

In The Matter Of:
People of the State of NY v.
Donald J. Trump

F. Chin
December 4, 2023

Deborah A. Rothrock, RPR

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People of the State of NY v.
Donald J. Trump

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1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF NEW YORK - CIVIL TERM - PART 37
3 -----X
4 PEOPLE OF THE STATE OF NEW YORK, BY LETITIA
5 JAMES, ATTORNEY GENERAL OF THE STATE OF NEW YORK,
6
7 Plaintiff,
8
9 -against- Index # 452564/2022
10 DONALD J. TRUMP; DONALD TRUMP JR.; ERIC TRUMP;
11 IVANKA TRUMP; ALLEN WEISSELBERG; JEFFREY
12 MCCONNEY; THE DONALD J. TRUMP REVOCABLE TRUST;
13 THE TRUMP ORGANIZATION, INC.; TRUMP ORGANIZATION
14 LLC; DJT HOLDINGS, LLC; DJT HOLDINGS MANAGING
15 MEMBER; TRUMP ENDEAVOR 12, LLC; 401 NORTH WABASH
16 VENTURE, LLC; TRUMP OLD POST OFFICE, LLC; 40 WALL
17 STREET, LLC; and seven SPRINGS, LLC,
18
19 Defendants.
20 -----X
21 Bench Trial
22
23 December 4, 2023
24 60 Centre Street
25 New York, New York 10007
BEFORE: THE HONORABLE ARTHUR S. ENGORON,
Justice of the Supreme Court
APPEARANCES:
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OF THE STATE OF NEW YORK - LETITIA JAMES
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LOUIS SOLOMON, ESQ.
(Continued next page.)

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Official Court Reporters

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1 THE COURT: Good morning, everyone.
2 Defendants, would you like to call your next
3 witness?
4 MR. FIELDS: Good morning, your Honor.
5 THE COURT: Good morning, Mr. Fields.
6 MR. FIELDS: The Defendants call Frederick Chin.
7 FREDRICK CHIN, called as a witness,
8 having been first duly sworn by the Clerk of the Court, was
9 examined and testified as follows:
10 THE COURT OFFICER: Please state your name and
11 either home or business address for the record.
12 THE WITNESS: Frederick Elliott Chin.
13 I reside at 16046 North 113th Way, Scottsdale,
14 Arizona.
15 THE COURT: Mr. Fields, please proceed.
16 MR. FIELDS: Thank you.
17 DIRECT EXAMINATION
18 BY MR. FIELDS:
19 Q Good morning, Mr. Chin.
20 Could you please state your education background after
21 high school?
22 A Certainly. I attended the University of Arizona, and
23 graduated in 1984 with a bachelor's in a concentration of
24 finance and in real estate.
25 Q And moving on to your professional background, where

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1 did you begin your professional career?
2 A My career began in Tucson, Arizona, with a firm called
3 Solot & Associates in 1979. I was a real estate researcher and
4 essentially an apprentice appraiser.
5 Q Were what were some of your responsibilities at Solot &
6 Associates?
7 A I would do title searches. I would measure properties
8 when we were valuing real estate. I would gather sales
9 information and later then perform the valuation of various
10 types of property.
11 Q And about how long were you there?
12 A From 1979 until 1981.
13 Q Where did you go next?
14 A In 1981 I left with one of the gentleman from Solot and
15 he formed a company called Greenberg Consultants. We were a
16 real estate appraisal and market research firm.
17 Q What were some of your responsibilities at Greenberg?
18 A My responsibilities continued. I was a real estate,
19 continued as real estate appraiser. I was also responsible for
20 reviewing the reports of others that were members or employees
21 of the firm.
22 So between 1981 and through 1984 the firm grew
23 considerably. I became a named partner in 1984 and we had, I
24 believe, six appraisers that were performing all sorts of real
25 estate valuations and I was responsible for, if you will,

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1 quality control of reviewing those appraisals as well as
 2 performing my own appraisals.
 3 Q Approximately how many appraisals did you perform with
 4 Greenberg, do you have any idea?
 5 A Probably a few thousand.
 6 Q All right. And do you have a general sense of when you
 7 left Greenberg, approximately?
 8 A Yes, it was, I believe, it was in 1988.
 9 Q And where did you go next?
 10 A I moved to Los Angeles to work at Kenneth Leventhal &
 11 Company.
 12 Q And what was Kenneth Leventhal & Company?
 13 A At the time part of the Big Ten accounting firms in the
 14 country. Kenneth Leventhal was very different, it provided
 15 accounting, tax and consulting services specifically for the
 16 real estate industry.
 17 Q All right. I think your testimony was that while you
 18 were at Greenberg you had been a partner. Why did you choose to
 19 leave your partnership and go to Kenneth Leventhal?
 20 A For me, I wanted to expand my use and application of
 21 real estate appraisals tools that I had. So while I had the
 22 real estate appraisal tools, I always believed they could be
 23 used in different capacities.
 24 So my perspective is that real estate valuation is a
 25 tool that is used in many different regards and I needed a

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1 larger platform to use my tools in different regards and the
 2 accounting firm environment, particularly with a firm that
 3 specialized in real estate, I believe I would be able to expand
 4 my use of those tools.
 5 Q How did you use the tools, to borrow your phrase, at
 6 Kenneth Leventhal?
 7 A They were used in many different regards. So I was
 8 brought in and Kenneth Leventhal had somewhat of a unique
 9 operating style unlike the other Big Four firms. Usually,
 10 meetings would involve an audit tax and consulting partner, I
 11 would be considered consulting person and decisions would be
 12 made in that context. Because if a valuation or real estate
 13 analysis was done it had impacts on how a structure might be or
 14 transaction might be structured and what the tax impacts might
 15 be and what the resulting accounting impacts would be.
 16 So I was the real estate side of that evaluation and
 17 analysis. And it afforded me the ability to work on many
 18 different things that were well outside the appraisal realm.
 19 Instead of doing single asset properties, I was advising and
 20 part of the team that was working on tax respinoffs of
 21 companies, divestitures, restructurings of debt and
 22 restructurings of company, the dispositions of portfolios and
 23 assets.
 24 So I was part of that team and that gave me a much
 25 broader perspective than doing single asset individual property

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1 appraisals.
 2 Q Did you have some exposure to financial statements
 3 while at Kenneth Leventhal?
 4 A Yes.
 5 Q And to what extent?
 6 A The firm often did Statements of Financial Condition
 7 for various of its clients. I was usually asked by an
 8 accounting partner to meet with the client, talk about their
 9 real estate holdings and talk about what they might be doing
 10 with their real estate and then provide feedback to the
 11 accounting people who would then use that however they might in
 12 their accounting reports.
 13 Q At some point did Kenneth Leventhal merge with another
 14 entity?
 15 A Yes, they did.
 16 Q What entity was that?
 17 A That was Ernst & Young.
 18 Q Did you remain employed by Ernst & Young after the
 19 merger?
 20 A Yes.
 21 Q In what capacity?
 22 A I was a partner at Ernst & Young when we had merged
 23 into Ernst & Young.
 24 Q So you would have been a partner at Ernst & Young after
 25 the merger?

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1 A Yes.
 2 Q Do you have to be an accountant or CPA to be partner at
 3 an accounting firm?
 4 A No. Ernst & Young had many partners. There were non
 5 accountants. The accounting firms were broadening their
 6 business scope into, a lot time at that time was information
 7 technology consulting, real estate consulting and all sorts of
 8 process improvement, performance improvement initiatives that
 9 were undertaken by accounting firms. They admitted a lot of
 10 nonCPA partners and I was among one of them.
 11 THE COURT: Just a moment. The question was do you
 12 have to be accountant to be partner at Ernst & Young? If
 13 there's yes or no question, please just answer it yes or no.
 14 THE WITNESS: My apologies, your Honor.
 15 THE COURT: Okay. It takes a lot to get the hang
 16 of this.
 17 THE WITNESS: Thank you.
 18 Q How, if at all, did your responsibilities change in
 19 terms of your work after the merger?
 20 A I took on many managerial roles. Mainly, I was still
 21 based in the Los Angeles office and that was the largest real
 22 estate consulting office of Ernst & Young. The reason why
 23 Kenneth Leventhal Group was a specialty group in Ernst & Young.
 24 At that time I oversaw a department of 75 people
 25 including eight partners. We provided all sorts of services,

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1 including the birth, if you will, have residential
2 mortgage-backed securities, restructuring, capital formation,
3 capital access for real estate clients, repositioning and
4 process improvement type of services all were within that domain
5 conducted out of the Los Angeles office and I offer saw those
6 activities.

7 Q Did you ever testify as an expert during your time at
8 Ernst & Young?

9 A Yes.

10 Q About how many times and what subject matters?

11 A My testimony was all real estate based. So relating to
12 real estate valuation, damages, contract disputes, inverse
13 condemnation, regular condemnation situations and I actually was
14 a subject matter expert for real estate nationally as well as
15 lead their real estate litigation practice while at Ernst &
16 Young.

17 Q Do you have a sense for approximately how many times
18 you testified as an expert while you were at E&Y?

19 A It was over 25 times.

20 Q What were some of the more notable cases that you
21 testified as an expert about while at Ernst & Young?

22 A A few notable ones. I was involved in a dispute
23 involving the Mall of America, it was the largest mall in
24 Minnesota. There was a dispute between the partners and I was
25 brought in to testify on that regard.

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1 Another situation notable in my career, I was the
2 expert witness involving the State of Arizona condemnation of
3 land through a master plan community. It was the states's
4 largest condemnation matter, the damage claim was over
5 \$100 million. This is going back to the early 90's. The
6 property owner had claimed that the properties were damaged
7 because of the construction of the roadway improvements.

8 I was representing the State and their Attorney General
9 rendered the opinion that there was no damage to these
10 particular properties partly because the highest and best use of
11 those properties hadn't changed as well as the acceleration of
12 demand that would occur as a result of the construction of those
13 improvements. It was a jury trial. And I had rendered
14 basically no damage other than the physical land being taken.
15 But there was no extenuating damages and the jury ruled at my
16 opinion.

17 Lastly, another notable one was, which was the -- in
18 Los Angeles was the Mid-Wilshire construction of an underground
19 subway. There was -- the Metropolitan Transit Authority was in
20 the process of constructing an underground subway underneath
21 Wilshire Boulevard. All the property owners who had not had
22 their properties condemned filed an inverse condemnation action
23 against the MTA that their property values had diminished.
24 Because of that subway construction even though their properties
25 were not physically taken.

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1 It was concurrent with the time when property values in
2 general were declining so that added to the damage claim that
3 the property owner's suffered. I represented the MTA. I looked
4 at the damage claim. I bifurcated the damages between market
5 value declines in general and I evaluated the specific instance
6 of what effect that subway construction would have on the
7 property.

8 I rendered the opinion that there was no inverse
9 condemnation and, in fact, that those properties along that
10 subway corridor were, in fact, benefited and demonstrated that
11 in court. And it was resolved at my opinion with respect to the
12 claim that there was no damage or inverse condemnation action
13 with those properties.

14 Q Outside of your testimony as an expert witness, were
15 you involved in any other notable engagements at E & Y that are
16 relevant for purposes of real estate valuation.

17 A Certainly. I was the real estate consultant to Calpers
18 which at the time was the largest pension fund in the United
19 States which had a very sizeable investment in real estate.
20 Every corridor, the airport folio of holdings would be
21 appraised. I was responsible for reviewing all those appraisals
22 and rendering opinions as to the reasonableness and to the
23 extent I disagreed, I would revalue the properties.

24 What was significant about the evaluation because
25 Calpers had relationships with many operating partners and the

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1 fees payable to those operating partners were triggered by
2 appraisal values. I did that for several years, every quarter
3 reviewing appraisals performed by others of properties that were
4 held by Calpers.

5 Another notable one I was involved in, purchase price
6 allocation of Pebble Beach, which was home of the U.S. Open.
7 But there was a group of investors, Peter Ueberroth and Clint
8 Eastwood who had purchased Pebble Beach in 1989 for
9 800-something million dollars. As part of normal subsequent
10 acquisition purposes, usually the purchase prices are allocated
11 for tax purposes because there's, my understanding, brief
12 understanding there's different tax treatments for different
13 allocations of property.

14 So I was involved in the purchase price allocation
15 involving Pebble Beach.

16 Q To be clear, when you say Pebble Beach, are you
17 referring to series of golf courses on the northern coast of
18 California?

19 A Yes, there are several golf courses. The most iconic
20 being Pebble Beach, but there's Spyglass, and a public one,
21 Monterey Golf Course as well.

22 Q While you were at Ernst & Young, were you also involved
23 with the valuations of other golf courses other than Pebble
24 Beach?

25 A Yes. I have appraised and also been a part of a team

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1 involving many golf courses on the Kohala Coast, K-O-H-A-L-A,
2 that were proposed for construction. There was several resort
3 hotels. We did the valuation work on the hotels as well as the
4 golf courses there.

5 There was a major acquisition in the Palm Desert area,
6 PGA West in La Quinta that was acquired in the early '90s for
7 250 million plus. I was involved in the valuation of that golf
8 course.

9 I've done quite a bit of golf course work over my
10 career. I have advised National Golf Investors, I forget, they
11 owned a portfolio of municipal golf courses, probably 100 of
12 them. I was consulting with them on ground rent payments and
13 how to restructure some of their obligations to improve their
14 profitability.

15 Q Why -- did you leave Ernst & Young at some point?
16 A I did.
17 Q Why?
18 A I left in 1995. What was happening at that time, there
19 was a federal regulation, Sarbanes-Oxley, S-A-R-B-A-N-E-S
20 O-X-L-E-Y, that came into law which effectively limited the
21 amount of work other non-accounting work that accounting firms
22 were doing.

23 Ernst & Young was very concerned about Sarbanes-Oxley.
24 And all the consulting businesses like information technology,
25 management consulting, process improvement, many of the ones I

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1 mentioned, including real estate became under fire. I think
2 Ernst & Young was very concerned about that.

3 So at that time I was doing quite a bit of real estate
4 litigation work. I think the pinnacle for me was I was going to
5 be the expert on the World Trade Center one-occurrence
6 two-occurrence situation. I had developed a damage theory
7 regarding the two occurrences.

8 As we normally do before we accept litigation
9 assignments, we run a conflict check sadly, Ernst & Young audits
10 most of the reinsurers that were insuring the loss and said
11 there's no way you could do this.

12 I had repeatedly run into situations where the conflict
13 of interest was precluding my ability to do litigation work.

14 In the context of expert witness litigation work it is
15 usually the individual that gets hired and then the firm comes
16 along with it. And that was probably the final straw that
17 caused me to leave.

18 Q Where did you go next?
19 A After that, and actually prior to that I was consulting
20 with a private home builder and land developer in Las Vegas. I
21 had approached the subject of actually being on the other side
22 of the table, being on the operating side instead of the
23 consulting side and I joined him as chief operating officer.

24 He had large growth plans, a lack of liquidity and
25 needed access to additional dollars to fund his growth plans.

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1 So I believed I could help him in that regard and I joined him,
2 which was called Sagebrush Enterprises, which, at the time was a
3 home builder locally known as Rhodes Homes.

4 Q What was your involvement -- what were your roles at
5 Sagebrush and what did those roles entail?
6 A My role was to help him improve his liquidity so that
7 he could actually realize his growth plans. He had considerable
8 land Holdings, so he was land rich and cash poor.

9 In order to do so, it involved essentially a revamping
10 of his entire organization. I had to recruit and bring in
11 several experts in various departments. So land development, we
12 needed much more discipline with respect to how the business was
13 being operated. So my involvement there helped actively recruit
14 some key people that started to build the organization.

15 Concurrently with that, I sought to seek liquidity for
16 the company and located the source that would provide secured
17 financing to the company. And started the process of
18 essentially preparing the company and then executing raising
19 capital for the company.

20 We put a credit facility together of about
21 \$525 million. It was reviewed by the RAID agencies. I made all
22 the presentations to the raid agencies, formulated -- it was in
23 front of the RAID agencies and other investors who were funding
24 this 525 million.

25 It was a significant key to the success of the

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1 organization because at the time the company had no more than
2 \$10 million of liquidity and lots of land holdings so now the
3 land holdings and capital that was available was more in balance
4 so that we could achieve the growth plans.

5 Subsequent to that, I then tried to acquire on behalf
6 of the company a private, publicly registered privately traded
7 company in Albuquerque, New Mexico, which had owned 54000 acres
8 of land. I had essentially secured the right to acquire that on
9 behalf of the company.

10 As part of that, I raised a 250 or \$275 million credit
11 facility to support that. That transaction did not go through.
12 We were overbid at the final curtain and did not complete that
13 transaction.

14 Q What were your actual titles at -- withdraw that.
15 I think you said this company that you were with was
16 called Sagebrush Enterprises?
17 A Yes, that was the parent company.
18 Q What were your titles while there?
19 A I was the originally hired as the COO and then
20 ultimately became the CEO of Sagebrush.

21 Q And after Sagebrush did you stay in the Las Vegas area?
22 A I did, yes.
23 Q What was your next stop for employment?
24 A I was -- so I left Sagebrush after I thought I had
25 completed what I needed to do. I was named as Chief

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1 Restructuring Officer of Lake at Las Vegas Companies.
2 Lake of Las Vegas Companies was the owner of a 3600
3 acre master plan community that included three existing golf
4 courses and two planned golf courses, built around a manmade 320
5 acre lake that had entitlement to construct up to 5000
6 residential units.
7 There was a default by the borrower of, I believe,
8 \$500 million credit facility and as part of the forbearance the
9 lender group nominated me to oversee the activities of the
10 borrower until the time -- at which time the Borrower was going
11 to repay the entire debt, but I was reporting to the lender
12 group with respect to the activities, the obligations, the
13 situation operating-wise and otherwise that I saw at Lake at Las
14 Vegas.
15 Q So you began as chief restructuring officer, did you
16 hold any other titles at Lake at Las Vegas?
17 A Yes. So in October I was appointed CRO on January 2nd
18 because the borrower failed to repay the loan. The lender group
19 appointed me as the new owner of Lake at Las Vegas and I became
20 the CEO of Lake at Las Vegas Company to evaluate the company, to
21 essentially run and improve it and to handle all the operations
22 which included the golf courses.
23 It also included a Ritz Carlton Hotel which we had
24 owned as well as all the land development activities.
25 Q How much debt existed at this time on this property?

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1 A I think all total it was over 600-something million.
2 There was debt against the Ritz Carlton Hotel separately and
3 then debt against the land holdings, golf courses and operating
4 businesses of Lake at Las Vegas.
5 Q Shifting gears a little bit into your next stop.
6 Where did you work at Lake at Las Vegas?
7 A So after Lake at Las Vegas, I went to Los Angeles and
8 became the chief operating officer of MPG Office Trust. We had
9 gotten Lake at Las Vegas out of bankruptcy, so before, when I
10 took over the ownership my recommendation was to file Chapter 11
11 and clean it through, to clean the company and exit bankruptcy.
12 Then I went to MPG Office. They had a significant
13 liquidity problem and a balance, too much debt against assets.
14 MR. AMER: Could we get a year, I lost track of the
15 time.
16 Q When did you leave Lake at Las Vegas?
17 A 2010.
18 Q And you mentioned you started with the MPG Office
19 Trust, would that have been in 2010, give or take?
20 A Yes.
21 Q And approximately how long were you with the MPG Office
22 Trust?
23 A Until 2013.
24 Q So what is the MPG Office Trust?
25 A MPG Office was a publicly traded real estate investment

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1 trust also known as a REIT. They owned approximately 16 million
2 square feet of commercial office buildings, hotels and some
3 retail. And it was a largest holdings in Southern California of
4 an office REIT and besides that, they own most of the high rises
5 in downtown Los Angeles. They had approximately a 40 percent
6 market share of high quality of office space in downtown Los
7 Angels.
8 (Whereupon, Cheryl-Lee Lorient relieved Deborah
9 Rothrock as the official court reporter.)
10 (Continued on next page.)
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1 CROSS EXAMINATION
2 BY MR. FIELDS:
3 Q. What was your title at MPG?
4 A. It was Chief Operating Officer.
5 Q. What were some of your responsibilities as COO?
6 A. I was responsible and co-worked with the CEO to
7 improve the liquidity of the company and, essentially,
8 deleverage the balance sheet and prepare it for either a
9 sale or continued operations.
10 Q. Did you become involved with a merger while at
11 MPG?
12 A. Yes. It was one of the exit plans that we had
13 discussed with the Board of Directors. And they had
14 evaluated options and believed that a merger, after the
15 company had been cleaned up -- we spent many years cleaning
16 it up to prepare it for merger.
17 Q. Who was the merger with?
18 A. It was with Brookfield Properties.
19 Q. And what were your responsibilities relative to
20 that merger?
21 A. I was, eminently, involved in most of the aspects
22 of that merger. So I prepared the company for sale; so for
23 gathering all necessary documents so that due diligence
24 could be performed on the portfolio.
25 We went through all of the systems, all the

<p>F. Chin - Defendant - Direct/Mr.Fields Page 5883</p> <p>1 people, all of the processes to, basically, display the</p> <p>2 story of what MPG was and what the opportunity was.</p> <p>3 We went through every lease -- so, there was over</p> <p>4 five hundred leases -- to make sure that all the information</p> <p>5 was input correctly and that people could do their own</p> <p>6 projections and forecasts.</p> <p>7 I worked on the investment memorandum that was</p> <p>8 sent. I did property tours with potential investors or</p> <p>9 buyers of the company, answered and fielded many questions</p> <p>10 that they had during their due diligence periods. And then,</p> <p>11 the merger was effective. There was lots of legal documents</p> <p>12 that I helped get completed.</p> <p>13 And then, post merger, I was involved in the</p> <p>14 handoff of making sure that the systems and all of the</p> <p>15 things that we knew about our company were transferred to</p> <p>16 Brookfield efficiently.</p> <p>17 Q. How, if at all, did you utilize appraisal</p> <p>18 information while you were at MPG?</p> <p>19 A. We had gotten appraisals on some of our</p> <p>20 properties. Because, as I mentioned, a lot of our</p> <p>21 properties were over-leveraged.</p> <p>22 We did have appraisal information that was either</p> <p>23 required by potential buyers -- as we did try to and we did</p> <p>24 sell several of our assets.</p> <p>25 And appraisal information was oftentimes required</p>	<p>F. Chin - Defendant - Direct/Mr.Fields Page 5885</p> <p>1 Q. And you said, shortly after you got the appraisal,</p> <p>2 about how much time from the time you received the appraisal</p> <p>3 to when you, actually, sold the property, could you</p> <p>4 estimate?</p> <p>5 A. It was, probably, within three months.</p> <p>6 Q. Were there any other examples?</p> <p>7 A. Yes. Two others come to mind. We had another</p> <p>8 office building. We, internally, valued it for,</p> <p>9 approximately, 110 million. Appraisals were about 80 or</p> <p>10 90 million. And the property ended up transacting at</p> <p>11 150 million.</p> <p>12 All within the same time period. Usually, the</p> <p>13 appraisals were a condition of some pre-losing requirements</p> <p>14 that the buyer had wanted.</p> <p>15 Most notably, we had U.S. Bank Tower, which, at</p> <p>16 the time, was the largest, tallest building west of the</p> <p>17 Mississippi. It was a 73-story highrise structure; a very</p> <p>18 iconic structure for downtown LA.</p> <p>19 There again, we had, we thought, lots of value.</p> <p>20 Appraisers did not think so. But, we, internally, valued it</p> <p>21 at somewhere around 300 million. The appraisal numbers came</p> <p>22 in about 250. And we sold the property for \$367 million.</p> <p>23 So, we -- I've had many arguments with appraisers.</p> <p>24 They were very adamant that their values were right. And I</p> <p>25 believe the market test, when you put it out there, is the</p>
<p>F. Chin - Defendant - Direct/Mr.Fields Page 5884</p> <p>1 by the buyers or it was something that somebody wanted to</p> <p>2 see how much they might be able to borrow against a piece of</p> <p>3 property.</p> <p>4 Q. Did you find that the appraisal information that</p> <p>5 you received was always indicative of the selling price of a</p> <p>6 particular asset?</p> <p>7 MR. AMER: Objection, leading.</p> <p>8 THE COURT: Sustained.</p> <p>9 Q. How were appraisals --</p> <p>10 Withdrawn.</p> <p>11 How did you use appraisals in determining what the</p> <p>12 potential selling price of an asset would be?</p> <p>13 A. I, actually, didn't. We had appraisal</p> <p>14 information. I found from the instances we had appraisal</p> <p>15 information, it was grossly inaccurate.</p> <p>16 Q. Are there any examples that come to mind?</p> <p>17 A. I do.</p> <p>18 Q. What examples?</p> <p>19 A. We had an office building in Pasadena called Plaza</p> <p>20 Los Fuentes. It was a multi-tenant office building. I</p> <p>21 looked at the valuation. I thought it was, probably, worth</p> <p>22 around \$60 million. We had it appraised by a national</p> <p>23 appraisal firm. They appraised the property for about</p> <p>24 33 million. We took it to market, shortly after we got the</p> <p>25 appraisal, and we sold the property for 75 million.</p>	<p>F. Chin - Defendant - Direct/Mr.Fields Page 5886</p> <p>1 best demonstration of value.</p> <p>2 Q. All right. So, we talked about the merger with</p> <p>3 Brookfield.</p> <p>4 When did you leave your MPG?</p> <p>5 A. In 2013.</p> <p>6 Q. What was your next -- where were you employed</p> <p>7 next?</p> <p>8 A. I had my own company called CPG Advisors.</p> <p>9 Actually, I created it before MPG but, I was pretty much</p> <p>10 full-time. It was my own business. And, I started doing</p> <p>11 consulting work under that tent.</p> <p>12 Q. What kind of consulting work did CPG do?</p> <p>13 A. It was general real estate advisory. It varied.</p> <p>14 I looked at site selection for Sonic Restaurants.</p> <p>15 I did an evaluation involving environmental</p> <p>16 contamination of a property in Northern California. I</p> <p>17 looked at the damages on that.</p> <p>18 I also was involved in the city of Stockton</p> <p>19 bankruptcy. So it was a Chapter 9 bankruptcy. So I was a</p> <p>20 valuation expert on three golf courses that secured a loan</p> <p>21 that Franklin Templeton made. They were municipal golf</p> <p>22 courses.</p> <p>23 There was a valuation dispute. The city's</p> <p>24 appraiser had valued these municipal golf courses,</p> <p>25 essentially, at zero or maybe it was \$100,000. My opinion</p>

<p>F. Chin - Defendant - Direct/Mr.Fields Page 5887</p> <p>1 was, I believe, right around \$5 million.</p> <p>2 And, there was a valuation testimony a valuation,</p> <p>3 if you will, fight. And, it ended up that the creditor,</p> <p>4 Franklin Templeton received a claim at my appraised number.</p> <p>5 Q. Was that in Federal Bankruptcy Court?</p> <p>6 A. Yes.</p> <p>7 Q. Were there other instances of expert testimony</p> <p>8 that you provided during this time at CPG?</p> <p>9 A. That was -- there was another one which was a</p> <p>10 previous of fiduciary duty. One of the partners had sued</p> <p>11 the owner of a company that was involved in land development</p> <p>12 across many different states. And, there was a dispute, a</p> <p>13 valuation dispute. I was named as the expert regarding the</p> <p>14 valuation and the potential damages.</p> <p>15 Q. Where were you employed after CPG?</p> <p>16 A. I moved to a company called Province, which was a,</p> <p>17 generally, creditor advisory firm. They advise companies,</p> <p>18 creditor committees that are in bankruptcy, as well as just</p> <p>19 general trustee work so post Chapter 11 liquidating plans</p> <p>20 usually had a trust and province did quite a bit of trust</p> <p>21 work.</p> <p>22 Q. What was your position and some of your</p> <p>23 responsibilities while you were there?</p> <p>24 A. I was a senior director. I, basically, was</p> <p>25 involved in anything that dealt with real estate. So if</p>	<p>F. Chin - Defendant - Direct/Mr.Fields Page 5889</p> <p>1 THE COURT: I was wondering myself.</p> <p>2 When did you go to Providence?</p> <p>3 THE WITNESS: 2015.</p> <p>4 Q. Do you recall when you left Providence?</p> <p>5 A. It was January 2018.</p> <p>6 Q. Where did you go next?</p> <p>7 A. I was appointed the CEO of Woodbridge Group of</p> <p>8 Companies.</p> <p>9 Q. Who were you appointed by?</p> <p>10 A. I was appointed by a reconstituted Board of</p> <p>11 Directors that was overseeing a company that had just filed</p> <p>12 Chapter 11.</p> <p>13 Q. What did Woodbridge do? Can you describe that a</p> <p>14 little bit?</p> <p>15 A. Well, Woodbridge was involved in many activities;</p> <p>16 mostly, real estate investment. However, various state and</p> <p>17 securities exchange commissions had concerns that there was</p> <p>18 a Ponzi scheme being operated by Woodbridge. It was before</p> <p>19 my arrival.</p> <p>20 As a result of some of that and some liquidity</p> <p>21 issues, the company filed for bankruptcy in December 2017.</p> <p>22 The debtor and, alleged, perpetrator of the Ponzi scheme</p> <p>23 remained in place.</p> <p>24 Through the Court hearings, there was actions to,</p> <p>25 basically, replace him with a Chapter 7 Trustee, which was a</p>
<p>F. Chin - Defendant - Direct/Mr.Fields Page 5888</p> <p>1 there was a financial advisory role Province had that</p> <p>2 involved real estate, I was involved in that. If there was</p> <p>3 some general litigation consulting work that was involved in</p> <p>4 as well at Province.</p> <p>5 Q. Did you provide expert testimony while you were at</p> <p>6 province? And if so, do you recall what the instances were?</p> <p>7 A. I didn't, ultimately, provide testimony. But it</p> <p>8 was involving an involuntary bankruptcy and the</p> <p>9 appropriateness of that filing. It was involving Master</p> <p>10 planning --</p> <p>11 MR. AMER: Can I just object, your Honor. I</p> <p>12 think the answer was no. So, anything beyond that is</p> <p>13 non-responsive.</p> <p>14 THE COURT: Objection, sustained.</p> <p>15 THE WITNESS: My apologies, your Honor.</p> <p>16 MR. FIELDS: It was a bad question. Don't</p> <p>17 worry. It is not your fault.</p> <p>18 Q. Did you provide or any expert opinion work in</p> <p>19 instances that did not result in testimony?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. And, what were those?</p> <p>22 A. It was involving the involuntarily bankruptcy of a</p> <p>23 master planning community in Henderson, Nevada.</p> <p>24 MR. AMER: Again, can we get a year for when</p> <p>25 he went to Providence?</p>	<p>F. Chin - Defendant - Direct/Mr.Fields Page 5890</p> <p>1 liquidation. The Judge had, basically, authorized a total</p> <p>2 removal of the debtor, reconstitution of the Board of</p> <p>3 Directors.</p> <p>4 And a new reconstituted Board was put in place. I</p> <p>5 was interviewed to be the CEO to guide the company through</p> <p>6 bankruptcy and out of it. And, I was appointed to the CEO</p> <p>7 position in January of 2018.</p> <p>8 Q. What were some of your responsibilities as CEO?</p> <p>9 A. Well, besides the normal Chapter 11</p> <p>10 responsibilities of providing all the creditor</p> <p>11 constituency's information about the company, more</p> <p>12 importantly, there were 200 pieces of real estate that</p> <p>13 needed to be planned and organized in how they would be</p> <p>14 disposed of.</p> <p>15 And, I was responsible for, essentially,</p> <p>16 formulating the reorganization plan and more specifically</p> <p>17 the action plans of how the real estate was going to be</p> <p>18 handled through the bankruptcy and after.</p> <p>19 Q. Could you just, generally, describe what steps you</p> <p>20 took to determine what to do with these 200 or so assets?</p> <p>21 A. Yes. I went through and looked at asset, which</p> <p>22 were concentrated in Colorado and California. I looked at</p> <p>23 what their status was. Much of the land was planned for new</p> <p>24 luxury homes.</p> <p>25 And I went through and, essentially, established</p>

<p>F. Chin - Defendant - Direct/Mr.Fields Page 5891</p> <p>1 business plans for each asset, which was either to sell as 2 is or to develop and construct the home and then sell it 3 later. 4 And then, not only devise the plan, determine what 5 the economics might be. And then, also to implement the 6 plan. So, have the appropriate staff and organizational 7 structure to support that as well as manage the cost of 8 construction during that process. 9 Q. What are some of the considerations that you 10 undertook in determining whether to sell an asset as is or 11 to develop it and sell it later? 12 A. In every situation I looked at what I thought the 13 sale price might be. So I looked at "Is there the 14 appropriateness to sell now and minimize the risk?" Or "Was 15 there a certain amount of risk that could be undertaken that 16 might maximize the recovery to the 9,000 victims of the 17 Ponzi scheme." 18 So, many cases, I decided that the finished value, 19 minus its cost, would yield much greater than selling the 20 property as is. 21 Q. What sorts of properties were involved in these 22 200 or so? 23 A. The composition included lots, finished lots, that 24 were available for development; land that was entitled for 25 certain construction of larger luxury single family homes</p>	<p>F. Chin - Defendant - Direct/Mr.Fields Page 5893</p> <p>1 A. The company exited bankruptcy in -- I believe it 2 was 2019. And I continued to operate the company, as a CEO, 3 until I left and finished my job in December of 2022. 4 Q. And what was your involvement? 5 From the exit of bankruptcy in 2019 to 2022, what 6 were some of your responsibilities? 7 A. I was responsible for all the operations of the 8 company. Additionally, we changed from private company to a 9 public reporting company. So we had to deal with all that 10 structure to basically be SEC compliant. 11 Besides that, it was the normal operations of 12 making sure the homes were constructed in a certain style to 13 maximize value, that we were on time and on budget and then, 14 also negotiating all the transactions involved in the sale 15 of the properties that were available for sale. 16 Q. Did your experience in the liquidation of the 17 Woodbridge Properties include the sale of a rent stabilized 18 unit? 19 A. Yes. 20 Q. And where was this unit? 21 A. Upper East Side. 22 Q. Of New York City? 23 A. New York City. My apologies. Yes. 24 Q. Did you, ultimately, sell the rent stabilized 25 unit?</p>
<p>F. Chin - Defendant - Direct/Mr.Fields Page 5892</p> <p>1 and homes that were under construction that were again 2 luxury homes. 3 Many of the properties, namely about 50, were 4 relocated and concentrated in LA in some of the highest 5 value areas available. So, Bel Air, Beverly Hills, 6 Hollywood Hills, Hidden Hills, all prime locations in the 7 Southern California, Los Angeles area. And, many of the 8 properties were very valuable. 9 The company had acquired, prior to my arrival, a 10 property that was almost a 100 million dollars in 11 acquisition price. 12 Q. How was the bankruptcy, ultimately, resolved? 13 A. So, we exited bankruptcy. We had sold off 14 various assets. The plan that I had designed was a 15 self-funding one. So, it didn't require further risk to the 16 victims of the Ponzi scheme. 17 And, I managed to, essentially, monetize all its 18 assets. So, I did 125 plus transactions that yielded or 19 grossed about 700 plus million dollars. That was, 20 ultimately, distributed to the trust, which, ultimately, got 21 distributed to the victims of the Ponzi scheme. 22 Q. Did you continue working there after the 23 conclusion of the bankruptcy? 24 A. Yes. 25 Q. In what role?</p>	<p>F. Chin - Defendant - Direct/Mr.Fields Page 5894</p> <p>1 A. We did. 2 Q. Do you recall when? 3 A. I believe it closed earlier this year. It was 4 negotiated during my time at -- when I was a CEO. 5 Q. How were you able to execute the sale of a rent 6 stabilized unit? 7 A. Well, leading up to the sale, beforehand, I 8 evaluated our options. So, one was to sell the unit with 9 the tenant in place. 10 And, we had gotten, essentially, indications of 11 value that with the tenant in place it was worth maybe 150 12 or \$200,000. 13 The tenant had been there for decades. And, there 14 was indications that they were already planning to transfer 15 it to siblings or others. So there was a concern about how 16 long they may be in place. 17 At the same time, we looked at the value of the 18 unit as if it was unencumbered. And, that number was well 19 over \$2 million. So we had a spread there. 20 We decided, with the approval of the Board of 21 Directors, to try to buyout the tenant and then, librate the 22 unit so it could be sold in the open market. 23 After some period of time, we were able to 24 negotiate that. We, basically, negotiated a buyout of the 25 tenant for a little over half a million dollars. We got</p>

<p>F. Chin - Defendant - Direct/Mr.Fields Page 5895</p> <p>1 full releases. She left the unit. And then, we put the</p> <p>2 unit on the market.</p> <p>3 It was immediately put into escrow. And, we ended</p> <p>4 up selling that unit for a little less than \$2 million. So,</p> <p>5 our net was, I think, after cost, somewhere around a million</p> <p>6 three or a million five after the buyout price.</p> <p>7 So instead of being realizing what it would have</p> <p>8 been if we just sold it as is, versus working through that</p> <p>9 process, and putting a little money into it, we were able to</p> <p>10 cover, significantly, more.</p> <p>11 Q. At the time of the sale, was the unit still</p> <p>12 encumbered by the rent stabilization?</p> <p>13 A. No.</p> <p>14 MR. AMER: You mean, after the sale closed?</p> <p>15 I'm sorry. I didn't understand the question.</p> <p>16 Q. Did the new owner of the property have a rent</p> <p>17 stabled or non-rent stabilized property on their hands?</p> <p>18 A. The owner had it free and clear. And, they were</p> <p>19 going to move in.</p> <p>20 MR. AMER: So after the close. I got it.</p> <p>21 THE COURT: I'm sorry. Say that again?</p> <p>22 MR. AMER: So, after the closing. That's</p> <p>23 what I understood.</p> <p>24 THE COURT: I think we, probably, all</p> <p>25 understand there was a buyout and the rent regulated</p>	<p>F. Chin - Defendant - Direct/Mr.Fields Page 5897</p> <p>1 Providence again?</p> <p>2 A. I am.</p> <p>3 Q. What kind of work are you doing for them now?</p> <p>4 A. Province is a financial adviser to one of the</p> <p>5 creditors. It's involved -- this particular assignment</p> <p>6 involves a portfolio of real estate. I am the real estate,</p> <p>7 I guess if you will, expert or adviser regarding how the</p> <p>8 real estate is handled in the bankruptcy.</p> <p>9 Q. All right. Are you involved in the sale process</p> <p>10 of a portfolio of properties, right now, through your</p> <p>11 employment with Province?</p> <p>12 A. I am.</p> <p>13 Q. Is that in bankruptcy?</p> <p>14 A. Yes, the company is in bankruptcy.</p> <p>15 Q. What's going on with some of those properties</p> <p>16 right now?</p> <p>17 A. Well, this was a closure of a company. I can't</p> <p>18 discuss what the company is. But, I can give you general</p> <p>19 description. They are liquidating, approximately, 170</p> <p>20 properties across United States.</p> <p>21 They, as part of that -- to repay the creditors.</p> <p>22 And as part of that analysis or part of that liquidation</p> <p>23 they had gotten appraisals on all 170 assets that are</p> <p>24 located across almost all 50 states.</p> <p>25 The appraisal was done by national firm. That</p>
<p>F. Chin - Defendant - Direct/Mr.Fields Page 5896</p> <p>1 tenant left and then it was an unregulated apartment.</p> <p>2 THE WITNESS: Thank you.</p> <p>3 Q. Okay. Mr. Chin, just to get my bearings here, I</p> <p>4 think you said you left Woodbridge in late last year,</p> <p>5 December of 2022?</p> <p>6 A. Correct.</p> <p>7 Q. And where did you go next?</p> <p>8 A. I went back to my old personal firm CPG Advisors</p> <p>9 and was going to figure out what the next assignment was</p> <p>10 going to be.</p> <p>11 Q. Is that where you are now?</p> <p>12 A. Yes, it is.</p> <p>13 Q. In terms of professional employment, not literally</p> <p>14 where you are right now. But --</p> <p>15 A. Yes.</p> <p>16 Q. All right. Do you also do some work for Ankura?</p> <p>17 A. This assignment. And, I do other work, some work</p> <p>18 subcontracting work for Ankura.</p> <p>19 Q. Just generally, what are some of your</p> <p>20 responsibilities or tasks you've taken on now with CPG?</p> <p>21 A. Ankura had been hired to help a bank evaluate its</p> <p>22 assets for possible sale. There was a default by a borrower</p> <p>23 and they had asked Ankura to evaluate its options. And I</p> <p>24 was asked to look at one of those assets.</p> <p>25 Q. All right. Are you also doing some work for</p>	<p>F. Chin - Defendant - Direct/Mr.Fields Page 5898</p> <p>1 national firm, I think, had 40 plus appraisers valued in its</p> <p>2 portfolio.</p> <p>3 Q. And what were the ranges, if any, that the</p> <p>4 portfolio was appraised at?</p> <p>5 A. It's been publically reported in -- I don't want</p> <p>6 to breach confidences. But, the appraised value was,</p> <p>7 approximately, 1.1 billion. But there was also another</p> <p>8 valuation provided by the firm which was just under</p> <p>9 900 million, which reflected -- it wasn't characterized as</p> <p>10 this, as a liquidation value, but it was called a "go dark"</p> <p>11 value; meaning, that the owner would vacate the premises and</p> <p>12 what would be the value as if nothing was there. So it was,</p> <p>13 basically, 900 million to a billion one was the appraised</p> <p>14 value.</p> <p>15 Q. Had there been any bids for these properties?</p> <p>16 A. Yes, there have been.</p> <p>17 Q. Where have the bids fallen in terms of value?</p> <p>18 A. There have been stalking horse bidders that,</p> <p>19 initially, were, approximately, 1.3 billion and now we're up</p> <p>20 to about a billion 525 is a stocking horse Court-approved</p> <p>21 bid for the same set of assets.</p> <p>22 Q. And the appraised value, what type of value did</p> <p>23 the appraisal appraise -- or the appraisals I should say?</p> <p>24 A. The appraisals were all based on market value.</p> <p>25 Q. So Mr. Chin, overall, about how long have you been</p>

<p>F. Chin - Defendant - Direct/Mr.Fields Page 5899</p> <p>1 working in the real estate valuation industry?</p> <p>2 A. Over 40 years.</p> <p>3 Q. I'd like to talk to you, for a moment, about some</p> <p>4 of your designations.</p> <p>5 Do you hold any professional designations?</p> <p>6 A. I do.</p> <p>7 Q. Can you describe some of them?</p> <p>8 A. I hold the MAI designation. I hold the CIRA,</p> <p>9 Certified Insolvency Restructuring Adviser, designation;</p> <p>10 CTP, Certified Turnaround Professional and CRE, Certified</p> <p>11 Consultant of Real Estate.</p> <p>12 Q. Counselor of Real Estate maybe.</p> <p>13 A. Counselor of Real Estate. Thank you. Sorry.</p> <p>14 Q. Let start with the MAI. What is a MAI</p> <p>15 designation?</p> <p>16 A. It's issued by the appraisal institute of</p> <p>17 professional organization. It's based on scope of work and</p> <p>18 experience levels, various reports that are reviewed by your</p> <p>19 peers, passing and attending classes all in appraisal and</p> <p>20 then being awarded that designation.</p> <p>21 (Whereupon, the following proceedings was</p> <p>22 stenographically recorded by Deborah Rothrock.)</p> <p>23</p> <p>24</p> <p>25</p>	<p>-F. Chin-Defendant-Direct-by Mr. Fields- Page 5901</p> <p>1 consulting or other type of experience.</p> <p>2 Q In terms of the appraisals that you have performed</p> <p>3 yourself, you had mentioned it earlier, about how many have you,</p> <p>4 appraisals have you done in your career?</p> <p>5 A Probably a couple thousand.</p> <p>6 Q What sorts of properties have you appraised?</p> <p>7 A All of the major property types, so that would be</p> <p>8 industrial, office, retail, residential, several special purpose</p> <p>9 preponderance, if you will, fire station, church or cemetery.</p> <p>10 Some of those types, but generally all property types.</p> <p>11 Q Have you done hotels?</p> <p>12 A Yes, I have, yes.</p> <p>13 Q And golf courses?</p> <p>14 A Yes.</p> <p>15 Q How many times, if you could approximate, have you</p> <p>16 testified as an expert witness at trial?</p> <p>17 A Probably 25 or so.</p> <p>18 Q And based on your time in the industry, how would you</p> <p>19 describe the importance of the interplay between real estate</p> <p>20 valuation, market analysis and market operations?</p> <p>21 A The tools of real estate valuation is used in so many</p> <p>22 different regards of real estate. Developers use valuation</p> <p>23 tools, restructuring professionals use real estate valuation</p> <p>24 tools. As an operator you're also trying to determine whether</p> <p>25 you're maximizing value and value is measured there. It is an</p>
<p>-F. Chin-Defendant-Direct-by Mr. Fields- Page 5900</p> <p>1 Q About how long have you been a member The Appraisal</p> <p>2 Institute?</p> <p>3 A Since 1984.</p> <p>4 Q You also mentioned you are certified as an insolvency</p> <p>5 and structure advisor?</p> <p>6 A Yes.</p> <p>7 Q What is that?</p> <p>8 A That is another professional organization that deals</p> <p>9 solely in, generally bankrupt situations, restructuring</p> <p>10 situations. Here it is based upon their regimen of class test</p> <p>11 which deal in law, finance and management. It is based on years</p> <p>12 of experience and between the testing and the experience they</p> <p>13 accord the CIRA designation.</p> <p>14 Q And you mentioned CTP, which I believe Certified</p> <p>15 Turnaround Professional?</p> <p>16 A Yes, correct.</p> <p>17 Q What is that?</p> <p>18 A That is another designation like the CIRA that is</p> <p>19 awarded to people with experience in restructuring. I think it</p> <p>20 is, in this case, I've been doing it for the last decade or more</p> <p>21 and based upon testing.</p> <p>22 Q And lastly, the Council of Real Estate, how did you</p> <p>23 obtain that?</p> <p>24 A That is by invitation only and I believe the minimum</p> <p>25 requirement is at least ten years of some sort of real estate</p>	<p>-F. Chin-Defendant-Direct-by Mr. Fields- Page 5902</p> <p>1 integral tool. It's used every which way in the real estate</p> <p>2 industry done by developers, investor, lenders, all sorts of</p> <p>3 purposes for real estate valuation and having valuation tools.</p> <p>4 They're so interrelated. You could, in my opinion, you can't</p> <p>5 separate them without knowing the other aspects.</p> <p>6 Q All right. We talked a little earlier about your time</p> <p>7 about accounting firms. I would like to ask questions regarding</p> <p>8 your experience specifically with accounting.</p> <p>9 First of all, are you an accountant?</p> <p>10 A No, I'm not an accountant.</p> <p>11 Q Could you describe your understanding of accounting</p> <p>12 principles?</p> <p>13 MR. AMER: Objection. Lack of foundation.</p> <p>14 Relevance.</p> <p>15 THE COURT: Vague. I don't understand.</p> <p>16 You asked him basically to explain accounting after</p> <p>17 he just said he's not an accountant.</p> <p>18 MR. FIELDS: I asked about his understanding of</p> <p>19 accounting principles.</p> <p>20 THE COURT: Subtle distinction.</p> <p>21 What is your understanding of accounting? Don't</p> <p>22 you go to school for eight years to become an accountant?</p> <p>23 MR. FIELDS: Certainly at a high level. I'm trying</p> <p>24 to establish so that the Court understands where Mr. Chin is</p> <p>25 coming from with regard to, if there's any cross-examination</p>

<p>-F. Chin-Defendant-Direct-by Mr. Fields- Page 5903</p> <p>1 on accounting. If there's not going to be anything, I'll</p> <p>2 move on.</p> <p>3 MR. AMER: So, I don't understand the relevance of</p> <p>4 asking someone who is not accountant what their</p> <p>5 understanding is of the field. You might as well ask: What</p> <p>6 is your understanding of neurosurgery is for all its worth.</p> <p>7 THE COURT: I think that is a little far off.</p> <p>8 Sustained.</p> <p>9 MR. FIELDS: I assume there will be no</p> <p>10 cross-examination at all of accounting principles, or</p> <p>11 anything of the sort?</p> <p>12 MR. AMER: I am not going to agree to anything in</p> <p>13 advance of hearing what the witness will testify to.</p> <p>14 MR. FIELDS: I don't know that that's fair, your</p> <p>15 Honor. He's saying that he can't opine on -- he can't</p> <p>16 mention what he knows about accounting then I think it is</p> <p>17 not fair to be asked anything about accounting.</p> <p>18 MR. AMER: You could make that objection if I ask</p> <p>19 him about that. I'm not agreeing in advance to anything.</p> <p>20 That is not an appropriate thing to ask.</p> <p>21 THE COURT: Now the question is: What is the</p> <p>22 understanding of accounting? What does he understand about</p> <p>23 accounting?</p> <p>24 MR. FIELDS: I'm asking his general understanding</p> <p>25 of the accounting world and accounting principles. He's</p>	<p>-F. Chin-Defendant-Direct-by Mr. Fields- Page 5905</p> <p>1 almost an hour of testimony about his background, more than</p> <p>2 an hour. In many instances he's testified about the work</p> <p>3 he's done in accounting firms as a member of a team where an</p> <p>4 accounting partner was part of the team. We've done through</p> <p>5 this already.</p> <p>6 THE COURT: Sustained. Objection sustained.</p> <p>7 MR. FIELDS: May I have a moment, your Honor,</p> <p>8 please.</p> <p>9 THE COURT: Sure.</p> <p>10 (Whereupon, there is a pause in the proceedings.)</p> <p>11 (Continued)</p> <p>12 DIRECT EXAMINATION:</p> <p>13 Q To the extent you were ever confronted with an</p> <p>14 accounting issue, who would you rely on for advice?</p> <p>15 A I would rely on the experts and people designated in</p> <p>16 the firm that dealt with accounting matters.</p> <p>17 Q All right.</p> <p>18 MR. FIELDS: Your Honor, I move to qualify Mr. Chin</p> <p>19 as an expert relating to real estate valuations, market</p> <p>20 analysis and real estate operations.</p> <p>21 THE COURT: Let me write this down. Real estate</p> <p>22 valuations.</p> <p>23 MR. FIELDS: Market analysis.</p> <p>24 THE COURT: Can that be more specific? Can we say</p> <p>25 real estate market analysis?</p>
<p>-F. Chin-Defendant-Direct-by Mr. Fields- Page 5904</p> <p>1 worked at an accounting firm. I wanted the Court to</p> <p>2 understand what he knows just generally about accounting,</p> <p>3 that's all.</p> <p>4 THE COURT: Is there still an objection?</p> <p>5 MR. AMER: Yes, it's incredibly vague.</p> <p>6 THE COURT: Sustained. This is ridiculous.</p> <p>7 MR. FIELDS: Okay.</p> <p>8 (Continued)</p> <p>9 DIRECT EXAMINATION:</p> <p>10 Q Have you worked with accountants throughout your</p> <p>11 career?</p> <p>12 A Yes. Particularly during my time at Kenneth Leventhal</p> <p>13 & Company and Ernst & Young.</p> <p>14 MR. AMER: It's been asked and answered too.</p> <p>15 THE COURT: By the way, you asked how many times</p> <p>16 he's testified as an expert. The first time he said</p> <p>17 "something like 25 at least, or 25 plus." The second time</p> <p>18 he said "around 25". So that was asked and answered.</p> <p>19 Anyway, let's get back to the current topic.</p> <p>20 You asked if he's been around accounting work or</p> <p>21 familiar with it.</p> <p>22 MR. FIELDS: I asked if he had worked with</p> <p>23 accountants through his career.</p> <p>24 THE COURT: Okay.</p> <p>25 MR. AMER: Asked and answered. We have heard</p>	<p>-F. Chin-Defendant-Direct-by Mr. Fields- Page 5906</p> <p>1 MR. FIELDS: Yes.</p> <p>2 THE COURT: And the third thing, real estate --</p> <p>3 MR. FIELDS: Real estate operations.</p> <p>4 MR. AMER: I have no objection to first designation</p> <p>5 real estate valuation. I do object to the other two. I</p> <p>6 think they're incredibly vague. I don't know that his</p> <p>7 experience goes beyond just real estate valuations.</p> <p>8 MR. FIELDS: I think, as Mr. Amer just noted,</p> <p>9 eloquently, we spent an hour talking about his experience</p> <p>10 developing properties, managing portfolios, determining when</p> <p>11 to sell or hold assets.</p> <p>12 I think that is all covered within market analysis</p> <p>13 and operations, as well. I think that is totally</p> <p>14 appropriate for this witness to be qualified in that</p> <p>15 respect.</p> <p>16 THE COURT: Granted.</p> <p>17 MR. AMER: I was going to make a suggestion. I</p> <p>18 think the two areas, real estate market analysis and real</p> <p>19 estate operations are just incredibly broad. If it's</p> <p>20 confined as to real estate valuation, I would be okay with</p> <p>21 it.</p> <p>22 THE COURT: Deem an expert. Overruled. I deem him</p> <p>23 an expert in all three areas.</p> <p>24 (Continued)</p> <p>25 DIRECT EXAMINATION:</p>

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1 Q All right. Mr. Chin, I am going to ask any opinions
2 you give in this case you give to reasonable degree of certainty
3 based upon your experience in the fields that you've worked in.
4 Okay?
5 A Yes, I understand.
6 THE COURT: You might have to talk louder.
7 THE WITNESS: Sorry, my apologies.
8 THE COURT: Five-minute warning.
9 (Continued)
10 DIRECT EXAMINATION
11 MR. FIELDS:
12 Q Did you have the occasion to review the Attorney
13 General's Complaint in this case?
14 A Yes.
15 Q When you reviewed the complaint, did you review the
16 exhibits that are attached to it as well?
17 A Yes.
18 Q And as part of those exhibits, did you review the
19 Statements of Financial Condition and supporting data
20 spreadsheets that were attached?
21 A Yes.
22 Q Did you form an opinion regarding what the Attorney
23 General's theory of valuation was after reading the complaint?
24 MR. AMER: Objection.
25 THE COURT: I'm not sure the theory of valuation,

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1 does the Attorney General have a single theory of valuation?
2 What were you going to say?
3 MR. AMER: I think the opinions need to be tied to
4 the evidence that we put in on our case. And not just to
5 what is stated in the complaint where we have not put in
6 evidence in our case.
7 As the Court knows, we've truncated our case based
8 upon the Court's summary judgment ruling.
9 THE COURT: I don't -- this is another one of the
10 times when I'll sustain the objection on different grounds.
11 I don't understand.
12 Mr. Fields, could you explain what that question
13 means?
14 MR. FIELDS: Sure. It's understanding his
15 impression about what the allegations are with regard to
16 valuation. That is what the question is getting at from his
17 perspective as an expert in real estate valuations.
18 THE COURT: What the allegations are?
19 MR. FIELDS: Yes. In addition to that, citing to
20 the evidence that is cited in the complaint, not just the
21 words, but also the evidence that is included as part of the
22 complaint which have now been moved into evidence in this
23 case.
24 MR. AMER: That goes to the point of my objection,
25 your Honor.

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1 THE COURT: State it again, please.
2 MR. AMER: They're going to offer opinions about
3 the complaint, not about the evidence we have put in on our
4 case. And I think it is appropriate for the expert's
5 testimony to address what we're putting in in terms of
6 evidence and theories on our case in chief.
7 MR. FIELDS: I think it is equally permissible for
8 an expert to testify about why the theories that are being
9 argued to this Court are plausible, implausible, accurate,
10 inaccurate, reasonable or unreasonable. That is what we're
11 getting at.
12 THE COURT: How about if we did this, let me try
13 for a second.
14 You said you read the complaint?
15 THE WITNESS: Yes, sir.
16 THE COURT: And you read the exhibits?
17 THE WITNESS: Correct.
18 THE COURT: Which were the background, backbone of
19 the complaint, right?
20 THE WITNESS: Yes.
21 THE COURT: And do you understand what I'll call
22 the theories of the complaint?
23 THE WITNESS: I believe so, yes.
24 THE COURT: Okay. And do you think -- I think this
25 is Mr. Fields' question but more direct: Do you feel that

-F. Chin-Defendant-Direct-by Mr. Fields- Page 5910

1 the evidence sustains the theories?
2 THE WITNESS: No, I don't.
3 THE COURT: Okay. Next question.
4 Did that do the trick Mr. Fields?
5 MR. FIELDS: I suppose if I could ask why not as
6 follow-up.
7 THE COURT: Yes.
8 (Continued)
9 DIRECT EXAMINATION:
10 Q Why not?
11 A It is my opinion that there are different perspectives
12 of value. That the Attorney General has a perspective of what
13 must be reported and the owner, Trump's financials have a
14 different perspective of value.
15 Q And in terms of perspective of value, is that something
16 you're familiar with based upon your 40 years in the industry?
17 MR. AMER: Objection.
18 THE COURT: Sustained. Leading.
19 Q Have you encountered these perspectives of value in the
20 past?
21 A Yes.
22 Q In your experience?
23 A Yes.
24 Q How frequently or infrequently do you encounter them?
25 A Frequently.

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1 Q And why?

2 A There are many, many reasons why appraisal information

3 either lags or is incongruent with the way the market works.

4 Number one, most or all appraisal information is

5 retrospective. It is based upon historical transactions that

6 have occurred in perhaps a different market environment than as

7 of date of appraisal.

8 One example would be appraisals lag when markets are

9 going up, and they lag when markets go down. They either

10 overstate or overvalue, particularly in those situations where

11 market cycles are more pronounced.

12 The appraisal process in general is governed by a

13 certain set of rules that appraisers must follow that often

14 times differ than, if you will, the free market. Investors,

15 individuals may have perspectives of value. It is not to say

16 the appraisal process is inherently wrong, but it tends to

17 normalize a lot of potential nuances that are influential on

18 value estimates.

19 I think those two things are prominent in my mind of

20 why there's a pretty big divergence between appraisal estimates

21 and the actual market test of what properties are really worth.

22 THE COURT: Okay. See you all the 11:40.

23 (Whereupon, a recess taken.)

24 THE COURT: Mr. Fields, would you like to continue.

25 MR. FIELDS: If I may.

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1 THE COURT: Please.

2 MR. FIELDS: Thank you.

3 (CONTINUED)

4 DIRECT EXAMINATION

5 BY MR. FIELDS:

6 Q Okay. Mr. Chin, let me just ask you first: At what

7 rate are you being compensated for your work in this case?

8 A \$550 an hour.

9 Q Do you have a sense for how many hours approximately

10 you've spent on this engagement to date?

11 A Probably about a thousand.

12 Q And is your compensation conditioned on any opinion you

13 give in this case?

14 A No.

15 Q All right. Have you heard the terms "as is" and "as

16 if" value before?

17 A Yes.

18 Q Could you describe them, please?

19 A "As is" generally connotes to a condition that exists

20 at the time, a specific date, generally often times referred to

21 as market value.

22 "As if" is a condition that will be expected to be --

23 expected to be completed or expected to be received either kind

24 of a hypothetical condition that might exist in the future.

25 Q Could you give an example of what such hypothetical

-F. Chin-Defendant-Direct-by Mr. Fields- Page 5913

1 condition might be?

2 A One might be a partially completed home that is assumed

3 to be completed as of a certain date, that would be an "as if"

4 analysis. Of a land development, if there was a raw piece of

5 land it was going to be converted with a golf course and

6 residential lots around the golf course, looking at its future,

7 assuming that was completed that would be and "as if" value.

8 Q Is there another way to do so "as if" values?

9 A Yes.

10 Q What is that way?

11 A Could be considered an investment value.

12 Q From your review of the complaint and the exhibits, did

13 you form an opinion with regard to "as is" or "as if" valuations

14 with regard to the valuations that were described in the

15 complaint?

16 A Yes.

17 Q And what is that?

18 A There were differences of perspective of whether "as

19 is" or "as if" valuations would apply.

20 Q And what were some of those differences of perspective

21 that you're mentioning?

22 A In the Trump financial statements there are many

23 situations and instances where to be completed or expected to be

24 received was included which would be an "as if" situation in

25 perspective.

-F. Chin-Defendant-Direct-by Mr. Fields- Page 5914

1 That differed many times from the perspective of "as

2 is" values that were argued in the AG's complaint.

3 Q And you mentioned the term "appraisals."

4 From your review of the documentation, what type of

5 value did the appraisals describe?

6 A Appraisals commonly refer to the "as is" value.

7 Q Now, there are different types of "as if" values?

8 A Yes.

9 Q What are some of those different types?

10 A One comes to mind would be if a building is partially

11 completed or planned to be constructed that would be and "as if"

12 completed value.

13 If a property is just opened and it is scheduled or

14 hoped to be leased up over time, there's the "as if" occupied

15 valuation.

16 If a proposed roadway was going to affect a property,

17 one might value "as if" the roadway is completed and done. And

18 value would be performed "as if" completed.

19 THE COURT: Just a second. The question was: Are

20 there different types of "as if" values, something like

21 that, I don't have it in front of me.

22 But you gave to me examples of "as if" values not

23 different types of "as if" values, am I right?

24 MR. FIELDS: I think I asked what are some types

25 "as if" values.

<p>-F. Chin-Defendant-Direct-by Mr. Fields- Page 5915</p> <p>1 THE COURT: I would call these examples more than</p> <p>2 different types, but okay, we understand each other.</p> <p>3 (CONTINUED)</p> <p>4 DIRECT EXAMINATION:</p> <p>5 Q All right. In terms of an appraiser's perspective, how</p> <p>6 do appraisers when doing market value appraisals, how do their</p> <p>7 perspective affect the ultimate value of the property?</p> <p>8 A It is very influential. It is the analysis, the</p> <p>9 beliefs, the perspective of appraiser that goes into how they</p> <p>10 interpret sales or projected income that might be received or</p> <p>11 occupancy or essentially the direction of the market if it is</p> <p>12 increasing or decreasing.</p> <p>13 Q And what sorts of information do appraisers generally</p> <p>14 look to in arriving at a value conclusion?</p> <p>15 A The value conclusions are grounded in historical</p> <p>16 information. So what has transpired in terms of economic growth</p> <p>17 or sales that have been transacted as opposed to listings or</p> <p>18 offers to purchase. They rely on those facts and put those</p> <p>19 pieces together to formulate their perspective of a property.</p> <p>20 Q In your experience do developers typically have a</p> <p>21 different perspective?</p> <p>22 MR. AMER: Objection. Leading.</p> <p>23 THE COURT: Sustained.</p> <p>24 MR. FIELDS: Do developers have a different</p> <p>25 perspective?</p>	<p>-F. Chin-Defendant-Direct-by Mr. Fields- Page 5917</p> <p>1 what is property is worth five years ago, am I correct that</p> <p>2 you're trying to figure out what is property is worth right</p> <p>3 now, though, two weeks later it is in the past.</p> <p>4 THE WITNESS: You're partly right, your Honor, but</p> <p>5 at the same time it is reliant on retrospective data.</p> <p>6 Sales --</p> <p>7 THE COURT: That is the only data we have, right?</p> <p>8 THE WITNESS: Correct. But there's also</p> <p>9 projections and anticipation that other people</p> <p>10 prognosticate.</p> <p>11 THE COURT: I'm in uncharted territory here but</p> <p>12 is there something called a prospective appraisal or is that</p> <p>13 what "as if" is?</p> <p>14 THE WITNESS: Yes, many people characterize that as</p> <p>15 prospective or projected, forecasted, those types of terms.</p> <p>16 THE COURT: Thank you.</p> <p>17 (CONTINUED)</p> <p>18 DIRECT EXAMINATION:</p> <p>19 Q On that note, do -- the perspective appraisals, what</p> <p>20 are those called?</p> <p>21 A Often times they're characterized as "as if".</p> <p>22 Q In your career, are those frequently created by</p> <p>23 appraisers or how often do you come across those is what I am</p> <p>24 asking?</p> <p>25 A They come across occasionally. Particularly if a</p>
<p>-F. Chin-Defendant-Direct-by Mr. Fields- Page 5916</p> <p>1 MR. AMER: Yes, leading.</p> <p>2 MR. FIELDS: Foundational question.</p> <p>3 THE COURT: You can ask what is their perspective</p> <p>4 and their perspective, appraisers versus developers.</p> <p>5 MR. FIELDS: Okay.</p> <p>6 Do developers' perspective differ from an</p> <p>7 appraiser's respective, is that an appropriate question?</p> <p>8 THE COURT: No, because it is a yes or no question.</p> <p>9 MR. FIELDS: Well, I have to ask some foundational</p> <p>10 questions to be able to --</p> <p>11 THE COURT: I suggested what is the perspective of</p> <p>12 an appraiser and what is the perspective of a developer.</p> <p>13 Q What is a perspective of a developer?</p> <p>14 A Unlike appraiser, they are focused on future</p> <p>15 performance.</p> <p>16 Q What do you mean by "focused on future performance"?</p> <p>17 A They're less reliant on the history or those pieces of</p> <p>18 information that have already transpired and more focused on how</p> <p>19 markets or properties may evolve. And looking at really a</p> <p>20 forecast or projections of what might occur as opposed to the</p> <p>21 appraisal process which is much more geared towards</p> <p>22 retrospective analysis.</p> <p>23 THE COURT: Wait a second. I don't -- you're the</p> <p>24 expert. But I don't think of appraisers as doing</p> <p>25 retrospective analysis, they're not trying to figure out</p>	<p>Page 5918</p> <p>1 building is proposed so as opposed to valuing it with partially</p> <p>2 completed steel and partially completed materials, they look at</p> <p>3 it "as if" it is finished and "as if" it is leased.</p> <p>4 It is a relevant point for a lending institution about</p> <p>5 what its terminal value, if you will, or future "as if" value</p> <p>6 might be. Those are common in new construction, common in</p> <p>7 proposed projects, common in partially completed projects.</p> <p>8 (Whereupon, Cheryl-Lee Lorient relieved Deborah</p> <p>9 Rothrock as the official court reporter.)</p> <p>10 (Continued on next page.)</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

<p>F. Chin - Defendant - Direct/by Mr. Fields Page 5919</p> <p>1 Q. How will you know, by picking up an appraisal, 2 whether it's "as is" or "as if?"</p> <p>3 A. The appraisal should be very clear. I believe 4 even FIRREA, the Federal Institution -- I'm not sure -- 5 Reform Recovery, better known as F-I-R-R-E-A, I believe 6 mandates that there is "as is" appraisals and there could be 7 other variants besides "as is" that's reported.</p> <p>8 Q. Are you familiar with the term value creation? 9 A. Yes.</p> <p>10 Q. What is that? 11 A. It's at phrase that -- common in the development 12 industry -- that they are or a developer is going to 13 undertake certain activities to differentiate or create an 14 environment or end product that may be a typical or 15 different in the marketplace and that there is a value 16 increment above and beyond that could be received by 17 creating a value.</p> <p>18 The best example, as I mentioned before, is taking 19 a raw piece of land and proposing a golf course -- land 20 that's for a luxury housing. And in that particular case, 21 by developing that and believing that there's market demand, 22 that, they created value that others may not, necessarily, 23 see on that vacant land.</p> <p>24 THE COURT: I just want to pindown my 25 understanding, the difference between "as is, as if."</p>	<p>F. Chin - Defendant - Direct/by Mr. Fields Page 5921</p> <p>1 least, construction cost, plus the value creation above 2 a land value that might be an "as if" value.</p> <p>3 THE COURT: All right. So again, using 4 arbitrary numbers, what's the "as is" value of the 5 vacant lot, unrestricted lot.</p> <p>6 THE WITNESS: So in that case, 500 million. 7 THE COURT: Okay.</p> <p>8 THE WITNESS: And "as if" might be two 9 billion.</p> <p>10 THE COURT: Okays. That's the difference. 11 Well, are you adding a factor -- I'll call it, the 12 genius factor. It would be worth 500 million. But, if 13 a genius owns, it's now worth 2 billion?</p> <p>14 THE WITNESS: Generally, in those "as if" 15 appraisals, it's not, per say, specific to an 16 individual. It's based on if it were done today, what 17 would the economics look like as if it were done. And 18 that is that "as if" value.</p> <p>19 THE COURT: Then why are you giving any 20 values to the "as is?"</p> <p>21 THE WITNESS: Well, in that situation, it 22 could be, somebody might have a different plan for it 23 and say, "I want to build an office building." That 24 might yield a different "as if" number.</p> <p>25 THE COURT: All right. So, depending upon</p>
<p>F. Chin - Defendant - Direct/by Mr. Fields Page 5920</p> <p>1 It you have a large vacant lot, in the middle of 2 New York City or Los Angeles, and there are no zoning 3 restrictions, you can build the best hotel in the world 4 or whatever or office building, what would you consider 5 the "as is" value?</p> <p>6 Is it nothing because it's doing nothing, you 7 get no rent next day or do you think "Well, it's going 8 to be a great hotel someday." But then, isn't that the 9 "as if" value.</p> <p>10 So, what's the "as is" value of a vacant lot, 11 no zoning restriction, in the middle of the city. You 12 can make up an arbitrary number.</p> <p>13 THE WITNESS: It would be as it sits today 14 as is available for all sorts of uses. So, just a 15 vacant land.</p> <p>16 THE COURT: So what's -- is the value zero 17 or \$500 million?</p> <p>18 THE WITNESS: It might be 500 million. 19 THE COURT: But isn't that the same as the 20 "as if" value?</p> <p>21 THE WITNESS: No. The "as if" would be 22 considering that a construction or hotel would be 23 constructed, what its economic potential might be and 24 based upon that use and that construction, assuming it 25 was all done, what that might be. So, it would be, at</p>	<p>F. Chin - Defendant - Direct/by Mr. Fields Page 5922</p> <p>1 the intelligence, if you will, of the plan, it could be 2 worth 500 million or two billion.</p> <p>3 THE WITNESS: Yes.</p> <p>4 THE COURT: I think we've heard investment 5 value. Is that what the as -- you know, I think you've 6 said that. But that's, basically, the same thing as 7 "as if."</p> <p>8 THE WITNESS: Yes.</p> <p>9 THE COURT: Okay. Thanks. I understand 10 much better now.</p> <p>11 Q. So perhaps, as a corollary to that, just to clear 12 it up, frankly, for myself, in a situation where there's 500 13 million for the vacant plot of land, that 500 million, what 14 does it represent?</p> <p>15 What is worth \$500 million if that situation?</p> <p>16 A. In that case, given the appraisal lease it's the 17 highest and best use. So, it could be used for multiple of 18 uses subject to its zoning and other allowable things.</p> <p>19 So it may not be just a hotel. It might be an 20 office, it might be a retail complex, it might be a 21 specialty convention center. It could be a variety of 22 things.</p> <p>23 Q. But the bottom line is, the land, itself, is the 24 value in that situation?</p> <p>25 MR. AMER: Objection, leading.</p>

F. Chin - Defendant - Direct/by Mr. Fields	Page 5923	F. Chin - Defendant - Direct/by Mr. Fields	Page 5925
1 THE COURT: Sustained.		1 could be a two billion hotel, could be 500 million	
2 Q. In the situation that the Court was describing,		2 dollars office building but, you can't build anything	
3 where there's a vacant plot of land in the middle of		3 on it, what's the value of that.	
4 New York City, and we threw around the term -- the figure --		4 THE WITNESS: Well, significantly less than	
5 \$500 million, does that figure represent with something		5 500 million. One would try to see, maybe in that	
6 constructed on it, if it's market value or just vacant land		6 particular case, a hypothetical you mentioned, it might	
7 that could sell vacant?		7 be for a park, it might be just for a parking lot.	
8 MR. AMER: Objection, leading.		8 There may be a use for it and it would be valued as	
9 THE COURT: I'll let him.		9 such.	
10 MR. AMER: He could just ask "What does it		10 THE COURT: So let's assume, again,	
11 represent," and let the witness tell us what he thinks		11 arbitrarily -- as a parking lot, it might be worth 100	
12 it's representing as opposed to giving him two options		12 thousand.	
13 that he gets to choose from.		13 THE WITNESS: Correct.	
14 THE COURT: Well, you're right. That's		14 THE COURT: Something like that. As a park,	
15 leading. Okay. Sustained.		15 it's not worth anything to the owner if the	
16 You can't ask "isn't A the same as B," you		16 municipality is just going to let people play there,	
17 can't ask "Isn't A the same as B or C." It doesn't		17 right?	
18 matter how many possibilities you're giving. It's		18 THE WITNESS: Yeah. And this gets a little	
19 still leading.		19 more nuanced. There's a value to the park or the	
20 MR. FIELDS: All right. Let me come at it		20 owner -- the municipality -- but there may be an owner	
21 from a different direction.		21 or that person who does own it. So there's some sort	
22 Q. So, we talked about the vacant plot of land, in		22 of value to him.	
23 middle of New York City, being worth \$500 million as what		23 But in your example, yeah, in municipal use	
24 we'll call market value.		24 there is no public value if you will.	
25 And then we also talked about developing something		25 THE COURT: Well, there is no private value.	
F. Chin - Defendant - Direct/by Mr. Fields	Page 5924	F. Chin - Defendant - Direct/by Mr. Fields	Page 5926
1 on that same vacant plot of land and we said that it could		1 There's a public value. But, it's not measurable.	
2 be worth a billion and a half or two billion dollars.		2 THE WITNESS: Yeah. But, if you look at	
3 What are the differences in value reflecting for		3 this in combination, if somebody just said, "Well, just	
4 those two situations?		4 give me your park because, it's not worth anything,"	
5 THE COURT: That sounds like the old joke		5 there's a value to it.	
6 about what's the difference between an old penny and a		6 THE COURT: Okay.	
7 new dime? Nine cents.		7 Q. Taking the Court's question regarding the piece of	
8 Mr. Fields, you asked is the value in the "as		8 land that you can't develop, how would the market value and	
9 is" only about just the value of the land. I would		9 investment values differ for that piece of property that the	
10 say, it can't be just the value of the land because, it		10 Court was just describing?	
11 wouldn't generate any income.		11 MR. AMER: Objection. I think it presents	
12 Isn't it assuming that there'd be some type		12 they would differ. Can we just ask how they would	
13 of building or development just not a genius building?		13 relate to each other.	
14 THE WITNESS: Yes. The land is available		14 THE COURT: Overruled.	
15 for all sorts of types of uses based upon its zoning.		15 A. Do you mind repeating that question.	
16 THE COURT: So, the use is what's value not		16 Q. Sure.	
17 the land itself?		17 THE COURT: Read back or you'll do it?	
18 THE WITNESS: The uses and allowances create		18 Q. Taking the Court's question regarding the piece of	
19 the value of the land.		19 land that you can't develop, how would the market value and	
20 THE COURT: Okay. All right. Thanks.		20 investment value different for that piece of proper that the	
21 Q. But the land, itself, possesses value independent		21 Court was just describing?	
22 of whatever use somebody seeks for it?		22 A. Well, the market value, in the case, could be	
23 A. Yes.		23 zero. And, to an owner, they believe it's, in their view,	
24 THE COURT: So, what if there is a zoning or		24 it's worth a lot. There could be a significant difference.	
25 trust and estate's restriction middle of the city,		25 Q. Why? Why could an owner think that?	

<p>F. Chin - Defendant - Direct/by Mr. Fields Page 5927</p> <p>1 A. Could be for sentimental reasons because, it's 2 been in the family forever and -- or there may be 3 restrictions that I can't transfer this property no matter 4 what. You know, the extenuating circumstances. It may be 5 something that they had history with that property and they 6 just cannot let it go.</p> <p>7 THE COURT: Well, that's a whole different 8 kettle of fish. Sentimental value? That's not any 9 kind of market value, right?</p> <p>10 THE WITNESS: No, it's not, sir.</p> <p>11 THE COURT: So, it's totally subject to 12 "Can't build. But, I love it. So, it's worth a lot to 13 me."</p> <p>14 THE WITNESS: Yes.</p> <p>15 THE COURT: Okay.</p> <p>16 Q. How does the -- how do the restriction 17 is -- withdrawn.</p> <p>18 How does whether or not the restrictions or can or 19 will continue into the future, how can that effect a 20 property owner's "as if" value?</p> <p>21 A. Well, it is a limitation on the ability to, if you 22 will, maximize the utility of that property. So, if there's 23 a short duration, it limits the alternatives that could be 24 used for a property; especially, if they're going to plan it 25 and construct it and develop it.</p>	<p>F. Chin - Defendant - Direct/by Mr. Fields Page 5929</p> <p>1 improve and they believe that they want to take advantage of 2 that situation and build something that will be in high 3 demand when the market cycle continues, hopefully, to 4 improve.</p> <p>5 They look at situations that could be an 6 underutilized property where they might envision something 7 that "I can do more with this than currently being done."</p> <p>8 And, therefore, there's a creation of value that 9 if they exercise certain initiatives that, that value could 10 be substantial and better than what it would cost them to 11 buy and change.</p> <p>12 Q. How, if at all, do the interest rates effect 13 developer's decisions to buy or sell real property?</p> <p>14 A. Interest rates have a large bearing on several 15 aspects that effect an owner or developer. It is a cost of 16 capital.</p> <p>17 Certainly, when cost or capital are higher, 18 interest rates increase. The obligations increase. And, it 19 may make a development less feasible. Because, it's going 20 to cost more in interest that doesn't result in a higher 21 property value.</p> <p>22 Interest rates could and have effected 23 capitalization rates, the rates of returns that are expected 24 by buyers and sellers of property.</p> <p>25 It does provide an indication as to the health of</p>
<p>F. Chin - Defendant - Direct/by Mr. Fields Page 5928</p> <p>1 Obviously, the longer period of time that's given, 2 the more flexibility there is to consider options and 3 alternatives.</p> <p>4 Q. You discussed, earlier, rent stabilization 5 restrictions.</p> <p>6 Do you recall we were talking about that earlier?</p> <p>7 A. Yes.</p> <p>8 Q. Is that an example of what you were just 9 describing with regard to restrictions and holding something 10 for long term?</p> <p>11 A. That would be an example. I think in the real 12 estate market, they think of the bundle of rights -- a whole 13 bunch of rights.</p> <p>14 And if certain things are removed or there is 15 encumbrances or restrictions then that takes away certain 16 rights of a property owner that have to be considered.</p> <p>17 Q. Going back to talking a little bit about 18 developers, what are some of the factors or considerations 19 that developers look to when determining an "as if" value 20 for an asset?</p> <p>21 A. There are many. They might look at the market and 22 see that there is something that is not there that they 23 believe would have high demand, that, they could build and 24 construct.</p> <p>25 They may see that the market cycle is going to</p>	<p>F. Chin - Defendant - Direct/by Mr. Fields Page 5930</p> <p>1 the economy. So if it's high interest rates, there's going 2 to be retraction, perhaps less demand, if you are a retail 3 building owner, that might curtail your retail sales. So 4 interest rates have a huge overall effect on the demand for 5 supply of and the pricing of real estate.</p> <p>6 Q. Similarly how do -- how if at all does a 7 developer's experience or expertise effect their decisions 8 to evaluate property and the necessary -- withdrawn. Let me 9 withdraw that.</p> <p>10 How, if at all, do the developer's experience and 11 expertise in real estate development effect what types of 12 property they invest in and the resulting values?</p> <p>13 A. Developer's experience is extremely important, 14 from a standpoint, if they're particularly constructing. 15 Things don't oftentimes go as planned. And developers have 16 to make adjustments in terms of how they respond to that 17 market.</p> <p>18 As commonly understood, real estate markets are 19 very cyclical. They go up, they go down, depending upon 20 various economic factors.</p> <p>21 And, usually, the investors and owners who've been 22 through many cycles, understand more where people are, where 23 they are, in the investment cycle.</p> <p>24 That might cause them to buy when other people are 25 selling and disposing of assets. It may give them an</p>

<p>F. Chin - Defendant - Direct/by Mr. Fields Page 5931</p> <p>1 indication, when a market is peeking, that they might sell 2 at the top of a market. 3 I think that the more you've been in real estate, 4 the longer you've been in it, you're more sensitive to what 5 impacts how you create or make money versus someone who's 6 never developed, has a limited perspective and may not have 7 been subject to the vagaries of market cycles or changes in 8 demand or changes in interest rates or other things that 9 effect their profitability. 10 Q. Can a developers experience or expertise effect 11 that developers -- the manner in which a developer values 12 their properties "as if"? 13 MR. AMER: Objection, leading. 14 THE COURT: Sustained. 15 Q. How does a developer's experience or expertise 16 effect how that developer values their properties "as if"? 17 A. They're focused on trying to anticipate and 18 forecast where the market is headed. So, if they believe 19 too many buildings are being proposed, they may retract 20 their decisions to building or to undertake more 21 construction activities. 22 If they believe that pricing does not allow them 23 sufficient profit with having to take on more risks, they 24 may decide to withdraw or temporarily hold their development 25 activities.</p>	<p>F. Chin - Defendant - Direct/by Mr. Fields Page 5933</p> <p>1 Q. How significant, in those instances, was current 2 market value appraisals? 3 A. They were irrelevant. Telling me what a property 4 is worth when I have a business plan to build and construct 5 a home that is underway -- I didn't care. 6 I was focused on how the market would respond, 7 where the market was headed, the potential demand for these 8 houses. So, I was very concerned about the "as if," if you 9 will, values. And I didn't care about the "as is" because I 10 wasn't selling. I'm not selling properties as it was. 11 Q. How old you describe the real estate market 12 conditions from a developer's point of view in the 2011 to 13 2019 years? 14 A. Very strong. It was a time -- I think about it as 15 before 2011 we had just had the greatest financial collapse 16 that occurred. So there was a total retraction of capital 17 for anything. And a lot of uncertainty. 18 I know this particular city has been hit very hard 19 because, it was a financial capital of, essentially, the 20 world. But, a lot of uncertainty. 21 Someone who understands real estate cycles would 22 see, "Okay. We had this condition in 2008. What a great 23 buying opportunity at some point in time." That the market 24 cycle would go backup. 25 So, what happened -- and it did happen -- as</p>
<p>F. Chin - Defendant - Direct/by Mr. Fields Page 5932</p> <p>1 So, they're, usually, attuned to what they think 2 their projections are of the future and how that my impact 3 real estate demand and prices. 4 Q. How, if at all, do the projections you just 5 described effect assumptions used for "as if" values? 6 A. The assumptions are highly influenced by their 7 perspectives of the market. 8 Q. In your 40 years of experience, did you project 9 "as if" values for different types of property? 10 A. I have. 11 Q. How did you use those "as if" values? 12 A. Well, most notably, like in the Woodbridge 13 example, I had to project what the selling price of a 14 finished luxury home would be in the future, knowing that 15 it's going to take some time to construct it, build it, 16 maybe there is COVID and supplier issues. 17 But, I had to project what I thought the prices 18 were because, I had to disseminate that information to, 19 essentially, the victims of the Ponzi scheme. So they knew 20 what sort of recovery might be possible from a sell out of 21 these homes. 22 So, in all those cases -- and, there were fifteen 23 luxury homes that I had built in LA. As of 2018, I had to 24 project them in 2022, 2021 about what I thought those houses 25 would sell for.</p>	<p>F. Chin - Defendant - Direct/by Mr. Fields Page 5934</p> <p>1 uncertainty decreased from that tragic situation of 2008, 2 markets started firming, prices started increasing, cap 3 rates started decreasing, valuations became greater and 4 higher as we moved on from 2011. Up until 2019, when we hit 5 kind of a high point in terms of the strength of the market 6 and we started entering an era of uncertainty. 7 That combined with a buildup of inventory that 8 happened, essentially, between 2016 to 2019, a lot of new 9 construction came on board. And it presumed that everything 10 would continue forward. 11 But then COVID hit. No one really knew how that 12 would effect demand. And then, now, we're in this situation 13 where we have massive uncertainty. We have an oversupplied 14 commercial real estate market and we're in another cycle. 15 Q. What type of value do developers generally rely on 16 when assessing a project's economic potential? 17 A. They -- and, I put myself in the same boat. They 18 are clearly focused on the future value, the "as if" value. 19 And, myself and others are hopeful that the market will 20 continue to be strong and bolstered but, we could be wrong. 21 Q. And how common is it for developers to use "as if" 22 values to project economic potential for a project? 23 A. Very common. 24 Q. How do developers differ from passive real estate 25 owners and investors in perceiving and managing risks?</p>

<p>F. Chin - Defendant - Direct/by Mr. Fields Page 5935</p> <p>1 A. There's a significant difference between passive 2 owners and developers. It is all premised on construction 3 risks. 4 So you have construction risks which is the taking 5 on the risk of building something -- excuse me -- on time, 6 on budget. And, hopefully, the market will be strong enough 7 to demand the product you're building. That is risky. 8 A lot of times things do not go as planned. Costs 9 are overrun, the time it takes to build is too long or some 10 other factor happens. 11 Notwithstanding that during that construction 12 process, the market cycle could change, that, it could go 13 from being very strong to very weak as you're still under 14 construction. 15 Contrast that with a passive owner, which would, 16 generally, buy it today. They know what they have, they 17 don't have to undertake any sort of construction risk and 18 start producing income right off the bat if they own an 19 office building. 20 So, that construction period. And then, there's 21 the lease up, that, I have to fill my building once I build 22 it. So, massive risks in this "as if" scenario. But, 23 they're rewarded if they, essentially, bet right. 24 Q. What considerations go into a developer's decision 25 to sell an asset?</p>	<p>F. Chin - Defendant - Direct/by Mr. Fields Page 5937</p> <p>1 time. 2 MR. FIELDS: Sure. 3 THE COURT: These are tough questions. 4 (Whereupon, the following proceedings was 5 stenographically recorded by Deborah Rothrock.) 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
<p>F. Chin - Defendant - Direct/by Mr. Fields Page 5936</p> <p>1 A. A couple of things. One is, if they have to. 2 Sometimes for tax reasons. Or if they feel that market 3 pricing is so high that they need to take advantage of the 4 cycle; that, we're at top of market, they may project that 5 the market is not going to be as strong and, therefore, they 6 should say, "Wow, we can take our chips off the table and 7 then maybe wait for the next cycle." 8 Q. In your experience, do developers build, sell or 9 liquidate assets at a discount? 10 MR. AMER: Objection; leading. 11 THE COURT: Sustained. 12 Q. How, if at all, does bulk selling or liquidating 13 assets, at a discount, effect a developer's decision to 14 sell? 15 A. I'm not sure I get the clarity. I didn't 16 understand your question. 17 Q. Sure. How, if at all, do developers consider -- 18 let me withdraw that. 19 Are you familiar with the terms bulk selling or 20 liquidating assets at a discount? 21 A. Yes. 22 Q. How often, in your experience, have you seen 23 developers do that; and if they do, do it, why? 24 MR. AMER: Compound question. 25 THE COURT: Let makes one question at a</p>	<p>-F. Chin-Defendant-Direct-by Mr. Fields- Page 5938</p> <p>1 Q How often do you see developers both selling or 2 liquidating assets at a discount? 3 A Not frequently, unless they're under substantial 4 pressure to do so. 5 Q And in your experience, what examples of substantial 6 financial pressure come to mind? 7 A I've seen it in the debt restructuring world that I am 8 in where there's an impasse between the lender and the borrower 9 and the properties need certain work, need monies invested and 10 the bank wouldn't do it. The borrower owes a lot of money and 11 sometimes they decide, let's just liquidate the portfolio. 12 Q I would like to shift gears and talk to you about 13 enterprise value. 14 Are you familiar with that them? 15 A Yes. 16 Q What is an enterprise? 17 A An enterprise is typically a collection or a grouping 18 of real estate assets that are owned, operated, managed 19 similarly under one umbrella. 20 So the best example would be like a Four Seasons is an 21 enterprise or Four Season Hotels. Ritz Carlton Hotel Group, its 22 an enterprise. They are lots of interrelated parts that are 23 leveraged off of a single brand name. 24 Q Is there value associated with an enterprise? 25 A Definitely.</p>

<p>-F. Chin-Defendant-Direct-by Mr. Fields- Page 5939</p> <p>1 Q Could you describe that?</p> <p>2 A Let's use a Ritz Carlton.</p> <p>3 There are certain systems, reservation systems,</p> <p>4 operating protocols, financial reporting, reservation systems</p> <p>5 that are all tied together that affect ^ all those properties.</p> <p>6 So they kind of perform under one umbrella, they move</p> <p>7 in one group. There's a standard for purchasing the same</p> <p>8 glassware, the same uniforms, everything. They operate as a</p> <p>9 group with a specific brand. They're marketed and merchandised</p> <p>10 as a brand.</p> <p>11 Therefore, this is an enterprise that includes all</p> <p>12 those parts which were all tied together to this brand.</p> <p>13 Q What types of properties do enterprise value generally</p> <p>14 apply to?</p> <p>15 A Enterprise value usually associates with several</p> <p>16 properties. So a single property doesn't -- wouldn't have an</p> <p>17 enterprise value. The more properties that are operating</p> <p>18 similarly or under a same type of name would be more considered</p> <p>19 a part of that enterprise.</p> <p>20 Q In terms of the use of the property, you mentioned Ritz</p> <p>21 Carlton. What types of properties and their uses do enterprise</p> <p>22 value generally apply to?</p> <p>23 A Generally operating type of businesses, so obviously</p> <p>24 hotels, you can consider motels as well. Golf courses, private</p> <p>25 clubs, could be maybe marinas if they're operated similarly. In</p>	<p>-F. Chin-Defendant-Direct-by Mr. Fields- Page 5941</p> <p>1 enterprise value?</p> <p>2 MR. AMER: I will object to the line of</p> <p>3 questioning. I don't think enterprise value is relevant to</p> <p>4 the case. It is not anything that was valued in the</p> <p>5 Statements of Financial Conditions. So I don't see how it</p> <p>6 is relevant.</p> <p>7 THE COURT: I see your point. I will allow it.</p> <p>8 The Appellate Division might not see the point. It is</p> <p>9 overruled.</p> <p>10 Q So I'll reask it.</p> <p>11 How does supply or leverage and purchasing power, if at</p> <p>12 all, affect enterprise value?</p> <p>13 A As I mentioned, it is one component of maybe an indicia</p> <p>14 of how an enterprise might exist.</p> <p>15 In an example, if someone is purchasing, let's say,</p> <p>16 dishes, Ritz Carlton dishes. They can negotiate probably</p> <p>17 stronger as a group as a Ritz Carlton than an individual</p> <p>18 property owner can go and say I will buy a thousand</p> <p>19 cobalt-looking glasses. That purchasing power and leverage of</p> <p>20 the organization or enterprise is much greater when negotiating</p> <p>21 contracts and others.</p> <p>22 THE COURT: Wouldn't that be called economies of</p> <p>23 scale?</p> <p>24 THE WITNESS: Yes, sir.</p> <p>25 THE COURT: Thank you.</p>
<p>-F. Chin-Defendant-Direct-by Mr. Fields- Page 5940</p> <p>1 some cases, apartment complexes if they're dominating a certain</p> <p>2 area. Could be office buildings, a collection of office</p> <p>3 buildings that are dominated by a single owner. Those would be</p> <p>4 some examples.</p> <p>5 Q What are some of the key indicia for a real state</p> <p>6 professional such as yourself to determine whether there's</p> <p>7 enterprise value associated with a certain subset of properties?</p> <p>8 A I consider the commonalities of the market. The</p> <p>9 commonalities of the systems, if you call it, the back of the</p> <p>10 house. How people are supposed to operate, how they price</p> <p>11 things, how they purchase items to operate a property. The</p> <p>12 people that they all march, if you will, kind of to a similar</p> <p>13 type of beat, that they have certain standards.</p> <p>14 Those are elements that I consider contributors to an</p> <p>15 enterprise type of value.</p> <p>16 Q What, if any, shortcomings in terms of valuation could</p> <p>17 exist when valuing a real estate portfolio but not accounting</p> <p>18 for enterprise value?</p> <p>19 A Well, there are several situations that happen when one</p> <p>20 looks at the just the individual assets. Unless someone takes</p> <p>21 out the benefit or the effect of that association with</p> <p>22 marketing, then it is missing this increment of value that is</p> <p>23 attributable to the property that is the result of the</p> <p>24 association with the enterprise.</p> <p>25 Q How does supply or leverage and purchasing power affect</p>	<p>-F. Chin-Defendant-Direct-by Mr. Fields- Page 5942</p> <p>1 Q From the perspective of a buyer of an enterprise, why</p> <p>2 would a buyer of an enterprise care about these indicia that you</p> <p>3 just described?</p> <p>4 A They will care about it because it's easy to make</p> <p>5 decisions about changing the organization. So if one day</p> <p>6 someone decides at an enterprise we want to change our pricing</p> <p>7 policy, it can be done very quickly and implemented very quickly</p> <p>8 versus if it was disbursed assets you have to tell this general</p> <p>9 manager and that property person and that and see how it</p> <p>10 unfolds.</p> <p>11 So the benefits of existing systems that can respond</p> <p>12 generally quickly to changing events, is the strength of an</p> <p>13 enterprise.</p> <p>14 To give an example would be a security threat. So that</p> <p>15 can be disseminated very quickly through an enterprise. They</p> <p>16 can say here is what needs to be done, it is crisis management,</p> <p>17 you need to have the following protocols in place, here is how</p> <p>18 you respond to the public.</p> <p>19 If you own 50 different assets with different owners it</p> <p>20 would be difficult to implement that on a system-wide basis.</p> <p>21 Q In your experience have you found that enterprise value</p> <p>22 positively or negatively affects the ultimate value of the</p> <p>23 selling price of a property?</p> <p>24 MR. AMER: Note my continuing objection. I know</p> <p>25 your Honor has overruled me, but for the record.</p>

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1 THE COURT: Could you read back the question again.
2 (Whereupon, the requested portion of the record was
3 read.)
4 THE COURT: Yes, this goes back to possibly
5 ambiguity two or three questions ago when you asked about
6 buying an enterprise. Did you mean the whole enterprise or
7 one unit of the enterprise?
8 MR. FIELDS: I could clear that up. It is the
9 whole thing.
10 THE COURT: I mean, the obvious answer to your
11 question, he's been talking the last 15 minutes about how
12 valuable enterprise value is. The obvious answer to your
13 question -- I don't want to tell the witness, I would be
14 leading. But sometimes the questions are just so obvious.
15 Don't quote me on this, please, I'm not as dumb as
16 I look.
17 MR. FIELDS: I'm just doing my best to ask
18 open-ended questions, your Honor. That is all. Be that as
19 it may.
20 (CONTINUED)
21 DIRECT EXAMINATION:
22 Q Mr. Chin, when we talked about the enterprise, can you
23 just describe what you mean by the enterprise vis-à-vis selling
24 individual properties as part of that enterprise?
25 A The value as part of the enterprise is going to be

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1 greater than if its individual value.
2 THE COURT: The whole is worth more than the sum of
3 the parts?
4 THE WITNESS: Thank you.
5 THE COURT: There we go.
6 (CONTINUED)
7 DIRECT EXAMINATION:
8 Q Do you have any experience with managing and selling
9 individual assets and also selling assets as part of an
10 enterprise?
11 A Yes.
12 Q What experience do you have in that?
13 A The MPG Office was certainly both selling individual
14 assets and then selling the entirety of the company.
15 Q In your experience how does the number of properties in
16 a portfolio affect whether enterprise value exists or could
17 exist?
18 A In general, the greater the number of the properties
19 the larger the enterprise, potentially the higher the valuation.
20 But it really depends if they're of similar ilks. Some
21 properties are not as contributory to or benefit from being
22 associated with the enterprise.
23 Q And same question for operating entities or operating
24 companies?
25 A Same answer.

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1 THE COURT: By the way, apparently I'm being quoted
2 already that is what I get by saying "don't quote me on
3 this."
4 Q All right. If we could shift gears, Mr. Chin, and talk
5 a little bit about appraisals.
6 Are there different types of appraisals and we talked a
7 little about it already, but are there different types of
8 appraisals that appraisers conduct?
9 A Yes.
10 Q What are some of the different types?
11 A Well, there's the traditional market value appraisals.
12 There could be a liquidation value or assuming quicker sale.
13 There could be insurable value. There could be value in use,
14 which is usually associated with special purpose properties.
15 And there could be tax valuations for a specific tax planning or
16 actions. And the mortgage lending as is market value
17 appraisals.
18 Q In your experience have you found that the type of
19 appraisal being conducted can dictate the ultimate value
20 reached?
21 MR. AMER: Objection. Leading.
22 Q How does the type of appraisal being conducted affect
23 ultimate value determinations?
24 A The intended purpose of appraisal can affect the
25 outcome.

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1 Q Why?
2 A Depends on what the criteria is. So if I were to say
3 market value that would be willing buyer willing seller normal
4 time no duress as contrasted to liquidation value, which might
5 say we need to sell this in a certain time period perhaps as is,
6 with as it sits. So that could be a very different value.
7 Q Are you familiar with lender-ordered appraisals?
8 A Yes.
9 Q What type of value do lender-ordered appraisals
10 generally predict?
11 A Market value is common for lender appraisals.
12 Q And for what period of time does the appraisal predict
13 a market value?
14 A It is very specific as of a specific date.
15 Q From an appraiser's perspective, what function do
16 lender-ordered appraisals serve?
17 A It provides a lender information about what the
18 collateral may be worth. If they have to -- if there's a
19 default, if there is a foreclosure it provides them the amount
20 they believe they could recover. And it also provides them a
21 basis for their own internal analysis, so usually lenders have
22 loan-to-value ratios they try to comply with and that value sets
23 what they believe the maximum loan amount could be.
24 Q And when doing lender-ordered appraisals what sort of
25 data are appraisers looking to?

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1 A Usually they're looking at comparable sales, sales that
2 have been transacted and consummated. Looking at the case
3 lease, leases that have been executed. There's some
4 consideration to listings or offers to purchase that might be
5 pending on a property although they're given less weight because
6 they have not occurred.

7 But generally looking at the economic indicators that
8 have occurred up to that date and time.

9 Q How much emphasis do appraisals put on potential market
10 changes for lender appraisals?

11 A I think appraisers try to, if you will, simulate what
12 might happen. But they really make, they don't overtly state
13 their prognostications. Again, it is more reliant on historical
14 trend of economics, of the health of the market up to that
15 point. Demand and supply up to a point up to the date of
16 appraisal and they don't forecast, project overtly in a report
17 about what they see or expect to happen.

18 Q Why not?

19 A I think a couple reasons. Number one, it is not common
20 in the appraisal world to do that. And I think much like
21 everything there's differences of opinion about how markets may
22 evolve.

23 There's no one definitive treatise about how the
24 economy might recover after a catastrophe or after an unusual
25 economic event or if a stock market dropped a thousand points

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1 today, how does that effect values in real estate, if it does at
2 all tomorrow and then going forward.

3 They're crystal balls, they have them but it is
4 probably murky. Everybody, like everybody in this room could
5 have a different perspective of what the next day and the future
6 holds.

7 THE COURT: Five-minute warning.

8 MR. KISE: I'm going to go out on a limb. If we
9 take our break now, there's a pretty good likelihood we that
10 could turn this up for this afternoon.

11 MR. FIELDS: Okay.

12 THE COURT: Everybody okay with that? Okay.
13 See you 2:15.

14 I'll direct the witness please do not discuss your
15 testimony or anything related to it during the lunch break.

16 THE WITNESS: Yes, sir.
17 (Lunch recess taken at this time.)
18 (Continued next page.)
19
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1 AFTERNOON SESSION:
2 THE COURT: Okay. Let's get the witness back and
3 let's continue.
4 (Witness approaches the witness stand.)
5 THE COURT: Please proceed.
6 MR. FIELDS: Thank you, your Honor.
7 DIRECT EXAMINATION
8 BY MR. FIELDS: (Continued)
9 Q Mr. Chin, could you describe some examples of
10 assumptions that an appraiser doing "as if" appraisal might take
11 into account?

12 A Yes. Some might be how fast a building might lease up;
13 the rental rate that it might be able to achieve; the operating
14 expenses, how they might change; the tenant improvement
15 allowances and leasing commissions that might be incurred based
16 upon the leases that might be signed.

17 There's the discount rate and capitalization rate, all
18 of these are ingredients that go into the income approach that
19 appraisers could make, that appraisers can make to estimate
20 through the income approach.

21 Q Could a change in land use restrictions be an example?
22 MR. AMER: Objection. Leading.
23 THE COURT: Sustained.
24 Q How could land use restriction changes in the future
25 that currently encumber the property play into an appraisers's

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1 determinations into a "as if" appraisal?

2 A Any sort of restriction that might limit the possible
3 uses would affect the value negatively usually.

4 Q But could an appraiser assume an "as if" appraisal that
5 that restriction does not exist at some point in the future for
6 purposes of an "as if" appraisal?

7 MR. AMER: Objection. Leading.
8 THE COURT: Sustained.

9 Q What basis do developers have to plan investments based
10 upon future zoning changes to property currently encumbered by a
11 zoning restriction?

12 A They consider what might be possible based upon those
13 limitations and they will plan accordingly in terms of usually
14 number of lots that can be built or the size of the lots and how
15 some of the common areas, perhaps parks and other things, might
16 be laid out.

17 Q In your experience how, if at all, do developers -- how
18 frequently do developers seek to change land use restrictions
19 that might currently encumber a property that they're seeking to
20 change?

21 A As a developer is essentially trying to get approvals
22 for his project for a land development as you might be referring
23 to, there are constant changes that depending if the cities
24 don't approve a certain element of the plan the developer has to
25 adjust.

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1 MR. AMER: I'll object and move to strike. I think
2 the question was: How frequently does it happen.
3 THE COURT: Was that indeed the question?
4 MR. FIELDS: I have to go back and look.
5 (Whereupon, there is a pause in the proceedings.)
6 Q Sure. How frequently do developers seek the land
7 use --
8 THE COURT: I'll strike the prior answer, prior
9 answer is stricken. Go ahead.
10 Q How frequently do developers seek to change land use
11 restrictions that might currently encumber a property that the
12 developer is seeking to change in the future?
13 A As frequently as they can.
14 Q Did you review in this case appraisals for 40 Wall
15 Street done by Cushman & Wakefield for the years 2011, 2012 and
16 2015?
17 A Yes.
18 Q Were those "as is" or "as if" appraisals?
19 A Those were "as is" appraisals.
20 Q In the years 2011 and 2012 were there multiple values
21 and if so, what were those values?
22 A There were two different values that I recall. In
23 2011, I believe, it was 200 million. And in 2012 it was 220
24 million.
25 MR. FIELDS: If we could pull up Plaintiff's 1573

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1 that has been admitted.
2 (Shown.)
3 MR. FIELDS: If we could go to Page 3 at the
4 bottom.
5 (Scrolling.)
6 Q I'm showing you Plaintiff's 1573, Mr. Chin.
7 Do you see at the bottom there's \$200 million figure?
8 A Yes.
9 Q And as of what date does that value reflect?
10 A As of November 1st, 2011.
11 Q And if we flip to Page 4, do you see the heading,
12 "Perspective Market Value."
13 A Yes.
14 Q What is the value and what is date is it as of?
15 A As of November 1st, 2014, the estimated value was
16 \$270 million.
17 Q So what value is this value here reflecting
18 \$270 million?
19 A I would consider it an "as if" value based upon various
20 assumptions that the appraiser made as of 2011.
21 Q And generally speaking, what were the general
22 sentiments -- withdrawn.
23 From your review, did the same appraiser conduct all
24 three of the appraisals; '11, '12 and '15 or the same
25 appraisers, I should say?

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1 A Yes, I believe so.
2 Q And generally speaking, in 2011, 2012, what were the
3 sentiments that the appraiser was suggesting with regard to the
4 market at the time?
5 A The sentiments or attitudes were clearly negative in
6 2011. If you recall, again, it is coming out of the great
7 financial crisis in 2008. So there's many cautionary statements
8 made in the 2011 valuation report that are reduced in quality
9 and number in 2012.
10 So there's much more negative sentiment that is
11 expressed in the appraisal, warning signs, uncertainty
12 indications regarding the financial markets here and
13 unemployment, which lessened in its quantity and I guess
14 disclaimer amount in the 2012 report.
15 Q In your experience, in this timeframe, was it common
16 for appraisers to have negative sentiments in 2011 and 2012?
17 A Yes, it was uncertain. It was an uncertain time coming
18 out of 2008. And the rate of recovery at that point wasn't
19 clear.
20 (Whereupon, Cheryl-Lee Lorient relieved Deborah
21 Rothrock as the official court reporter.)
22 (Continued on next page.)
23
24
25

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1 Q. We talked a little bit about this earlier. But,
2 in the same time period, were you in -- what role were you
3 in, in 2011 or 2012?
4 A. I was running the office portfolio and office
5 company in Los Angeles.
6 Q. And from your perspective, at that time, what were
7 the sentiments with regard to the market in '11 and '12.
8 A. I think there was a different kind of rate of
9 recovery than, necessarily, New York. But, it was more
10 optimistic.
11 There was much more investment going on, expansion
12 of tenant spaces and more confidence that the market was
13 recovering after 2008.
14 MR. FIELDS: All right. If we could -- on
15 Plaintiff's 1573. Please, go to page 169.
16 Q. Mr. Chin, can you see the heading that says,
17 "Direct Capitalization Valuation Method Perspective Mark
18 Value as of November 1, 2014?"
19 A. Yes.
20 Q. In the top paragraph, it says, "In the direct
21 capitalization method, we estimated market value my dividing
22 the stabilized net operating income by an overall rate
23 derived from our analyses of market sales and computed by
24 dividing the net operating income from a sold property by
25 its sale price."

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1 What does that tell you as an appraiser? What are		1 A. Not common. Usually, there is some sort of	
2 they doing?		2 explanation why. But this is -- there is no explanation.	
3 A. Basically, taking an income stream, net operating		3 THE COURT: Quick question. Do you mean	
4 income, dividing it by a rate to reflect value.		4 there is no possible explanation or do you mean there	
5 Q. And the next to sentence says, "We estimated the		5 is no explanation given?	
6 capitalization rate to be 7 percent."		6 THE WITNESS: There is no explanation given.	
7 What -- to ask an open ended question, what is the		7 THE COURT: Are there possible explanations.	
8 capitalization rate and what does it reflect?		8 THE WITNESS: Perhaps. I'd be speculating.	
9 A. The capitalization rate reflects the ratio of net		9 THE COURT: No, we don't allow speculation.	
10 operating income to a sales price. Appraisers will get that		10 We allow guesstimation.	
11 information either from surveys or they'll have actual		11 I mean, isn't it just possible that the	
12 transaction data where they will compare that ratio and		12 appraisers just felt conservative to use your word and	
13 depict it as they did here in this report.		13 were expecting downturn?	
14 Q. The next sentence says, "The overall		14 THE WITNESS: It's a possibility.	
15 capitalization rates derived from the improved property		15 THE COURT: Okay.	
16 sales are between 4.21 and 6.74 percent."		16 Q. From an appraiser's perspective, in 2011 and 2012,	
17 What are these numbers reflecting that the		17 was there a concern that the real estate market could revert	
18 appraiser is discussing in this sentence?		18 back to the levels that it was at in 2008, 2009?	
19 A. These number reflect the results of transactions		19 MR. AMER: Objection, leading.	
20 that had occurred. So, there were individual transactions		20 THE COURT: Sustained.	
21 that occurred.		21 Q. All right. To go through it again, how did you	
22 The appraiser looked at net operating income for a		22 describe the real estate market in 2008 and 2009?	
23 property and compared that to the sales price and got the		23 A. Well, at that time, specifically, very stressed.	
24 overall rate or capitalization rate which is the ratio.		24 Very -- tons of uncertainty about when things might get	
25 Q. Why are these properties important for purposes of		25 better, if they might get better. It effected all aspects	
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1 this appraisal that are listed here between numbers one and		1 of finance.	
2 seven?		2 Q. How would you compare that to 2011 and 2012?	
3 A. The appraiser deemed that they were appropriate		3 A. Well, it varied depending on region of country.	
4 for comparison to the subject property being appraised.		4 But, in general, it was firming from the standpoint the	
5 MR. FIELDS: All right. And if we could		5 uncertainty was being weaned away; that, there was less	
6 scroll down, a little bit, to the statistics box.		6 uncertainty about how and if the economy was going to	
7 Q. What is the lowest capitalization rate selected by		7 recover. There was job growth versus job losses. There was	
8 this appraiser for purposes of this appraisal?		8 a strengthening of the economy relative to what it was in	
9 A. Four point 21 percent.		9 2008 and 2009.	
10 Q. And what is the highest?		10 Q. Generally speaking, when you compare the two	
11 A. Six point 74 percent.		11 timeframes, was there more positive sentiment or negative	
12 Q. And what is the capitalization rate that this		12 sentiment in 2011 than 2012?	
13 appraiser chose to use?		13 A. There was more positive attributes in 2012. There	
14 A. 7 percent.		14 had already been the demonstration that the economy and the	
15 Q. What does the appraiser selection of a 7 percent		15 employment was coming back, that, there was a recovery.	
16 capitalization rate tell you as an appraiser?		16 And, it was being demonstrated in real estate prices in	
17 A. In light of the sales information provided, which		17 general.	
18 showed a range of 4.2 to 6.7 percent, the appraiser was more		18 MR. FIELDS: If we could now turn to 2012,	
19 conservative or had a higher cap rate, which resulted in a		19 Plaintiff's 3208, that's been admitted. Page 165.	
20 lower value relative to the sales information that		20 Q. All right. Mr. Chin, there's a paragraph	
21 demonstrated lower capitalization rates.		21 immediately above the section that says, "Terminal	
22 Q. And in your experience, how often do you see		22 capitalization rate section."	
23 appraisers selecting capitalization rates or using a		23 Do you see that?	
24 capitalization rate that is higher than the highest of the		24 A. Yes.	
25 comparable selected?		25 Q. All right. It's highlighted on the screen. This	

<p>F. Chin - Defendant -Direct/ by Mr. Fields Page 5959</p> <p>1 is 2012.</p> <p>2 The appraiser writes "In addition to IRR</p> <p>3 decreases" -- what's IRR?</p> <p>4 A. It's referred to as the internal rate of return or</p> <p>5 yield rate that is commonly used to value properties.</p> <p>6 Q. And what does a decreasing internal rate of return</p> <p>7 tell you as an evaluation professional?</p> <p>8 A. Decreased risks, decreased yield expectations.</p> <p>9 Q. Appraiser continues "overall capitalization rates</p> <p>10 OAR for Manhattan Office have also decreased by 127 basis</p> <p>11 points from the peak of 6.65 percent during fourth quarter</p> <p>12 2009 to 5.38 percent as of second quarter 2012.</p> <p>13 "Terminal capitalization rates have declined from</p> <p>14 their high achieved during second quarter 2009 open paren</p> <p>15 7.5 percent, by 142 basis point range to its current level</p> <p>16 of 5.38 percent as of second quarter 2012."</p> <p>17 So, generally speaking, what is the appraiser</p> <p>18 conveying about the state of the market now in 2012?</p> <p>19 A. This demonstration, there's strong evidence that</p> <p>20 the market has improved, property prices are increasing</p> <p>21 evidenced by yield rates or cap rates coming down.</p> <p>22 MR. FIELDS: If we could go to page 175,</p> <p>23 please.</p> <p>24 Q. Again, Mr. Chin, the heading here says, "Direct</p> <p>25 Capitalization Valuation Method Upon Achieving Stabilized</p>	<p>F. Chin - Defendant -Direct/ by Mr. Fields Page 5961</p> <p>1 Q. I'll represent to you this is the 2015, 40 Wall</p> <p>2 Street appraisal.</p> <p>3 What is the range of capitalization rates selected</p> <p>4 by this appraiser?</p> <p>5 A. The range is from 2.68 percent to 7.68 percent.</p> <p>6 MR. FIELDS: And if we can scroll down all</p> <p>7 the way to the bottom, please.</p> <p>8 Q. What capitalization rate does this appraiser</p> <p>9 select?</p> <p>10 A. Four point 25 percent.</p> <p>11 Q. What does the selection of a 4.25 percent, given</p> <p>12 the range, tell you about this appraisal relative to the</p> <p>13 market at the time?</p> <p>14 A. He's deeming it to be within the category or</p> <p>15 comparable set that's demonstrated by market sales.</p> <p>16 Q. What is your opinion with regard to the estimate</p> <p>17 of value, in this 2015 appraisal, as compared to the two</p> <p>18 that we just looked at?</p> <p>19 A. I believe that the 2015 appraisal is much more</p> <p>20 accurate and in line with the market information than the</p> <p>21 prior years.</p> <p>22 Q. From your review of the complaint and -- from your</p> <p>23 review of the complaint, did you identify another source of</p> <p>24 valuation for 40 Wall Street in 2015?</p> <p>25 A. Yes.</p>
<p>F. Chin - Defendant -Direct/ by Mr. Fields Page 5960</p> <p>1 Occupancy as of November 1, 2015."</p> <p>2 What is the range of capitalization rates that</p> <p>3 this appraiser selected as comparables to use in this</p> <p>4 section?</p> <p>5 A. The range is from 3.62 percent to 6.74 percent.</p> <p>6 MR. FIELDS: And, if we can scroll down a</p> <p>7 little further.</p> <p>8 Q. What does the appraiser select as a capitalization</p> <p>9 rate for this appraisal?</p> <p>10 A. Seven percent.</p> <p>11 Q. Is that the same capitalization rate that was used</p> <p>12 in the prior year?</p> <p>13 A. Yes.</p> <p>14 Q. As an appraiser, what does it tell you that the</p> <p>15 appraiser is suggesting positive sentiments about the market</p> <p>16 but keeping the same capitalization rate from the prior</p> <p>17 year?</p> <p>18 A. It's inconsistent with what the market evidence is</p> <p>19 showing. But without speculating, there may be some other</p> <p>20 reason why he is doing that.</p> <p>21 MR. FIELDS: If we can now go to plaintiff's</p> <p>22 118, page 170, please.</p> <p>23 Q. All right. Mr. Chin you see at the top it says,</p> <p>24 "Direct Capitalization Valuation Method"?</p> <p>25 A. Yes.</p>	<p>F. Chin - Defendant -Direct/ by Mr. Fields Page 5962</p> <p>1 Q. What was that?</p> <p>2 A. There was an investor report by Morningstar that</p> <p>3 listed out details of 40 Wall Street.</p> <p>4 Q. What's the purpose of Morningstar's investor</p> <p>5 report?</p> <p>6 A. Morningstar does reports on certain types of</p> <p>7 investments. In this particular case, there was mortgage</p> <p>8 backed securities that were issued that included 40 Wall</p> <p>9 Street.</p> <p>10 So, Morningstar would, basically, do an analysis</p> <p>11 of what they see of the investment pool as well as its</p> <p>12 asset. And they perform various stress tests to evaluate</p> <p>13 what the risk factors might be for the investment and for a</p> <p>14 property.</p> <p>15 Q. How does Morningstar's valuation methodology</p> <p>16 differ from that of an appraiser if at all?</p> <p>17 A. The methodology is very different. There are --</p> <p>18 in general, they use the same general tools. But, the</p> <p>19 assumptions that they apply and how they look at the</p> <p>20 property is very different.</p> <p>21 Q. All right.</p> <p>22 MR. FIELDS: If we can pull up what has not</p> <p>23 been admitted in evidence, the Morningstar report</p> <p>24 plaintiffs 3186.</p> <p>25 Q. Let's go to page 40. Mr. Chin, you mentioned a</p>

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1 moment ago that there were different assumptions relied upon
2 in the Morningstar report than in the 40 Wall Street
3 appraisal.
4 What is one of the different assumptions that was
5 used in the Morningstar report?
6 A. The Morningstar report calculates value based on
7 net cash flow versus net operating income. As we were
8 discussing how the appraisers were using it, they were using
9 net operating income and applying a capitalization rate.
10 Morningstar uses net cash flow, which is different than net
11 operating income.
12 Q. How are the two different?
13 A. Net cash flow is lower. Net cash flow is taking
14 net operating income minus leasing commissions and tenant
15 improvements, reserves for replacement. And that results in
16 a lower amount that would then be capitalized for purposes
17 of calculating value.
18 Q. So, in the -- if you could look at the last
19 sentence that's highlighted there on the -- let me withdraw
20 that.
21 Under the subheading "valuation drivers," do you
22 see that it says, "Morningstar underwrote a NCF of
23 18,860,112 and applied a direct capitalization rate of
24 7 percent for a term value of 270.7 million," what does the
25 NCF stand for in your parlance?

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1 A. That is the net cash flow. So, that is net
2 operating income minus various expenses to get to net cash
3 flow.
4 Q. And then, if we look at the last sentence in that
5 paragraph -- in the middle of the paragraph. Let's start
6 with where it says, "For the balloon value, Morningstar made
7 a cash flow deduction of 643,559,000 which represents the
8 variance between the average ground rent payments over the
9 term of the loan and the calculated average ground rent
10 payments for years 11 to 20.
11 "This deduction, through NCF, was capitalized at
12 7 percent for a balloon value of 261.5 million or \$224 per
13 square foot.
14 As a comparison, the appraisal concluded a
15 capitalization rate of 4.25 percent and value of 540 million
16 or \$464 per square foot."
17 So how does the use of net cash flow as opposed to
18 net operating income, in the Morningstar report, ultimately,
19 effect the value reached by Morningstar?
20 A. The deductions that they make for net cash flow,
21 significantly, decreases the value that would, otherwise, be
22 calculated by an appraiser.
23 Q. And, what capitalization rate is Morningstar using
24 for its value?
25 A. Seven percent.

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1 Q. And what capitalization rate does Morningstar site
2 as one that was used for the appraisal?
3 A. 4.25 percent.
4 Q. All right. I'd like to shift gears and talk to
5 you, for a moment, about Seven Springs.
6 Are you, generally, familiar with the Seven
7 Springs property?
8 A. Yes.
9 Q. And are you familiar with conservation easement
10 appraisals?
11 A. Yes, generally.
12 Q. How, if at all, do conservation easement
13 appraisals take into account the identity of the property
14 owner?
15 A. It doesn't.
16 Q. And what do you mean by that?
17 A. It's ambiguous. There's no defined buyer or
18 profile of a specific owner that is used to calculate a
19 value.
20 Q. Is it a hypothetical scenario?
21 MR. AMER: Objection. Leading.
22 THE COURT: Sustained. I don't see why the
23 owner would have an affect on the conservation easement
24 values.
25 MR. FIELDS: The appraisal, your Honor.

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1 We're talking about the appraisal, the conservation
2 easement appraisal.
3 THE COURT: I don't see why it would effect
4 that either. But, I'll learn.
5 Q. In a general sense, can the identity of the owner,
6 in some instances, have an effect on "as if" versus "as
7 if" -- or "as if" appraisals?
8 MR. AMER: I'm going to object. I think you
9 misspoke. You said "as if" versus "as if."
10 MR. FIELDS: I meant "as is" and "as if."
11 MR. AMER: Maybe we could just get the
12 question again.
13 THE COURT: You want to just give it another
14 go.
15 Q. In a general sense, could an appraiser subscribe
16 some value, whether in an "as is" or "as if" appraisal, to
17 the property based on who owns that property?
18 MR. AMER: Objection, leading.
19 THE COURT: Sustained.
20 Q. How could the identity of the property owner
21 affect, if at all, an "as is" or "as if" appraisal?
22 A. There's no affect.
23 Q. Did you review the values in the Statements of
24 Financial Condition from 2011 to 2014 relative to Seven
25 Springs?

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1 A. Yes.		1 (Whereupon, the following proceedings was	
2 Q. And what is your opinion as to what type of value		2 stenographically recorded by Deborah Rothrock.)	
3 was used in those years?		3	
4 A. Clearly, "as if" values were used in those		4	
5 Statements of Financial Condition.		5	
6 Q. Why?		6	
7 A. They presumed a situation that didn't exist; from		7	
8 the standpoint, while there were plans to develop a property		8	
9 and build houses, those did not exist and they are future		9	
10 conditions that were expected to be happening at the		10	
11 property.		11	
12 Q. All right. And then, shifting gear for a moment,		12	
13 did you have an opportunity to review a 2010 Oxford		13	
14 appraisal for a Trump Park Avenue?		14	
15 A. Yes.		15	
16 Q. And what is your understanding of the appraisals		16	
17 valuation of the rent stabilized units in that appraisal?		17	
18 A. There were evaluations that assumed that they were		18	
19 always rent stabilized. And then, there was another		19	
20 evaluation perspective that parts of them would not be rent		20	
21 stabilized.		21	
22 Q. And did you have an opportunity to review -- let		22	
23 me withdraw that.		23	
24 In your experience, why are rent stabilized units		24	
25 not necessarily roadblocks for a developer?		25	
F. Chin - Defendant -Direct/ by Mr. Fields	Page 5968	-F. Chin-Cross-Defendant-by Mr. Amer-	Page 5970
1 MR. AMER: I'll object. I think it assumes		1 MR. FIELDS: May I have a moment your Honor.	
2 testimony he hasn't given.		2 THE COURT: Sure.	
3 THE COURT: You want to rephrase.		3 (Whereupon, there is a pause in the proceedings.)	
4 Q. Mr. Chin, earlier, you testified about your		4 MR. FIELDS: No further questions at this time.	
5 experience with a rent stabilized unit, I believe, last year		5 THE COURT: Nothing further, okay.	
6 in New York City, right?		6 Will there be cross-examination?	
7 A. Yes.		7 MR. AMER: I have a few questions.	
8 Q. From a developer's perspective, how do developers		8 THE COURT: You may proceed.	
9 consider encumbrances, such as rent stabilized units, when		9 MR. AMER: Thank you.	
10 forecasting value?		10 THE COURT: Please proceed.	
11 A. I would, generally, say that they're optimistic.		11 MR. AMER: Thank you, your Honor.	
12 They're optimistic that, at some point in time, there is the		12 CROSS-EXAMINATION	
13 possibility, that a tenant may vacate, that the rent could		13 BY MR. AMER:	
14 go to market. And then, they might be liberated and either		14 Q Mr. Chin, we have not met before. My name is Andrew	
15 rent it at a current market rate or that it might be sold.		15 Amer. I'm with the Attorney General's office. I have a couple	
16 THE COURT: Well, if it's sold, wouldn't it		16 of quick questions first on your rates.	
17 receive less money for the sale?		17 You mentioned you were charging \$550 hour, correct?	
18 THE WITNESS: If it's sold with the rent		18 A Yes, correct.	
19 stabilization in place?		19 Q You are engaged through Ankura, correct?	
20 THE COURT: Exactly.		20 A Yes.	
21 THE WITNESS: Oh, yes. The value is,		21 Q They are charging for your time \$850 per hour?	
22 certainly, lower with rent stabilization. But, there's		22 A I believe so, yes.	
23 the opportunity, if it was removed, then the value		23 Q I think you said you're close to thousand hours; is	
24 would be --		24 that right?	
25 THE COURT: Of course, yes.		25 A Yes.	

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1 Q So for your expert work in this case Ankura has charged
2 almost \$850,000, is that right?
3 A That's my understanding.
4 Q You confirm for us that you're not accountant, correct?
5 A Yes.
6 Q And you have never worked as a banker, correct?
7 A Correct.
8 Q Now, I believe in connection with preparing your May
9 expert report you reviewed accounting literature, right?
10 A Yes.
11 Q And among the accounting literature you reviewed was
12 AASC 274 which governs personal financial statements; is that
13 right?
14 A Yes, correct.
15 Q You agree that pursuant AASC 274 personal financial
16 statements are required to present assets at estimated --
17 MR. FIELDS: Objection. Outside the scope of
18 direct examination. The Court limited my questions about
19 accounting because of the witness' knowledge of accounting.
20 So I would respectfully request that the Court also
21 limit the Attorney General's ability to examine him over
22 accounting and accounting standards.
23 THE COURT: I think your questions were generally
24 what is accounting or what do you think about accounting --
25 MR. FIELDS: My question was what his understanding

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1 was of accounting principles and the Court said I could not
2 ask him that question. So now --
3 THE COURT: I stand by that one. What kind of
4 question is that: What is your understanding of accounting
5 principles?
6 MR. FIELDS: As I explained, your Honor, I was
7 laying a foundation for what his knowledge of accounting
8 was. And now Mr. Amer is asking him about accounting
9 standards. After the Court limiting me from being able to
10 ask him accounting standards, it is outside the scope of
11 direct.
12 THE COURT: You want to risk reversal?
13 MR. AMER: The witness confirmed he viewed this in
14 coming to his opinions. And he's giving testimony about the
15 financial statements here. I'm asking him about the
16 financial statements.
17 THE COURT: Objection overruled.
18 MR. AMER: Could I get read back?
19 THE COURT: Read back, please.
20 (The record was read back by the court reporter.)
21 Q -- present assets at estimated current value. Right?
22 A Yes.
23 Q And when you were reviewing the financial statements,
24 you had in mind a definition of what estimated current value
25 was, didn't you?

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1 A Yes.
2 Q And let me show you from the Parties' 202 statement,
3 Plaintiff's Exhibit 3041. It is Paragraph 31, up on the screen.
4 You see it says (Reading:) GAAP defines estimated
5 current value as, quote, the amount at which the item could be
6 exchanged between a buyer and seller each of whom is well
7 informed and willing and neither of whom is compelled to buy or
8 sell. And that is the undisputed fact in this case.
9 Is that the definition you had in mind for estimated
10 current value when you were preparing your expert opinions?
11 MR. FIELDS: Objection, same objection.
12 THE COURT: You're comparing apples to elephants.
13 I really don't understand. Nothing somebody could say, you
14 keep repeating it because I can't remember your exact
15 question:
16 What is your understanding of accounting? Is that
17 the question?
18 MR. FIELDS: Yes, I asked basically what he knew
19 about accounting. Now we're asking him about GAAP and he's
20 not been qualified as an expert in accounting. So...
21 THE COURT: Because he said he used it, he knew
22 this.
23 MR. FIELDS: But the Court prohibited me from
24 asking those questions. Now the Attorney General is
25 cross-examining him on it.

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1 THE COURT: If you had asked him: What is your
2 understanding of GAAP through 274, that might have been
3 different. But what is your understanding of accounting?
4 If you did not follow-up in the right way, I'm sorry.
5 MR. FIELDS: Could I have a standing objection to
6 this line of questioning and anything about accounting,
7 please.
8 THE COURT: Of course.
9 MR. AMER: Could we get a read back.
10 (Whereupon, the requested portion of the record was
11 read.)
12 Q You see in this paragraph it says (Reading:) Estimated
13 current value is, quote, the amount at which the item could be
14 exchanged between a buyer and seller each of whom is well
15 informed and willing and neither of whom is compelled to buy or
16 sell.
17 Is this the definition you had in mind for estimated
18 current value when preparing your opinions?
19 A May I ask, is this the exact quotation because it is in
20 quotes because I don't know where.
21 Q This is what the parties have agreed is the definition
22 of estimated current value.
23 MR. FIELDS: I have an objection, that is just
24 false. That is a definition of estimated current value. We
25 have spent days and days with several experts here

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1 discussing how estimated current value is applied, what
2 estimated current value is and notably they are not even
3 showing the witness of entire definition of estimated
4 current value. They're pulling out a statement from 202-G.
5 If you are asking a nonexpert in accounting a definition of
6 what estimated current value is, you must as well show him
7 what the full definition is.
8 THE COURT: The question was what definition he was
9 using, not what the definition is.
10 MR. FIELDS: Right. He has got up there a
11 definition that is not the complete definition of estimated
12 current value.
13 THE COURT: How is it not the definition of
14 estimated current value. You said undisputed.
15 MR. SUAREZ: It's incomplete. It says defines.
16 That does not mean the only definition. That doesn't mean
17 that there aren't entire sections in the literature as to
18 how it is implemented.
19 We spent days with another expert talking about
20 estimated current value and how it is defined, which is why
21 it is so unfair to show him this part to a non-expert in
22 accounting and try to jam him up with a definition of
23 estimated current value that the Attorney General wants to
24 use in a vacuum.
25 THE COURT: Do you want to excuse the witness? You

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1 don't have to.
2 MR. AMER: Let me respond. If we have to have
3 another round, I will excuse the witness. I think the
4 witness should have been excused by Mr. Suarez before he
5 gave that objection.
6 THE COURT: I agree.
7 MR. AMER: My question was whether this definition
8 was what he had in mind. He could say yes or no if he
9 doesn't want to agree to it.
10 THE COURT: That is what I say. The idea that
11 well, this is just one definition of estimated current
12 value. That is not what the response says. It doesn't say
13 one definition, it says undisputed.
14 Do you need the question said or read again?
15 THE WITNESS: No, I was just, you know, it is
16 quoted. I don't know. I don't know. It is taken out of
17 context. I want to make sure. It would be nice to see the
18 document where this came from.
19 THE COURT: You don't need to see the document.
20 The question is: Is this the definition that you were using
21 in your valuations?
22 THE WITNESS: I had many definitions in mind.
23 THE COURT: That is the answer.
24 Q Was this one of them?
25 A Yes.

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1 MR. AMER: Let's put up Plaintiff's Exhibit 756 in
2 evidence. This is Statement of Financial Condition for
3 2016.
4 (Shown.)
5 Q This is one of the statements that you reviewed, right?
6 A Yes.
7 Q Let's go to Page 5 of this exhibit. Let's look at the
8 third paragraph. The first sentence of this paragraph says:
9 "Assets are stated at their estimated current values." Let me
10 stop there.
11 You understood when you read this that it was
12 representing to the reader that the assets contained in this
13 statement were estimated current values, right?
14 MR. FIELDS: Objection, relevance to what he
15 understood and it was suggesting to the reader. Lack of
16 foundation as well and speculation.
17 THE COURT: I just want to go back a second about
18 something that irked me.
19 Mr. Amer asked the witness before: Was this the
20 definition you were using? Something like that. All of a
21 sudden Mr. Suarez says; well, there are several definitions.
22 What's the answer?
23 The answer is, well, there were several
24 definitions.
25 Please next time let's have the witness excused.

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1 Could we have a readback or Mr. Amer, do you want
2 to rephrase, either way.
3 Q When you reviewed this statement --
4 THE COURT: So you're withdrawing.
5 MR. AMER: I'll rephrase it and with draw.
6 Q Mr. Chin, when you reviewed this statement of financial
7 conditions, did you understand that the statement was
8 representing to the reader of the statement that the assets
9 contained in the statement were being presented at their
10 estimated current values, yes or no?
11 A Yes.
12 Q And one of the definitions you had in mind when
13 reviewing the statement for estimated current values, was
14 willing buyer willing seller that we had on the screen before,
15 correct?
16 A Yes, that is one element.
17 Q And am I correct that it is your opinion that there are
18 various methods or techniques that can be used to value
19 properties for a personal financial statement?
20 A Yes.
21 Q Would you agree regardless of what method or technique
22 one uses to value properties for personal financial statement,
23 at the end of the day, the resulting value must be the amount at
24 which the asset would be exchanged between a willing buyer and a
25 willing seller both well informed and neither of whom is

<p>-F. Chin-Cross-Defendant-by Mr. Amer- Page 5979</p> <p>1 compelled to buy or sell; yes or no?</p> <p>2 MR. FIELDS: Objection. Speculation. Lack</p> <p>3 foundation.</p> <p>4 THE COURT: Overruled.</p> <p>5 A No. Let me explain --</p> <p>6 Q No.</p> <p>7 Let me show you some testimony from Jason Flemmons who</p> <p>8 is another expert for the Defendants in this case. I'm going to</p> <p>9 put up page 4495 of the trial transcript, lines 4 to 11.</p> <p>10 Again, this is one of the Defendants' own experts in</p> <p>11 this case. (Reading:)</p> <p>12 "QUESTION: Now, if you are going to use one of</p> <p>13 those techniques that we were discussing AASC 274, would</p> <p>14 still require that number reflect the amount at which an</p> <p>15 item could be exchanged between a buyer and a seller each of</p> <p>16 whom is well informed and willing and neither of whom is</p> <p>17 compelled to buy or sell, is that correct?</p> <p>18 "ANSWER: That is the definition of current</p> <p>19 estimated current value, so, yes."</p> <p>20 Do you disagree with Mr. Flemmons' response here?</p> <p>21 MR. FIELDS: Objection, your Honor. We're now</p> <p>22 impeaching this non-accountant expert.</p> <p>23 MR. AMER: You need to excuse the witness, I think,</p> <p>24 your Honor.</p> <p>25 MR. FIELDS: Improper impeachment, impeaching a</p>	<p>-Proceedings- Page 5981</p> <p>1 outside the scope and you did mentioned that you did not</p> <p>2 want him to be qualified as an accountant and all that, that</p> <p>3 is on the record, we checked it again. This is completely</p> <p>4 improper.</p> <p>5 I'm not sure what the purpose is, he's not a</p> <p>6 rebuttal expert. What are we doing?</p> <p>7 Maybe Mr. Amer could let me know while the witness</p> <p>8 is not here so what we're doing and we can finish him today.</p> <p>9 MR. AMER: The last thing you're going to get from</p> <p>10 me is a road map to my cross-examination.</p> <p>11 MS. HABBA: He's not here to rebut an accounting</p> <p>12 expert.</p> <p>13 MR. AMER: You did not offer him as an accounting</p> <p>14 expert --</p> <p>15 MS. HABBA: Thank you for recognizing THAT.</p> <p>16 MR. AMER: So what --</p> <p>17 MS. HABBA: Excuse me?</p> <p>18 MR. AMER: So what.</p> <p>19 MS. HABBA: There are court rules that I follow.</p> <p>20 You can't ask whatever you want of an expert that</p> <p>21 wasn't qualified as an accounting expert.</p> <p>22 THE COURT: His whole testimony was about valuing</p> <p>23 real estate. Now we're asking him how he values real estate</p> <p>24 and you don't like the answer.</p> <p>25 MS. HABBA: I have no problem with the answers,</p>
<p>-Proceedings- Page 5980</p> <p>1 non-accounting expert with an accountant's opinion.</p> <p>2 THE COURT: Let's excuse the witness.</p> <p>3 (Witness exits.)</p> <p>4 (The following the heard outside the presence of</p> <p>5 the witness.)</p> <p>6 THE COURT: You know, Defendants, you can't object</p> <p>7 just because you don't like what is happening. It is not</p> <p>8 impeaching, it is asking him whether he agreed or disagreed</p> <p>9 with Mr. Flemmons. It doesn't make it an impeachment.</p> <p>10 MR. FIELDS: Respectfully, how could this witness</p> <p>11 who has not been qualified as an expert in accounting be</p> <p>12 asked to render an opinion about whether he agrees or</p> <p>13 disagrees with an accounting expert. It seems widely</p> <p>14 unfair.</p> <p>15 THE COURT: He asked whether he agreed or disagreed</p> <p>16 with this statement.</p> <p>17 MS. HABBA: Your Honor. Sorry, I'm a little bit</p> <p>18 lost. I think if Mr. Amer could give us some direction here</p> <p>19 as to what we're doing, how much we're going into</p> <p>20 accounting, so that we don't have to go back and forth.</p> <p>21 He's not accounting expert as my colleague said. If he's</p> <p>22 going to talk about things that are within the scope of what</p> <p>23 we did on direct, that's one thing. But we're outside of</p> <p>24 the scope now.</p> <p>25 I have to make record that this is completely</p>	<p>-F. Chin-Cross-Defendant-Mr. Amer- Page 5982</p> <p>1 he's our expert. Keep going. I'll keep objecting.</p> <p>2 THE COURT: His answer is different from</p> <p>3 Mr. Flemmons' answer.</p> <p>4 Mr. Amer asked the exact question here and he's</p> <p>5 getting totally a different answer.</p> <p>6 At the end of the day, estimated current value is</p> <p>7 the willing buyer willing seller, et cetera, et cetera. I'm</p> <p>8 saying that without a jury, obviously.</p> <p>9 Let's get the witness back.</p> <p>10 Any outstanding objection is overruled.</p> <p>11 You can have your standing objection.</p> <p>12 (Witness enters.)</p> <p>13 MR. AMER: May I proceed?</p> <p>14 THE COURT: Please.</p> <p>15 (Continued)</p> <p>16 CROSS-EXAMINATION:</p> <p>17 MR. AMER: We can remove that from the screen.</p> <p>18 Q Mr. Chin, am I correct that there are different methods</p> <p>19 that can be used to value a property some of which you've called</p> <p>20 "as if" methods and others that you've called "as is" methods.</p> <p>21 Did I understand you correctly?</p> <p>22 A Yes, sir.</p> <p>23 Q Would an example of an "as is" method value of property</p> <p>24 be taking net operating income and dividing by the cap rate for</p> <p>25 commercial building?</p>

<p>-F. Chin-Cross-Defendant-Mr. Amer- Page 5983</p> <p>1 A Yes, one method.</p> <p>2 Q Am I correct that an "as if" method would be to value a</p> <p>3 future development to build homes on an empty lot?</p> <p>4 A Yes.</p> <p>5 Q And that's the situation that occurred with Seven</p> <p>6 Springs, right?</p> <p>7 A You're correct.</p> <p>8 Q And to calculate future profit from a planned</p> <p>9 development like Seven Springs, am I correct that you need to</p> <p>10 come up with an estimated future projection of what you can sell</p> <p>11 the homes for, yes?</p> <p>12 A Yes.</p> <p>13 Q And then you would need to subtract out the costs</p> <p>14 associated with building out those homes, right?</p> <p>15 A One could. It's not mandatory, but one could do that.</p> <p>16 Q Well, are you saying that you can do an "as if" value</p> <p>17 for future development without taking into account the costs</p> <p>18 that you incur to actually build out that development; is that</p> <p>19 your testimony?</p> <p>20 A Yes. If one is looking at the exit value of how much I</p> <p>21 could realize from the sale of the homes, you would not deduct</p> <p>22 out costs.</p> <p>23 Q Would you at least need to know when the homes would be</p> <p>24 built?</p> <p>25 A There's an expectation as to timing of when that might</p>	<p>-F. Chin-Cross-Defendant-Mr. Amer- Page 5985</p> <p>1 Q I'm going to read to you from line 6 to line 13:</p> <p>2 "QUESTION: In order to make projections with</p> <p>3 current value one would need to apply discount rate, yes?</p> <p>4 "ANSWER: If one were to get it to -- excuse me,</p> <p>5 I'm sorry -- a current value, one would discount future</p> <p>6 estimates and projections into a current value."</p> <p>7 That was your sworn testimony at your deposition,</p> <p>8 correct?</p> <p>9 MR. FIELDS: Objection. He asked today about</p> <p>10 estimated current value and this is talking about current</p> <p>11 value. We're talking about two different values.</p> <p>12 THE COURT: What difference does the word</p> <p>13 "estimated" mean? These are all estimates. That is one of</p> <p>14 your big points in this whole litigation, all estimates.</p> <p>15 MR. FIELDS: Your Honor, the estimated current</p> <p>16 value is a term of art that I know the Court has heard ad</p> <p>17 nauseam about at this trial. And current value could be</p> <p>18 viewed as --</p> <p>19 THE COURT: Let's excuse the witness.</p> <p>20 MR. AMER: My question was whether this was his</p> <p>21 sworn testimony, yes or no.</p> <p>22 THE COURT: All right. Start with that. Objection</p> <p>23 overruled. This is his sworn testimony.</p> <p>24 MR. FIELDS: You can't impeach him with something</p> <p>25 that is not a prior inconsistent statement.</p>
<p>-F. Chin-Cross-Defendant-Mr. Amer- Page 5984</p> <p>1 hit the market, yes.</p> <p>2 Q If you wanted to express the future projected profit of</p> <p>3 a development as a current value you would need to apply a</p> <p>4 discount factor to that projection, yes?</p> <p>5 A If you wanted to get to "as is," if you were trying to</p> <p>6 do that, yes.</p> <p>7 Q That was not my question.</p> <p>8 If you wanted to get to a current estimated value,</p> <p>9 wouldn't you have to apply a discount factor to the projected</p> <p>10 future profit?</p> <p>11 A It is one option, yes.</p> <p>12 Q Are you saying you don't have to do that?</p> <p>13 A Are we speaking about a statement of financial</p> <p>14 condition?</p> <p>15 Q For a statement of financial condition, yes, in order</p> <p>16 to come up with an estimated current value for future projected</p> <p>17 profit from a development don't you need to apply a discount</p> <p>18 factor to bring the future profit to present value?</p> <p>19 A No.</p> <p>20 MR. AMER: Let's pull up --</p> <p>21 Q You gave a deposition in this case, correct?</p> <p>22 A Yes.</p> <p>23 MR. AMER: Why don't we pull up your deposition and</p> <p>24 look at Page 119.</p> <p>25 (Shown.)</p>	<p>-F. Chin-Cross-Defendant-Mr. Amer- Page 5986</p> <p>1 MR. AMER: That's his redirect.</p> <p>2 MR. FIELDS: He asked about estimated current</p> <p>3 value. This is not about estimated current value.</p> <p>4 THE COURT: Was your question: Was this your</p> <p>5 testimony at your deposition?</p> <p>6 MR. AMER: Sworn testimony at his deposition. -</p> <p>7 THE COURT: Thank you.</p> <p>8 Objection overruled.</p> <p>9 If you keep objecting like this, I'll have you</p> <p>10 taken out of the room. Get that.</p> <p>11 MR. FIELDS: I'm trying to represent my clients,</p> <p>12 I'm certainly not trying to inflame the Court.</p> <p>13 THE COURT: The question was a simple yes or no.</p> <p>14 If you want to object to the follow-up, object to the</p> <p>15 follow-up.</p> <p>16 Ask it again, please.</p> <p>17 Q Was this your sworn testimony at your deposition,</p> <p>18 Mr. Chin, yes or no?</p> <p>19 A Yes.</p> <p>20 MR. AMER: We can take that down.</p> <p>21 Q For Woodbridge, you gave us testimony about doing a</p> <p>22 sellout of 15 luxury homes. Do you recall that testimony?</p> <p>23 A I do.</p> <p>24 Q And were those homes already built?</p> <p>25 A No.</p>

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1 Q When -- if you were to value those 15 luxury homes for
2 purposes of a personal financial statement, would you agree that
3 you would need to determine how long it would take you to build
4 those homes and then discount to present value if you were
5 presenting in your financial statement estimated current value
6 of that development?
7 A No. Let me explain.
8 Q I don't need you to explain, I just need your answer;
9 yes or no?
10 THE COURT: The answer is no, there could be
11 re-direct if the Defendants want to ask for the explanation.
12 Q Now, did you review, I think you said you reviewed the
13 supporting data spreadsheets when forming your opinion, correct?
14 A Yes.
15 Q Did you review --
16 MR. AMER: Let's put up Plaintiff's 708 in native,
17 which is the 2013 Jeff supporting data spreadsheet, in
18 evidence.
19 (Shown.)
20 Q In this one of the spreadsheets you reviewed?
21 A It looks like it, yes.
22 MR. AMER: And if we go to Row 646.
23 (Scrolling.)
24 Q You'll see that this is the section that values the
25 seven mansions that had been approved but not yet built on the

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1 property.
2 Do you see that?
3 A Yes.
4 Q It assumes a sales price for each residence of
5 \$35 million, correct?
6 A Correct.
7 Q And it assumes a cost to develop each residence of \$12
8 million for net profit 23 million per mansion, correct?
9 A Yes.
10 Q And could you tell me from this spreadsheet or any
11 other material you've reviewed when it was projected that the
12 first mansion will be built and ready for sale?
13 A It does not appear on this spreadsheet.
14 Q My question was little different, whether you could
15 tell from this spreadsheet or any other material you've
16 reviewed.
17 A Not that I recall.
18 Q And it could take a year or ten years to sell the first
19 home, right, you don't know based on the information you've
20 reviewed, correct?
21 A Correct.
22 Q Could you tell me from this spreadsheet or any other
23 material you reviewed how long it was projected to take for all
24 seven mansions to be hold?
25 A It wasn't evident, no, I could not.

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1 Q So it could take a year or ten years to sell all seven
2 homes, you don't know from any of the information you reviewed,
3 correct?
4 A Correct.
5 Q Let me show you Mr. McConney's testimony discussing
6 valuation of the seven mansions at Page 717 of the trial
7 transcript beginning line 14:
8 "QUESTION: Am I correct that the value of \$161
9 million for the seven homes in Bedford does not apply any
10 discount factor to take into account how long it would take
11 to construct the infrastructure, build the homes and then
12 sell the home for \$35 million each?
13 "ANSWER: That's correct.
14 "QUESTION: You didn't factor into the valuation
15 whether the homes were going to be built today, tomorrow or
16 in a number of years?
17 "ANSWER: Correct.
18 "QUESTION: If it took five years to complete the
19 new homes and they were sold two years after that, your
20 valuation doesn't account for that at all, correct?
21 "ANSWER: Correct.
22 "QUESTION: Can we agree that this \$161 million
23 attributable to these seven homes is by necessity going to
24 be future income because the homes don't exist as of the
25 date of these valuations?

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1 "ANSWER: Correct.
2 "QUESTION: You have treated for purposes of this
3 valuation the profit of 23 million per home for all seven
4 homes as if it were realized immediately as of June 30th in
5 each year?
6 "ANSWER: Yes."
7 Mr. Chin, were you aware of that Mr. McConney followed
8 this approach in valuing the seven mansions at Seven Springs?
9 A No, I'm not aware of what McConney thought or said or
10 did.
11 Q And in your expert opinion does the method described by
12 Mr. McConney to value the seven mansions result in an amount at
13 which the empty lots could be exchange as of June 30, 2013,
14 between a willing buyer and willing seller each of whom is well
15 informed and neither of whom is compelled to buy or sell; yes or
16 no?
17 MR. FIELDS: Objection.
18 THE COURT: What's the objection?
19 MR. SWAREZ: Outside the scope and he's not offered
20 as an accounting witness.
21 THE COURT: Mr. Amer, go ahead.
22 MR. AMER: The witness has testified about Seven
23 Springs and about valuations of properties in the Statements
24 of Financial Condition which he has reviewed. This is
25 perfectly proper cross-examination.

<p style="text-align: right;">Page 5991</p> <p>1 THE COURT: Let's do this. I think the question</p> <p>2 did make sense. The objection was overruled for the reasons</p> <p>3 Mr. Amer said. Maybe you could condense it, it went on for</p> <p>4 quite awhile.</p> <p>5 (Whereupon, Cheryl-Lee Lorient relieved Deborah</p> <p>6 Rothrock as the official court reporter.)</p> <p>7 (Continued on next page.)</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 5993</p> <p>F.Chin - Defendant - Cross/by Mr. Amer</p> <p>1 Yes or no?</p> <p>2 MR. SUAREZ: Same objection.</p> <p>3 THE COURT: Overruled.</p> <p>4 A. No, I would use, potentially, different methods</p> <p>5 besides that approach. That is one approach, of many, of</p> <p>6 looking at a, to-be-developed project that was proposed for</p> <p>7 homes. And it depends if you're looking at it in the</p> <p>8 future, without cost, at a different time period. There's</p> <p>9 many ways to approach it.</p> <p>10 Q. I will ask it a slightly different way. As an</p> <p>11 expert, do you think Mr. McConney's method for valuing the</p> <p>12 seven mansions at Seven Springs was reasonable "yes" or</p> <p>13 "no"?</p> <p>14 A. Yes. It is one method.</p> <p>15 Q. I didn't ask if it was a method. I asked you if</p> <p>16 you thought it was reasonable. Do you think it's reasonable</p> <p>17 "yes" or "no"?</p> <p>18 A. No. It's one of those that is of many different</p> <p>19 dimensions and perspectives evaluation.</p> <p>20 Q. Let me ask you some questions about appraisals</p> <p>21 which you testified about on direct.</p> <p>22 You identified a number of different types of</p> <p>23 appraisals.</p> <p>24 Do you recall that?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 5992</p> <p>F.Chin - Defendant - Cross/by Mr. Amer</p> <p>1 Q. Is the method, in your expert opinion, that</p> <p>2 Mr. McConney used to value the seven mansions and Seven</p> <p>3 Springs a proper method?</p> <p>4 A. It's a method.</p> <p>5 Q. That wasn't my question whether it was a method.</p> <p>6 My question was, is it a proper method that you, as an</p> <p>7 expert in the field, would endorse?</p> <p>8 A. No, it would depend on the circumstances that I</p> <p>9 was being asked to evaluate.</p> <p>10 As I mentioned before, at Woodbridge, I looked at</p> <p>11 the exit prices of houses. And, that was the only</p> <p>12 consideration.</p> <p>13 Q. We have a context for this description. It's the</p> <p>14 seven mansions at Seven Springs.</p> <p>15 And you've reviewed the financial statements in</p> <p>16 connection with how that valuation was done, right?</p> <p>17 A. Yes.</p> <p>18 Q. And you've reviewed the Jeff Supporting Data</p> <p>19 Spreadsheet on that property, correct?</p> <p>20 A. Yes.</p> <p>21 Q. And we've just looked at Mr. McConney's testimony</p> <p>22 as to the method he employed, right?</p> <p>23 A. That's his testimony, correct.</p> <p>24 Q. And so, for Seven Springs, am I correct that you,</p> <p>25 as an expert, would not endorse his method?</p>	<p style="text-align: right;">Page 5994</p> <p>F.Chin - Defendant - Cross/by Mr. Amer</p> <p>1 Q. One of the types you identified was market value</p> <p>2 appraisal. Do you recall that?</p> <p>3 A. Yes.</p> <p>4 Q. And, I think you said that, that's a type of</p> <p>5 appraisal that lenders use; is that right?</p> <p>6 A. Correct.</p> <p>7 Q. I thought I heard you say -- but, you can correct</p> <p>8 me if I'm wrong -- that, a market value appraisal looks at</p> <p>9 what a willing buyer and willing seller would pay.</p> <p>10 Did I get that right?</p> <p>11 A. I don't know if -- I don't recall if I,</p> <p>12 specifically, said that. But, embedded in a market value</p> <p>13 definition, that is correct.</p> <p>14 Q. And are you aware of the concept, in a market</p> <p>15 value appraisal, of "highest and best" use?</p> <p>16 A. Yes.</p> <p>17 Q. And doesn't "highest and best use" incorporate the</p> <p>18 concept of "as if" valuation if the highest and best use is</p> <p>19 a use that is different from the current use of the</p> <p>20 property?</p> <p>21 A. Yes, it looks at potential uses that could apply</p> <p>22 for a property. You're correct.</p> <p>23 Q. So I just need to understand your prior testimony</p> <p>24 that a market value appraisal is an "as is" appraisal. If</p> <p>25 it is a "highest and best use" market value appraisal, then</p>

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<p>1 wouldn't it incorporate "as if" valuation to the extent that</p> <p>2 the highest and best use is a use that is not the current</p> <p>3 use of the property?</p> <p>4 A. The highest and best use contemplates all sorts of</p> <p>5 potential uses; legal, financial, regulatory and</p> <p>6 environmental. And, it does contemplate a variety of</p> <p>7 different potential uses; nothing specific.</p> <p>8 So, it does contemplate what possible uses are for</p> <p>9 a property. It isn't expressed specifically as "as if" and</p> <p>10 it is available to a property owner as of the date of</p> <p>11 valuation.</p> <p>12 Q. Well, when you said that a market value appraisal</p> <p>13 is an "as is" appraisal --</p> <p>14 A. Yes.</p> <p>15 Q. -- I mean, that's wrong to the extent that the</p> <p>16 highest and best use that the appraiser takes into account</p> <p>17 is a use that's not the current use of the property, right?</p> <p>18 A. No, I disagree. The reason for "highest and best</p> <p>19 use" is to look at its potential and alternatives of use</p> <p>20 despite its current use. And that reflects the price that</p> <p>21 would be paid for that potential as of the date of</p> <p>22 appraisal.</p> <p>23 Q. Do developers get to value a report for a use</p> <p>24 that's higher and better than the highest and best use?</p> <p>25 A. Not always.</p>		<p>1 MR. AMER: I'm just waiting for them to get</p> <p>2 your copy.</p> <p>3 Q. You'll see there are page numbers on the lower</p> <p>4 left. So let's go to -- if you go to page two, you'll see</p> <p>5 this is an appraisal of Seven Springs estate as of</p> <p>6 December 1, 2015.</p> <p>7 Do you see that?</p> <p>8 A. Yes, sir.</p> <p>9 Q. Have you reviewed this appraisal in connection</p> <p>10 with your expert work in this case?</p> <p>11 A. Yes.</p> <p>12 Q. If we go to page five, if you look at the very top</p> <p>13 line, we can agree this is a market value appraisal, right?</p> <p>14 It says "The following opinions of market value."</p> <p>15 Do you see that?</p> <p>16 A. (No response.)</p> <p>17 Q. Top line.</p> <p>18 A. Oh, yes. Thank you.</p> <p>19 Q. So this is a market value appraisal, right?</p> <p>20 A. Correct.</p> <p>21 Q. And if we look at the glossary, which is page 65,</p> <p>22 for the definition of "market value," that's a definition of</p> <p>23 "market value" and "appraisals" that you're familiar with,</p> <p>24 correct?</p> <p>25 A. Yes. This one says, "The agency's appraisal</p>	
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<p>1 Q. What does it mean to say that a use a higher and</p> <p>2 better than the "highest and best use" as appraisers use</p> <p>3 that term?</p> <p>4 A. So, appraisers look at "highest and best use" in</p> <p>5 two different ways. As is or as vacant or as improved.</p> <p>6 They will look at -- sometimes a situation will exist or</p> <p>7 certain improvements on the property that don't put a</p> <p>8 property to its highest and best use as a vacant.</p> <p>9 So, for instance, if a gas station is on a corner</p> <p>10 site and there are mid rise new apartments all around it,</p> <p>11 the "highest and best use" of that site, as a vacant, would</p> <p>12 be for that type of higher and better use.</p> <p>13 As improved, that gas station might still be</p> <p>14 economically productive. And, that could be the highest and</p> <p>15 best use as it's improved.</p> <p>16 Q. Is "as improved" synonymous with "as if"?</p> <p>17 Yes or no?</p> <p>18 A. No.</p> <p>19 Q. Are you aware that there is an appraisal for Seven</p> <p>20 Springs?</p> <p>21 A. Are you referring -- yes, there is one regarding</p> <p>22 the conservation easement.</p> <p>23 Q. Let's go ahead and look at Defendant's Exhibit</p> <p>24 1016 which is in evidence already.</p> <p>25 THE COURT: Five minute warning.</p>		<p>1 regulation." So, I'm not familiar with the specific agency.</p> <p>2 Q. The definition is "the most probable price which a</p> <p>3 property should bring in a competitive and open market under</p> <p>4 all conditions requisite to a fair sale the buyer and seller</p> <p>5 each acting prudently and knowledgeably and assuming the</p> <p>6 price is not effected by undue stimulus."</p> <p>7 Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. Is that, in your opinion, synonymous with the</p> <p>10 willing buyer, willing seller definition that -- was one of</p> <p>11 the definitions you had in mind when reaching your opinions.</p> <p>12 A. (No response.)</p> <p>13 Q. Yes or no?</p> <p>14 A. No. Only from a standpoint that this is a</p> <p>15 specific agency that has its own definition. And I know</p> <p>16 various governmental agencies, banks, have different</p> <p>17 definitions of value which are very similar sounding. And</p> <p>18 similar sometimes in content but, differ slightly.</p> <p>19 Q. Doesn't this definition of market value include</p> <p>20 "as if" evaluations?</p> <p>21 A. No. This one is based on "as is".</p> <p>22 Q. This one is based on "as is"?</p> <p>23 A. It appears to be.</p> <p>24 Q. Let's go to the prior page. You see there is a</p> <p>25 separate definition at the top for "as is" market value?</p>	

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<p>1 A. Yes.</p> <p>2 Q. So, isn't it the case that there is "as is market</p> <p>3 value" and then there's "market value" in this glossary?</p> <p>4 There are two separate terms defined differently, yes?</p> <p>5 A. It does appear that way, two different agencies</p> <p>6 have different -- this is the office of the -- Office of</p> <p>7 Comptroller of Currency and the other one says, "agency."</p> <p>8 And, I'm not sure what agency that is.</p> <p>9 Q. And the "as is market value" says, "The estimate</p> <p>10 of the market value of real property in its current physical</p> <p>11 condition use and zoning as of the appraisal date." That's</p> <p>12 your "as is" valuation, correct?</p> <p>13 A. Correct. That's what's defined.</p> <p>14 Q. And market value, which is defined on the next</p> <p>15 page, which talks about buyer and seller, that includes the</p> <p>16 concept of "as is" because, it can take into account future</p> <p>17 development of the property; isn't that right?</p> <p>18 A. Its embedded, yes. It's embedded in the "highest</p> <p>19 and best use" analysis.</p> <p>20 Q. And if you go to the prior page, there's something</p> <p>21 known as hypothetical conditions. You know what those are</p> <p>22 correct, right?</p> <p>23 A. Yes.</p> <p>24 Q. If we look at that, a condition directly related</p> <p>25 to a specific assignment which is contrary to what is known</p>		<p>1 improved" and under "as improved" it says, "A subdivision of</p> <p>2 the subject parcels and development of a single family</p> <p>3 residential development, including 24 vacant residential</p> <p>4 lots."</p> <p>5 That's "as if," isn't it?</p> <p>6 A. It appears to be, yes.</p> <p>7 Q. And if we go to "highest and best use" in the</p> <p>8 definition of it on page 33, of the appraisal, that's the</p> <p>9 section that defines "highest and best use," correct?</p> <p>10 A. Yes.</p> <p>11 Q. And, if we look at the "highest and best use" of</p> <p>12 the property as vacant, that would apply to the vacant lots</p> <p>13 that are going to be developed into the 24 homes, correct?</p> <p>14 A. I believe so, yes. That's what I recall.</p> <p>15 Q. And under "highest and best use" the criteria is</p> <p>16 that it must be, legally, permissible, yes?</p> <p>17 A. Yes.</p> <p>18 Q. It must be, physically, possible, yes?</p> <p>19 A. Yes.</p> <p>20 Q. And it must be financially feasible and maximally</p> <p>21 productive, correct?</p> <p>22 A. Correct.</p> <p>23 Q. Mr. Chin, does a developer, in coming up with a</p> <p>24 value, an "as if" value, have to comply with those same</p> <p>25 criteria; namely, does the developer's, "as if" value need</p>	
F. Chin - Defendant - Cross/Mr.Amer	Page 6000	F. Chin - Defendant - Cross/Mr.Amer	Page 6002
<p>1 by the appraiser to exist on the effective date of the</p> <p>2 assignment results but, is used for purposes of the</p> <p>3 analysis.</p> <p>4 That's "as if", right?</p> <p>5 A. Correct.</p> <p>6 Q. So, this market value appraisal includes "as if"</p> <p>7 valuation, doesn't it?</p> <p>8 A. No.</p> <p>9 MR. AMER: I don't know if I'm at my five</p> <p>10 minutes yet.</p> <p>11 THE COURT: Basically, yes. All right. See</p> <p>12 you all at 3:55.</p> <p>13 And, I'll order the witness not to discuss</p> <p>14 the case or his testimony.</p> <p>15 THE WITNESS: Understood. Thank you.</p> <p>16 (A recess was taken.)</p> <p>17 (After the recess the following occurred:)</p> <p>18 THE COURT: Please, continue.</p> <p>19 MR. AMER: Thank you, your Honor.</p> <p>20 CROSS EXAMINATION</p> <p>21 BY MR. AMER:</p> <p>22 Q. Mr. Chin, I want to ask you a few more questions</p> <p>23 about the Seven Springs appraisal. If we go to page seven</p> <p>24 of the appraisal, and look at the section entitled "highest</p> <p>25 and best use," you see it says "as vacant" and then "as</p>		<p>1 to be based on a use that's, legally, permissible,</p> <p>2 physically possible and financially feasible and maximally</p> <p>3 productive?</p> <p>4 Yes or no?</p> <p>5 A. No.</p> <p>6 Q. So a developer's "as if" value can be based on a</p> <p>7 use that is, legally, impermissible; is that your testimony?</p> <p>8 A. No.</p> <p>9 Q. So, a developer's "as if" value has to be based on</p> <p>10 a use that is, legally, permissible, is that your testimony?</p> <p>11 A. No.</p> <p>12 Q. Okay.</p> <p>13 A. May I explain?</p> <p>14 Q. No.</p> <p>15 And a developer's "as if" value, in your opinion,</p> <p>16 can be based on a use that is, physically, impossible is</p> <p>17 that your opinion, yes or no?</p> <p>18 A. No.</p> <p>19 Q. So, a developer's "as if" value has to be based on</p> <p>20 a use that is, physically, possible, yes?</p> <p>21 A. Yes.</p> <p>22 Q. And a developer's "as if" value, does it need to</p> <p>23 be based on a use that's, financially, feasible and</p> <p>24 maximally productive.</p> <p>25 Yes or no?</p>	

<p>F. Chin - Defendant - Cross/Mr.Amer Page 6003</p> <p>1 A. No.</p> <p>2 Q. Now, if you turn to page 37, you'll see there is a</p> <p>3 scenario, "One approach, before donation, that envisions a</p> <p>4 subdivision sellout analysis."</p> <p>5 Do you see that.</p> <p>6 A. (No response.)</p> <p>7 Q. Page 37?</p> <p>8 A. Yeah, I'm sorry. I was looking at the Bates</p> <p>9 number versus the -- sorry. My apologies.</p> <p>10 Yes.</p> <p>11 Q. And that's an "as if" valuation method, correct?</p> <p>12 "Subdivision sellout analysis?"</p> <p>13 A. Yes.</p> <p>14 Q. And, if we turn to page 51, you'll see there's a</p> <p>15 further discussion of the sell-out analysis.</p> <p>16 Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. And, if you'll turn to the next page, am I correct</p> <p>19 that the sell-out analysis projects, over five years, the</p> <p>20 number of homes that would be sold in each year, right?</p> <p>21 A. Yes.</p> <p>22 Q. And, on the next page, the appraiser does a</p> <p>23 present value analysis to come to the sell-out analysis</p> <p>24 value, correct?</p> <p>25 A. Correct.</p>	<p>F. Chin - Defendant - Cross/Mr.Amer Page 6005</p> <p>1 no present value calculation done, the developers "as if"</p> <p>2 value is still an estimated current value?</p> <p>3 A. Yes, for purposes of the Statement of Financial</p> <p>4 Condition.</p> <p>5 Q. And, is it your expert opinion that, that value is</p> <p>6 what the property would be exchanged at between a willing</p> <p>7 buyer and a willing seller, both of whom are fully informed</p> <p>8 and neither of whom is under a compulsion to buy?</p> <p>9 A. No, not necessarily.</p> <p>10 Q. That's because any willing buyer, who is fully</p> <p>11 informed and not under a compulsion to buy, would calculate</p> <p>12 the present value, right?</p> <p>13 A. They may. They may not.</p> <p>14 Q. Can you think of any circumstances where a willing</p> <p>15 buyer would agree to pay, based on a future profit, that's</p> <p>16 not discounted to present value?</p> <p>17 A. Yes, I could.</p> <p>18 Q. What would that be?</p> <p>19 A. Something that might be a staged transaction. So</p> <p>20 a price is agreed upon now, with basic hurdles, to perform</p> <p>21 and construct certain improvements over time.</p> <p>22 Q. But, if you're valuing the property as of the date</p> <p>23 of the financial statement and you're saying that's the</p> <p>24 value that a willing buyer would pay, who's fully informed</p> <p>25 and not under a compulsion to buy, wouldn't you agree that,</p>
<p>F. Chin - Defendant - Cross/Mr.Amer Page 6004</p> <p>1 Q. And is it your testimony, expert testimony, that,</p> <p>2 a developer doing an "as if" value does not need to do that</p> <p>3 calculation?</p> <p>4 A. Yes, it is my opinion.</p> <p>5 Q. So, they can just come to a value without</p> <p>6 projecting out over how many years it would take to build</p> <p>7 and sell the homes.</p> <p>8 Is that your opinion?</p> <p>9 A. Yes. In the context of the Statement of Financial</p> <p>10 Condition and that representation, yes.</p> <p>11 Q. In your view, that still gets to an estimated</p> <p>12 current value.</p> <p>13 Yes or no?</p> <p>14 A. Yes. According to the Statement of Financial</p> <p>15 Condition and the conditions of that.</p> <p>16 Q. Okay. Does that get to a value that a willing</p> <p>17 buyer and a willing seller would exchange the property for</p> <p>18 in your view?</p> <p>19 A. No, not necessarily.</p> <p>20 Q. And, it's your view that a developer doing an "as</p> <p>21 if" value, doesn't need to calculate the present value as of</p> <p>22 the date of the statement of financial condition; is that</p> <p>23 right?</p> <p>24 A. Correct.</p> <p>25 Q. And, is it your opinion that even though there's</p>	<p>F. Chin - Defendant - Cross/Mr.Amer Page 6006</p> <p>1 that buyer would insist that any future profit, that's part</p> <p>2 of the value, be discounted to the present value of the date</p> <p>3 of the financial statement?</p> <p>4 A. No, not necessarily.</p> <p>5 Q. Let's turn to the concept of a developers</p> <p>6 perspective of value. And we've been talking a little bit</p> <p>7 about that.</p> <p>8 In your expert opinion, does there need to be a</p> <p>9 reasonable, factual basis for the developer's perspective of</p> <p>10 value that he puts in a Statement of Financial Condition?</p> <p>11 A. Yes.</p> <p>12 Q. And would you agree that it would be improper for</p> <p>13 a developer to put in a Statement of Financial Condition a</p> <p>14 perspective of value that is based on pie in the sky dreams</p> <p>15 of concocted value?</p> <p>16 A. I would agree with that.</p> <p>17 Q. Let's talk about Trump Park Avenue.</p> <p>18 You testified about that on direct, right?</p> <p>19 A. Yes.</p> <p>20 Q. And you understand that Trump Park Avenue is one</p> <p>21 of the properties valued in Mr. Trump's Statement of</p> <p>22 Financial Condition from 2011 to 2021, right?</p> <p>23 A. Yes.</p> <p>24 THE COURT: A little closer to the mike a</p> <p>25 little louder; one or the other.</p>

F. Chin - Defendant - Cross/Mr.Amer Page 6007

1 MR. AMER: Let's put up 708 native, which is
2 the 2013 Jeff Supporting Data Spreadsheet in evidence
3 that we were looking at before. And if we could go to
4 row 166, which is where -- that's where
5 trump@parkavenue begins.
6 If you look at row 172, you'll see it says,
7 "unsold units." And, in 2013, the value for the unsold
8 units is almost \$327 million.
9 Do you see that?
10 A. Yes.
11 Q. And, can we agree that, that is nearly the entire
12 total value of the property which is shown on row 187 at
13 346.1 million?
14 A. Yes.
15 Q. And, you're aware that some of the unsold units
16 that make up the value, in row 172, are a part and subject
17 to rent stabilization laws, right?
18 A. Yes.
19 Q. And I believe you testified that you have your own
20 personal business experience evaluating a rent stabilized
21 apartment in New York City, correct?
22 A. Or selling it, then valuing it.
23 Q. And that is when you were CEO of Woodbridge; is
24 that right?
25 A. Correct.

F. Chin - Defendant - Cross/Mr.Amer Page 6008

1 Q. And the company owned the rent stabilized
2 apartment that was located on the Upper East Side; is that
3 right?
4 A. Yes, sir.
5 Q. Do you remember the address of the building?
6 A. I don't. But, I am happy to get it for you.
7 Q. And, am I correct that your company purchased the
8 shares to own that co-op apartment, in 2019, on the basis of
9 an appraisal that did not disclose the fact that the
10 apartment was subject to rent stabilization laws?
11 Yes?
12 A. No, I believe we made a loan to someone on the
13 basis of that appraisal. And then, I believe the borrower
14 defaulted. So then, the company received, essentially, a
15 deed in lieu. And that's how we received the title to the
16 unit.
17 Q. But the appraisal did not disclose that the unit
18 was rent stabilized, right?
19 A. That was our argument when we were looking back
20 and doing our forensic analysis of this transaction.
21 Q. So, you made the loan based on the appraisal
22 believing that the apartment was a free market apartment
23 only to later find out that it was rent stabilized; is that
24 right?
25 A. I didn't make the loan. This pre-existed my

F. Chin - Defendant - Cross/Mr.Amer Page 6009

1 tenure at the company. It was done many years before.
2 Q. Well, isn't it a fact that your company considered
3 suing the appraisers and the attorneys who were involved in
4 the sale of the unit based on the fact that the appraisal
5 didn't disclose that the apartment was rent stabilized,
6 right?
7 A. Yes.
8 Q. And, I think you mentioned this but, let's just
9 confirm. During negotiations to buyout the tenant, the
10 tenant indicated that she had relatives, I think including
11 grandchildren, right, who were going to come move into the
12 apartment?
13 A. Yes, or had been, actually, having rooms there.
14 Q. And you understood, at the time, that there were
15 succession rights to tenancy with respect to rent
16 stabilization, right?
17 A. Yes.
18 Q. And you mentioned the terms of the buyout
19 consisting of a payment of, approximately, half a million
20 dollars to the tenant, is that right?
21 A. Correct. Might have been 525,000. Somewhere in
22 that area.
23 Q. Aren't you leaving out another component of the
24 buyout?
25 A. I don't believe so.

F. Chin - Defendant - Cross/Mr.Amer Page 6010

1 Q. Didn't the buyout also include a profit sharing
2 arrangement with the tenant if the sales price hit a certain
3 point?
4 A. Oh, yes. You're correct.
5 Q. Uh-huh. Okay. So you paid the tenant a little
6 \$500,000 but, you also agreed to a profit sharing
7 arrangement, with the tenant, based on the sale price,
8 correct?
9 A. If a sale price exceeded a certain amount then,
10 the tenant would participate in that amount over a hurdle
11 rate that we had established.
12 Q. Do you recall if the ultimate sale price, which I
13 believe you said was almost \$2 million, triggered the profit
14 sharing arrangement under the buyout deal?
15 A. I believe it did.
16 Q. And so, I think you said the net profit was
17 somewhere between 1.3 and 1.5 million after taking into
18 account the amount you had to pay for the buyout, right?
19 A. That as well as closing costs and I think we had
20 some legal fees as well. It was the net recovery that we
21 could get back from the sale.
22 So we look at all the different costs besides just
23 the buyout; the legal cost, I think we had to replace an
24 electric panel and a couple of other things.
25 Q. So I'm just trying to understand the math. If the

<p>F. Chin - Defendant - Cross/Mr.Amer Page 6011</p> <p>1 buyout was slightly over \$500,000, and there was a profit</p> <p>2 share and you sold the unit for just under 2 million, the</p> <p>3 net profit had to be closer to the 1.3. It couldn't have</p> <p>4 been 1.5, right?</p> <p>5 A. I don't recall the exact closing price because, it</p> <p>6 closed after I left the company. I think there was some</p> <p>7 concession that might have been made to the buyer. So, I'm</p> <p>8 not sure what the exact proceeds are.</p> <p>9 Q. Do you agree that if an owner of a rent stabilized</p> <p>10 apartment wanted to value the apartment, for purposes of a</p> <p>11 personal financial statement, based on what the apartment</p> <p>12 would sell for on the open market, the owner would need to</p> <p>13 include in the value calculation the cost to remove the</p> <p>14 legal restriction to the sale that exists under rent</p> <p>15 stabilization laws?</p> <p>16 A. Yes. If you use the exit price being unencumbered</p> <p>17 as the amount you would deduct that from.</p> <p>18 (Whereupon, the following proceedings was</p> <p>19 stenographically recorded by Deborah Rothrock.)</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>-F. Chin-Defendant-Cross-by Mr. Amer- Page 6013</p> <p>1 valuations, correct?</p> <p>2 "ANSWER: Yes."</p> <p>3 Then we tick off the 12 units that were rent</p> <p>4 stabilized and then picking up line 17:</p> <p>5 "QUESTION: And you valued them without any regard</p> <p>6 to their rent stabilized status; is that correct?</p> <p>7 "ANSWER: I didn't value them, TIR valued them, but</p> <p>8 I believe that's correct.</p> <p>9 "QUESTION: You put them into your spreadsheet that</p> <p>10 is goes to Donald Bender; is that correct?</p> <p>11 "ANSWER: Correct.</p> <p>12 "QUESTION: And the values you relied on when you</p> <p>13 put them in your spreadsheet and sent them to Donald Bender</p> <p>14 were the offering plan price values knowing that these were</p> <p>15 rent stabilized units, correct?</p> <p>16 "ANSWER: Correct.</p> <p>17 "QUESTION: And you followed the same approach for</p> <p>18 every statement you reviewed, correct?</p> <p>19 "ANSWER: Correct.</p> <p>20 "QUESTION: And it was intentional, correct?</p> <p>21 "ANSWER: Correct.</p> <p>22 "QUESTION: And it was something you discussed with</p> <p>23 Mr. Weisselberg, correct?</p> <p>24 "ANSWER: I believe so, yes.</p> <p>25 "QUESTION: And he agreed that that was the way</p>
<p>-F. Chin-Defendant-Cross-by Mr. Amer- Page 6012</p> <p>1 Q Let me ask you a hypothetical:</p> <p>2 Consider a situation where someone owns 20 apartments</p> <p>3 in a New York City building and ten of them rent stabilized.</p> <p>4 Would you agree if the owner values all 20 apartments</p> <p>5 in his personal financial statement to be provided to a bank as</p> <p>6 if they are all free market units without disclosing that half</p> <p>7 are subject to rent stabilization laws, that would be a pretty</p> <p>8 significant omission that should be disclosed; yes?</p> <p>9 A In that hypothetical, I would agree with that.</p> <p>10 MR. AMER: Let's go ahead and put up Plaintiff's</p> <p>11 Exhibit 708, native.</p> <p>12 (Shown.)</p> <p>13 Q Did you review how the figure in Row 172 was derived?</p> <p>14 A I don't recall.</p> <p>15 Q Do you have any understanding as you sit here today as</p> <p>16 to how that value of just under \$327 million was calculated?</p> <p>17 A I don't recall.</p> <p>18 Q Have you reviewed any of the testimony of Mr. McConney</p> <p>19 given at the trial about how the value was calculated?</p> <p>20 A No.</p> <p>21 Q Let me go ahead and show you his trial testimony at</p> <p>22 transcript Page 711, starting at line 7. And it goes over to</p> <p>23 the section on the following page as well:</p> <p>24 "QUESTION: Mr. McConney, you were aware that Park</p> <p>25 Avenue had these rent stabilized units when you prepared the</p>	<p>-F. Chin-Defendant-Cross-by Mr. Amer- Page 6014</p> <p>1 that you were going to do it, correct?</p> <p>2 "ANSWER: Yes. "</p> <p>3 Do you see in this description that Mr. McConney says</p> <p>4 that the rent stabilized units were valued based on the offering</p> <p>5 plan prices?</p> <p>6 A That is what it appears the testimony to be, yes.</p> <p>7 Q And would you agree that by using offering plan pricing</p> <p>8 of the units without deducting the cost to remove the legal</p> <p>9 restrictions that exist under rent stabilization laws, Mr.</p> <p>10 McConney and Mr. Weisselberg inflated the value of those units,</p> <p>11 yes?</p> <p>12 A No, they provided a perspective of value that was based</p> <p>13 upon their analysis that was shared with Mazars.</p> <p>14 Q So you think it is fine for them to have valued the</p> <p>15 rent stabilized apartments based on using offering plan prices</p> <p>16 without disclosing in the statements that that is what they were</p> <p>17 doing, is that your expert opinion?</p> <p>18 A No. Mine was if it was disclosed -- I don't know</p> <p>19 because I didn't read this testimony and I wasn't there, but it</p> <p>20 was disclosed to Mazars so...</p> <p>21 Q Well --</p> <p>22 A I would need to look at what they might have said or</p> <p>23 didn't say in their Statement of Financial Condition.</p> <p>24 Q Do you know if it was disclosed to the reader of the</p> <p>25 Statement of Financial Condition?</p>

-F. Chin-Defendant-Cross-by Mr. Amer- Page 6015

1 A Not off the top of my head.

2 Q Well, let's look at Plaintiff's Exhibit 707 which is

3 the Statement of Financial Condition for 2013.

4 (Shown.)

5 Let's turn to Page 10 of 25.

6 You'll see that has the description of estimated

7 current value for Trump Park Avenue on the top paragraph, you

8 see that?

9 A Yes.

10 Q And it says (Reading:) The estimated current value of

11 346.1 million is based upon an evaluation made by Mr. Trump in

12 conjunction with his associates and outside professionals of the

13 amount that he will earn as a result of the sale of the

14 remaining condominiums as well as the residual value of the

15 commercial space.

16 Can we agree there's no mention of the fact that some

17 of the remaining condo units are subject to rent stabilization

18 laws but were valued based on offering plan prices?

19 A No, it says (Reading:) As a result of the sale the

20 remaining condominium units.

21 It is not explicit as to rent stabilized or not but

22 this would infer that it says we're selling the remaining

23 condominium units.

24 Q My question simply is whether this discloses to the

25 reader of the statement that some of the units are rent

-F. Chin-Defendant-Cross-by Mr. Amer- Page 6016

1 stabilized and yet were value based on offering plan prices?

2 Do you see that information disclosed anywhere in this

3 paragraph?

4 A No.

5 Q Would you agree that the failure to disclose that some

6 of the condo units were rent stabilized and yet were valued at

7 their offering plan prices without regard to their rent

8 stabilization status was a pretty significant omission?

9 MR. FIELDS: Objection. Lack of foundation. It is an

10 accounting question.

11 THE COURT: Overruled.

12 A It would have been helpful to include.

13 Q That wasn't my question.

14 A That was my answer but please go ahead.

15 MR. AMER: Could I get a readback so that I could

16 get an answer to my question.

17 (Whereupon, the requested portion of the record was

18 read.)

19 Q Would you agree that the failure to disclose that some

20 of the condo units were rent stabilized and yet were valued at

21 their offering plan prices without their rent stabilization

22 status disclosed is a pretty significant omission; yes or no?

23 A No. May I explain?

24 Q Let me show you some testimony from your deposition.

25 THE COURT: He asked if he could explain.

-F. Chin-Defendant-Cross-by Mr. Amer- Page 6017

1 MR. AMER: No.

2 Q Let me show you testimony from your deposition. It's

3 Page 168 and it starts on line 3. And this is the part of your

4 deposition where you were discussing with my colleague the co-op

5 that you were selling that was rent stabilized.

6 "QUESTION: I mean what if I'm presenting a value

7 of a building where I own certain units and I don't disclose

8 that some of them are subject to rent stabilization or I

9 value them as free market?

10 "ANSWER: I think that's a pretty significant

11 omission that should be disclosed."

12 That was your testimony in response to those

13 questions, right?

14 A Yes.

15 Q Let me ask you some questions about 40 Wall Street.

16 MR. AMER: Let's go ahead and put up Plaintiff's

17 Exhibit 1573.

18 (Shown.)

19 Q You testified about this. This is the 2011 appraisal

20 for 40 Wall Street.

21 Do you recall testifying about this on direct?

22 A Yes.

23 MR. AMER: And let's go ahead and look at Page 3.

24 (Shown.)

25 MR. AMER: If we could go forward to Page 3 of the

-F. Chin-Defendant-Cross-by Mr. Amer- Page 6018

1 actual appraisal.

2 (Scrolling.)

3 Q Do you see that this appraisal indicates that there are

4 no extraordinary assumptions or hypothetical conditions, do you

5 see that?

6 A Yes.

7 Q If there had been, would this be an "as if" appraisal?

8 A Yes.

9 Q So, the mere fact that it is a market value appraisal

10 doesn't determine if it is "as is or "as if", you have to look

11 if there are hypothetical conditions that are being accounted

12 for; is that fair?

13 A Yes, and usually the appraisers are pretty good about

14 making note of that that it is a different viewpoint than "as

15 is."

16 MR. AMER: Let's go to Page 169. Blow up the top

17 two charts.

18 (Shown.)

19 Q Now we looked at this page, correct?

20 A Yes.

21 Q And you indicated --

22 MR. AMER: Just go down a little more.

23 Q You indicated that the estimated capitalization rate to

24 be seven percent, you noted that the low was 4.21 and high 6.74.

25 Do you recall that?

-F. Chin-Defendant-Cross-by Mr. Amer- Page 6019

1 A Yes, sir.

2 Q And I believe the Judge asked you if you saw any

3 explanation from Cushman in this appraisal for why they choose

4 the seven percent. Do you recall that exchange?

5 A I recall that, yes.

6 Q I think your testimony was that you didn't see any

7 explanation, right?

8 A Correct.

9 MR. AMER: Could you go a little further down on

10 the page.

11 (Scrolling.)

12 Q You see the paragraph that is just below the bottom box

13 that says Statistics. I'll read it:

14 "The current market conditions require higher rates as

15 a result of the recent credit market correction in the context

16 of the direct capitalization method, a going in rate of seven

17 percent is considered reasonable compensating the typical buyer

18 for the risk inherent in investing in this building."

19 Do you see that?

20 A Yes, I do.

21 Q Isn't that explanation of why the appraiser chose the

22 seven percent, just yes or no?

23 A It is not, No.

24 Q Now, we looked at the 2015 appraisal which is

25 Plaintiff's Exhibit 118. If we could pull that up. And

-F. Chin-Defendant-Cross-by Mr. Amer- Page 6020

1 Page 170, there is a selection here of a cap rate that was

2 within the range of the high and low, right?

3 A Yes.

4 Q I believe your testimony was that this appraisal was

5 much more accurate and in line with market information than the

6 earlier appraisals, is that right?

7 A Correct.

8 MR. AMER: Could we go ahead and pull up

9 Plaintiff's demonstrative Exhibit 3 and go to the page that

10 has 40 Wall Street.

11 (Shown.)

12 Q By the way, do you recall what the value was for the

13 2015 appraisal that you said was more accurate and in line with

14 market information?

15 A I believe it was \$540 million.

16 Q And it is the case that the value used in the Statement

17 of Financial Condition for 2015 was nearly \$200 million more

18 than that 2015 appraised value, correct?

19 A Yes.

20 Q And it was almost \$250 million more than the value used

21 in the 2016 Statement of Financial Condition, correct?

22 A Correct.

23 Q And the Morning Star analysis also reached a value of

24 \$540 million, correct?

25 A I believe Morning Star was more like 260 million, 267

-F. Chin-Defendant-Cross-by Mr. Amer- Page 6021

1 million. It cited the Cushman appraisal of 540, but I believe

2 their own calculation was somewhere, if I recall, 267.5 million,

3 something around there.

4 Q That is hundreds of dollars even lower than the Cushman

5 2015 appraisal, correct?

6 A Yes.

7 MR. AMER: We are right at 4:30.

8 THE COURT: Just to get more done, I was hoping to

9 go to 4:45. If that is impossible. Let's keep going.

10 MR. AMER: We can.

11 Q On direct examination you offered your expert opinions

12 about the quality of the 2011 and 2012 Cushman appraisals; is

13 that correct?

14 A Yes.

15 Q And your opinions are critical of the quality of the

16 2011 and 2012 Cushman appraisals; is that fair?

17 A Yes.

18 Q You expressed your expert opinion that those appraisals

19 were underestimating the "as is" values of 40 Wall Street; is

20 that fair?

21 A Yes, relative to 540 and some of the analysis that I

22 prepared.

23 Q Now, Mr. Chin, I think you confirmed you are a member

24 of The Appraisal Institute, so you are what is known as MAI for

25 short, right?

-F. Chin-Defendant-Cross-by Mr. Amer- Page 6022

1 A Yes.

2 Q Am I correct that as an MAI appraiser you are required

3 to adhere to the Uniformed Standards of Professional Appraisal

4 Practice known as USPAP for short?

5 A Yes, for conducting specific property appraisals, yes.

6 Q Am I correct as an MAI appraiser you are required to

7 adhere to USPAP in the preparation, analysis and reporting of

8 appraisal results, right?

9 A Yes, under the USPAP standards, correct.

10 Q You're familiar with something known as an appraisal

11 review under USPAP?

12 A Yes.

13 Q And I think you testified about some notable cases that

14 you handled and you mentioned a case involving Calpers. Did I

15 get that right?

16 A It wasn't a case, it was an ongoing consulting

17 assignment.

18 Q And I think you said that for that Calpers assignment

19 you reviewed dozens of appraisals; is that right?

20 A Yes, every quarter.

21 Q Were those appraisal reviews?

22 A They were appraisal reviews based upon an agreement

23 with Calpers.

24 Q So, you understand the standards under USPAP that apply

25 to appraisal reviews, correct?

<p>-F. Chin-Defendant-Cross-by Mr. Amer- Page 6023</p> <p>1 A As following USPAP, correct.</p> <p>2 Q And you complied, I presume, with those standards when</p> <p>3 you did the appraisal reviews for the Calpers engagement; is</p> <p>4 that right?</p> <p>5 A Generally, I believe we had an agreement that I was</p> <p>6 doing file memoranda, that basically, I think, mimic USPAP, but</p> <p>7 it wasn't per se. I don't know if it was verbatim how bank</p> <p>8 appraisers do an individual appraisal review for very specific</p> <p>9 property.</p> <p>10 MR. AMER: Let's go ahead and look at Plaintiff's</p> <p>11 Exhibit 3397 which are the USPAP standards.</p> <p>12 (Shown.)</p> <p>13 Q Let me ask you just to confirm something.</p> <p>14 This says that they're effective through December 31st,</p> <p>15 2021.</p> <p>16 Is it your understanding that these standards have been</p> <p>17 extended through the end of this year?</p> <p>18 A I believe so.</p> <p>19 MR. AMER: So, your Honor, if we could, I would</p> <p>20 distribute this exhibit. This is a new exhibit, it is not</p> <p>21 in evidence.</p> <p>22 (Handing.)</p> <p>23 THE WITNESS: Thank you.</p> <p>24 Q And if we could turn to Page 5 of 34. You'll see</p> <p>25 there's a definition of Appraisal Review.</p>	<p>-F. Chin-Defendant-Cross-by Mr. Amer- Page 6025</p> <p>1 opinion about the quality of another appraiser's work, they need</p> <p>2 to comply with USPAP Standard 4 which relates to appraisal</p> <p>3 reviews, correct?</p> <p>4 A Yes, if there's an assignment to do a specific</p> <p>5 appraisal review.</p> <p>6 Q And you did not believe that your critique of the 2011</p> <p>7 or 2012 Cushman appraisals triggered your obligation to follow</p> <p>8 those standards because in your view you were weren't doing an</p> <p>9 appraisal review; is that fair?</p> <p>10 A Correct.</p> <p>11 Q And so you, in fact, did not follow the standards laid</p> <p>12 out USPAP for engaging in the act or process of developing an</p> <p>13 opinion about the quality of another appraisers's work, right?</p> <p>14 A No, that is not correct.</p> <p>15 Q Did you -- let's look at 4.3, which is on Page 30.</p> <p>16 You see Standard 4.3 requires a certification as an</p> <p>17 integral part of the appraisal review report; do you see that?</p> <p>18 A Yes.</p> <p>19 Q Can we agree you did not produce a signed certification</p> <p>20 that meets the requirements of 4.3?</p> <p>21 A That's correct.</p> <p>22 MR. AMER: If you give me a minute, your Honor.</p> <p>23 THE COURT: Of course.</p> <p>24 (Whereupon, there is a pause in the proceedings.)</p> <p>25 THE COURT: Let's go ahead.</p>
<p>-F. Chin-Defendant-Cross-by Mr. Amer- Page 6024</p> <p>1 Do you see that?</p> <p>2 A Yes.</p> <p>3 Q I'm going to read it: "Appraisal review when used as a</p> <p>4 noun means the act or process of developing an opinion about the</p> <p>5 quality of another appraiser's work, i.e., a report, part of a</p> <p>6 report, a work file or some combination of these that was</p> <p>7 performed as part of an appraisal or an appraisal review</p> <p>8 assignment."</p> <p>9 Do you see that?</p> <p>10 A Yes.</p> <p>11 Q Because we've established that you rendered an opinion</p> <p>12 about the quality of the Cushman 2011 and 2012 appraisals, would</p> <p>13 you agree that your opinions constitute an appraisal review as</p> <p>14 defined by USPAP in this paragraph; yes or no?</p> <p>15 A No. There is something that --</p> <p>16 Q I just asked yes or no. You've answered my question.</p> <p>17 So it's your view that what you did with respect to the</p> <p>18 2011 and 2012 Cushman appraisals was not appraisal review as</p> <p>19 defined by USPAP; is that your testimony?</p> <p>20 A Yes. In the context of the overall statement of</p> <p>21 financial condition and as I recorded in my report which was</p> <p>22 looking at the totality of a Statement of Financial Condition</p> <p>23 and the various entries for all the different properties in all</p> <p>24 the different years.</p> <p>25 Q When an MAI does an act or process of developing an</p>	<p>Page 6026</p> <p>1 MR. AMER: Your Honor, I have no further questions.</p> <p>2 THE COURT: We can break five minutes early.</p> <p>3 MR. AMER: Well, do they have re-direct?</p> <p>4 THE COURT: Could you start your re-direct?</p> <p>5 Are you going to have re-direct.</p> <p>6 MR. FIELDS: I expect so and it will probably be</p> <p>7 longer than five minutes. Could we break for the evening.</p> <p>8 THE COURT: Sure.</p> <p>9 I'll direct the witness again not to discuss his</p> <p>10 testimony or this case.</p> <p>11 (Witness exits.)</p> <p>12 (Whereupon, the trial stood adjourned to December</p> <p>13 5, 2023 at 10:00 a.m.)</p> <p>14 * * *</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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In The Matter Of:
PEOPLE OF THE STATE OF NEW YORK v.
DONALD J. TRUMP

FREDRICK CHIN, JOHN SHUBIN & LAWRENCE MOENS
December 5, 2023

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1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF NEW YORK - CIVIL TERM - PART 37
3 PEOPLE OF THE STATE OF NEW YORK, BY LETITIA
4 JAMES, ATTORNEY GENERAL OF THE STATE OF
5 NEW YORK,
6 Plaintiff, Index No. 452564/2022
7 -against- DONALD J. TRUMP; DONALD TRUMP JR.; ERIC
8 TRUMP; IVANKA TRUMP; ALLEN WEISSELBERG;
9 JEFFREY MCCONNEY; THE DONALD J. TRUMP
10 REVOCABLE TRUST; THE TRUMP ORGANIZATION,
11 INC.; TRUMP ORGANIZATION LLC; DJT HOLDINGS
12 MANAGING MEMBER; TRUMP ENDEAVOR 12, LLC;
13 401 NORTH WABASH VENTURE, LLC; TRUMP OLD
14 POST OFFICE, LLC; 40 WALL STREET, LLC; and
15 seven SPRINGS, LLC.
16 Defendants.
17 TRIAL 60 Centre Street
18 New York, New York
19 December 5, 2023
20 B E F O R E:
21 HONORABLE ARTHUR F. ENGORON,
22 Supreme Court Justice
23 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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1 THE COURT: Good morning, everyone. Will
2 there be any redirect of the previous witness.
3 MR. SUAREZ: Yes, your Honor.
4 MR. AMER: Your Honor, we have a different
5 lawyer for redirect. I don't think that's appropriate.
6 MR. SUAREZ: I'm glad you noticed, Mr. Amer.
7 MR. KISE: Mr. Fields had a previous
8 engagement that precluded him from being here. We all
9 represent the same clients. And, if Mr. Fields was,
10 medically, infirmed, or out ill, I don't think there's
11 any preclusion. The same lawyer doesn't have to do it.
12 It's just the same law firm that's representing the
13 client.
14 I'm unaware of any rule or procedure. We'll
15 differ to CPLR expert. But, I'm not aware of any
16 procedure. We all represent the same clients, at
17 least, among Mr. Suarez, Mr. Fields and myself.
18 MR. ROBERT: I'm not aware of any
19 prohibition about that.
20 THE COURT: I don't think, particularly,
21 because -- you're from the same law firm?
22 MR. ROBERT: Yes.
23 THE COURT: I can't imagine -- Mr. Amer is
24 there any authority or reason --
25 MR. AMER: I'm fine to withdraw the

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1 Cont'd Appearances

2
3
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22
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24 DEBORAH ROTHROCK
25 LISA CASEY
SENIOR COURT REPORTER

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1 F.Chin - Defendant - Redirect/Mr. Suarez
2 objection. I didn't know the explanation, that,
3 Mr. Fields was otherwise engaged. But, let's just go
4 ahead.
5 THE COURT: I'm sure he wasn't fired. I
6 mean, he did a fine job.
7 MR. KISE: No, he was not.
8 THE COURT: Okay.
9 MR. WALLACE: I think the answer was, if he
10 was here, he should do the rest of the redirect. But,
11 Mr. Kise is representing he's not here. So, that's
12 fine.
13 THE COURT: I will represent he's not here.
14 I got a good view. I don't see him anywhere. Okay.
15 Mr. Suarez.
16 THE WITNESS: Good morning.
17 THE COURT: Mr. Chin, let's begin.
18 MR. SUAREZ: I won't take it personally that
19 they prefer Mr. Fields to me. It's not the first time
20 that's happened. He's a lot more charming.
21 THE COURT: I will remind the witness he is
22 still under oath as I'm sure you know.
23 THE WITNESS: Thank you.
24 REDIRECT EXAMINATION
25 BY MR. SUAREZ:
Q. Mr. Chin, yesterday you discussed with the

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1 government ASC 274. How did you obtain your understanding
2 of the definition of the term estimated current value?
3 A. I asked one of the accounting experts at Ankura
4 for definitions of estimated current value.
5 Q. And, how did you obtain your understanding of
6 ACS-274 for purposes of the opinions that you have offered
7 in court?
8 A. When I received the information, I looked at both
9 the definition as well as the methods that are used to
10 calculated estimated current value.
11 Q. And what is your understanding, for purposes of
12 the opinions that you've offered here at trial, of the
13 definition of estimated current value contained in ASC-274?
14 A. There are, certainly, many ways of calculating it,
15 the estimated current value, and there are a number of
16 methods that are suggested by that documentation.
17 MR. WALLACE: I'll move to strike because
18 the question was, what's his understanding of the
19 definition, not what are the methods that can be used
20 to get there. So, it's non-responsive.
21 MR. KISE: Your Honor, those are one in the
22 same. I noticed that in my absence yesterday there was
23 a gross mischaracterization of the prior testimony of
24 Mr. Flemmons in a deliberate attempt by the government
25 to --

F.Chin - Defendant - Redirect/Mr. Suarez Page 6032

1 MR. WALLACE: Do we want to excuse the
2 witness?
3 MR. KISE: We can do that. That's fine.
4 The witness just answered as to what his
5 understanding is, and that understanding, as he just
6 testified, includes the methods.
7 That's consistent with what Mr. Flemmons
8 testified to. That's consistent with what all the
9 accounting experts testified to.
10 The only thing it's not consistent with is
11 their misleading interpretation of the definition of
12 estimated current value.
13 By taking a 202 Statement and saying, "Oh,
14 well, you've admitted that this is the definition." No
15 we admitted that that's what it says. And, given where
16 we were, if we didn't -- if we didn't admit that the
17 actual statement in the ECV is what it says, then I'm
18 likely to have faced some kind of sanction.
19 So if you look at the remainder of the 202
20 Statement, it becomes apparent. If you look at the
21 expert testimony, if you look at everything that
22 anyone, with actual knowledge of this subject, that's
23 come into this Court to say other than the government,
24 that it's altogether.
25 And so, this witness is being asked what's

F.Chin - Defendant - Redirect/Mr. Suarez Page 6033

1 his understanding. He provides his understanding.
2 He's not an accountant. We went round and round with
3 that many times I saw yesterday. And, he's just going
4 to give his understanding.
5 What his understanding is doesn't have any
6 actual basis, ultimately, on the Court's determination
7 of the definition because, that would be the province
8 of accounting experts.
9 And as Mr. Amer pointed out yesterday and as
10 the witness testified to, he's not an accounting
11 expert. So, all we're really trying to get at is what
12 was in his head.
13 I think your Honor made this point yesterday.
14 We're just trying to get at what was in his head when
15 he provided his opinions. So, his answer is his
16 answer. That's it.
17 They've asked him about it. They've put up,
18 again, a mischaracterization of the record by showing
19 him only part of it. They've prohibited this witness
20 from explaining what he meant.
21 So we're just on redirect asking him "What's
22 your understanding?" I think it's perfectly
23 acceptable. And his understanding is necessarily going
24 to be limited by his lack of real knowledge of
25 accounting principles.

F.Chin - Defendant - Redirect/Mr. Suarez Page 6034

1 We're just trying to get at what this witness
2 has to say about how it impacted his decisions. That's
3 it. But, I don't think his answer was nonresponsive.
4 THE COURT: Well, Mr. Kise, we missed you
5 yesterday. But, I'm not going to revisit the rulings.
6 Your statement that the question or that the
7 202 Statement was simply, "Yes, that's what it says," I
8 don't, necessarily, agree with that.
9 Mr. Amer, do you agree with that statement he
10 made?
11 MR. AMER: I don't. I think the 202
12 paragraph was clear. I think it was undisputed. Its
13 deemed admitted for purposes of this trial. And, we
14 could all read English. We know what the 202 Statement
15 said.
16 It said that under GAAP ASC 274, the
17 definition of estimated current value means -- and
18 then, it sets forth a definition. They did not dispute
19 that. So that has legal consequences. And they can't
20 try and redo their response to the 202 paragraph now.
21 I think we all know what's going on here,
22 your Honor. My objection was very simple. He was
23 asked what his understanding of the definition was.
24 And, instead, he gave a response that
25 discussed the methods you can use to get to estimated

F.Chin - Defendant - Redirect/Mr. Suarez Page 6035

1 current value. Those are two different things. The
2 definition is one thing. And the methods you used to
3 get there are another.
4 So, that's why I think his answer was
5 unresponsive, your Honor. So if they want to ask him
6 about the methods, that's a different question.
7 MR. KISE: So, your Honor, as Mr. Flemmons,
8 who's the only accounting expert that's testified about
9 this, has testified, they're altogether. It's not that
10 there's one piece and two pieces. It's all one piece.
11 And so, if you use any of the methods -- this
12 is the part that was misleading. If you use any of the
13 methods, you, by definition, get back to estimated
14 current value. So, if you have a top line, then you
15 have the remainder.
16 So the 202 Statement is a red herring.
17 They're trying to isolate a response that is,
18 technically, accurate and ignore the fundamentals of
19 accounting principles that are in the record and
20 established in the record. And they're ignoring the
21 remainder of the 202 Statements which we're not going
22 to get into.
23 But, at all events, we're still not really
24 here to debate what the actual definition is with this
25 witness. We're just asking this witness "What's your

F.Chin - Defendant - Redirect/Mr. Suarez Page 6036

1 understanding of how it's derived."
2 The definition of "How do you get there?" I
3 mean, that's it. His definition is, "You used these
4 methods and you get to estimated current value."
5 And that's consistent with what Mr. Flemmons
6 testified to. That's exactly what Mr. Flemmons
7 testified to in that manner.
8 And that's the part that they didn't allow
9 the witness to explain yesterday when he answered "no"
10 to the question about "Is that your same definition of
11 estimated current value?"
12 He said, "No, may I explain?"
13 And Mr. Amer said, "No, you can't."
14 Okay. That's cross examination. So all
15 we're doing is asking this witness "What's your
16 understanding?" It's fairly straightforward.
17 But this witness is not here to testify about
18 what the definition is. That's the providence of the
19 county expert.
20 He's just here to testify about -- so there's
21 nothing to revisit about Your Honor's ruling from
22 yesterday. Respectfully, I don't think there is
23 anything to revisit. I think there's just what this
24 witnesses' understanding is. And that's all he can
25 testify to.

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1 He's not stuck with the 202 Statement. He
2 has nothing to do the 202 Statement. He's not stuck
3 with Flemmons' testimony, he has nothing to do with
4 Flemmons' testimony.
5 What he's here to testify about is what his
6 understanding is and why he derived the opinions that
7 he derived as an appraisal expert not an accounting
8 expert.
9 So, I just don't see how its possible that
10 his answer, when he's telling the Court "This is my
11 understanding," how anyone can disagree with that and
12 say, "No, you're wrong." They can argue he's wrong.
13 Fine. But, he's answering the question.
14 THE COURT: Well, in your posttrial briefs,
15 you can argue about the effect of the defendant's
16 statement on the 202 Statement.
17 As for the particular question that's in
18 front of me, since the wording was "What's your
19 understanding of" -- his understanding of how it works
20 or how you get there and the different methods, I'll
21 allow it.
22 I will agree with Mr. Kise's general point
23 there. The plaintiff can always, you know, recross if
24 need be. That's his understanding.
25 Let's get him back. I hope the rest of the

F.Chin - Defendant - Redirect/Mr. Suarez Page 6038

1 morning is not a revisit of yesterday.
2 MR. KISE: Our plan was to be done by now.
3 FREDRICK CHIN, having been
4 previously sworn, testified further as follows:
5 REDIRECT EXAMINATION
6 BY MR. SUAREZ:
7 Q. Mr. Chin, how are the methods used to determine
8 estimated current value relevant to your understanding of
9 estimated current value if at all?
10 A. Very relevant. Those methods were, definitely,
11 considered and provided a guidance in terms of how
12 individuals might be able to use it and estimate their
13 current values.
14 Q. What opinions, if any, do you offer concerning the
15 interpretation of ASC 274?
16 A. With respect to the statements of financial
17 condition?
18 Q. Yes.
19 A. I believe that they were appropriately stated
20 following the estimated current value guidance.
21 Q. What opinions, if any, do you offer concerning the
22 interpretation of the term "estimated current value" under
23 the accounting standards?
24 A. Do you mind repeating that question?
25 Q. Sure.

<p>F.Chin - Defendant - Redirect/Mr. Suarez Page 6039</p> <p>1 A. Sorry.</p> <p>2 Q. What opinion, if any, do you offer concerning the</p> <p>3 interpretation of the definition of estimated current value</p> <p>4 as provided in the accounting standards?</p> <p>5 A. I believe it offers a pretty broad interpretation</p> <p>6 in terms of how real estate or assets could be valued.</p> <p>7 Q. How, if at all, are the opinions you've given in</p> <p>8 this trial consistent with USPAP?</p> <p>9 A. I believe they are different, that, the estimate</p> <p>10 the current value is different than how normal USPAP market</p> <p>11 value appraisals are done.</p> <p>12 THE COURT: And please louder and closer to</p> <p>13 the microphone.</p> <p>14 THE WITNESS: My apologies, your Honor.</p> <p>15 Q. And how, Mr. Chin, are your opinions at trial</p> <p>16 compliant with USPAP?</p> <p>17 A. Very different function. They're different. They</p> <p>18 are. My opinions are based on the totality of the statement</p> <p>19 of financial condition which has estimated current values as</p> <p>20 part of that statement of financial condition.</p> <p>21 Q. Do your opinions comply with USPAP?</p> <p>22 A. No, they don't; not in the strict sense.</p> <p>23 Q. Why not?</p> <p>24 A. Well, there are several reasons.</p> <p>25 The first one is that my assignment wasn't to do,</p>	<p>F.Chin - Defendant - Recross/Mr.Amer Page 6041</p> <p>1 RECROSS EXAMINATION</p> <p>2 BY MR. AMER:</p> <p>3 Q. If we could just put up, from yesterday's</p> <p>4 transcript, page 6006. I just want to read to you, from</p> <p>5 line eight on it and confirm that this is -- that this is</p> <p>6 still your testimony.</p> <p>7 "QUESTION: In your expert opinion, does</p> <p>8 there need to be a reasonable factual basis for the</p> <p>9 developer's perspective of value that he puts in a</p> <p>10 statement of financial condition.</p> <p>11 "ANSWER: Yes.</p> <p>12 Q. Do you standby that testimony?</p> <p>13 A. I do.</p> <p>14 "QUESTION: And would you agree that it</p> <p>15 would be improper for a developer to put in a Statement</p> <p>16 of Financial Condition a perspective of value that is</p> <p>17 based on pie-in-the-sky dreams of concocted value?</p> <p>18 "ANSWER: I would agree with that.</p> <p>19 Q. Is that still testimony that you standby?</p> <p>20 A. Yes, sir.</p> <p>21 Q. Am I correct that in this case, you have not</p> <p>22 rendered any opinions of value with respect to any of the</p> <p>23 assets in the Statement of Financial Condition?</p> <p>24 A. You're correct.</p> <p>25 MR. AMER: That's all I have, your Honor.</p>
<p>F.Chin - Defendant - Recross/Mr.Amer Page 6040</p> <p>1 specifically, an appraisal review of a property. It was to</p> <p>2 evaluate the statement of financial condition.</p> <p>3 Number two, there's a jurisdictional exception</p> <p>4 that is in USPAP that if there is, in this case, a</p> <p>5 litigation or otherwise and there will be testimony then</p> <p>6 there's an allowance that strict compliance with USPAP is</p> <p>7 not necessary.</p> <p>8 And number three, most, importantly, a lot of the</p> <p>9 time that I spent that we talked about in terms of hours,</p> <p>10 was spent reviewing the AG's appraisals of the property,</p> <p>11 which their appraisals signed as MAIs, provided almost five</p> <p>12 hundred separate opinions of value. And they were not, at</p> <p>13 all, compliant with USPAP.</p> <p>14 Q. In reviewing the Statements of Financial Condition</p> <p>15 at issue in this case, what evidence, if any, have you</p> <p>16 identified that the valuations are based on pie-in-the-sky</p> <p>17 dreams of concocted value?</p> <p>18 A. None.</p> <p>19 MR. SUAREZ: No further questions on</p> <p>20 redirect, Your Honor.</p> <p>21 THE COURT: Recross.</p> <p>22 MR. AMER: I have just a quick couple of</p> <p>23 questions. But, I can do it from here, your Honor.</p> <p>24 THE COURT: Oh, sure.</p> <p>25</p>	<p>F.Chin - Defendant - Recross/Mr.Amer Page 6042</p> <p>1 THE COURT: Any re redirect?</p> <p>2 MR. SUAREZ: No, your Honor.</p> <p>3 THE COURT: Okay. If there are no other</p> <p>4 questions, the witness is excused. Nice to meet you.</p> <p>5 THE WITNESS: Thank you, your Honor.</p> <p>6 (Witness excused.)</p> <p>7 THE COURT: Defendant, would you like to</p> <p>8 call your next witness?</p> <p>9 MR. ROBERT: Yes, your Honor. Defendants</p> <p>10 call John Shubin. Let's get Mr. Shubin.</p> <p>11 COURT OFFICER: Witness entering.</p> <p>12 Raise your right hand.</p> <p>13 Do you solemnly swear or affirm that any</p> <p>14 testimony you give will be the truth the whole truth</p> <p>15 and nothing but the truth?</p> <p>16 THE WITNESS: I do.</p> <p>17 JOHN SHUBIN, called as a witness by</p> <p>18 the Defendants, having been first duly sworn, testified</p> <p>19 as follows:</p> <p>20 COURT OFFICER: Please, have a seat.</p> <p>21 Please, state your name, business address for the</p> <p>22 record.</p> <p>23 THE WITNESS: Yes, good morning. My name is</p> <p>24 John Shubin. My business address is 150 West Flagler</p> <p>25 Street, Miami Florida, 33130.</p>

<p>J.Shubin - Defendants - Direct/Mr. Robert Page 6043</p> <p>1 THE COURT: Mr. Robert, please proceed.</p> <p>2 MR. ROBERT: Thank you, your Honor.</p> <p>3 DIRECT EXAMINATION</p> <p>4 BY MR. ROBERT:</p> <p>5 Q. Good morning, Mr. Shubin?</p> <p>6 A. Good morning.</p> <p>7 Q. If you could start by advising the Court of your</p> <p>8 educational background from college on, sir.</p> <p>9 A. I graduate Harvard College in 1983. I then went</p> <p>10 on to Oxford University, St. John's College where I received</p> <p>11 a post graduate MA in politics, philosophy and economics.</p> <p>12 In 1985, attended the University of Miami Law School</p> <p>13 graduated in 1988.</p> <p>14 Q. And sir, are you admitted to practice law?</p> <p>15 A. I'm admitted to practice law.</p> <p>16 Q. And where are you admitted to practice law, sir?</p> <p>17 A. State of Florida.</p> <p>18 Q. And sir, can you briefly describe for the Court</p> <p>19 your professional background since you graduated law school.</p> <p>20 A. I've been a practicing lawyer since 1988. I have</p> <p>21 tried cases in State and Federal Courts in front of jury's</p> <p>22 nonjuries.</p> <p>23 I've participated in hundreds of legislative and</p> <p>24 quasi judicial hearings and other forms of administrative</p> <p>25 hearings.</p>	<p>J.Shubin - Defendants - Direct/Mr. Robert Page 6045</p> <p>1 Q. And is that limited to Florida or anywhere else?</p> <p>2 A. It's not limited to Florida. We have represented</p> <p>3 clients in multiple jurisdictions.</p> <p>4 Q. So I want to talk to you a little bit about the</p> <p>5 areas that you said you primarily practice in.</p> <p>6 What is land use?</p> <p>7 A. Land use is what are the rules and regulations</p> <p>8 that effect how an individual, an owner or a tenant, can</p> <p>9 utilize a piece of real estate.</p> <p>10 What uses can occur, what structures can occur,</p> <p>11 the size, the dimensions of those structures; anything</p> <p>12 related to the use and operation of a piece of property.</p> <p>13 Q. And what is planning?</p> <p>14 A. Planning is the method by which government</p> <p>15 effectuate the regulation of land. They look into the</p> <p>16 future, they determine the needs, the requirements of a</p> <p>17 community and they provide long term -- they generate long</p> <p>18 term planning documents that guide how zoning, which is the</p> <p>19 implementation of planning, occurs in different</p> <p>20 jurisdictions.</p> <p>21 Q. And what are entitlements?</p> <p>22 A. Entitlements are commonly the approvals, the</p> <p>23 governmental approvals, usually, that run with a piece of</p> <p>24 land that are secured by the owner to allow certain uses of</p> <p>25 that property.</p>
<p>J.Shubin - Defendants - Direct/Mr. Robert Page 6044</p> <p>1 I have argued between fifty and hundred appeals in</p> <p>2 various forum -- both in state and federal Appellate</p> <p>3 forum -- and have had a very active practice over the last</p> <p>4 35 years.</p> <p>5 Q. And what about your employment history since the</p> <p>6 time you graduated law school, sir?</p> <p>7 A. I started at the Law Firm of Schultz & Bowen in</p> <p>8 Miami, proceeded to the firm of Sterns Weaver and then</p> <p>9 started my own firm in 1993.</p> <p>10 Q. Sir, what if any specialty are you engaged in the</p> <p>11 practice of law in?</p> <p>12 A. For the last 20 years, in particular, I've focused</p> <p>13 on real estate as it relates to entitlement, land use,</p> <p>14 planning. Anything that relates to real estate.</p> <p>15 The business of Florida often is real estate. And</p> <p>16 so, even as a trial lawyer, most of the matters that I</p> <p>17 handle have some aspect of real estate related to them.</p> <p>18 Q. I'm going to talk, in a few moments, about and</p> <p>19 drilling down a little bit more about that. But what, if</p> <p>20 any, other employment have you been engaged in other than</p> <p>21 the practice of law.</p> <p>22 A. I also own a consulting firm called the Euclid</p> <p>23 Group which advises investors and individuals and entities</p> <p>24 on strategies related to the use and development of real</p> <p>25 estate.</p>	<p>Proceedings Page 6046</p> <p>1 Q. And finally zoning?</p> <p>2 A. Zoning is the implementation of planning. It's</p> <p>3 the rules and regulations that govern the use, the</p> <p>4 intensity, the density the shape of property.</p> <p>5 Q. Now, you mentioned before that your practice is,</p> <p>6 primarily, limited to this over the last 20 years. How much</p> <p>7 of your practice is devoted to these four areas?</p> <p>8 A. Probably -- it was always about 50 percent. Now,</p> <p>9 its about 80 percent.</p> <p>10 MR. ROBERT: Your Honor, at this point, I</p> <p>11 would like to tender John Shubin as a land use,</p> <p>12 planning, entitlements and zoning expert.</p> <p>13 THE COURT: Can you repeat that slowly.</p> <p>14 MR. ROBERT: Sure. Yes, your Honor. Land</p> <p>15 use, planning, entitlements and zoning expert. I</p> <p>16 figured it was easier than just staying real estate</p> <p>17 which was a little too broad.</p> <p>18 THE COURT: What has plaintiff have to say?</p> <p>19 MR. WALLACE: I would renew our objection,</p> <p>20 that, this is, essentially, a legal expert. I would</p> <p>21 assume the witness's expertise in this area is limited</p> <p>22 to interpretations of laws, regulations and contracts</p> <p>23 that govern these areas; and hence, is an improper area</p> <p>24 for expert testimony.</p> <p>25 I believe, though, to the extent the</p>

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1 defendants suggested, in the motion to preclude		1 just posit based on what --	
2 Mr. Shubin's testimony, that, his expertise would show		2 MR. ROBERT: We can limit it to Mar-a-lago	
3 which documents are relevant, if they want to go that		3 where he practices. His consulting business is beyond	
4 far, I would take it, they can identify documents.		4 Florida but, the questions are going to be dealing only	
5 But, as to the interpretation of those		5 with Mar-a-lago.	
6 documents, we object to him having expertise that is		6 MR. WALLACE: I appreciate that.	
7 useful to the court in the manner in which an expert is		7 DIRECT EXAMINATION	
8 supposed to be qualified.		8 BY MR. ROBERT:	
9 MR. ROBERT: I think Mr. Wallace may have		9 Q. The series of questions I'm going to ask you today	
10 looked at my notes to see what's coming next. This		10 are, ultimately, from your opinion, Mr. Shubin. Will you be	
11 testimony is going to be about Mr. Shubin's experience		11 able to give them to me with a reasonable degree of	
12 in knowing what to look for, why you are looking for it		12 certainty?	
13 and where to find it. It's not legal conclusions.		13 THE COURT: Mr. Robert, you are a little	
14 MR. WALLACE: I have a suspension we'll		14 down. Maybe you speak up.	
15 disagree as to what constitutes legal conclusion as we		15 MR. ROBERT: I think it is my throat, your	
16 proceed. If his familiarity with the nature and		16 Honor.	
17 location of these covenants, restrictions and deeds		17 THE COURT: The witness too, you have to be	
18 we're happy to hear from the witness on those issues.		18 very close, speak loudly and slowly and clearly.	
19 THE COURT: Mr. Shubin, good morning.		19 THE WITNESS: I'll do my best.	
20 THE WITNESS: Good morning.		20 THE COURT: Hear the difference?	
21 THE COURT: Have you been qualified as an		21 THE WITNESS: Yes. Absolutely.	
22 expert in these areas or any areas before?		22 THE COURT: You have to hear yourself over	
23 THE WITNESS: I've never testified as an		23 the PA or you're not doing your job.	
24 expert before.		24 THE WITNESS: Don't feel like I'm ignoring	
25 THE COURT: Are you aware of the dispute		25 you.	
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1 that the lawyers have had about limitations on your		1 THE COURT: I won't.	
2 testimony as to the law which is what I'm here for.		2 Q. Did there come a time that you were asked to	
3 THE WITNESS: I have heard from counsel that		3 provide opinion information in this case?	
4 there has been a dispute. And, as a practicing lawyer,		4 A. Yes.	
5 I'm very familiar with the issues related to the		5 Q. What were the circumstances surrounding that?	
6 dispute. I've tried to tie myself to the mass so I		6 A. I received a phone call from Chris Kise and I	
7 don't know too much. But, I'm certainly familiar with		7 think there was another individual on the line, Greg	
8 the issues regarding a lawyer testifying.		8 Coleman. And, they asked me if I would consider being an	
9 THE COURT: All right. I hereby deem you,		9 expert witness in a matter.	
10 for the first time, an expert in land use planning,		10 Q. And what was your understanding of what the	
11 entitlement and zoning.		11 assignment was that you were given?	
12 And as you, I'm sure, just heard the lawyers		12 A. My understanding of the assignment, at the time,	
13 discuss, I'm not looking for -- I'm not allowing the		13 was to ascertain what restrictions, if any, applied to the	
14 testimony on the law itself but, where documents are,		14 use of Mar-a-lago in Palm Beach, Florida.	
15 how they may interact with each other, with the		15 Q. What, if anything, did you do to --	
16 upshot -- well, I'll leave out "the upshot." I'm sure		16 Did you come to a conclusion after reviewing	
17 Mr. Roberts will keep the questioning within the right		17 documents?	
18 areas.		18 A. I did.	
19 MR. ROBERT: In about a half-hour, we'll		19 Q. What documents did you review?	
20 decide whether we agree or not. I'm hoping that we do.		20 A. I reviewed a variety of documents all of which are	
21 MR. WALLACE: I would ask for one		21 set forth in my expert witness report. But, essentially,	
22 clarification. I don't think it's relevant to the		22 what I did was what is my common practice, I ordered a title	
23 nature of the testimony Mr. Shubin is going to provide		23 report on Mar-a-lago.	
24 but, are we qualifying him as an expert to the		24 And a title report identifies and produces all	
25 jurisdiction of Florida or somewhere else. I would		25 documents that effect the title to the property that are	

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1 recorded and contain their legal description.		1 doesn't somehow, magically, transform what he's saying	
2 I reviewed the universe of those documents		2 into a legal conclusion. It's still a factual	
3 compared them to some of the documents that Mr. Kise had		3 determination that he's making and providing to the	
4 provided to me that he thought were relevant. And there was		4 Court. You will then -- so, the testimony doesn't get	
5 substantial overlap.		5 excluded on that basis.	
6 I then also conducted a search, a public records		6 THE COURT: Mr. Wallace, I assume you	
7 search, of the town of Palm Beach's records to determine		7 disagree with that.	
8 what records they had in their possession that might be		8 MR. WALLACE: The question is, what is	
9 important for me to review prior to giving any opinion.		9 permitted based on the laws, regulations and covenants	
10 Q. And what opinion did you, ultimately, come to?		10 which are, essentially, contracts. And he is offering	
11 A. The opinion that I reached is that there is,		11 his opinion as to what is permitted under that.	
12 absolutely, no prohibition on the use of Mar-a-lago as a		12 That's, inherently, a legal conclusion. If	
13 single-family residence.		13 they want to walk through all the documents and say,	
14 MR. WALLACE: Your Honor, we object to that		14 "These are the ones your Honor should consider," that's	
15 opinions. That is a legal conclusion.		15 fine.	
16 THE COURT: Sustained.		16 But saying, "The end result of these	
17 Q. Mr. Shubin, is there anything in the document that		17 documents is, there's no restrictions on using	
18 you reviewed that showed that there was any prohibition of		18 Mar-a-lago as a private home," that's the legal	
19 Mar-a-lago being used as a single-family residence.		19 conclusion.	
20 A. I did not see any document that contained that		20 So no objection to him identifying what he	
21 prohibition.		21 found in his title search in terms of what the	
22 MR. WALLACE: Objection. That's a		22 documents are but, his interpretation of those	
23 rephrasing of the same question.		23 documents is, inherently, a legal conclusion.	
24 MR. ROBERT: No. I'm asking him if there is		24 MR. ROBERT: Your Honor, we're going to take	
25 anything in any of the documents that I'm about to go		25 the witness through the document -- sections of the	
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1 through that shows that there was a restriction. And		1 document. But the question was, did he find anything	
2 there were not.		2 in the documents that prohibited it.	
3 That's a factual issue. It helps the Court		3 Again, that's not a legal conclusion. The	
4 with the ultimate conclusion but, it's not a legal		4 first question I asked is did he reach an opinion on	
5 conclusion. That's up to your Honor at the end of the		5 it. And his Honor sustained the objection. I	
6 day.		6 understood that sustaining of the objection. That's	
7 MR. KISE: Your Honor, I just want to point		7 why I reworded the question.	
8 out, land use experts, land planner that aren't lawyers		8 THE COURT: It, absolutely, is a legal	
9 that work in government or in the private sector, they		9 conclusion. What I think -- maybe we can agree on	
10 make these factual determinations everyday. It's not		10 this. You can ask the witness what documents exist that	
11 legal conclusion to say what Mr. Shubin is saying.		11 might effect this property. And then, ask him what	
12 A lawyer can make that determination. But,		12 they say.	
13 ultimately, you have to decide the legal ramifications		13 MR. ROBERT: That's exactly where I'm headed	
14 of the factual input. But, it's not a legal		14 next.	
15 conclusion.		15 THE COURT: That's a lot different from "Do	
16 THE COURT: That's why we don't allow		16 any of the documents prohibit the use of the property	
17 testimony on the law because, I make those decisions.		17 as a single-family residence."	
18 MR. KISE: Right. But, the testimony isn't		18 MR. ROBERT: I, respectfully, disagree. At	
19 a conclusion. The testimony is, factually, the		19 the end, I'm going to come back to it because, I think	
20 application of these provisions.		20 your Honor will see that it's based on what he's giving	
21 It's just like you said, a land -- if we		21 an opinion on not as a lawyer. It's not a legal	
22 brought in a land use planner, if we brought in a		22 conclusion. It's based on the interlay as I said.	
23 zoning expert, if we brought in a planning expert --		23 Mr. Shubin's testimony is based on his	
24 which this witness is qualified to be --		24 experience of knowing what to look for, what is	
25 Just because Mr. Shubin has a law degree,		25 relevant and where you find it.	

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<p>1 The government is relying on one document for</p> <p>2 their position that Mar-a-lago cannot be used as a</p> <p>3 single-family residence. And this witness is going to</p> <p>4 explain that there's a much greater series of documents</p> <p>5 that need to be looked at.</p> <p>6 MR. KISE: So I have an idea, your Honor.</p> <p>7 Why don't we just go through the document and then come</p> <p>8 back it this?</p> <p>9 THE COURT: Exactly. Objection is sustained</p> <p>10 without prejudice to once we get through the documents</p> <p>11 and see where we're at.</p> <p>12 (Whereupon, the following proceedings was</p> <p>13 stenographically recorded by Deborah Rothrock.)</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>		<p>1 Q What is this document?</p> <p>2 A This is essentially materials that accompanied an</p> <p>3 application for a special exception that was filed in 1993 to</p> <p>4 allow Mar-a-Logo to be used as a private club.</p> <p>5 Q And is this one of the documents that you reviewed,</p> <p>6 sir?</p> <p>7 A Yes, it is.</p> <p>8 Q Okay. If we could go to D-478-5 in the bottom</p> <p>9 left-hand corner.</p> <p>10 If you could go to the third paragraph, Mr. Shubin, and</p> <p>11 read that into the record please, sir?</p> <p>12 (Whereupon, there is a pausing in the proceedings.)</p> <p>13 Q Mr. Shubin, drawing your attention to the third</p> <p>14 paragraph here, if you could read the first two lines.</p> <p>15 A Sure. (Reading:) The alternative uses of Mar-a-Logo</p> <p>16 are, 1) continued ownership by one individual as a private</p> <p>17 residential estate at his or her sole expense, 2) a retreat for</p> <p>18 government officials, 3) a museum, 4) a cultural and</p> <p>19 intellectual center, 5) a subdivision with multiple single</p> <p>20 family homes, 6) separately owned condominiums created out of</p> <p>21 existing suites and 7) a private social club; competing and</p> <p>22 conflicting interests must be resolved for each possibility</p> <p>23 based on fairness, principles of private property and a valid</p> <p>24 determination of public welfare.</p> <p>25 (Pause in proceedings.)</p>	
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<p>1 MR. WALLACE: Your Honor, we would ask that the</p> <p>2 witness' answers to those questions be stricken, in addition</p> <p>3 to our judgment.</p> <p>4 THE COURT: Stricken. The answer to that question</p> <p>5 is stricken, calls for a legal conclusion. Clearly I don't</p> <p>6 think there's a reasonable debate on that.</p> <p>7 Let's move ahead and not belabor the point.</p> <p>8 Q Did you look at the series of documents with regard to</p> <p>9 Mar-a-Logo, sir?</p> <p>10 A Yes.</p> <p>11 Q If we could put Defendant's Exhibit 478 up on the</p> <p>12 screen that is in evidence please?</p> <p>13 (Shown.)</p> <p>14 THE COURT: I can't help myself, not just a legal</p> <p>15 conclusion but the ultimate legal conclusion. If I were to,</p> <p>16 you know, if I were to allow him to testify and take his</p> <p>17 word for it, we would not need anymore testimony. That is</p> <p>18 the ultimate issue on Mar-A-Logo, certainly an ultimate</p> <p>19 issue on Mar-a-Logo. Again, let's not belabor it.</p> <p>20 Q Mr. Shubin, what is Defendant's Exhibit 478? And</p> <p>21 please hold on, they're going to give you a hard copy of the</p> <p>22 document.</p> <p>23 (Hanging.)</p> <p>24 Q Mr. Shubin, do you recognize this document?</p> <p>25 A Yes, I do.</p>		<p>1 THE COURT: We're ready.</p> <p>2 (Witness resumes the witness stand.)</p> <p>3 THE COURT: Okay. We're back in session.</p> <p>4 Mr. Roberts, before you go ahead, could you explain</p> <p>5 what we're looking at?</p> <p>6 MR. ROBERTS: I was going to put the stipulation on</p> <p>7 the record but I'll be happy to do that.</p> <p>8 THE COURT: I'm not questioning whether it should</p> <p>9 or isn't in evidence, I'm just asking what the heck is it.</p> <p>10 MR. ROBERTS: I think the best person to ask is Mr.</p> <p>11 Shubin.</p> <p>12 Could you identify what has been handed to you as</p> <p>13 Defendant's Exhibit 478.</p> <p>14 A Yes. It is a narrative that accompanies an application</p> <p>15 for a special exception which is to permit a private club at</p> <p>16 Mar-a-Logo.</p> <p>17 MR. ROBERTS: Your Honor, before I proceed, I would</p> <p>18 just like to put on the record the agreement that we made</p> <p>19 with the Attorney General's Office as concerning the</p> <p>20 exhibits.</p> <p>21 It's been agreed that Defendant's Exhibit 359,</p> <p>22 Defendant's Exhibit 360, Defendant's Exhibit 1066,</p> <p>23 Defendant's Exhibit 361, Defendant's Exhibit 244,</p> <p>24 Defendant's Exhibit 427, Defendant's Exhibit 428,</p> <p>25 Defendant's Exhibit 429 and Defendant's Exhibit 484 are</p>	

<p>J. Shubin-Defendant-Direct-Mr. Roberts Page 6059</p> <p>1 stipulated and admitted into evidence.</p> <p>2 MR. AMER: The People agree.</p> <p>3 THE COURT: Great. The People agree one time.</p> <p>4 MR. ROBERTS: We'll also asking the Court to take</p> <p>5 judicial notice of the code ordinances of the Town of Palm</p> <p>6 Beach, Section 134-2(b) and Sections 134-786 and 134-787.</p> <p>7 Those are also two documents that Mr. Shubin had relied on</p> <p>8 as part of his report. We have that marked and put into</p> <p>9 evidence, they are sections and we just did it for the ease</p> <p>10 of the Court so that you don't have to look to Florida</p> <p>11 statutes and laws.</p> <p>12 MR. WALLACE: No objection from the People.</p> <p>13 THE COURT: I'm glad we have those agreements in</p> <p>14 place.</p> <p>15 MR. ROBERTS: Thank you.</p> <p>16 Q Mr. Shubin, turning your attention to where we left off</p> <p>17 which is D-478-5. What is the significance of what you have</p> <p>18 just read?</p> <p>19 A Again, this accompanied an application in order to seek</p> <p>20 a private club in Palm Beach. At this point in time we've to</p> <p>21 file an application, it is uncommon to accompany these</p> <p>22 applications with a narrative. So this is a narrative that</p> <p>23 talks about what could or could not be done at Mar-a-Logo as an</p> <p>24 alternative. And one of the alternatives is a private social</p> <p>25 club, that is parentheses seven.</p>	<p>J. Shubin-Defendant-Direct-Mr. Roberts Page 6061</p> <p>1 A It is significant in that it identifies what uses</p> <p>2 occurred on the property and it's a commitment as to what uses</p> <p>3 will occur on the property should the application be granted.</p> <p>4 Q And what is your understanding of what the property is</p> <p>5 used for today?</p> <p>6 A It's used as a private social club.</p> <p>7 Q And any other use, sir?</p> <p>8 A There are other uses that occur on the club. They're</p> <p>9 recreational uses that occur in connection with a social club,</p> <p>10 which are ordinary and customary and Mr. Trump has a residence</p> <p>11 at the club, an owner's residence.</p> <p>12 Q That would be consistent with the fact that the actual</p> <p>13 usage of Mar-a-Logo will not change, correct, sir?</p> <p>14 MR. WALLACE: Objection, Leading?</p> <p>15 THE COURT: Leading, sustained.</p> <p>16 Q What is the significance of Mar-a-Logo not changing</p> <p>17 mean to you, sir?</p> <p>18 A It means that and in other portions of the narrative</p> <p>19 describe how Ms. Post, Marjorie Merriweather Post, how she used</p> <p>20 the property in the past and it describes how the property will</p> <p>21 be used in the future.</p> <p>22 Q And how did Ms. Post used the property in the past,</p> <p>23 sir?</p> <p>24 A She lived there, she entertained, she had opened it up</p> <p>25 occasionally to the public, to the residence of Palm Beach but</p>
<p>J. Shubin-Defendant-Direct-Mr. Roberts Page 6060</p> <p>1 Q And who was it that had prepared this document?</p> <p>2 A It would be someone on behalf of the owner of the</p> <p>3 property, that was Donald Trump or an entity on Donald Trump's</p> <p>4 behalf.</p> <p>5 Q Now, drawing your attention to Page 69, D-478-69.</p> <p>6 What is this document, sir, contained within this</p> <p>7 exhibit?</p> <p>8 A It is common in an application and maybe with the</p> <p>9 Court's permission I can talk about what a special exception is,</p> <p>10 it is what they applied for. They applied for a special</p> <p>11 exception. So they are proffering and addressing what type of</p> <p>12 conditions they would consider being applied to their</p> <p>13 application should it be approved.</p> <p>14 Q And, Mr. Shubin, if you could read into the record the</p> <p>15 first paragraph starting "in its conversion of this document."</p> <p>16 A It states (Reading:) In its conversion from a</p> <p>17 so-called large residential estate to a private social club, the</p> <p>18 actual usage of Mar-a-Logo will not change. No new activity</p> <p>19 will not occur which cannot, does not, or has not taken place in</p> <p>20 the past under the existing zoning of this property. The</p> <p>21 applicant seeks no physical change whatsoever with the property.</p> <p>22 (Such as, for instance, the addition or demolition of any</p> <p>23 improvement.)</p> <p>24 Q And what, if any, significance does this paragraph</p> <p>25 have?</p>	<p>J. Shubin-Defendant-Direct-Mr. Roberts Page 6062</p> <p>1 she lived there and it was her residence.</p> <p>2 Q And drawing your attention to Page 154 of that</p> <p>3 document, Mr. Shubin.</p> <p>4 (Pausing.)</p> <p>5 Is this what you were referring to?</p> <p>6 A Yes.</p> <p>7 Q If you could read the first sentence, please?</p> <p>8 A (Reading:) Ms. Post used Mar-a-Logo as a residence</p> <p>9 during winter months of the year and was a place to entertain</p> <p>10 houseguests and other guests who were invited on a daily basis.</p> <p>11 Q Okay. If we could show the witness Defendant's Exhibit</p> <p>12 359 in evidence.</p> <p>13 (Shown.)</p> <p>14 Q Mr. Shubin, what is the document?</p> <p>15 A This is a declaration of use agreement between the Town</p> <p>16 of Palm Beach, the Mar-A-Logo Club, Inc. and Donald Trump.</p> <p>17 Q And what does such a document signify?</p> <p>18 A This document reflects the intention of the parties to</p> <p>19 the agreement to agree to certain conditions related to the use</p> <p>20 of Mar-a-Logo in connection with the approval of the special</p> <p>21 exception application.</p> <p>22 Q And that is the document we just looked at before,</p> <p>23 correct?</p> <p>24 A Yes.</p> <p>25 Q And how do these two documents work with each other?</p>

<p>J. Shubin-Defendant-Direct-Mr. Roberts Page 6063</p> <p>1 A It is very common particularly with special exceptions</p> <p>2 for a municipality to impose conditions on the use of what</p> <p>3 they're permitting. They're permitting a use on a property and</p> <p>4 the municipality may say that they may want to have certain</p> <p>5 restrictions, certain condition, certain limitations. In order</p> <p>6 to make those limitations enforceable they typically ask for</p> <p>7 them not only to be conditions of the approval, but to be set</p> <p>8 forth and memorialized in a written agreement than binding</p> <p>9 between the parties.</p> <p>10 Q And drawing your attention to Page 5 of that document,</p> <p>11 Mr. Shubin, under Article 2 where it says, Club Use.</p> <p>12 A Yes.</p> <p>13 Q If you could read the first few lines?</p> <p>14 A (Reading:) The use of the land shall be for a private</p> <p>15 social club in compliance with all of the information and</p> <p>16 exhibits included in the application not inconsistent with the</p> <p>17 terms set forth herein and subject to such uses not inconsistent</p> <p>18 with the terms set forth herein, set forth in the application</p> <p>19 for special exception. In the Mar-a-Logo Club a special</p> <p>20 exception use and preservation plan as amended and submitted to</p> <p>21 the town.</p> <p>22 THE COURT: You keep saying could you read the</p> <p>23 first line, you really mean could you read the first</p> <p>24 sentence.</p> <p>25 MR. ROBERTS: I thought I said the first few lines,</p>	<p>J. Shubin-Defendant-Direct-Mr. Roberts Page 6065</p> <p>1 is why we're bringing this to the Court's attention. Ms.</p> <p>2 Faherty is saying that nothing inconsistent with the</p> <p>3 document we looked at before, the application for special</p> <p>4 exception, which made it clear that the existing use at the</p> <p>5 time it was converted to the club. It always has the</p> <p>6 ability to have that use which was a private residence just</p> <p>7 as Ms. Post had done years before Mr. Trump bought it.</p> <p>8 THE COURT: You can't do it.</p> <p>9 Q Article 9 is titled what?</p> <p>10 A Article 9 is titled Liability Abandonment of Club Use.</p> <p>11 Q If we could go to the top of Page 10, following his</p> <p>12 Honor's advice please read the first sentence?</p> <p>13 A (Reading:) If the club is unintentionally abandoned</p> <p>14 for a period of one (one year) after the club has been in</p> <p>15 operation, or is intentionally abandoned at any time, the use of</p> <p>16 the land shall revert to a single family residence and the</p> <p>17 ownership of the owner.</p> <p>18 Q Now I would like to show the witness Exhibit D360 in</p> <p>19 evidence.</p> <p>20 (Shown.)</p> <p>21 MR. ROBERTS: Your Honor, for the record, to move</p> <p>22 things along. Each time a document is shown to the witness,</p> <p>23 I would have asked him what his conclusion was or his</p> <p>24 opinion was as a result of that. I'm following your</p> <p>25 direction at this point, or your order, which is he's not to</p>
<p>J. Shubin-Defendant-Direct-Mr. Roberts Page 6064</p> <p>1 your Honor, I'll take the first few lines.</p> <p>2 THE WITNESS: I didn't want to object on my own,</p> <p>3 your Honor.</p> <p>4 MR. ROBERTS: You could have.</p> <p>5 THE COURT: I mean, it would be much more specific</p> <p>6 to just say could you please read the first sentence, rather</p> <p>7 than the first few lines; how many are a few?</p> <p>8 MR. ROBERTS: There are so many semicolons in terms</p> <p>9 of this document and the other -- I'll take that advice</p> <p>10 going forward.</p> <p>11 THE COURT: All right.</p> <p>12 Q Mr. Shubin, is this what you are referring to as the</p> <p>13 interplay between the two documents?</p> <p>14 A Yes.</p> <p>15 Q And what does this document mean when it says, subject</p> <p>16 to such uses not inconsistent with the terms set forth herein,</p> <p>17 but more importantly, set forth in the application for special</p> <p>18 exception in Number 11-183--</p> <p>19 MR. WALLACE: Objection. The meaning of the</p> <p>20 contract language would be giving an opinion.</p> <p>21 THE COURT: Sustained. By the way, some of this</p> <p>22 stuff is just so obvious.</p> <p>23 MR. ROBERTS: I tend to think it is obvious, the</p> <p>24 Attorney General doesn't. Their position still is that</p> <p>25 Mar-A-Logo cannot be used as a single family residence that</p>	<p>J. Shubin-Defendant-Direct-Mr. Roberts Page 6066</p> <p>1 give those types of legal opinions in your mind. I want the</p> <p>2 record to be clear, otherwise I will have to ask each time</p> <p>3 and it will just prolong things.</p> <p>4 THE COURT: Okay. Understood. Thank you.</p> <p>5 Q Mr. Shubin, what is Defendant's Exhibit 360 in</p> <p>6 evidence?</p> <p>7 A This is a deed from Donald Trump to the National Trust</p> <p>8 for Historic Preservation. It is a deed that conveys a</p> <p>9 conservation and preservation easement as to the Mar-a-Logo</p> <p>10 property.</p> <p>11 Q And what is the significance of this document?</p> <p>12 A This is a document that was memorialized after the</p> <p>13 approval of the special exception. So the special exception was</p> <p>14 in 1993, this deed was subsequent to that in 1995 and it is a</p> <p>15 commitment by Mr. Trump to preserve and conserve and to restore</p> <p>16 and agree to restore certain specific features of the Mar-a-Logo</p> <p>17 property.</p> <p>18 Q I want to draw your attention specifically to Page 14</p> <p>19 of that document under Section 5 guarantor's rights. Do you see</p> <p>20 that sir?</p> <p>21 A Yes.</p> <p>22 Q I would ask you to read into the record Section 5.1</p> <p>23 with Romanette A?</p> <p>24 A (Reading:) It is titled rights not requiring further</p> <p>25 approval by grantee. The following rights, uses and activities</p>

<p>J. Shubin-Defendant-Direct-Mr. Roberts Page 6067</p> <p>1 of, or by grantor, on, over, or under the property are permitted</p> <p>2 by this easement and by grantee without further approval by</p> <p>3 grantee.</p> <p>4 Subsection (a) states, the right to engage in those</p> <p>5 acts or uses permitted by governmental statute or regulation</p> <p>6 that are not expressly prohibited or regulated by this easement.</p> <p>7 Q I'll ask you to continue to B and read that as well?</p> <p>8 A (Reading:) Sub (b), the right to perform work,</p> <p>9 exercise the rights and privileges contemplated by, and engage</p> <p>10 in those uses of the property permitted by the plan and by the</p> <p>11 declaration of use agreement. (The "Declaration"), dated</p> <p>12 August 10th, 1993 between the Town of Palm Beach, the Mar-a-Logo</p> <p>13 Club and grantor recorded in the public records of Palm Beach</p> <p>14 County, Florida. Official record book 7933, Page 22, as the</p> <p>15 plan and/or the Declaration may be amended from time to time</p> <p>16 provided that (i, such uses are not specifically prohibited or</p> <p>17 regulated by this easement). ii, such amends to the plan and/or</p> <p>18 declaration not inconsistent of the purpose of this easement.</p> <p>19 Q Turning your attention to page 22, D-360-22. Do you</p> <p>20 see that, sir?</p> <p>21 A Which specific provision?</p> <p>22 Q Paragraph 11, Limitation of 11, if you could read that</p> <p>23 into the record, sir.</p> <p>24 A (Reading:) Limitations on amendment. If circumstances</p> <p>25 arise under which amendment to or modification of this easement</p>	<p>J. Shubin-Defendant-Direct-Mr. Roberts Page 6069</p> <p>1 (Pausing.)</p> <p>2 If you could read that into the record.</p> <p>3 A (Reading:) The witnesseth, the Club and Trump for good</p> <p>4 and invaluable consideration, the receipt and sufficiency of</p> <p>5 which is acknowledged by these presence do hereby transfer,</p> <p>6 grant, bargain, sell, alienize, release, convey, and confirm on</p> <p>7 to the National Trust. To the extent such rights, if not</p> <p>8 already been transferred through the Deed of Conservation and</p> <p>9 Preservation Easement and any and all of their rights to develop</p> <p>10 the property for any usage other than club usage.</p> <p>11 Q Sir, earlier we looked at Defendant's Exhibit 360,</p> <p>12 which was the Deed of Conservation and Preservation Easement.</p> <p>13 How, if any way, is this document read in relation to that</p> <p>14 document?</p> <p>15 A If you go to the first page of this document it makes</p> <p>16 numerous references to the 1995 Conservation Easement. I think</p> <p>17 it is also a defined term and there are multiple references in</p> <p>18 the whereas clause as to the previous document.</p> <p>19 Q And in this document anywhere is there any conveyance</p> <p>20 to the right to occupy the premise as a single family residence?</p> <p>21 MR. WALLACE: Objection. Calls for legal</p> <p>22 conclusion.</p> <p>23 THE COURT: Sustained.</p> <p>24 MR. KISE: On this point, I'll talk about legal</p> <p>25 issues but if you want to excuse the witness we could do</p>
<p>J. Shubin-Defendant-Direct-Mr. Roberts Page 6068</p> <p>1 were to be appropriate, grantor and grantee made by mutual</p> <p>2 written agreement jointly amend this easement provided that no</p> <p>3 amendment shall be made that will adversely affect the</p> <p>4 qualification of these easement or the status of grantee under</p> <p>5 any applicable laws, including Section 170(h) and 501 (c)(3) of</p> <p>6 the code and the laws of the State of Florida.</p> <p>7 Q Mr. Shubin, how does the land use of this document have</p> <p>8 any interplay with the previous documents that we looked at?</p> <p>9 A They -- it describes the circumstances under which</p> <p>10 future uses can occur on the property, alterations to the</p> <p>11 property can occur, essentially what can and cannot occur and</p> <p>12 what is the process for seeking an amendment to those conditions</p> <p>13 that are part are the preservation easement.</p> <p>14 Q Now I would like to show the witness</p> <p>15 Plaintiff's Exhibit 1013 in evidence.</p> <p>16 (Shown.)</p> <p>17 Q Mr. Shubin, do you recognize this document?</p> <p>18 A Yes, I do.</p> <p>19 Q What is this document?</p> <p>20 A One, it is a Deed of Development Rights from the</p> <p>21 Mar-a-Logo Club, LLC to the National Trust For Historical</p> <p>22 Preservation. Chronically it is subsequent to the previous</p> <p>23 document that I reviewed, that was also a deed and conveyance of</p> <p>24 the easement to the National Trust.</p> <p>25 Q Drawing your attention to Page 2 of this document, sir.</p>	<p>-Proceedings- Page 6070</p> <p>1 that in case we have any overlap.</p> <p>2 THE COURT: Plaintiff, do you want to excuse the</p> <p>3 witness?</p> <p>4 MR. WALLACE: Yes.</p> <p>5 THE COURT: Why don't we excuse the witness.</p> <p>6 (Whereupon, the following is heard outside the</p> <p>7 presence and hearing of the witness.)</p> <p>8 THE COURT: So far I think the Plaintiff has been</p> <p>9 liberal in what they're not objecting to; but go ahead.</p> <p>10 MR. WALLACE: If he's describing a document</p> <p>11 generally about trying to convey legal implications, I'm</p> <p>12 trying to allow it to move it through. For the most part</p> <p>13 he's reading documents that are part of the record. But...</p> <p>14 MR. KISE: Again, without going into the</p> <p>15 characterization of liberality. His conclusions as a land</p> <p>16 use zoning planning expert are not necessarily legal</p> <p>17 conclusions.</p> <p>18 THE COURT: I disagree with you.</p> <p>19 MR. KISE: I understand that. But for the</p> <p>20 Appellate purpose of this, you've stricken his answers. We</p> <p>21 need to develop some way to preserve the proffer of his</p> <p>22 testimony. If you would like us to do that it in writing so</p> <p>23 that it is preserved for the record. But your denial of an</p> <p>24 answer to the question denies the Appellate Court the</p> <p>25 opportunity to understand what this expert's opinion is in</p>

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<p>1 full so...</p> <p>2 THE COURT: So I could be reversed on not allowing</p> <p>3 him to give us his legal or other conclusions.</p> <p>4 MR. KISE: Without having a record of what that</p> <p>5 answer would be, the Appellate Court is deprived of</p> <p>6 understanding that, which may itself be a reason for</p> <p>7 reversal.</p> <p>8 We would submit, your Honor, that we should at</p> <p>9 least be allowed to put into the record the proffer of what</p> <p>10 his answers would have been to those questions and you--</p> <p>11 understanding it is the Court's ruling, so that it is there</p> <p>12 for the Appellate Court to know exactly what the testimony</p> <p>13 would be as a proffer. That is just simply a proffer. We</p> <p>14 will not take up time today, we can ask the questions, you</p> <p>15 can make your rulings. We need a complete record on this.</p> <p>16 We disagree with your Honor's interpretation and we need to</p> <p>17 make sure the Appellate Court is advised. That's all.</p> <p>18 THE COURT: I understand. Plaintiff?</p> <p>19 MR. WALLACE: I believe his opinions are contained</p> <p>20 in his expert report. The report is in the record as part</p> <p>21 of their summary judgment application. I tried to</p> <p>22 accommodate Mr. Kise and have the entire report and witness</p> <p>23 struck but I was overruled on that. Based on his proffer</p> <p>24 that this witness could talk about documents and direct the</p> <p>25 Court to the parts of the record concerning property that</p>	<p>1 conclusions, that is preferable acceptable. I don't know</p> <p>2 why they would oppose that since they are saying it is of</p> <p>3 the record. I disagree from an Appellate standpoint the</p> <p>4 summary judgment record it is traveling on its own track</p> <p>5 right now and the briefing on that may be done in a matter</p> <p>6 of weeks. That is a completely different record.</p> <p>7 We need some way -- I'm happy to have the opinions</p> <p>8 themselves introduced as a proffer and leave it at that.</p> <p>9 THE COURT: I could see this is all new. If the</p> <p>10 Plaintiff would agree that the Defendants could put the</p> <p>11 opinions submitted in support or, again, the summary</p> <p>12 judgment motion, into the trial record, I'm --I'm not sure</p> <p>13 if I agree with Mr. Kise because it is proceeding on</p> <p>14 separate Appellate tracts. You could not automatically use</p> <p>15 one or the other; but Plaintiff what could we do here?</p> <p>16 MR. WALLACE: I disagree. I disagree that there's</p> <p>17 not a sufficient record based on what is going up on summary</p> <p>18 judgment. I also note that I don't believe it is an</p> <p>19 evidentiary requirement that every single piece of evidence</p> <p>20 that is excluded for evidentiary purposes, including</p> <p>21 opinions, needs to be produced so that it could then be</p> <p>22 fully studied by the Court of Appeals.</p> <p>23 If he wants to mark Mr. Shubin's reports, it is not</p> <p>24 evidence but it is an exhibit to the trial record, that is</p> <p>25 fine, so that it could be seen by the Court of Appeals. I</p>
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<p>1 are irrelevant which should be considered by the judge in</p> <p>2 making a conclusion, legal conclusion that I will note based</p> <p>3 on summary judgment is law of the case and does not need to</p> <p>4 be revisited.</p> <p>5 If they want to -- so I don't know if there's much</p> <p>6 more of a record that needs to be established.</p> <p>7 MR. KISE: So, your Honor, I'm noting that after 8</p> <p>8 or 9 weeks Mr. Wallace is learning how to give my kind of</p> <p>9 speeches, there's a whole bunch of additional narratives so</p> <p>10 I'm glad of that.</p> <p>11 Just briefly. The opinion --the reports themselves</p> <p>12 are not part of the trial record. They may be part of the</p> <p>13 summary judgment record, they're not part of the trial</p> <p>14 record. And for Appellate purposes, those are two very</p> <p>15 different -- summary judgment is a proceeding on its own</p> <p>16 Appellate track and it is not necessarily the case. In</p> <p>17 fact, it may not at all be the case that the plenary appeal</p> <p>18 from the final judgment is subsumed --the summary judgment</p> <p>19 of appeals is subsumed by the final judgment. I don't think</p> <p>20 that's necessarily going to happen.</p> <p>21 So if there'll agree to allow us to put the</p> <p>22 opinions in the record for purposes of preserving what they</p> <p>23 are, into the trial record so that it is there in the trial</p> <p>24 record, that is fine, and your ruling will stand as to your</p> <p>25 determination as to whether or not they're legal</p>	<p>1 think they would have it in time, there'll be a judgment at</p> <p>2 some point that will be incorporated. I think it may be</p> <p>3 angles dancing on the head of a pin at this point, but I'm</p> <p>4 happy to have it flagged so that it is in the record and if</p> <p>5 the fact is what was included in his expert report.</p> <p>6 THE COURT: All right. Let's make sure we're all</p> <p>7 on the same page.</p> <p>8 Plaintiff, are you agreeing that its expert reports</p> <p>9 that Mr. Shubin submitted on the summary judgment motion</p> <p>10 could be included in the appeal of the trial?</p> <p>11 MR. WALLACE: Yes, perfectly acceptable.</p> <p>12 MR. KISE: I'll also note that the angels dancing</p> <p>13 on the head of a pin are the province of the Appellate</p> <p>14 Court, that is why we're engaging in the exercise.</p> <p>15 THE COURT: Sometimes I feel like I'm the angel</p> <p>16 dancing on the pin. All right. Thanks for dealing with</p> <p>17 that. Let's get the witness back.</p> <p>18 MR. ROBERTS: Yes, sir.</p> <p>19 THE COURT OFFICER: Witness entering.</p> <p>20 (Witness enters the courtroom.)</p> <p>21 MR. ROBERTS: Could I have the last question read</p> <p>22 back to see where I left off.</p> <p>23 THE COURT: Yes.</p> <p>24 Well, the last question I assume was an objection</p> <p>25 and I sustained the objection.</p>

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1 MR. ROBERTS: I know. It will tell me in my mind
2 where we left off.
3 THE COURT: Fine.
4 MR. ROBERTS: I didn't think you would change your
5 mind on another read back, don't worry Judge.
6 THE COURT: You would be surprised with what
7 lawyers try to get a ways with.
8 (Whereupon, the requested portion of the record was
9 read.)
10 MR. ROBERTS: The objection was sustained. We're
11 going to read -- I'm going to show the witness D-427.
12 (Shown.)
13 Q Mr. Shubin, do you recognize this document?
14 A I do.
15 Q What do you recognize this documents to be?
16 A These are the published Rules and Regulations of the
17 Mar-a-Logo Club.
18 Q Drawing your attention to page D-427-4. To the right
19 hand side (c) where it says, revokable license. If you could
20 read that please, sir?
21 A Yes. (Reading:) Revokable license. Membership in the
22 club is acquired on an non-equity basis. It does not infer any
23 vested or scripted right to easement in and/or to use the club
24 in its facilities. Members require only a revokable license to
25 use the club or its facilities. They have no ownership or

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1 voting interest in the Mar-a-Logo Club, LLC, which operates the
2 club.
3 Q Under the next section (e), Declaration of the
4 Agreement. Do you see that, sir?
5 A Yes.
6 Q If you could read the bottom paragraph labeled number
7 three?
8 A (Reading:) Declaration of Agreement: The club will at
9 all times comply with the declaration of use of agreement, among
10 the Town of Palm Beach, the Mar-a-Logo Club, LLC and Donald J.
11 Trump, dated August 11, 1993 and recorded in the official
12 records of Palm Beach County, Florida. This Agreement includes
13 without limitation the following finding corporations.
14 Q Moving to number three at the bottom of the page?
15 A (Reading:) If the club is intentionally abandoned for
16 a period one (one year) after the club has been in operation, or
17 if the club is intentionally abandoned any time, Mar-a-Logo
18 shall revert to use as a private single family residence of
19 Donald J. Trump and under such circumstances, all membership
20 deposits shall be refunded without interests.
21 Q Now, I would like to show the witness what has been
22 Marked as Defendant's Exhibit 484 in evidence.
23 (Shown.)
24 Q Do you recognize this document, sir?
25 A I do.

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1 Q What is this document?
2 A This is a reproduction of the minutes of the Town
3 Council meeting for the Town of Palm Beach, held February 9,
4 2021.
5 Q What, if anything, at this meeting had to do with the
6 Mar-a-Logo property?
7 A There was a discussion on the record regarding several
8 complaints that had been brought by neighbors of Mar-a-Logo who
9 were complaining that Mr. Trump could not reside at Ma-a-Logo.
10 Q This is when, sir?
11 A This is February 9, 2021.
12 Q Drawing your attention to Page 22 of that document.
13 A Yes.
14 (Show.)
15 Q Is this section the section in the minutes that reflect
16 the discussion that you just spoke of?
17 A It does.
18 Q And drawing your attention to the third full paragraph,
19 if you could read that, sir?
20 A (Reading:) Town attorney, John C. Randolph, summarized
21 his written report provided to counsel. He indicated this was
22 for informational purposes only.
23 Attorney Randolph stated that this was not a quasi
24 judicial hearing or hearing and there will be no cross-examine.
25 Q Putting that document to the side for a second. I

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1 would like to hand to the witness Defendant's Exhibit 429 in
2 evidence.
3 (Handing.)
4 Q Mr. Shubin, when you had been looking at Defendant's
5 484 in evidence, that referenced John Randolph summarized his
6 written report. Is what you're looking at, Defendant's 429, in
7 fact, that written report?
8 A Yes, it is.
9 Q Okay. This is from John Randolph going to who?
10 A To the Mayor & Town Council of the Town of Palm Beach.
11 Q If you could start reading the first paragraph?
12 A (Reading:) Each of you are aware of the allegations of
13 neighbors of the Mar-a-Logo Club, that former President Donald
14 J. Trump is not allowed to reside at Mar-a-Logo since it was
15 converted in 1993 to a private club. In sum, it is argued
16 Mar-a-Logo is either a private residence or a club but cannot be
17 both.
18 Q Ultimately you will read the whole thing.
19 A I hope I am reading slow enough for the court reporter.
20 MR. WALLACE: If we are going to read, I believe
21 the document is in evidence. Is he going to read the
22 entirety of the document?
23 MR. ROBERTS: The first two pages. Since I'm
24 limited in that I cannot ask Mr. Shubin to draw conclusions.
25 Ordinarily I would say, did you review the document, can you

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1 summarize the document, what is your conclusion on it? I
2 want to read into the record what the evidence is. It is
3 the only way I could do it.
4 MR. WALLACE: The letter is in the record.
5 MR. ROBERTS: I know. It will help assist the
6 Judge in understanding what it is that he reviewed and what
7 the facts are that are in evidence.
8 THE COURT: I will allow the witness to read the
9 first two pages.
10 MR. ROBERTS: Thank you, sir.
11 A (Reading:) I have previously provided you with
12 historical documents relating to the conversion of Mar-a-Logo
13 from a private residence to a private club, including the
14 application, minutes of applicable meetings, the Declaration of
15 Use agreement relating to the club, amendments to said agreement
16 and the zoning ordinance which defines private club. These
17 documents shed light on the conditions of approval of the club
18 and the question of whether Trump may reside at Mar-a-Logo
19 subsequent to it having been converted to a private club.
20 The application for special exception 11-93 was
21 submitted by the Mar-a-Logo Club, Inc. on April 29, 1993,
22 requesting a special exception to convert Mar-a-Logo from a
23 residential use to a private club. The application was filed
24 pursuant to that section of the town zoning code relating to
25 District R-AA, large estate residential which allows "private,

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1 social, swimming, golf, swimming, tennis, and yacht clubs."
2 There is a special exception use. Notable, the definition of
3 private club under the zoning code provides, in part, "within
4 the residential zoning districts a private club may provide
5 living quarters for its bonafide employees only."
6 The purpose of this regulation prohibiting living
7 quarters except for the club's bonafide employees is to keep a
8 club from turning into a multifamily residence or a commercial
9 use, such as a hotel; neither of which are permitted uses in
10 this R-AA District.
11 The application for special exception was first heard
12 at a special meeting of the Town Council, on May 13, 1993. The
13 minutes of that meeting reflect the following regarding
14 statement of Paul Rampell representing the applicant.
15 "Another question asked of him is whether or not Mr.
16 Trump will continue to live at Mar-a-Logo. And the answer is,
17 no, except if he will be a member of the club and would be
18 entitled to use the guest rooms. Some have suggested that this
19 statement is dispositive of the manner in which former President
20 Trump may use the club, i.e. only as a member of using the guest
21 suites for no more than three (3) nonconsecutive seven (7) day
22 periods during the year.
23 It is important to note, however, that the Declaration
24 of Use agreement ultimately agreed to and executed by the
25 parties did not incorporate a direct prohibition on the former

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1 President Trump's residing at the club. The language in the
2 agreement pertaining only to the member's use of the guest
3 suites. Because the Agreement is silent in regard to specific
4 prohibition on Trump residing at the club, the Town should look
5 to its zoning code to determine whether there's any prohibition
6 on former President Trump residing at the Mar-a-Logo. The code
7 prohibits living quarters within the club, except for bonafide
8 employees.
9 The definition of employee in the town's code provides
10 as follows: Employee means any person generally working on-site
11 for the establishment and includes sole proprietors, partners,
12 limited partners, corporate officers, and the like."
13 I believe this issue, therefore, hinges primarily on
14 whether former President Trump is a bonafide employee of the
15 club. In that regard, please see the attached letter from John
16 Marion representing former President Trump in the Mar-a-Logo
17 Club, Inc. This letter includes representations relating to
18 former President Trump's residency at Mar-a-Logo, both before
19 and after its conversion to a club, which although of historical
20 significance, are honestly irrelevant, in my opinion, is the
21 representations regarding whether or not former President Trump
22 is a bonafide employee of the club. If he is a bonafide
23 employee of the club, absent a specific restriction prohibiting
24 former President Trump from residing at the club, it appears the
25 zoning code permits him to reside at the club.

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1 I recommend that the Mayor and Town Council hear
2 presentations in regard to this matter from all interested
3 parties, including, but not limited to, the neighbors to
4 Mar-a-Logo, their representatives, representatives of former
5 President Trump, the Mar-A-Lagos Club and other interested
6 parties, after entertaining all of the relevant presentations,
7 the Town Council should deliberate on this matter and determine
8 what action, if any, should be taken.
9 I will be here to answer any questions the Mayor and
10 Town Council have in regard to this matter.
11 MR. ROBERTS: Before I ask the next question, do
12 you want some water?
13 THE WITNESS: I'm out of wasn't, I'm fine.
14 (Whereupon, Cheryl-Lee Lorient relieved Deborah
15 Rothrock as the official court reporter.)
16 (Continued on next page.)
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J.Shubin - Defendant - Direct/Mr.Robert	Page 6083	J.Shubin - Defendant - Cross/Mr.Wallace	Page 6085
1 Q. Drawing your attention to the next document in		1 MR. WALLACE: Objection. Calls for a legal	
2 here 429-3.		2 conclusion.	
3 Is this the letter that is referred to in the town		3 THE COURT: Sustains.	
4 attorney's memo?		4 MR. ROBERT: No further questions. Thanks,	
5 A. Yes.		5 your Honor.	
6 Q. And sir, what is, if any, action did the town of		6 THE COURT: Well done.	
7 Palm Beach take at that meeting with regard to this issue?		7 MR. WALLACE: Good morning.	
8 A. At the action.		8 THE COURT: I guess there will be cross	
9 Q. Thank you very much.		9 examination.	
10 A. At the meeting itself, the minutes reflect that		10 MR. WALLACE: Very brief, your Honor. I	
11 they took no action. They took no action.		11 promise. If we could put back on the screen	
12 Q. And that does that mean?		12 Defendant's 478.	
13 A. It means they simply chose not to agree with the		13 CROSS EXAMINATION	
14 position of the neighbors. And I have, actually, reviewed		14 BY MR. WALLACE:	
15 the files of the town of Palm Beach. And there has been no		15 Q. You've done such a wonderful job. I just want you	
16 action taken against Mar-a-lago subsequent too that meeting.		16 to read one more piece of this document into the record. If	
17 Q. And does President Trump, currently, reside at the		17 you could turn to page six of the documents and if you could	
18 Mar-a-lago?		18 read the first four sentences at the top of the page.	
19 A. Yes.		19 A. "As to item paren one, it is impractical for a	
20 MR. ROBERT: Your Honor, if I could have a		20 single individual to continuously own Mar-a-lago as a	
21 moment to speak with my colleagues?		21 private estate at his or her sole expense.	
22 THE COURT: Sure.		22 "When the Post Foundation marketed the property	
23 MR. ROBERT: Thank you.		23 after its return to the foundation, from the US Government,	
24 (Pause in proceedings.)		24 it was almost impossible to sell.	
25 MR. ROBERT: Your Honor, this may be a good		25 "About 80 qualified buyers, thoroughly screened,	
J.Shubin - Defendant - Direct/Mr.Robert	Page 6084	J.Shubin - Defendant - Cross/Mr.Wallace	Page 6086
1 time to take the morning break and see if we can trim		1 inspected Mar-a-lago and elected even against making an	
2 this down.		2 offer. H. Ross Perot was one prospect. Although, quote,	
3 THE COURT: Okay.		3 everything is for sale at a price, end of quote, no one	
4 MR. ROBERT: Thank you, sir.		4 would step forward to make any offer for this so called,	
5 THE COURT: Perfect timing. I'll see you		5 quote, white elephant."	
6 all at a quarter to twelve. And I will order the		6 MR. WALLACE: We can take that down.	
7 witness not to discuss this case, his testimony or		7 Q. Mr. Shubin, are you being compensated for your	
8 anything related to this during the break.		8 testimony today?	
9 THE WITNESS: I will not.		9 A. Yes, I'm.	
10 THE COURT: Thank you.		10 Q. How much are you being compensated?	
11 (A recess was taken.)		11 A. I believe, for trial time, \$1,595 an hour.	
12 (After the recess the following occurred:)		12 Q. And for your work outside of trial time, how much	
13 THE COURT: Let's get the witness back and		13 are you being compensated?	
14 continue with the direct. Please continue.		14 A. \$1,395 an hour.	
15 MR. ROBERT: As usual, your Honor, the break		15 Q. I believe you testified at your deposition that	
16 does wonders in streamlining things. I just have one		16 your standard billing rate for South Florida, with no New	
17 question left. I already told Mr. Wallace I'll go slow		17 York, Chicago or Los Angeles component is probably a	
18 for a second because, I have a funny feeling I know		18 thousand dollars an hour.	
19 what he's going to do.		19 Does that sound right?	
20 DIRECT EXAMINATION		20 A. That sounds right.	
21 BY MR. ROBERT:		21 Q. And your billing rate could go lower than that	
22 Q. Mr. Shubin, based on a review of the documents		22 depending on the matter; is that correct?	
23 that we went through this morning, do you have an opinion as		23 A. Or higher, yes.	
24 to whether Mar-a-lago could be used as a single-family		24 Q. It could go as low as 700 per hour?	
25 residence?		25 A. I haven't charged 700 an hour in a long time.	

<p>J.Shubin - Defendant - Cross/Mr.Wallace Page 6087</p> <p>1 But, if there were unique circumstances, that would -- I'm</p> <p>2 sure I would consider it, depending on the market.</p> <p>3 MR. WALLACE: If we could put up on the</p> <p>4 screen Plaintiff's Exhibit 3398.</p> <p>5 Q. Were you an attorney in this the matter</p> <p>6 represented in the screen of this --</p> <p>7 A. I was.</p> <p>8 Q. Please turn to page 13 of this document. Item one</p> <p>9 states, "Balazar's counsel's hourly rates are reasonable."</p> <p>10 Is that you listed under "John K. Shubin" with a</p> <p>11 billing rate of \$700 an hour?</p> <p>12 A. Yes.</p> <p>13 Q. This application was submitted in 2019; is that</p> <p>14 correct?</p> <p>15 A. Yes. For work that was done proceeding 2019.</p> <p>16 Q. Do you know how much total time you've spent on</p> <p>17 this matter since you were retained?</p> <p>18 A. Which matter? This matter.</p> <p>19 Q. This matter, the matter you're testifying in right</p> <p>20 now.</p> <p>21 A. Probably, eighty to a hundred hours. But, I</p> <p>22 haven't looked at my time sheets.</p> <p>23 Q. And have any of your colleagues, at your firm,</p> <p>24 performed work on this?</p> <p>25 A. Yes. I had two colleagues assist me.</p>	<p>J.Shubin - Defendant - Cross/Mr.Wallace Page 6089</p> <p>1 dollars? Is my math terrible?</p> <p>2 A. No.</p> <p>3 Q. A hundred thousand.</p> <p>4 Well, you do the math.</p> <p>5 A. I think it's somewhere between hundred and hundred</p> <p>6 fifty thousand is my guess.</p> <p>7 Q. Thank you. I didn't lead in with the joke about</p> <p>8 lawyers doing math in my exam there.</p> <p>9 MR. WALLACE: Thank you, your Honor.</p> <p>10 THE COURT: Any redirect?</p> <p>11 MR. ROBERT: No, thank you.</p> <p>12 THE COURT: Since there are no more</p> <p>13 questions, the witness is excused.</p> <p>14 THE WITNESS: Thank you.</p> <p>15 THE COURT: Thank you.</p> <p>16 (Witness excused.)</p> <p>17 THE COURT: Defendants, next witness.</p> <p>18 MR. ROBERT: Your Honor, defense calls</p> <p>19 Lawrence Moens. M-O-E-N-S.</p> <p>20 COURT OFFICER: Witness entering.</p> <p>21 Please raise your right hand. Do you</p> <p>22 solemnly swear or affirm that any testimony you give</p> <p>23 will be the truth, the whole truth and nothing but the</p> <p>24 truth?</p> <p>25 THE WITNESS: I do.</p>
<p>J.Shubin - Defendant - Cross/Mr.Wallace Page 6088</p> <p>1 Q. Do you know how many hours they spent?</p> <p>2 A. Probably fifteen to twenty hours.</p> <p>3 Q. And do you know what their billing rate was?</p> <p>4 A. Approximately -- I think, one was 895, the other</p> <p>5 was lower in the seven hundreds, maybe in the five</p> <p>6 hundreds -- Ian DeMello.</p> <p>7 Q. Do you recall, in your report, disclosing that</p> <p>8 other attorneys in your office were being billed at \$935 per</p> <p>9 hour to \$735 per hour?</p> <p>10 A. The 935 would be Mr. Forachi who is a very</p> <p>11 experienced partner in the firm. The 735 would be</p> <p>12 Mr. DeMello.</p> <p>13 Q. So do you have a sense of the total billings for</p> <p>14 your firm in this matter?</p> <p>15 A. I think it's been de minimis for Mr. Forachi and</p> <p>16 Mr. DeMello since my deposition. And in preparation for</p> <p>17 this proceeding, maybe 20, 25 hours.</p> <p>18 Q. I guess, I'm just asking what the total number is</p> <p>19 all-in at this point.</p> <p>20 A. I wish I could tell you. I'm going to say maybe</p> <p>21 hundred, hundred ten hours.</p> <p>22 Q. That would be times the hourly rate for each of</p> <p>23 those?</p> <p>24 A. Something to that effect, yes.</p> <p>25 Q. So we could be talking upwards of a million</p>	<p>L.Moens - Defendant - Direct/Mr.Robert Page 6090</p> <p>1 L A W R E N C E M O E N S, called as a witness by the</p> <p>2 Defendant, having been first duly sworn, testified as</p> <p>3 follows:</p> <p>4 COURT OFFICER: Please, have a seat.</p> <p>5 THE WITNESS: Good morning, Judge.</p> <p>6 THE COURT: Good morning.</p> <p>7 COURT OFFICER: Please state your name</p> <p>8 address for the record.</p> <p>9 THE WITNESS: Lawrence Moens. My address is</p> <p>10 2320 South Ocean Boulevard, Palm Beach, Florida.</p> <p>11 DIRECT EXAMINATION</p> <p>12 BY MR. WALLACE:</p> <p>13 Q. For another two minutes, it's still morning,</p> <p>14 Mr. Moens. Good morning, Mr. Moens.</p> <p>15 A. Good morning.</p> <p>16 Q. I'd like to discuss your educational background.</p> <p>17 Okay, sir?</p> <p>18 A. That should be brief.</p> <p>19 Q. Okay. Where did you go to high school?</p> <p>20 A. Briefly, I went in Fort Lauderdale, Florida to</p> <p>21 Cardinal Gibbons until they asked me to leave prematurely in</p> <p>22 the ninth grade. It was a private school.</p> <p>23 The public school that I almost finished was Boca</p> <p>24 Raton High School in Boca Raton, Florida.</p> <p>25 Q. And I can take from that you did not graduate high</p>

<p>L.Moens - Defendant - Direct/Mr.Robert Page 6091</p> <p>1 school, correct, sir?</p> <p>2 A. Not yet.</p> <p>3 Q. Sir, let's talk about your professional career</p> <p>4 after high school. What, if anything, did you do after high</p> <p>5 school?</p> <p>6 A. Let's see, during high school, I left home and</p> <p>7 washing dishes was my first job. After that, I employed</p> <p>8 some people to do work for me putting leaflets on car</p> <p>9 windshields in parking lots for advertising purposes. I</p> <p>10 think I was making three times what the principle of my high</p> <p>11 school was making at the time. I sold that company when I</p> <p>12 was 17.</p> <p>13 And then, I went into another line of work which</p> <p>14 was furniture manufacturing; made a lot of tables, had my</p> <p>15 first plane at 19; fifty-four employees, when I sold the</p> <p>16 company at 20.</p> <p>17 Q. What did do you after that Mr. Moens.</p> <p>18 A. You know, Thomas Jefferson said the basis of all</p> <p>19 true wealth is in the land. You can mind it, you can farm</p> <p>20 it, you can build on it and there's only so much of it. So,</p> <p>21 I went into real estate.</p> <p>22 Q. And what does it mean you went into real estate.</p> <p>23 A. I went to work for a very wealthy couple of</p> <p>24 families Sam Bronfman and Nate Cummings were my first bosses</p> <p>25 in a development in Palm Beach, Florida called the Sun &</p>	<p>L.Moens - Defendant - Direct/Mr.Robert Page 6093</p> <p>1 named it Lawrence A. Moens Associates, Inc.</p> <p>2 Q. Sir, is that the company that you work for today?</p> <p>3 A. I still work for them.</p> <p>4 Q. Okay. Can you describe how things started out at</p> <p>5 Lawrence A. Moens and how it's progressed over 40 years at</p> <p>6 this point?</p> <p>7 A. Well, it started out as "on a wing and a prayer"</p> <p>8 and it's done pretty well since then.</p> <p>9 Q. Well, when you say it started out as "a wing and a</p> <p>10 prayer," do you remember when it was you first sold a home</p> <p>11 as Lawrence Moens Associates?</p> <p>12 A. It was in 1982.</p> <p>13 Q. Do you happen to remember how much that home sold</p> <p>14 for?</p> <p>15 A. Actually, I do. It was to Irving and Doris</p> <p>16 Morris. It was 127,600. And yeah, I sold it four times</p> <p>17 since.</p> <p>18 Q. Since that time.</p> <p>19 And sir, has your practice been mostly consisting</p> <p>20 of real estate in Palm Beach?</p> <p>21 A. Mostly.</p> <p>22 Q. How would you describe what has happened to the</p> <p>23 company since 1982 through today?</p> <p>24 A. It's grown a bit.</p> <p>25 Q. Well, Mr. Moens, I understand its grown a bit.</p>
<p>L.Moens - Defendant - Direct/Mr.Robert Page 6092</p> <p>1 Surf.</p> <p>2 They converted two buildings that were for rental</p> <p>3 purposes into condominium apartments. So, I worked for them</p> <p>4 showing those condominium apartments.</p> <p>5 Q. What did do you after that?</p> <p>6 A. Opened my own office. Let's see. I started in</p> <p>7 the late 70's. I opened my office in '82 and went into the</p> <p>8 general residential real estate business.</p> <p>9 Q. Are you a licensed real estate broker, sir?</p> <p>10 A. Yes, I am.</p> <p>11 Q. When did you become a licensed real estate broker?</p> <p>12 A. I think it was about the time I opened the</p> <p>13 company. I got that license, I believe, in '82.</p> <p>14 Q. And sir, what are your duties -- withdraw.</p> <p>15 When you started the firm, what did the firm do?</p> <p>16 A. Work very hard to try and sell rich people</p> <p>17 properties in Palm Beach.</p> <p>18 Q. And other than selling property in Palm Beach</p> <p>19 what, if anything, did your company do?</p> <p>20 A. Basically, just hustled to make a bunch of sales</p> <p>21 in the real estate arena of a very small island 13 miles</p> <p>22 long -- Palm Beach.</p> <p>23 Q. And what was the name of the company that you</p> <p>24 founded in the early 1980's?</p> <p>25 A. I couldn't think of another name. So, I just</p>	<p>L.Moens - Defendant - Direct/Mr.Robert Page 6094</p> <p>1 Tell us in a little more detail, sir.</p> <p>2 A. Our sales now are many time exceeding a billion</p> <p>3 dollars a year in sales.</p> <p>4 Q. Sir, since 2020, for 2020, '21, '22 combined, can</p> <p>5 you approximate how much in residential real estate in Palm</p> <p>6 Beach you have sold?</p> <p>7 A. A lot. Maybe a couple billion dollars.</p> <p>8 Q. And sir, to your knowledge, is there anyone in the</p> <p>9 Palm Beach real estate market that has sold as much real</p> <p>10 estate as you have?</p> <p>11 A. They don't exist.</p> <p>12 Q. And sir, are you aware of properties that have</p> <p>13 sold for over a hundred million dollars over the last few</p> <p>14 years in Palm Beach?</p> <p>15 A. I am.</p> <p>16 Q. How many of them are there or were there?</p> <p>17 A. Let's see. There were ten in Palm Beach, one in</p> <p>18 Manalapan and one in Miami. So there were twelve sales in</p> <p>19 the entire state of Florida.</p> <p>20 Q. And sir, what, if any, involvement did you have in</p> <p>21 those twelve sales in excess of a hundred million dollars?</p> <p>22 A. I sold ten of the twelve.</p> <p>23 Q. I'm sorry. I didn't hear that?</p> <p>24 A. I sold ten out of the twelve.</p> <p>25 Q. And sir, as a licensed real estate broker, do you</p>

<p>L.Moens - Defendant - Direct/Mr.Robert Page 6095</p> <p>1 give opinions of value?</p> <p>2 A. I give opinions of value almost daily.</p> <p>3 Q. What is an opinion of value?</p> <p>4 A. It's taking a look at something and trying to come</p> <p>5 up with a valuation based on data or information that's</p> <p>6 around you.</p> <p>7 Q. Are you a MAI appraiser?</p> <p>8 A. No, I am not.</p> <p>9 Q. Are you licensed to give an appraisal?</p> <p>10 A. No, I am not.</p> <p>11 Q. What is the distinction between an appraisal and</p> <p>12 an evaluation?</p> <p>13 A. Well, it's semantics. I am asked every week to</p> <p>14 give an appraisal. I don't know don't always give a lesson</p> <p>15 that I don't or won't perform an appraisal to someone who</p> <p>16 just lost her husband and needs it for estate tax purposes.</p> <p>17 I know what she means by giving an opinion of</p> <p>18 value. I know what she means by giving an estimate of a</p> <p>19 value.</p> <p>20 I always direct them to an MAI appraiser; even</p> <p>21 though I can give her a letter giving her my opinion, I tell</p> <p>22 her the best thing to do is to hire an appraiser and submit</p> <p>23 both documents to the proper authorities when there is an</p> <p>24 opinion of value needed or even an appraisal by an</p> <p>25 appraiser.</p>	<p>L.Moens - Defendant - Direct/Mr.Robert Page 6097</p> <p>1 THE COURT: That's a first.</p> <p>2 (Pause in proceedings.)</p> <p>3 THE WITNESS: Sorry about that. I did turn</p> <p>4 it off, Judge. He's 91. I had to take the call.</p> <p>5 THE COURT: Okay. Great.</p> <p>6 MR. ROBERT: If I could just have the last</p> <p>7 question and answer read back.</p> <p>8 THE COURT: Read back.</p> <p>9 (The testimony as requested was read by the</p> <p>10 reporter.)</p> <p>11 MR. WALLACE: Note my objection to that</p> <p>12 question. It calls for hearsay.</p> <p>13 THE COURT: Which part?</p> <p>14 MR. WALLACE: Why do MAI appraisers ask for</p> <p>15 your opinions of value.</p> <p>16 THE COURT: Sustained.</p> <p>17 Q. Do you have an understanding, Mr. Moens, as to why</p> <p>18 MAI appraisers would go to you for a valuation?</p> <p>19 A. Because they know they'll get a straight answer</p> <p>20 and an accurate reading of where the market is.</p> <p>21 Q. So when you say a straight answer and an accurate</p> <p>22 reading, I need to dig down a little, what does that mean?</p> <p>23 A. It means, my numbers are, usually, right.</p> <p>24 Q. And what do you do to come up with a number or</p> <p>25 value for a piece of property in Palm Beach?</p>
<p>L.Moens - Defendant - Direct/Mr.Robert Page 6096</p> <p>1 Q. In your experience as a real estate broker, having</p> <p>2 your own business for the last 40 plus years, have you given</p> <p>3 opinions of value as to residential real estate in Palm</p> <p>4 Beach?</p> <p>5 A. Thousands of time.</p> <p>6 Q. And in those thousands of times, to whom would you</p> <p>7 be giving those opinions?</p> <p>8 A. Usually, the person asking me for my opinion.</p> <p>9 Q. I should have expected that answer.</p> <p>10 Who are the people that asked you for those</p> <p>11 opinions?</p> <p>12 A. It ranges from appraisers, attorneys, rich people,</p> <p>13 poor people. All kind of people ask me for help and I try</p> <p>14 and give it if they cross my path.</p> <p>15 Q. In your experience why do appraisers, MAI</p> <p>16 appraisers, ask you for your opinion of value?</p> <p>17 A. Well, I'm on the front lines everyday of selling</p> <p>18 properties. And I have a pretty good handle as to what's</p> <p>19 happening, currently, in the market.</p> <p>20 Markets don't just go up. They go down. Markets</p> <p>21 go up and down; have since the beginning of time. Values</p> <p>22 change --</p> <p>23 (Phone rings.)</p> <p>24 THE WITNESS: Sorry, Judge. I'll get that</p> <p>25 off.</p>	<p>L.Moens - Defendant - Direct/Mr.Robert Page 6098</p> <p>1 A. It's everything from getting information on square</p> <p>2 footage, how much land is involved or how many units in a</p> <p>3 building -- if it's a multifamily situation -- data from</p> <p>4 sources -- public sources -- the Palm Beach property</p> <p>5 appraisers office to verify numbers and 45 years experience</p> <p>6 in selling billions of dollars worth of real estate.</p> <p>7 Q. What is it that you attribute to your 45 years of</p> <p>8 success selling real estate in Palm Beach?</p> <p>9 A. Knowing my left ear from my right elbow.</p> <p>10 Q. Well, is there anything more than that?</p> <p>11 A. A little luck.</p> <p>12 Q. What, if anything, about how you treat your</p> <p>13 clients?</p> <p>14 A. I treat everyone the same.</p> <p>15 Q. Well, Mr. Moens, if we were to go to your website,</p> <p>16 there's no picture of you on the website, right?</p> <p>17 A. I prefer not to be photographed.</p> <p>18 Q. Well, why is there no picture of you on your</p> <p>19 website?</p> <p>20 A. Because, I don't believe in self-promotion. I</p> <p>21 don't believe in egos that have to see their name or their</p> <p>22 face in a newspaper or magazine.</p> <p>23 Q. So, notwithstanding the fact that you had ten of</p> <p>24 the twelve largest transactions in Florida, you're not out</p> <p>25 in the press that much are you?</p>

<p>L.Moens - Defendant - Direct/Mr.Robert Page 6099</p> <p>1 A. I don't speak to the media.</p> <p>2 MR. ROBERT: Your Honor, at this point, I</p> <p>3 would tender Mr. Moens as an expert in the evaluation</p> <p>4 of Palm Beach real estate.</p> <p>5 THE COURT: I think the testimony was ten of</p> <p>6 the twelve largest sales in Palm Beach, not in all of</p> <p>7 Florida; is that correct.</p> <p>8 THE WITNESS: I think I had nine in Palm</p> <p>9 Beach, one in Manalapan Florida -- an exclusive enclave</p> <p>10 just south of Palm Beach where Larry Ellison bought his</p> <p>11 house. Yeah, so, nine in Palm Beach.</p> <p>12 THE COURT: Nine of the largest twelve or</p> <p>13 ten or --</p> <p>14 THE WITNESS: Well, there's twelve in the</p> <p>15 state of Florida that exceeded a hundred million</p> <p>16 dollars.</p> <p>17 THE COURT: Oh, okay.</p> <p>18 THE WITNESS: Nine were in Palm Beach, one</p> <p>19 in Manalapan and one in Miami.</p> <p>20 THE COURT: And Mr. Robert, exactly, what do</p> <p>21 you want him to be deemed an expert on?</p> <p>22 MR. ROBERT: In being able to value</p> <p>23 residential real estate or real estate in Palm Beach.</p> <p>24 That 13-mile island, which is highly specialized and</p> <p>25 highly particularized, the witness has testified he's</p>	<p>L.Moens - Defendant - Voir Dire/Mr.Wallace Page 6101</p> <p>1 evaluation of Palm Beach in general, not just</p> <p>2 residential. His life has been in Palm Beach.</p> <p>3 MR. WALLACE: That I disagree with.</p> <p>4 THE COURT: I thought we had agreed or you</p> <p>5 had asked that. I think you said residential.</p> <p>6 MR. WALLACE: If I did, it should be the</p> <p>7 value of Palm Beach real estate. I may have misspoke</p> <p>8 if I said, "residential." It is value of Palm Beach</p> <p>9 real estate.</p> <p>10 THE COURT: Mr. Moens, do you deal in</p> <p>11 commercial properties.</p> <p>12 THE WITNESS: I do.</p> <p>13 THE COURT: Go ahead, Mr. Wallace.</p> <p>14 MR. WALLACE: I'd appreciate an opportunity</p> <p>15 to voir dire him, a little bit, I guess, then on the</p> <p>16 scope of his expertise beyond residential real estate.</p> <p>17 THE COURT: Sure.</p> <p>18 VOIR DIRE</p> <p>19 BY MR. WALLACE:</p> <p>20 Q. Mr. Moens, you do not have any experience</p> <p>21 brokering, selling or valuing country clubs; is that</p> <p>22 correct?</p> <p>23 A. I haven't seen any come for sale.</p> <p>24 Q. And you don't have any experience brokering,</p> <p>25 selling or valuing social clubs; is that correct?</p>
<p>L.Moens - Defendant - Direct/Mr.Robert Page 6100</p> <p>1 given valuations thousands of times appraisers call him</p> <p>2 because he's --</p> <p>3 THE COURT: I just asked you what --</p> <p>4 MR. ROBERT: Sorry, your Honor. I guess</p> <p>5 I've been hanging out with Mr. Kiser too long. I'm</p> <p>6 sorry, your Honor.</p> <p>7 THE COURT: An expert in valuing residential</p> <p>8 property in Palm Beach?</p> <p>9 MR. ROBERT: Yes, sir.</p> <p>10 THE COURT: Okay. Mr. Moens, have you ever</p> <p>11 been qualified to testify as an expert before?</p> <p>12 THE WITNESS: Not as an expert. Probably,</p> <p>13 as a fact witness in cases or trials.</p> <p>14 THE COURT: And you realize those are</p> <p>15 different.</p> <p>16 THE WITNESS: I realize they are different.</p> <p>17 THE COURT: AG, any comments or questions?</p> <p>18 MR. WALLACE: I believe Your Honor limited</p> <p>19 the qualification to residential property. So we</p> <p>20 certainly agree with that limitation.</p> <p>21 I believe Mr. Moens' description of his</p> <p>22 valuation techniques is what, I believe, is technically</p> <p>23 called a little squishy. But, I think that's something</p> <p>24 we can deal with on cross.</p> <p>25 MR. ROBERT: To be clear, your Honor, it's</p>	<p>L.Moens - Defendant - Voir Dire/Mr.Wallace Page 6102</p> <p>1 A. Never have done.</p> <p>2 Q. And you've never sold or acted as a broker in the</p> <p>3 sale of a private club; is that correct?</p> <p>4 A. Don't know of any that have ever come up.</p> <p>5 MR. SOLOMON: Your Honor, I think the</p> <p>6 witness should be limited to residential real estate.</p> <p>7 MR. ROBERT: Well, your Honor, the issue</p> <p>8 here is, he's going to be giving his opinion as to</p> <p>9 Mar-a-lago and the surrounding homes to Mar-a-lago that</p> <p>10 are all owned by President Trump.</p> <p>11 THE COURT: Well, you said the surrounding</p> <p>12 homes. So that means the only arguably nonresidence</p> <p>13 would be Mar-a-lago itself.</p> <p>14 MR. ROBERT: Correct, your Honor. Our</p> <p>15 position is, obviously, it's a single family residence.</p> <p>16 That's what Mr. Moens is going to testify about. I</p> <p>17 just wanted to be clear about that with Mr. Moens.</p> <p>18 We're not going to ask him his opinion about</p> <p>19 an office building in Palm Beach -- not that I think</p> <p>20 there is one in Palm Beach. But, we're not going to</p> <p>21 ask that.</p> <p>22 THE COURT: We agree on -- whether or not I</p> <p>23 agree he's an expert yet, but can we agree that the</p> <p>24 request is that he's an expert evaluator of residential</p> <p>25 real estate, including Mar-a-lago, whether or not it is</p>

<p>L.Moens - Defendant - Voir Dire/Mr.Wallace Page 6103</p> <p>1 a residence.</p> <p>2 How is that?</p> <p>3 MR. WALLACE: As long as we can agree to</p> <p>4 that because, I think I have a strong position on</p> <p>5 whether or not it is, indeed, a residence.</p> <p>6 I think the subject matter of his expertise</p> <p>7 is the same whether or not Mar-a-lago is included.</p> <p>8 And if the defendants want to make their</p> <p>9 legal argument as to why Mar-a-lago should be</p> <p>10 considered as a residence, they are free to do that.</p> <p>11 I think we have objected to Mr. Moens valuing</p> <p>12 Mar-a-lago and operating a social club as a residential</p> <p>13 property. But, that I think is, certainly, beyond the</p> <p>14 scope of what subjects he's qualified as an expert on.</p> <p>15 THE COURT: Mr. Kise?</p> <p>16 MR. KISE: Again, if you're prepared to</p> <p>17 admit him as expert, I don't need to speak. But, if</p> <p>18 you would like to hear --</p> <p>19 THE COURT: You have to talk louder.</p> <p>20 MR. KISE: I said, I am not going to add</p> <p>21 anything if you are prepared to deem him as an expert.</p> <p>22 THE COURT: You're learning. How about this</p> <p>23 plaintiff, expert in residential real estate in Palm</p> <p>24 Beach, including Mar-a-lago, whether or not it is</p> <p>25 considered a residence.</p>	<p>L.Moens - Defendant - Voir Dire/Mr.Wallace Page 6105</p> <p>1 think the evidence -- the factual evidence, not the</p> <p>2 legal arguments -- it's beyond dispute that it's a</p> <p>3 residence now.</p> <p>4 And there's nothing to preclude it from being</p> <p>5 a residence later because, anyone who buys it -- if I</p> <p>6 bought it at your price of 18 million, I would just</p> <p>7 simply step into the shoes of President Trump. It</p> <p>8 would be the same. I would live there just like he</p> <p>9 does.</p> <p>10 So, Mr. Moens isn't offering an opinion as to</p> <p>11 whether or not -- that question, whether or not, it can</p> <p>12 be used as a club residence or both.</p> <p>13 He's just saying that if you sell it as a</p> <p>14 residence, it's worth X. If someone wants to buy it</p> <p>15 and use it as a residence, club use no club use, he's</p> <p>16 not getting into that. But that's it. Its just his</p> <p>17 opinion of value.</p> <p>18 So, I think with or without the qualifier</p> <p>19 it's acceptable. But, he's not offering an opinion as</p> <p>20 to -- just like Mr. Shubin, you limited him to offering</p> <p>21 an opinion as to that legal conclusion. But, I just</p> <p>22 would posit that it's not a legal conclusion.</p> <p>23 President Trump lives there.</p> <p>24 (Whereupon, the following proceedings was</p> <p>25 stenographically recorded by Lisa Casey.)</p>
<p>L.Moens - Defendant - Voir Dire/Mr.Wallace Page 6104</p> <p>1 But, I will, obviously, just take his</p> <p>2 testimony for what its worth in terms of -- and there</p> <p>3 is no jury -- in terms of whether or not he could have</p> <p>4 an expert opinion on Mar-a-lago whereas its uses is</p> <p>5 somewhat an issue of dispute.</p> <p>6 MR. WALLACE: I don't want to get into</p> <p>7 whether the witness should be here for this but, I do</p> <p>8 not believe the witness attempts to value Mar-a-lago as</p> <p>9 an operating club. And his opinion of Mar-a-lago value</p> <p>10 is limited to its ability to be sold as a single-family</p> <p>11 residence. So, I do not think the additional</p> <p>12 qualification is necessary, that, it can be a limited</p> <p>13 to residential.</p> <p>14 MR. KISE: Your Honor, I mean, not as legal</p> <p>15 argument but as a factual argument -- it's undisputed,</p> <p>16 I think, I have not heard a disputed -- President Trump</p> <p>17 lives there now as a residence. He's lived there for</p> <p>18 years as a residence. And it's undisputed that it's</p> <p>19 his residence. So, that's not a legal argument.</p> <p>20 That's a factual argument. So, it's not really --</p> <p>21 So Mr. Moens is going to testify as to his</p> <p>22 opinion of what it could be sold for, what it could be</p> <p>23 sold for in the residential market.</p> <p>24 Whether you accept that it can be sold for</p> <p>25 that or not that's another question altogether. I</p>	<p>L. Moens - Direct by Mr. Robert Page 6106</p> <p>1 THE COURT: I'm trying to simplify things, as</p> <p>2 always. Why don't we just say he's an expert in</p> <p>3 residential real estate, and in Palm Beach and not talk</p> <p>4 about --</p> <p>5 MR. WALLACE: We'll agree to that, your Honor.</p> <p>6 THE COURT: Okay. I hereby deem the witness as</p> <p>7 an expert in the value of residential real estate in Palm</p> <p>8 Beach.</p> <p>9 Q When you were retained, Mr. Moens, what was the</p> <p>10 assignment that was given to you?</p> <p>11 A I was asked to look at four properties and give an</p> <p>12 opinion of the value of those properties.</p> <p>13 Q And did you, in fact, do that, sir?</p> <p>14 A I did.</p> <p>15 Q And what were the steps that you took to determine the</p> <p>16 value of those four properties? Before we discuss each</p> <p>17 property, separately.</p> <p>18 A Well, it's quite a lot of research, to verify facts,</p> <p>19 usually numbers. Again, as I said earlier, square footages,</p> <p>20 acreage, size of land. It's usually not acreage, in Palm Beach.</p> <p>21 It's usually much less than an acre in Palm Beach, but we have</p> <p>22 to get the numbers right, because if it's .49 of an acre versus</p> <p>23 .73 of an acre, there's a huge difference.</p> <p>24 Getting opinions of published items and seeing that,</p> <p>25 when I approach to give an opinion of value, that I have all the</p>

L. Moens - Direct by Mr. Robert Page 6107

1 facts so that I can give a clear number. That, combined with
2 all the experience I've had -- because I'm a lot older than
3 you -- and having done this for as many years as I have, it's
4 kind of a formula, which is usually very accurate.

5 Q And Mr. Moens, what if any objective information do
6 you need to make such an assessment?

7 A I need everything at my disposal to come up with a
8 valuation.

9 Q What if anything did you use from the Palm Beach
10 County Property Appraiser's Office?

11 A Same thing I stated. In her files, when you go in the
12 Property Appraiser's Office, it usually gives number of
13 dwellings. It will say how many square feet. It will say
14 approximately, or it will state a number, whether it's right or
15 wrong, what the number of acres is, or square feet of land.

16 All of those technical things do have something to do
17 with the value. You have to know what you're valuing and how
18 big it is. Not just the dwelling, but also the land. It's
19 whether or not it's on the water. If it's not on the water; if
20 it is on the water. If it's in the estate section; not in the
21 estate section. There's -- location has a lot to do with it,
22 but facts, real numbers and all the facts, aren't always right.
23 Even when I look at different reports, or the property
24 appraiser, sometimes field officers get things wrong. There are
25 mistakes.

L. Moens - Direct by Mr. Robert Page 6108

1 Q With regard to the tax assessor, what if anything does
2 the assessment in taxable value have to do with the selling
3 price of the property?

4 A Absolutely none.

5 Q With regard to the Mar-A-Lago valuation, that was one
6 of the properties you valued; correct, sir?

7 A Yes, it is.

8 Q And have you visited the property?

9 A Many times, since the 1980s.

10 Q And this is as good a time as any. How, if at all, or
11 did you ever, meet President Trump?

12 A I was asked to meet him by Larry Fisher -- God rest
13 his soul. He was a nice guy. One of the first billionaires in
14 America -- to help guide him on a property that he was doing in
15 West Palm Beach, Florida, and give him an opinion.

16 Q And when was that, sir?

17 A I would say somewhere in the late 1980s.

18 Q And how would you describe your relationship with
19 President Trump, from that point in time to now?

20 A Cordial.

21 Q And how is it that you came to be an expert for us in
22 this case?

23 A President Trump was at Mar-A-Lago, and we bumped into
24 each other. I hadn't seen him in quite some time, and he said,
25 Can I ask you if you would help me with something? I've got an

L. Moens - Direct by Mr. Robert Page 6109

1 issue in New York that I'm dealing with. I would like to see if
2 you could render an opinion for my attorneys, and that's first
3 time I heard the name Chris Kise. And he asked if it will be
4 all right for Chris to call me, and I said it would be.

5 Q And what, if any -- what was the specific assignment
6 that Mr. Kise gave you?

7 A Well, Mr. Kise asked me to take a look at properties
8 which are the subject of this trial, I guess. In Palm Beach,
9 not the other properties that are subject to this. But, I
10 looked at the four properties in Palm Beach, and he offered me
11 an amount of money per hour. I think it was 975, I think it
12 was, per hour, to take a look at and give an opinion of the
13 values of those four properties.

14 Q So, let's start with the Mar-A-Lago property, sir.
15 You already testified that the first thing you did is you went
16 and you got square footage and acreage; correct?

17 A Correct.

18 Q What if anything did you do next?

19 A I looked at anything. I've got a great office
20 manager, highest paid, probably, in Palm Beach. Very good at
21 what she does. She went through all of our files. She pulled
22 records. We did properties in the area. We did comparable
23 sales. We looked at the facts that I told you earlier from the
24 courthouse. We looked at, even, Les Evans' report, which is no
25 longer published, but at the time of the years 2011 to 2021, I

L. Moens - Direct by Mr. Robert Page 6110

1 think, they were published.

2 So, anything that was out there that I could tap into
3 to come up with a real number, including my own experience and
4 gut feeling correlating that information.

5 Q Before we talk about your experience and your gut
6 feeling, what is the Evans report?

7 A It's no longer published, but it's an attorney in Palm
8 Beach that used to report sales and their numbers and their
9 frequency, and some of the information in there was wrong. I
10 would know that -- he would have a recorded price on a property
11 at, you know, 63 million, and it actually sold for 67 million.
12 The reason there's a discrepancy is sometimes properties sell,
13 and they are legally allowed to take things off, like
14 furnishings, or artwork, or greedy brokers' fees. They're able
15 to deduct certain expenses from the number, so that the recorded
16 number is less than the actual transfer and consideration of
17 money.

18 Q What else do you use to determine comparables sales?

19 A We try and get as close as we can to similar
20 properties in the area. When they sold, what was involved. You
21 have additions and subtractions for additional reasons, based on
22 their location, size, the proximity of the property, and it's
23 kind of a recipe to come up with a final number.

24 Q What if anything does uniqueness of a property have to
25 do, in determining value?

L. Moens - Direct by Mr. Robert Page 6111

1 A Well, I mean, if it's waterfront it's a different
2 league. If you are, say, dealing with a house on the
3 Intracoastal, versus a house that's not on the water, versus,
4 say, a house that's on the ocean, or even -- in Palm Beach we
5 have a few golf courses where you can have a house that looks at
6 a golf course -- that gives you something added, because water
7 is more valuable or limited, and in more demand, say, than the
8 plethora of non-water property properties.

9 Q And where does Mar-A-Lago fit in with that?

10 A Well, Mar-A-Lago is a little unique. It's not just on
11 the Intracoastal. It's on the Ocean, and it's connected by a
12 tunnel underneath the road so that it's contiguous, so you have
13 access to both the Ocean and the Intracoastal by way of the
14 underground tunnel, which is rare in Palm Beach.

15 Q How big is the parcel of land that Mar-A-Lago sits on?

16 A Mar-A-Lago, I think, is 17.6 acres, and I'm not sure
17 that that is the total with or without -- I don't recall if it's
18 with or without the Ocean parcel, but I think it's
19 17-point-something.

20 Q And how big is the home itself?

21 A The home is just over 76,000 square feet, if you count
22 all the buildings. It's not just one building. Mar-A-Lago is
23 not one building. I actually did a video showing the
24 difference, because you have a beach club, you have the main
25 residence. You have a ballroom that was added years after this

L. Moens - Direct by Mr. Robert Page 6112

1 was turned into a club, and it's quite amazing to see, if you
2 haven't seen it.

3 I invited the Attorney General's Office to come see it
4 anytime. That offer stands, if you ever want to go in there.
5 I'll make sure he is not there when you come, but I'll get you
6 in there to see it, because it's something breathtaking. It's
7 something amazing to see.

8 Q You mentioned a video. Mr. Moens, did you prepare a
9 video for your testimony here today?

10 A I did. I thought it would be good for the judge,
11 or --

12 Q And what does that video depict?

13 A It just gives you a flavor. It's very short. It's
14 only seven and a half minutes, or less, and it just gives you an
15 overview of what we are talking about with regard to that
16 structure.

17 MR. ROBERT: Your Honor, I would like to put, on
18 the board, a video, Defendant's Exhibit 1063, which is the
19 video that Mr. Moens prepared of Mar-A-Lago. Instead of
20 having a site visit, which I don't think is practicable, to
21 take the Court and everyone else to Mar-A-Lago, we figured
22 it's the simplest way to do it, and then Mr. Moens will
23 explain after, what it is we're seeing.

24 THE COURT: If it gets any colder outside, I'll
25 take him up on the offer.

L. Moens - Direct by Mr. Robert Page 6113

1 MR. WALLACE: I'll just note my objection, your
2 Honor. It's a marketing video. It's got swelling sound
3 tracks and crane shots and drone shots. It is not, I
4 believe, relevant, and I'm not sure if it's qualifying as a
5 demonstrative of the nature of the property, or if it's --
6 how it's supposed to be entered into evidence.

7 Q Mr. Moens, that was produced for this testimony; it's
8 not a marketing --

9 A It was, absolutely. I would never use that as
10 marketing.

11 Q Well, how do you market --

12 MR. ROBERT: Withdrawn.

13 Q What is the typical client that you deal with, or who
14 is the typical client that you deal with?

15 A They're usually very wealthy people that come to Palm
16 Beach because so it's damn expensive to live there.

17 Q And would a marketing -- would the video, that
18 Mr. Wallace is suggesting that this is a marketing video, be a
19 way that someone like you would sell a home like this?

20 A I don't use videos to market my properties.

21 MR. ROBERT: Your Honor, I would like to show the
22 Court Exhibit 1063, which is the video.

23 THE COURT: Objection overruled. Let's see it.

24 MR. ROBERT: Let's hope the technology works.
25 It's all on you.

L. Moens - Direct by Mr. Robert Page 6114

1 (Whereupon, a video was played.)

2 A I'm sorry. The flag was at half mast in honor of the
3 first lady, who had just recently passed away when we did this.
4 Roslyn Carter.

5 MR. WALLACE: Who was not a member of Mar-A-Lago,
6 I believe.

7 MR. ROBERT: I believe so.

8 Q Mr. Moens, obviously that was an impressive
9 presentation in the video. What, if anything of great
10 significant -- and I'll not use the word significance -- great
11 significant, in terms of your opinion of value, would you like
12 to specifically draw our attention to.

13 MR. ROBERT: Without looking at it again, your
14 Honor.

15 Q Just certain specific things, Mr. Moens.

16 A Well, if I narrated it, I would have pointed out
17 things like the hand-laid stones in the huge courtyard to the
18 west of the main facade of the house. Each one was laid by an
19 individual person, from Marjorie Post, when the house, or the
20 castle, was built.

21 The winged ceilings -- it's called the room of a
22 thousand wings -- has actual gold applied to it. At the time,
23 millions of dollars worth of gold were used. I don't know what
24 it would be today, but it would be far -- it would cost many
25 times what it did then, in 1927, completed in '28, to try and

<p>L. Moens - Direct by Mr. Robert Page 6115</p> <p>1 replicate what's in that house.</p> <p>2 Hand-carved stone. There were workmen there for years</p> <p>3 just doing trades, from all over the world, carving and creating</p> <p>4 what Mar-A-Lago is today. That's why I encouraged the Attorney</p> <p>5 General to come and see it, do a field view of the property, to</p> <p>6 understand what it is. That was just a seven-minute snippet of</p> <p>7 what is there. I think it's important to know that it's</p> <p>8 different from other residential, or clubs, whatever label you</p> <p>9 put on it, that exist in the world. It's unto itself. One of</p> <p>10 the most important properties.</p> <p>11 You have got Mar-A-Lago. You have got San Simeon in</p> <p>12 California, the Hearst castle. Harold Vanderbilt's house in</p> <p>13 North Carolina. These are castles, sometimes turned in museums</p> <p>14 or clubs, but they were residences lived in by the original</p> <p>15 families, and other families that occupied, after the original</p> <p>16 family either didn't want the property anymore, or they died.</p> <p>17 MR. ROBERT: Your Honor, at this point we move</p> <p>18 Defendant's Exhibit 1063 into evidence.</p> <p>19 THE COURT: Granted. It's in.</p> <p>20 (Whereupon, Defendant's Exhibit 1063 was received</p> <p>21 in evidence.)</p> <p>22 Q Mr. Moens, before we talk about the actual value,</p> <p>23 there came a point in time that you placed a valuation on</p> <p>24 Mar-A-Lago; correct?</p> <p>25 A Yes.</p>	<p>L. Moens - Direct by Mr. Robert Page 6117</p> <p>1 MR. ROBERT: Correct.</p> <p>2 (Whereupon, a document was handed to the Court</p> <p>3 and the witness.)</p> <p>4 THE COURT: I'm going to ask that the witness be</p> <p>5 excused for a minute. I did to discuss and address certain</p> <p>6 issues.</p> <p>7 We'll see you back soon.</p> <p>8 THE WITNESS: Oh. You want me to leave? Sorry.</p> <p>9 I didn't know I was being ejected.</p> <p>10 THE COURT: We have an interrogation room in the</p> <p>11 back. We will work you over.</p> <p>12 THE WITNESS: I hope it's sound proof.</p> <p>13 (Whereupon, the witness was excused from the</p> <p>14 courtroom.)</p> <p>15 THE COURT: Something that I wrestled with, this</p> <p>16 whole case, is what exactly is the Attorney General basing</p> <p>17 its case on, in this. What is the real claim, here. And</p> <p>18 I've tried to make clear in my own mind, and in the summary</p> <p>19 judgment motion, I don't see this case as -- you ask the</p> <p>20 person on the street, what's the case about. They</p> <p>21 over-valued the property. I see this case about the</p> <p>22 documents, whether the defendants used false documents in</p> <p>23 transacting business, which is what 6312 is basically</p> <p>24 about. And the other six causes of action, one of them is</p> <p>25 false documents, insurance fraud, I think somewhat similar.</p>
<p>L. Moens - Direct by Mr. Robert Page 6116</p> <p>1 Q And that was for the period of 2011 through 2021;</p> <p>2 correct?</p> <p>3 A I did those years, yes. Ten years.</p> <p>4 Q We spoke about the objective things that you looked</p> <p>5 at. What else did you add to the mix, if anything, in coming up</p> <p>6 to the value?</p> <p>7 A Well, it's just comparing it to properties of great</p> <p>8 importance that sell in the town that I have my business, and</p> <p>9 surrounding towns like Jupiter Island, Manalapan, but primarily</p> <p>10 Palm Beach, Florida. I came up with my numbers by using all the</p> <p>11 information at my fingertips, and 45 years of doing this</p> <p>12 business in the Palm Beach market.</p> <p>13 Q Is there an analogy that you like to use that explains</p> <p>14 how you interject your 45 years of experience into these</p> <p>15 objective numbers?</p> <p>16 A I don't understand.</p> <p>17 Q Okay.</p> <p>18 MR. ROBERT: Your Honor, I would like to put, on</p> <p>19 the board, demonstrative Exhibit DD6.</p> <p>20 THE COURT: Which is?</p> <p>21 MR. ROBERT: We are going to hand it up. It's a</p> <p>22 chart from Mr. Moens' report that has his valuation. It's</p> <p>23 just going to be easier to take him through.</p> <p>24 THE COURT: So, this is going to be his basic</p> <p>25 bottom line?</p>	<p>L. Moens - Direct by Mr. Robert Page 6118</p> <p>1 So, I'll allow Mr. Moens' testimony, either as a</p> <p>2 demonstrative or orally, what he thinks Mar-A-Lago is</p> <p>3 worth, but that's not the bottom issue here for me, and in</p> <p>4 fact I said, and maybe in a footnote in the summary</p> <p>5 judgment motion, I'm not trying to figure out what the</p> <p>6 value is. I'm trying to figure out whether or not the</p> <p>7 defendants violated 6312 by using false documents in the</p> <p>8 transaction of business.</p> <p>9 So, I'll let it in, with the understanding that I</p> <p>10 don't necessarily even consider it relevant. But again,</p> <p>11 sort of taking on a cue from Mr. Kise, on appeal, maybe the</p> <p>12 Appellate Division or the higher courts will think, Well,</p> <p>13 no, it is relevant, so we wanted the testimony.</p> <p>14 MR. ROBERT: And I know better than to say</p> <p>15 anything when it's coming in, so I will keep my mouth shut.</p> <p>16 THE COURT: Plaintiff, any comments, agreement,</p> <p>17 disagreement, anything you want to say?</p> <p>18 MR. WALLACE: No, I certainly agree, it's</p> <p>19 irrelevant. I do think that our case is based on the use</p> <p>20 of false information and the preparation the valuations</p> <p>21 that went into the statement. We have not ever taken the</p> <p>22 position that because something is objectively wrong, or</p> <p>23 that, you know, you need to have a certain appraisal or</p> <p>24 certain piece. It is based on the information that</p> <p>25 existed, that was available to the defendants at the time</p>

<p>L. Moens - Direct by Mr. Robert Page 6119</p> <p>1 they were preparing these, and the choices they made in how</p> <p>2 they undertook to present the values.</p> <p>3 So, I agree. We are not presenting -- I think</p> <p>4 this is actually going to be the only witness who is</p> <p>5 valuing a property so far, in the entire case, who is</p> <p>6 offering sort of any independent estimate of value for any</p> <p>7 individual property, and that's because I don't think it's</p> <p>8 really relevant to the issue, as well.</p> <p>9 THE COURT: Did I say anything with which you</p> <p>10 disagree?</p> <p>11 MR. WALLACE: No, your Honor.</p> <p>12 THE COURT: You don't have to say no.</p> <p>13 MR. WALLACE: I can go back and look, but why</p> <p>14 don't I do that over lunch.</p> <p>15 THE COURT: And Mr. Kise, what's your philosophy</p> <p>16 here?</p> <p>17 MR. KISE: Well, my philosophy is, it's coming</p> <p>18 in, so I'm not going to say much, but I will say that you</p> <p>19 said a lot that I don't agree with, but we'll deal with</p> <p>20 that at another time.</p> <p>21 THE COURT: A lot that you disagree.</p> <p>22 MR. KISE: I disagree, but that's for --</p> <p>23 THE COURT: Another time.</p> <p>24 MR. KISE: Another time. It's coming in.</p> <p>25 THE COURT: Okay. Let's get the witness and see</p>	<p>L. Moens - Direct by Mr. Robert Page 6121</p> <p>1 to the witness.)</p> <p>2 A I do.</p> <p>3 Q And do you recognize these numbers?</p> <p>4 A Yes. I prepared them.</p> <p>5 Q Okay. And where did you prepare them?</p> <p>6 A In my office, with my office manager and bookkeeper</p> <p>7 and receptionist.</p> <p>8 Q Are these the numbers that you determined to be THE</p> <p>9 value of Mar-A-Lago for particular years?</p> <p>10 A Yes, they are.</p> <p>11 Q So, looking to 2011, what was the value that you</p> <p>12 placed on Mar-A-Lago in 2011, as a single --</p> <p>13 MR. ROBERT: Withdrawn.</p> <p>14 Q What is this value based on?</p> <p>15 A What I could get for it in the open market in that</p> <p>16 year, 2011, if he would hire me to sell it. Which, he did not.</p> <p>17 Q And for what would it be, as a single-family house,</p> <p>18 something else? As what?</p> <p>19 A As a club, as a single-family residence. As what it</p> <p>20 exists in its present form today, or in 2011.</p> <p>21 Q And what was the value you placed on it in 2011, sir?</p> <p>22 A \$655 million.</p> <p>23 Q And what is the comment to the right that says, Moens</p> <p>24 value, with memberships? Explain that, sir.</p> <p>25 A Well, I just wanted the Court to understand that</p>
<p>L. Moens - Direct by Mr. Robert Page 6120</p> <p>1 the demonstrative.</p> <p>2 MR. KISE: Thank you.</p> <p>3 I was just going to say, it may be, now that I've</p> <p>4 seen where we are, if we take our lunch break now, we can</p> <p>5 truncate. If I confer with Mr. Robert, we can probably --</p> <p>6 THE COURT: Let's keep going. We have got --</p> <p>7 MR. KISE: That's fine.</p> <p>8 (Whereupon, the witness resumed the witness</p> <p>9 stand.)</p> <p>10 THE COURT: I appreciate the offer.</p> <p>11 MR. ROBERT: What time do you want to stop? So I</p> <p>12 keep --</p> <p>13 THE COURT: About five to 1:00.</p> <p>14 MR. ROBERT: Sure.</p> <p>15 THE COURT: So, we have got ten minutes.</p> <p>16 THE WITNESS: Can we finish me in ten?</p> <p>17 THE COURT: He could finish you in ten, but I</p> <p>18 don't think they could.</p> <p>19 MR. ROBERT: Even I couldn't finish him in ten.</p> <p>20 Maybe twelve, but not ten.</p> <p>21 CONTINUED DIRECT EXAMINATION</p> <p>22 BY MR. ROBERT:</p> <p>23 Q Mr. Moens, you have in front of you what's been marked</p> <p>24 as Defendant's Demonstrative Exhibit DD6. Do you see that?</p> <p>25 (Whereupon, a document was displayed, and handed</p>	<p>L. Moens - Direct by Mr. Robert Page 6122</p> <p>1 there's an underlying additional thing to consider here. I'm</p> <p>2 looking at bricks and mortar. I'm looking at what it is, where</p> <p>3 it is, when I come up with my value.</p> <p>4 In addition to my value, because it allows to be a</p> <p>5 club and has memberships that are available, there's additional</p> <p>6 monies or revenue that can be derived from selling those</p> <p>7 memberships, if one chose to sell the memberships. As</p> <p>8 Mar-A-Lago, in 2011, they were getting an average of 100,000 for</p> <p>9 a membership. Each year, it bounces around, but I was able to</p> <p>10 obtain the numbers from the club manager, Bernd Lembcke, who was</p> <p>11 able to give me the numbers of what the club collected for</p> <p>12 memberships, during the ten years that I was asked to do this</p> <p>13 analysis.</p> <p>14 (Continued on the next page.)</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

<p>L.Moens - Defendants - Direct/Mr. Robert Page 6123</p> <p>1 Q. And what was the value you placed on the</p> <p>2 Mar-a-lago sale with membership in 2011?</p> <p>3 A. \$705 million.</p> <p>4 Q. And Mr. Moens, on the left, next to the year, it</p> <p>5 says, "SOFC value" what's that?</p> <p>6 A. I'm not really good with acronyms but, I think</p> <p>7 it's Statement of Financial Condition or something.</p> <p>8 Q. What is the number that's listed underneath that</p> <p>9 Statement of Financial Condition value?</p> <p>10 A. \$426,529,614.</p> <p>11 Q. And moving to 2012, Mr. Moens, what was the value</p> <p>12 that you placed on Mar-a-lago without memberships?</p> <p>13 A. \$675 million.</p> <p>14 Q. And the value you placed on it with memberships in</p> <p>15 2012?</p> <p>16 A. \$725 million.</p> <p>17 Q. In 2013, the value you placed on it without</p> <p>18 memberships?</p> <p>19 A. \$660 million.</p> <p>20 Q. And in 2013, the value you placed on it with</p> <p>21 memberships?</p> <p>22 A. \$697,500,000.</p> <p>23 MR. WALLACE: Your Honor, I just want to</p> <p>24 take this opportunity to interpose objection on the</p> <p>25 membership amounts.</p>	<p>L.Moens - Defendants - Direct/Mr. Robert Page 6125</p> <p>1 A. \$760 million.</p> <p>2 Q. And your value with memberships in 2016?</p> <p>3 A. \$835 million.</p> <p>4 Q. And in 2017, your value without memberships?</p> <p>5 A. \$790 million.</p> <p>6 Q. And in 2017, your value with memberships?</p> <p>7 A. \$890 million.</p> <p>8 Q. And in 2018, Mr. Moens, your value without</p> <p>9 memberships?</p> <p>10 A. \$825 million.</p> <p>11 Q. And in 2018, your value with memberships?</p> <p>12 A. \$950 million.</p> <p>13 Q. And Mr. Moens, in 2019, your value without</p> <p>14 memberships?</p> <p>15 A. \$865 million.</p> <p>16 Q. And your value with memberships in 2019.</p> <p>17 A. \$990 million.</p> <p>18 Q. And Mr. Moens, in 2020, what was the value placed</p> <p>19 on Mar-a-lago without memberships for 2020?</p> <p>20 A. \$950 million.</p> <p>21 Q. And in 2020, the value you placed on Mar-a-lago</p> <p>22 with memberships?</p> <p>23 A. One billion seventy five million dollars.</p> <p>24 Q. Mr. Moens, for 2012, what was the value you placed</p> <p>25 on Mar-a-lago?</p>
<p>L.Moens - Defendants - Direct/Mr. Robert Page 6124</p> <p>1 The source for this these amounts that came</p> <p>2 from the club manager was not disclosed in his report.</p> <p>3 I don't know that it is material but, I just wanted to</p> <p>4 note that this is -- the source of this data was not</p> <p>5 disclosed as the source of material reviewed.</p> <p>6 MR. ROBERT: I believe the question was</p> <p>7 asked at his deposition.</p> <p>8 THE COURT: Well, the exhibit is in</p> <p>9 Evidence. And I will decide how to treat it.</p> <p>10 Q. So did I have an answer as to what the value of</p> <p>11 the membership was in 2013.</p> <p>12 A. I'm sorry, which value?</p> <p>13 Q. With memberships in 2013.</p> <p>14 A. Six hundred ninety seven million five hundred</p> <p>15 thousand dollars.</p> <p>16 Q. In 2014 what was the value without memberships?</p> <p>17 A. \$685 million.</p> <p>18 Q. And the value with memberships in 2014?</p> <p>19 A. \$735 million.</p> <p>20 Q. The value in 2015 without memberships?</p> <p>21 A. \$720 million.</p> <p>22 Q. And the value with memberships in 2015?</p> <p>23 A. 770 million.</p> <p>24 Q. In 2016, Mr. Moens, your value without</p> <p>25 memberships?</p>	<p>L.Moens - Defendants - Direct/Mr. Robert Page 6126</p> <p>1 THE COURT: You don't mean 2012.</p> <p>2 MR. ROBERT: I'm sorry, your Honor. Forgive</p> <p>3 me.</p> <p>4 Q. Mr. Moens, in 2021, what was the value you placed</p> <p>5 on Mar-a-lago without memberships?</p> <p>6 A. One billion forty million dollars.</p> <p>7 Q. And the value you placed on Mar-a-lago for 2021</p> <p>8 with memberships?</p> <p>9 A. \$1,215,000,000.</p> <p>10 MR. ROBERT: Your Honor, I think this may be</p> <p>11 a good time to break for lunch.</p> <p>12 THE COURT: That's a deal. I'm hungry. See</p> <p>13 you all at 2:15 then.</p> <p>14 MS. FAHERTY: Can we get an admonition, your</p> <p>15 Honor.</p> <p>16 THE WITNESS: Thank you.</p> <p>17 THE COURT: Do not discuss this case, your</p> <p>18 testimony or anything related to it during the lunch</p> <p>19 break.</p> <p>20 THE WITNESS: I'm honoring your wish.</p> <p>21 THE COURT: Thank you.</p> <p>22 (A luncheon recess was taken.)</p> <p>23 (After the luncheon recess, the following</p> <p>24 occurred:)</p> <p>25 ***</p>

<p>L.Moens - Defendants - Direct/Mr. Robert Page 6127</p> <p>1 AFTERNOON SESSION. 2 (The trial continued.) 3 THE COURT: Welcome back. First order of 4 business is to discuss schedule. Who's going to take 5 the lead on that? 6 MR. KISE: Okay. 7 MR. ROBERT: To try to streamline things, we 8 have decided not to call Eric Trump. We're pleased 9 with his earlier testimony. 10 THE COURT: Do you have any other witness? 11 MR. KISE: We have Professor Bartov and 12 President Trump who are the two remaining witnesses. 13 Professor Bartov will be Thursday. He 14 teaches tomorrow. We tried to move him up. He teaches 15 at NYU. 16 I'm not sure, shouldn't they be out of school 17 by now? It is December 11th. It's next week. It's 18 not Florida. Apparently, not. But yes, we tried to 19 move him up but, apparently not. 20 And then, we have one -- we have several 21 documents that -- they are just corporate documents -- 22 that we can present to the government. And, if they 23 will agree to just admit them, fine. If they won't, 24 then we can bring a witness in to admit the documents. 25 But that would be the only other witness.</p>	<p>L.Moens - Defendants - Direct/Mr. Robert Page 6129</p> <p>1 on what we hear from Mr. Bartov if we call a rebuttal 2 expert on accounting to respond to Mr. Flemmons and to 3 Mr. Bartov. And beyond that, I don't know if we 4 have -- oh, Kevin Sneddon would be the other potential 5 witness we would call, who is a fifteen-minute witness 6 from our perspective. 7 THE COURT: Okay. And no comments on the 8 schedule? 9 MR. WALLACE: At this point, we're almost 10 to the end. Let's just get there. 11 MR. KISE: And to the extent they call -- 12 again, as Mr. Wallace said, we don't know what their 13 accounting witness is going to say but, to the extent 14 they call an accounting witness, that requires us then 15 to bring Mr. Bartov and Mr. Flemmons back, we would do 16 that. 17 Depending on what they're proffering this 18 witness for -- it may be that they're -- it really 19 depends on what they're proffering the witness for -- 20 certainly, our position is going to be that they can't 21 bring in a witness now to testify to things that they, 22 certainly, could have done in their case and chief. 23 But, we don't know because we don't know exactly what 24 the proffer of the testimony is. 25 But we can't have -- Mr. Flemmons and</p>
<p>L.Moens - Defendants - Direct/Mr. Robert Page 6128</p> <p>1 And again, if they won't do it by 2 stipulation, we can bring the witness in Thursday 3 morning. It would take fifteen minutes -- if that. 4 But that's the current plan, your Honor. 5 THE COURT: Plaintiff, in response? 6 MR. WALLACE: Well, the devil is in the 7 details of the document. But, so far, we have been 8 able to agree. 9 I think we would want to see what they are 10 proposing. It's not our case. So, beyond that, I 11 don't think -- if the proposal is workout some 12 stipulation on documents or spend fifteen minutes with 13 everyone coming to court to deal with that, I think 14 that would not be our preference. Happy to see what 15 the defendants have and are proposing. 16 And another option is always if people offer 17 affidavits or lay a foundation for a document. Why 18 don't we just see what the defendants have. 19 MR. KISE: Sure. 20 MR. ROBERT: Your Honor, at this point, if 21 the prosecution could let us know if they have a 22 rebuttal case and who they will call so that we can 23 prepare because, that would start Tuesday morning 24 presumably. 25 MR. WALLACE: I think it depends, somewhat,</p>	<p>L.Moens - Defendants - Direct/Mr. Robert Page 6130</p> <p>1 Professor Bartov aren't going to testify about what 2 their expert said necessarily directly because, that's 3 not in the trial record. The only way they would have 4 an opportunity to do that is if they called that 5 witness and then we would have an actual rebuttal. 6 THE COURT: Okay. So we're down tomorrow; 7 is that it? 8 MR. KISE: I believe that's correct. 9 MR. ROBERT: I'm not going to be long with 10 the witness this afternoon. I don't think the 11 government is going to be long. 12 MR. WALLACE: We're not going to be long 13 either. 14 THE COURT: I will turn the microphone over 15 to the person who's sitting next to me. 16 MS. GREENFIELD: We're going to be down 17 tomorrow. Bartov is going to start Thursday morning? 18 MR. ROBERT: I'm sorry. I didn't hear that? 19 MR. KISE: Yes, Professor Bartov is starting 20 Thursday morning. 21 MS. GREENFIELD: And is he expected to go 22 into Friday or is that going to be one day. 23 MR. KISE: We're certainly going to take a 24 good amount of Thursday not the whole day Thursday I 25 would anticipate. It depends on how much cross</p>

<p>L.Moens - Defendants - Direct/Mr. Robert Page 6131</p> <p>1 examination the government has. But I'm hoping it</p> <p>2 doesn't spill over to Friday. But, that's certainly a</p> <p>3 distinct possibility.</p> <p>4 MS. GREENFIELD: So if it does not spill</p> <p>5 into Friday, do you anticipate Friday being another</p> <p>6 down day?</p> <p>7 MR. KISE: It will be because, the only</p> <p>8 other remaining witness would be President Trump. And</p> <p>9 I have one other issue on that.</p> <p>10 MS. GREENFIELD: There's no other</p> <p>11 administrative tasks that can be done, that needs to be</p> <p>12 done?</p> <p>13 MR. KISE: Not that I'm aware of.</p> <p>14 THE COURT: Okay. We're all set.</p> <p>15 MR. KISE: As to President Trump, given, as</p> <p>16 the Court may be aware of, that we're in the process of</p> <p>17 seeking expedited review, by the New York Court</p> <p>18 Appeals, as to the gag order issues, we would ask the</p> <p>19 Court to postpone his testimony until after that is</p> <p>20 resolved. Because, at this point, he's not capable of</p> <p>21 fully testifying because, he's going to be subject to a</p> <p>22 gag order.</p> <p>23 So, we would ask the Court to put off his</p> <p>24 Monday testimony until such time as the New York Court</p> <p>25 of Appeals resolves, one way or the other, the gag</p>	<p>L.Moens - Defendants - Direct/Mr. Robert Page 6133</p> <p>1 A. I do.</p> <p>2 Q. Sir, were those opinions of value with a degree of</p> <p>3 certainty?</p> <p>4 A. Absolutely.</p> <p>5 Q. Mr. Moens, what went into the factors in coming up</p> <p>6 with these values?</p> <p>7 A. Well, several factors. It's factual evidence or</p> <p>8 prima facie evidence that exists in the world to come up</p> <p>9 with what we're talking about in terms of size, not only of</p> <p>10 the land but of the structures, you know, where the economic</p> <p>11 conditions are of the market at that time that I'm asked the</p> <p>12 question. It may change, from year to year, as markets</p> <p>13 change.</p> <p>14 Forty-five years that I've been doing this</p> <p>15 business, you develop after, over ten billion in sales, you</p> <p>16 start developing a feel for pricing if you're doing it</p> <p>17 everyday pretty much seven days a week for that many years.</p> <p>18 So, it's an analysis, it's a gut feeling, it's</p> <p>19 factual evidence. It's like a recipe. It's, like, putting</p> <p>20 a cake together. You need the milk, the flour, the</p> <p>21 chocolate, the eggs. I make the best chocolate cake in the</p> <p>22 world by the way. It's amazing.</p> <p>23 But, to do that cake or make that recipe work, you</p> <p>24 have to have everything. And it's not an exacting science.</p> <p>25 You have to have a feel for it. You have to know, "A little</p>
<p>L.Moens - Defendants - Direct/Mr. Robert Page 6132</p> <p>1 order.</p> <p>2 Because, we don't think that a civil</p> <p>3 defendant should be called to the witness stand in his</p> <p>4 own case, under any, any limitations as to what he can</p> <p>5 testify about.</p> <p>6 THE COURT: Plaintiff?</p> <p>7 MR. WALLACE: Absolutely, not.</p> <p>8 THE COURT: Absolutely, not. No way. No</p> <p>9 how. Nonstarter. Not allowing that. If he's going to</p> <p>10 testify, it will be Monday. And, that's that.</p> <p>11 MR. KISE: Thank you, Judge.</p> <p>12 THE COURT: But, you tried. I gave it to</p> <p>13 you. You could tell. Let's get the witness back?</p> <p>14 MR. ROBERT: Yes, Judge.</p> <p>15 May I proceed, your Honor?</p> <p>16 THE COURT: Please do.</p> <p>17 MR. ROBERT: If we can call back on the</p> <p>18 screen demonstrative KD-61.</p> <p>19 DIRECT EXAMINATION</p> <p>20 BY MR. ROBERT:</p> <p>21 Q. Mr. Moens, before the lunch break, I had taken you</p> <p>22 through this and you had set forth, for the Court, your</p> <p>23 value both with and without memberships for Mar-a-lago from</p> <p>24 2011 to 2021.</p> <p>25 Do you remember that?</p>	<p>L.Moens - Defendants - Direct/Mr. Robert Page 6134</p> <p>1 pinch of this, a little coffee instead, sneak a little</p> <p>2 something else in, vanilla" things that aren't on a recipe.</p> <p>3 So, what I do is a little different from other</p> <p>4 people. I've been doing this for a long time. It seems to</p> <p>5 work the way I'm doing it. So I'm going to keep baking</p> <p>6 cakes the way I do.</p> <p>7 Q. What are those things that are the ingredients in</p> <p>8 the cake, if you will, for real estate valuations such as</p> <p>9 for Mar-a-lago and other properties?</p> <p>10 A. What I said before. It's square footage, it's</p> <p>11 quality of construction. It's, with Mar-a-lago, you've gold</p> <p>12 gilded ceilings that you saw in the video, hand carved</p> <p>13 cherubs on the doors. There are, you know, dozens and</p> <p>14 dozens of these hand carved his cherubs that are attached to</p> <p>15 each door in the living room.</p> <p>16 A single person hand carved each one of those</p> <p>17 pieces. They don't do that anymore today. Hand-painted</p> <p>18 tiles, the carved stone outside.</p> <p>19 There were individuals that were carving the stone</p> <p>20 out of blocks and turning it into the beauty that you saw in</p> <p>21 the video. I'd encourage you to see the video again to see</p> <p>22 some of the detail in it and not just watch a short film.</p> <p>23 My first short film. I hope it's an Academy Award winner</p> <p>24 but, I don't know that I'm a film maker. But, I tried to</p> <p>25 give you a snippet of Mar-a-lago. I tried to get you there</p>

<p>L.Moens - Defendants - Direct/Mr. Robert Page 6135</p> <p>1 since we're not there we're in New York.</p> <p>2 Q. You mentioned earlier something about the estate</p> <p>3 section. Is that where Mar-a-lago is located?</p> <p>4 A. Yes, it is.</p> <p>5 Q. What is the estate section of Palm Beach?</p> <p>6 A. Well, it's known as the properties that exists</p> <p>7 between Worth Avenue and, probably, Mar-a-lago at Southern</p> <p>8 Boulevard.</p> <p>9 It drifts a little bit south a couple blocks</p> <p>10 south; assembled over, probably, nine years; over six</p> <p>11 hundred million dollars worth of land for one family.</p> <p>12 And that's just the land. We're not talking about</p> <p>13 structures. Now, they're going to build for hundreds of</p> <p>14 millions of dollars a structure and have another billion</p> <p>15 dollar house that would exist in Palm Beach. It has yet to</p> <p>16 be created but, it took years and years to put together that</p> <p>17 many properties. I think it was 13.</p> <p>18 Q. How big is the acreage of that \$600 million</p> <p>19 property?</p> <p>20 A. Over twenty.</p> <p>21 Q. And is that in the estate section?</p> <p>22 A. Well, it's in the -- it's in the estate section</p> <p>23 but, it's the south of the southern estate section. So they</p> <p>24 say, its just south of the estate section.</p> <p>25 Q. And what if any impact does the beach front have</p>	<p>L.Moens - Defendants - Direct/Mr. Robert Page 6137</p> <p>1 A. I started in 1977. I started my own label company</p> <p>2 in 1982.</p> <p>3 Q. In 1993, were you, actively, involved in the sale</p> <p>4 of real estate in Palm Beach?</p> <p>5 A. Very much so.</p> <p>6 Q. If we could draw your attention to 478-6.</p> <p>7 Mr. Wallace asked the last witness to comment on something.</p> <p>8 I would like to show it to you. Okay.</p> <p>9 I'm taking the Judge's advise. It's the first</p> <p>10 sentence that goes almost two lines. And it says, "As to</p> <p>11 item one, it is impractical for a single individual to,</p> <p>12 continuously, own Mar-a-lago as a private estate at his or</p> <p>13 her sole expense."</p> <p>14 Do you see is that, sir?</p> <p>15 A. I see it very clearly.</p> <p>16 Q. Is that something you would have agreed was</p> <p>17 accurate back in 1993?</p> <p>18 A. Absolutely.</p> <p>19 Q. And is that something you agree is accurate today?</p> <p>20 A. Not at all.</p> <p>21 Q. Why?</p> <p>22 A. When this was done there weren't -- there wasn't</p> <p>23 the wealth that there is today in America. You have a lot</p> <p>24 of entrepreneurs, a lot of very wealthy multi, multi,</p> <p>25 billionaires that can afford to buy expensive housing.</p>
<p>L.Moens - Defendants - Direct/Mr. Robert Page 6136</p> <p>1 on value of Mar-a-lago?</p> <p>2 A. Well, beachfront, generally, is hard to get</p> <p>3 anymore in Palm Beach. I fortunately have a house on the</p> <p>4 beach and bought it 21 years ago. Thank God I bought it</p> <p>5 because, I wouldn't be able to afford it in today dollars.</p> <p>6 Q. Do you know how much beachfront area Mar-a-lago</p> <p>7 has?</p> <p>8 A. Mar-a-lago has 365 feet on the ocean. I think</p> <p>9 it's similar on the lake. But, it might be a little</p> <p>10 different.</p> <p>11 MR. ROBERT: Before we leave Mar-a-lago and</p> <p>12 go to the other properties, I'd like to show the</p> <p>13 witness Defendant's Exhibit 4782 in evidence.</p> <p>14 Q. And I draw your attention, specifically, to page</p> <p>15 three -- actually, let's start at the first page for a</p> <p>16 minute or the second page actually.</p> <p>17 Do you recognize this document, Mr. Moens?</p> <p>18 A. I do.</p> <p>19 Q. And what is this document?</p> <p>20 A. Well, it's regarding the club. It's special</p> <p>21 exception use and preservation plan.</p> <p>22 Q. What is the year of this document?</p> <p>23 A. I think '93, March 12 of '93.</p> <p>24 Q. And just to orient ourselves, Lawrence Moens &</p> <p>25 Associates started selling Palm Beach real estate in '82.</p>	<p>L.Moens - Defendants - Direct/Mr. Robert Page 6138</p> <p>1 Before just a few years ago, there were no homes</p> <p>2 for over a hundred million dollars. They didn't exist.</p> <p>3 They do now.</p> <p>4 The wealth isn't, you know, a hundred million</p> <p>5 dollars anymore. I still think that's a lot of money. But</p> <p>6 now you're talking billion. And then, you're talking</p> <p>7 billion of billion. Then you talk about net worth of guys</p> <p>8 that have over a hundred billion dollars which to me is</p> <p>9 staggering. It's incredible.</p> <p>10 If I had the right properties, like a Mar-a-lago</p> <p>11 or something of its caliber, I would have people that would</p> <p>12 want to obtain it. The problem is, it's hard to get</p> <p>13 properties like that. They don't really often come up.</p> <p>14 They usually come up through attrition. People</p> <p>15 die. People change their mind or move to a different part</p> <p>16 of the world. But, they don't often come up.</p> <p>17 Q. In addition to Mar-a-lago, were you asked to value</p> <p>18 1094 South Ocean Boulevard?</p> <p>19 A. I was.</p> <p>20 Q. What is 1094 South Ocean Boulevard.</p> <p>21 A. Single family home. Located just north of</p> <p>22 Mar-a-lago.</p> <p>23 Q. And do you know how big a parcel that is?</p> <p>24 A. I don't have the facts in front of me. But, I can</p> <p>25 look at my notes and tell you it's probably three quarters</p>

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1 of an acre or less.

2 Q. And sir -- let's put on DT the defendant's

3 demonstrative Exhibit DD6-2.

4 And just before we go into this, Mr. Moens, what

5 would it take to recreate a Mar-a-lago today?

6 MR. WALLACE: Objection.

7 THE COURT: On the ground.

8 MR. WALLACE: It goes beyond the scope of

9 his expertise or his opinions or testimony in this

10 case.

11 THE COURT: Well, he's been there. He's

12 filmed it. I will let him say in layperson's terms

13 what it would take to recreate it.

14 A. May I answer?

15 Q. Yes. The Judge said yes.

16 A. I just want to make sure. I don't want to

17 overstep.

18 THE COURT: Overruled.

19 A. Your Honor, I build homes from the ground up. I'm

20 a developer not just a real estate broker. I know what

21 costs are in terms of building homes or renovating homes --

22 which I do more than I do -- I try and save landmark homes.

23 But to do Mar-a-lago, its almost unimaginable to

24 think of how to get the people that would even know how to

25 carve the stone or get the labor to hand lay each stone into

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1 a mosaic pattern in the floor.

2 It can be done if you can find it I'm sure. If

3 you can afford to pay for it. Building costs in Palm Beach

4 range anywhere from \$900 to probably -- one of my clients is

5 spending 3200 a foot.

6 But, the norm, the average, is probably in the

7 twelve to \$1400 square foot range for the average house.

8 Mar-a-lago would not be considered -- especially if you saw

9 the video -- an average house.

10 There's tapestry and carved doors and carved

11 floors and gold gilded -- with real gold -- ceilings and

12 things that would be difficult but, not impossible, to

13 recreate.

14 If you were to try and recreate it, the way it is

15 today, and get as close as you could, I would imagine the

16 number per foot would be into the seven, eight, 9,000 a

17 square foot range.

18 Q. As a practical matter, is it even possible to

19 recreate that today?

20 A. I'm not sure I know the answer to that question.

21 I think you could try and get close. I don't know if you

22 could do it exactly because, some of the technology, the old

23 world technology, labor, to do it, the knowledge of how to

24 do it is kind of a lost art. I don't know that you could.

25 Q. Drawing your attention to --

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1 MR. WALLACE: Your Honor, those answers I'm

2 going to note, again, my objection that they are bond

3 the scope of his opinion. And I don't know that it is

4 anymore relevant than any of the rest of this. It is

5 well beyond anything that was disclosed as part of his

6 opinion.

7 THE COURT: Well beyond the scope of

8 anything disclosed in --

9 MR. WALLACE: In his report.

10 THE COURT: Doesn't matter one way or the

11 other. I saw the video. I wasn't born yesterday. I

12 know how difficult it is to get carved stone, et

13 cetera. Let's just leave it in. Objection noted and

14 overruled.

15 Q. Drawing your attention, Mr. Moens, to

16 demonstrative Exhibit DD6-2 for 1094 South Ocean Boulevard.

17 Do you see that?

18 A. I do.

19 Q. Was one of the tasks that you were asked to place

20 a value on this property as well?

21 A. It was.

22 Q. And sir, did you, in fact, place a value on this

23 property?

24 A. I did.

25 Q. And without having to go through everything you

L.Moens - Defendants - Direct/Mr. Robert Page 6142

1 went through before -- and I see the Judge agreeing with

2 me -- the methodology that you described in how you came to

3 values for Mar-a-lago, would that be consistent, the same,

4 for 1094 South Ocean Boulevard, 124 Woodbridge and 1125

5 South Ocean Boulevard?

6 A. It is with the exception of Mar-a-lago is a

7 special entity that took a lot more effort, time and hours

8 because, the others were much easier to formulate numbers

9 with.

10 Q. Understood. But, the same Moens' formula, if you

11 will, is used for all of them, correct?

12 A. It's always the same when I make my cake.

13 Q. Okay. Drawing your attention to 2011 for 1094

14 South Ocean Boulevard. Do you have see that?

15 What was the Moens value for that year for this

16 property sir?

17 A. 9,700,000.

18 Q. What does this in this chart or -- withdrawn.

19 Was there an additional value you gave for each

20 year 2011 to 2021?

21 A. There were different values.

22 Q. When you talk about Moens value with memberships,

23 what does that mean?

24 A. I just did the same thing I did with the

25 Mar-a-lago that we went through earlier in adding that years

L.Moens - Defendants - Direct/Mr. Robert	Page 6143	L.Moens - Defendants - Direct/Mr. Robert	Page 6145
1 membership dues on the side. Not trying to put a flashlight		1 Q. The Moens' value with memberships?	
2 on it but, it does create some value in addition to the		2 A. \$13,200,000.	
3 bricks and mortar and the actual land that the bricks and		3 Q. And for 2021 Mr. Moens, the Moens' value without	
4 mortar sit on.		4 memberships?	
5 Q. That would mean if these three homes came with		5 A. 13,975,000.	
6 memberships to the club, correct?		6 Q. And Moens' value with memberships for that year?	
7 A. Yes.		7 A. \$14,325,000.	
8 Q. What was the value placed for 2011 with		8 Q. And similar to the other chart we looked at	
9 memberships?		9 before, what is the SOFC value Mr. Moens?	
10 A. 9,800,000.		10 A. Well, the Statement of Financial Condition their	
11 Q. In 2012, what was the Moens' value without a		11 numbers weren't too dissimilar.	
12 membership?		12 Q. My question is simply, Mr. Moens, what is that	
13 A. 9,875,000.		13 number evidencing here? What is it showing on the chart,	
14 Q. And what was the Moens value with the membership?		14 just so the Court understands what it is?	
15 A. 9,975,000.		15 A. It's a number based on a Statement of Financial	
16 Q. For 2013, what was the Moens' value without the		16 Condition.	
17 membership?		17 Q. This was the numbers that was on the statement of	
18 A. 9,600,000.		18 financial condition, correct?	
19 Q. And, the Moens' value with the membership for		19 A. When I saw it, yes.	
20 2013?		20 (Whereupon, the following proceedings was	
21 A. 9,675,000.		21 stenographically recorded by Lisa Casey.)	
22 Q. And for 2014, what was the Moens' value without		22	
23 the membership?		23	
24 A. 10,900,000.		24	
25 Q. And, for that same year, the Moens' value with the		25	
L.Moens - Defendants - Direct/Mr. Robert	Page 6144	L. Moens - Direct by Mr. Robert	Page 6146
1 membership?		1 Q Trying to get it so the Court understands what the	
2 A. \$11 million.		2 columns are. It's not a trick question.	
3 Q. For 2015 the Moens' value for this property		3 A Okay.	
4 without membership?		4 Q Moving to 124 Woodbridge Road. That was another	
5 A. 11,375,000.		5 property that you were asked to place a value on.	
6 Q. And the Moens' value with the membership?		6 A I did.	
7 A. 11,475,000.		7 Q And again, say same questions for here. That was	
8 Q. For 2016, the Moens' value?		8 using the same formula and methodology we spoke of earlier as to	
9 A. 11,500,000.		9 Mar-A-Lago; correct?	
10 Q. And the Moens value with memberships?		10 A Absolutely.	
11 A. 11,650,000.		11 Q So, for 2011, what was the Moens value for that piece	
12 Q. For 2017, the Moens' value without memberships?		12 of property?	
13 A. 11,750,000.		13 A \$4,825,000.	
14 Q. And the Moens' value with memberships?		14 Q And the Moens value with memberships?	
15 A. 11,950,000.		15 A 4,925,000.	
16 Q. For 2018, the Moens value without memberships?		16 Q In 2012, the Moens value without memberships?	
17 A. 11,850,000.		17 A 5,175,000.	
18 Q. And the Moens' value with memberships?		18 Q And the Moens value with memberships?	
19 A. 12,100,000.		19 A 5,275,000.	
20 Q. For 2019, the Moens' value without memberships?		20 Q 2013, the Moens value?	
21 A. Two million -- 12,100,000. Excuse.		21 A 4,950,000?	
22 Q. And the value with memberships?		22 Q And that's without memberships. And with memberships?	
23 A. 12,350,000.		23 A 5,025,000.	
24 Q. And 2020 the Moens' value without memberships?		24 Q And for 2014, the Moens value?	
25 A. 12,950,000.		25 A 5,400,000.	

<p>L. Moens - Direct by Mr. Robert Page 6147</p> <p>1 Q And the Moens value with memberships?</p> <p>2 A 5,500,000.</p> <p>3 Q And for 2015, the Moens value without memberships?</p> <p>4 A 5,675,000.</p> <p>5 Q And the Moens value with memberships for that year?</p> <p>6 A 5,775,000.</p> <p>7 Q For 2016, the Moens value without memberships?</p> <p>8 A 5,900,000.</p> <p>9 Q And the Moens value with memberships for that year?</p> <p>10 A \$6,050,000.</p> <p>11 Q For 2017, Mr. Moens, the value without memberships?</p> <p>12 A 6,100,000.</p> <p>13 Q And the value with memberships?</p> <p>14 A \$6,300,000.</p> <p>15 Q In 2018, Mr. Moens, the value without memberships, you</p> <p>16 placed?</p> <p>17 A 6,400,000.</p> <p>18 Q And the value with memberships?</p> <p>19 A 6,650,000.</p> <p>20 Q For 2019, the value you placed on the property,</p> <p>21 Mr. Moens?</p> <p>22 A 6,800,000.</p> <p>23 Q The Moens value with memberships?</p> <p>24 A 7,050,000.</p> <p>25 Q 2020, the Moens value, sir?</p>	<p>L. Moens - Direct by Mr. Robert Page 6149</p> <p>1 but do you know whose SOFC's these are?</p> <p>2 MR. ROBERT: These are from President Trump's</p> <p>3 SOFC's, and these were transposed from the appendix to</p> <p>4 Mr. Moens' report.</p> <p>5 THE COURT: And who owns these properties?</p> <p>6 MR. ROBERT: These are properties that are owned</p> <p>7 by President Trump, and/or the Trust. Mar-A-Lago is a big</p> <p>8 house, and then there are three other houses.</p> <p>9 THE COURT: These are the --</p> <p>10 MR. ROBERT: Those are the three -- We were</p> <p>11 actually trying to find -- remember Don, Jr. showed you</p> <p>12 that small house in the corner?</p> <p>13 THE COURT: I understand.</p> <p>14 MR. ROBERT: Sorry, your Honor.</p> <p>15 THE WITNESS: I'm terrible with acronyms.</p> <p>16 MR. ROBERT: As a matter of fact, your Honor</p> <p>17 makes a good point. Let me digress for just one second.</p> <p>18 And they didn't buy it 'til 2017, so we don't</p> <p>19 have to go back to 2011. It will be less numbers.</p> <p>20 But, if we go back to Defendant's Exhibit 1019 in</p> <p>21 evidence, please, and if we go to page 23.</p> <p>22 He will just see it on the screen, Officer.</p> <p>23 That's fine.</p> <p>24 (Whereupon, a document was displayed and handed</p> <p>25 to the witness.)</p>
<p>L. Moens - Direct by Mr. Robert Page 6148</p> <p>1 A 7,100,000.</p> <p>2 Q And the Moens value with memberships?</p> <p>3 A \$7,350,000.</p> <p>4 Q And in 2021, sir, the Moens value?</p> <p>5 A \$7,950,000.</p> <p>6 Q And the Moens value with memberships?</p> <p>7 A \$8,300,000.</p> <p>8 Q And was there an additional property you were asked to</p> <p>9 place a value on, sir?</p> <p>10 A Yes.</p> <p>11 Q And was that 1125 South Ocean Boulevard?</p> <p>12 THE COURT: Before you leave, who or what SOFC's</p> <p>13 were these from? The owners? I don't understand.</p> <p>14 MR. ROBERT: President's Trump's Statement of</p> <p>15 Financial Conditional.</p> <p>16 MR. WALLACE: I think it's for the witness, the</p> <p>17 question.</p> <p>18 MR. ROBERT: I thought you were asking me.</p> <p>19 THE COURT: I'm asking whoever knows.</p> <p>20 MR. ROBERT: Oh. Okay.</p> <p>21 THE WITNESS: I got confused, too.</p> <p>22 THE COURT: You got confused, too. All right.</p> <p>23 We are both confused. So, let's try to clear the</p> <p>24 confusion.</p> <p>25 Mr. Robert, I gather you did not create these,</p>	<p>L. Moens - Direct by Mr. Robert Page 6150</p> <p>1 Q Do you see this in front of you, Mr. Moens?</p> <p>2 A I do.</p> <p>3 Q And the property that's all the way to the right here,</p> <p>4 which property is that?</p> <p>5 A That's the 1125 South Ocean Boulevard.</p> <p>6 MR. ROBERT: So, your Honor, these are all the</p> <p>7 adjoining houses on the side. I apologize for the</p> <p>8 confusion.</p> <p>9 THE COURT: That's okay. I noticed one of the</p> <p>10 charts said that there was a listing price for one of the</p> <p>11 properties. I think just one square.</p> <p>12 MR. ROBERT: On which chart, your Honor? I'm</p> <p>13 sorry.</p> <p>14 THE COURT: Well, it's the top left box of one of</p> <p>15 the reports.</p> <p>16 THE WITNESS: It had been listed for sale.</p> <p>17 THE COURT: And do you know why it was listed for</p> <p>18 sale?</p> <p>19 THE WITNESS: I believe it was owned by President</p> <p>20 Trump's sister, and he ended up buying it from her before</p> <p>21 someone got it on the open market.</p> <p>22 THE COURT: All right. Thanks.</p> <p>23 THE WITNESS: It's confusing.</p> <p>24 Q And Mr. Moens, what was the address, again, of this</p> <p>25 last property here?</p>

<p>L. Moens - Direct by Mr. Robert Page 6151</p> <p>1 A 1125 South Ocean Boulevard.</p> <p>2 MR. ROBERT: Okay. You can take that down and</p> <p>3 put back up DD6-4.</p> <p>4 (Whereupon, a document was displayed and handed</p> <p>5 to the witness.)</p> <p>6 Q And this is, in fact, the property that we were just</p> <p>7 speaking of, and I just showed you in the photographs in</p> <p>8 Defendant's Exhibit 1019-23; correct?</p> <p>9 A That would be correct.</p> <p>10 Q Okay. And the same methods for value you used for</p> <p>11 this property as you did for all the others; correct?</p> <p>12 A Yes.</p> <p>13 Q Okay. And for 2017 --</p> <p>14 MR. ROBERT: Your Honor was ahead of me. Listed</p> <p>15 for sale. Thank you, your Honor.</p> <p>16 Q And you explained what that meant. What was the Moens</p> <p>17 value that you put on that property, sir?</p> <p>18 A In 2017?</p> <p>19 Q Yes, sir?</p> <p>20 A 19,250,000.</p> <p>21 Q And that was without membership; correct?</p> <p>22 A I'm sorry.</p> <p>23 Q That was without a membership correct?</p> <p>24 A That was without a membership.</p> <p>25 Q And what was the value with membership for 2017, sir?</p>	<p>L. Moens - Direct by Mr. Robert Page 6153</p> <p>1 proceedings.)</p> <p>2 MR. ROBERT: Thank you, your Honor.</p> <p>3 THE COURT: Okay.</p> <p>4 Q Mr. Moens, you spoke a little while ago about the</p> <p>5 collection of parcels that you put together that were south of</p> <p>6 where Mar-A-Lago is. Do you remember that?</p> <p>7 A I remember speaking about that with you.</p> <p>8 Q And that was south of the estate sections; correct?</p> <p>9 A It's two blocks south of Mar-A-Lago.</p> <p>10 Q And was that a piece -- how many years did it take you</p> <p>11 to put those pieces together?</p> <p>12 A It took little over nine years.</p> <p>13 Q And what, again, was the price for just the land?</p> <p>14 A In excess of \$600 million.</p> <p>15 Q Okay.</p> <p>16 MR. ROBERT: I'm going to put, on the board, a</p> <p>17 demonstrative. What is the number of it? DD7?</p> <p>18 (Whereupon, a document was displayed and handed</p> <p>19 to the witness.)</p> <p>20 Q Do you see this, Mr. Moens?</p> <p>21 A I do.</p> <p>22 Q What do you recognize this to be?</p> <p>23 A Bunch of land. Bunch of houses.</p> <p>24 Q Okay. Fair point. Does this map demonstrate the</p> <p>25 parcel that you were just speaking of here, of those parcels you</p>
<p>L. Moens - Direct by Mr. Robert Page 6152</p> <p>1 A Slightly higher, at 19,450,000.</p> <p>2 Q And in 2018, what was the Moens value of 1125 South</p> <p>3 Ocean Boulevard?</p> <p>4 A 24,500,000.</p> <p>5 Q And the Moens value with membership?</p> <p>6 A 24,750,000.</p> <p>7 Q And in 2019, the Moens value without membership?</p> <p>8 A \$29,300,000.</p> <p>9 Q And the Moens value with membership, for 2019?</p> <p>10 A 20 -- 29,550,000.</p> <p>11 Q And in 2020, Mr. Moens, what was your value for the</p> <p>12 property, without memberships?</p> <p>13 A \$35 million.</p> <p>14 Q And the value with memberships?</p> <p>15 A 35,250,000.</p> <p>16 Q And in 2021, Mr. Moens, the value that you placed on</p> <p>17 that property?</p> <p>18 A 42,500,000.</p> <p>19 Q And the value with memberships for that year?</p> <p>20 A 42,850,000.</p> <p>21 I was low. I got an offer. Much higher.</p> <p>22 MR. ROBERT: Your Honor, if I can have a moment</p> <p>23 to speak with my colleagues, please?</p> <p>24 THE COURT: Sure.</p> <p>25 (Whereupon, there was a pause in the</p>	<p>L. Moens - Direct by Mr. Robert Page 6154</p> <p>1 put together for that person, south of Mar-A-Lago?</p> <p>2 A Yes.</p> <p>3 Q Is that what's reflected in just the red, or the whole</p> <p>4 thing in the picture?</p> <p>5 A Well, it's not the whole thing in the picture. It's</p> <p>6 most of the picture.</p> <p>7 Q Okay. And is that a parcel that goes from</p> <p>8 Intracoastal to ocean?</p> <p>9 A In the assemblage, there were properties that were</p> <p>10 direct ocean. There were properties that were direct lakefront.</p> <p>11 There was one property, not pictured here to the south -- I</p> <p>12 don't know if you can move the picture. It's further down,</p> <p>13 toward the bottom, that had -- there you go.</p> <p>14 So, if you look at the word boulevard, or the</p> <p>15 abbreviation of the word boulevard, below that there's an estate</p> <p>16 with a tile roofed, and across from that there's a vacant parcel</p> <p>17 on the Intracoastal. That house is still there, on that, and</p> <p>18 that vacant parcel looks like the picture. That was owned by</p> <p>19 one person, so it was two actual sales in one. So, it was one</p> <p>20 family, two sales. So, that was the only one that you could say</p> <p>21 could have been called ocean to lake, but it was two separate</p> <p>22 parcel numbers. So, it was really two separate properties, but</p> <p>23 they were contiguous. If I'm answering that accurately.</p> <p>24 Q In the estate section of Palm Beach, where Mar-A-Lago</p> <p>25 is located, how many properties are there that go from -- you</p>

<p>L. Moens - Direct by Mr. Robert Page 6155</p> <p>1 call it lake?</p> <p>2 A Well, the Intracoastal waterway is also known,</p> <p>3 synonymously, as the lake.</p> <p>4 Q So in the estate section of Palm Beach, how many</p> <p>5 properties are there that go from lake to ocean?</p> <p>6 A Two.</p> <p>7 Q And what are those two properties?</p> <p>8 A Mar-A-Lago, and one that's owned by a gentlemen by the</p> <p>9 name of William Koch.</p> <p>10 Q And how big is Mr. Koch's property, if you know?</p> <p>11 A It's probably four plus, or minus acres.</p> <p>12 Q So the only two properties in the estate section of</p> <p>13 Palm Beach that go from lake to ocean are Mr. Koch's 14 acres</p> <p>14 and Mar-A-Lago's 17-plus acres. Is that fair?</p> <p>15 A That would be correct.</p> <p>16 Q Finally, Mr. Moens, throughout the course of this</p> <p>17 case, at your deposition, you had -- you were quoted as having</p> <p>18 said you were a dreamer. Do you remember that?</p> <p>19 A You may say I'm a dreamer, but I'm not the only one.</p> <p>20 No, you have -- it's true. I mean, you have the likes</p> <p>21 of great Americans like Thomas Jefferson, or John Fitzgerald</p> <p>22 Kennedy, or Martin Luther King, or any of these people. Donald</p> <p>23 J. Trump. He is a dreamer, for sure. If you have a dreamer,</p> <p>24 and a great American, I don't think that's a bad thing. You can</p> <p>25 call me a dreamer, any time.</p>	<p>L. Moens - Cross by Mr. Wallace Page 6157</p> <p>1 First, I believe that at your deposition you testified</p> <p>2 that someone who lacked your specific expertise would not be</p> <p>3 able to reproduce your evaluation of these properties. Is that</p> <p>4 fair?</p> <p>5 A I think it's fair. I don't think the numbers would</p> <p>6 ever be the same.</p> <p>7 Q And you doubted that anyone else had the experience</p> <p>8 that you have in the industry to be able to come up with these</p> <p>9 valuations; is that fair?</p> <p>10 A They didn't sell as much real estate as I have.</p> <p>11 Q Okay. And I believe you said that in order to</p> <p>12 understand your valuation methodology, someone would actually</p> <p>13 have to go inside your head; is that correct?</p> <p>14 A It would help them to get to the number, I'm sure.</p> <p>15 Q But it would be difficult for anyone else to recreate</p> <p>16 the analysis that you performed. It's sui generis.</p> <p>17 A They can do the same technological things that I did,</p> <p>18 or take the same steps. It's just rare, if you have three MAI</p> <p>19 appraisers, let's say, and you hire them to analyze the value of</p> <p>20 a certain property, with the same address, usually you are going</p> <p>21 to get three different numbers. Even though they have the same</p> <p>22 qualifications and they have the same data, they formulate some</p> <p>23 of their own opinions which don't always correlate to the same</p> <p>24 end number.</p> <p>25 Q But you are not running a process that's re-creatable.</p>
<p>L. Moens - Cross by Mr. Wallace Page 6156</p> <p>1 MR. ROBERT: I have no further questions for this</p> <p>2 witness. Thank you.</p> <p>3 MR. WALLACE: Just want to note, on the record,</p> <p>4 an objection on the last demonstrative. That was actually</p> <p>5 one of the requests. That was not disclosed last night. I</p> <p>6 understand the defendants just posted that at the lunch</p> <p>7 period. I will ask that the defendants honor our</p> <p>8 commitment to exchange demonstratives the night before they</p> <p>9 come into testimony, before they come about with a witness.</p> <p>10 MR. KISE: That may have been inadvertent.</p> <p>11 That's what I was trying to discover. That's what took us</p> <p>12 all the time -- we have honored the commitment, and I</p> <p>13 apologize, your Honor. That was the confusion at the</p> <p>14 momentary pause. But, I do apologize for that.</p> <p>15 THE COURT: Okay. Cross examination?</p> <p>16 MR. WALLACE: I have a couple of things, your</p> <p>17 Honor, so just give me a moment.</p> <p>18 (Whereupon, there was a pause in the</p> <p>19 proceedings.)</p> <p>20 CROSS EXAMINATION</p> <p>21 BY MR. WALLACE:</p> <p>22 Q Good afternoon, Mr. Moens. My name is Kevin Wallace.</p> <p>23 I'm an attorney with the Attorney General's office. I would</p> <p>24 like to go over a few more things that you talked about at your</p> <p>25 deposition.</p>	<p>L. Moens - Cross by Mr. Wallace Page 6158</p> <p>1 You are not doing a discounted cash flow analysis, or some other</p> <p>2 kind of equation, to come up with these numbers. Is that fair?</p> <p>3 A That's fair.</p> <p>4 Q Okay. And I think we may be -- Mr. Robert, to coin a</p> <p>5 phrase, talked about the Moens formula. You didn't use,</p> <p>6 actually, any specific equations in coming up with these</p> <p>7 numbers; is that fair?</p> <p>8 A That's fair.</p> <p>9 Q Mr. Moens, you talked about some of the facts that you</p> <p>10 looked at in the course of preparing your opinion. Some of the</p> <p>11 data might be from the Appraiser's Office. It could come from</p> <p>12 other sources. I think you mentioned your own collection of</p> <p>13 data that you have gathered over the years. Is that a fair</p> <p>14 summary of some of the areas that you looked at?</p> <p>15 A Yes.</p> <p>16 Q Okay. And do you agree that easements and deed</p> <p>17 restrictions are relevant to a property's value? Is that</p> <p>18 correct?</p> <p>19 A In most cases, yes.</p> <p>20 Q And in your process, you would consider any easements</p> <p>21 on a piece of property to come up with a valuation; is that</p> <p>22 correct?</p> <p>23 A I always do.</p> <p>24 Q And you would consider any deed restrictions on a</p> <p>25 piece of property in coming up with a valuation; is that</p>

<p>L. Moens - Cross by Mr. Wallace Page 6159</p> <p>1 correct?</p> <p>2 A I would.</p> <p>3 Q And easements that negatively impact a property would</p> <p>4 take away from its value; is that correct?</p> <p>5 A If they are negative, they will take away. If they</p> <p>6 are positive, they would add to.</p> <p>7 MR. WALLACE: If we could put back up on the</p> <p>8 screen Defendant's Exhibit 360.</p> <p>9 (Whereupon, a document was displayed and handed</p> <p>10 to the witness.)</p> <p>11 Q This is the deed of conservation and preservation</p> <p>12 easement from Donald J. Trump to the National Trust for Historic</p> <p>13 Preservation of the United States.</p> <p>14 Mr. Moens, did you review this document in preparing</p> <p>15 your opinion?</p> <p>16 A I did.</p> <p>17 MR. WALLACE: If we could turn to page nine of</p> <p>18 this document.</p> <p>19 Q If we look at the second sentence, under Grantor's</p> <p>20 Covenants, item two is covenants to maintain. Item 2.1 says, In</p> <p>21 general -- and there's a small A. I'm going focus on the second</p> <p>22 sentence here, which states, "Grantor's obligation to maintain</p> <p>23 shall require replacement, rebuilding, repair, and</p> <p>24 reconstruction by grantor, whenever reasonably necessary to</p> <p>25 preserve the critical features in substantially the form and</p>	<p>L. Moens - Cross by Mr. Wallace Page 6161</p> <p>1 A '95 or -6, I'm guessing.</p> <p>2 MR. WALLACE: If we could put, just, back up on</p> <p>3 the screen for a moment, DD6.</p> <p>4 (Whereupon, a document was displayed.)</p> <p>5 Q You talked a little bit with the judge and with</p> <p>6 Mr. Robert about the SOFC values. Did you actually review</p> <p>7 Mr. Trump's Statements of Financial Condition in preparing this</p> <p>8 report?</p> <p>9 A I saw the statements of financial condition after I</p> <p>10 prepared my valuations.</p> <p>11 Q So you saw, for each year, the actual document that</p> <p>12 contains this Statement of Financial Condition; is that correct?</p> <p>13 A It's -- you are talking about the numbers on the left?</p> <p>14 Q I'm talking about the actually document. Are you</p> <p>15 familiar with it?</p> <p>16 A If you show it to me, I'll confirm that.</p> <p>17 (Whereupon, there was a pause in the</p> <p>18 proceedings.)</p> <p>19 MR. WALLACE: Why don't we pull up Plaintiff's</p> <p>20 Exhibit 730.</p> <p>21 (Whereupon, a document was displayed and handed</p> <p>22 to the witness.)</p> <p>23 MR. WALLACE: I don't know if he needs to flip</p> <p>24 through it.</p> <p>25 Q Do you recognize the cover, up on the screen?</p>
<p>L. Moens - Cross by Mr. Wallace Page 6160</p> <p>1 condition, with substantially similar materials, and as</p> <p>2 appropriate, with substantially similar plantings, vegetation,</p> <p>3 and natural screening, to that existing on the date -- on the</p> <p>4 effective date of this easement."</p> <p>5 Mr. Moens, did you undertake any analysis to determine</p> <p>6 the cost of maintaining the critical features of Mar-A-Lago,</p> <p>7 consistent with this deed of conservation easement?</p> <p>8 A Yes. I mean, I know it's very expensive to maintain</p> <p>9 it. It would be smart to make it a private club and charge the</p> <p>10 members, and use that money to maintain it. I'm glad it's a</p> <p>11 club being maintained properly.</p> <p>12 Q And you talked about some of the other facts that are</p> <p>13 in the Appraiser's Office. Mar-A-Lago is currently being taxed</p> <p>14 as a club; correct?</p> <p>15 A To my knowledge, the Tax Appraiser is taxing it as a</p> <p>16 club.</p> <p>17 Q And it's currently operating as a club?</p> <p>18 A Well, I understand it's being operated as a club, and</p> <p>19 as a personal residence for the President.</p> <p>20 Q Are you a member of the club?</p> <p>21 A I am.</p> <p>22 Q You are still able to use the club, consistent with</p> <p>23 your standard membership that you have, and had, since you --</p> <p>24 A I don't go too often. I don't like clubs.</p> <p>25 Q When did you join?</p>	<p>L. Moens - Cross by Mr. Wallace Page 6162</p> <p>1 A I actually don't recognize the cover on the screen.</p> <p>2 Q So, do you know how the values contained in your chart</p> <p>3 made it into your report?</p> <p>4 (Whereupon, a document was handed to the</p> <p>5 witness.)</p> <p>6 A Well, they were provided to my office.</p> <p>7 Q Okay. And who, in your office, put them into the</p> <p>8 chart?</p> <p>9 A Christine Curry, my office manager.</p> <p>10 Q Okay. So, you didn't look at the, I'll represent to</p> <p>11 you, a bunch of pages talking about how the property was valued.</p> <p>12 You didn't look at this in preparing your report?</p> <p>13 A I didn't think it was relevant.</p> <p>14 Q And you did not review any supporting spreadsheets</p> <p>15 that showed the calculations that went into Mr. Trump's</p> <p>16 Statement of Financial Condition; is that fair?</p> <p>17 A That's fair.</p> <p>18 Q I believe you were shown the supporting data</p> <p>19 spreadsheet at your deposition, though. Does that sound</p> <p>20 familiar to you?</p> <p>21 A It does. They were very thorough in providing just</p> <p>22 about everything for me.</p> <p>23 MR. WALLACE: Why don't we pull up, on the</p> <p>24 screen, a copy of Plaintiff's Exhibit 719.</p> <p>25 (Whereupon, a document was displayed.)</p>

<p>L. Moens - Cross by Mr. Wallace Page 6163</p> <p>1 Q This is the spreadsheet, that I'll just represent to</p> <p>2 you -- it's already in evidence.</p> <p>3 MR. WALLACE: We don't need a hard copy.</p> <p>4 Q This is already in evidence. This is the supporting</p> <p>5 data spreadsheet that feeds into the Statement of Financial</p> <p>6 Condition for Mr. Trump. This is the report for 2014. I</p> <p>7 believe you were shown this at one of your depositions.</p> <p>8 MR. WALLACE: If we could go to the row for 846,</p> <p>9 please?</p> <p>10 Q If you look at row 846 it says, Two homes in Palm</p> <p>11 Beach, and there's prices listed underneath, 1094 S. Ocean</p> <p>12 Boulevard, and 124 Woodbridge Drive. Those are two of the</p> <p>13 properties you valued; correct?</p> <p>14 A That is correct.</p> <p>15 Q If you look at the notation above those two properties</p> <p>16 it says, "Per conversation with Paul Rampell, 9/25/08, and email</p> <p>17 8/14/2013."</p> <p>18 Can I ask, do you know who Paul Rampell is?</p> <p>19 A Very well. Paul has been an acquaintance, I would</p> <p>20 like to call him a friend, for probably 40-plus years.</p> <p>21 Q How do you know Mr. Rampell?</p> <p>22 MR. WALLACE: Let me withdraw the question.</p> <p>23 Q What does Mr. Rampell do, for his profession?</p> <p>24 A I think he is still a liar. I mean, lawyer.</p> <p>25 THE WITNESS: Sorry, guys. I had to fit it in</p>	<p>L. Moens - Cross by Mr. Wallace Page 6165</p> <p>1 that if he said he spoke to you, you agreed that it probably</p> <p>2 happened. Does that sound fair?</p> <p>3 A That is fair.</p> <p>4 Q Okay. And the next property, for 124 Woodbridge, Palm</p> <p>5 Beach, states the value from the PBC Appraiser at \$2,323,412.</p> <p>6 He then writes "Again, this is the low end of the range. Moens</p> <p>7 values it at about \$2,750,000. Since the house itself is</p> <p>8 mediocre, the land is where the value lies. I tend to think</p> <p>9 Moens is accurate in his estimation."</p> <p>10 First, let me ask, is it in fact the case that the</p> <p>11 house itself at 124 Woodbridge is mediocre, and that the land is</p> <p>12 where the value lies?</p> <p>13 A At that time. Since then, I believe there's been</p> <p>14 renovations to make it less mediocre.</p> <p>15 MR. WALLACE: If we could put this email up, side</p> <p>16 by side with Defendant's Demonstrative Exhibit 6, page 2.</p> <p>17 (Whereupon, a document was displayed.)</p> <p>18 Q So, this is the valuation of South Ocean Boulevard.</p> <p>19 I'll just direct your attention to the 2013 valuation. The</p> <p>20 email states that you informed Mr. Rampell that the value was</p> <p>21 \$7,500,000, but your valuation in the chart is \$9,600,000. Is</p> <p>22 that correct?</p> <p>23 A That's what it says.</p> <p>24 Q Okay. And if we flip to the next page of the</p> <p>25 demonstrative DDX-3, for 124 Woodbridge Road, the email values</p>
<p>L. Moens - Cross by Mr. Wallace Page 6164</p> <p>1 there.</p> <p>2 Q And does he work in the same field that you do,</p> <p>3 generally?</p> <p>4 A Pretty much so, yes.</p> <p>5 THE WITNESS: Sorry. I apologize. It was really</p> <p>6 low.</p> <p>7 MR. WALLACE: If we could pull up Plaintiff's</p> <p>8 Exhibit 2310.</p> <p>9 (Whereupon, a document was displayed and handed</p> <p>10 to the witness.)</p> <p>11 Q This is an email from Paul Rampell to Jeff McConney at</p> <p>12 the Trump Organization with the re: line, Houses. This is the</p> <p>13 email that's referencing the supporting data. If I can direct</p> <p>14 your attention to point one, at the top, it says, 1094 South</p> <p>15 Ocean Boulevard, Palm Beach, and the text under it reads, "The</p> <p>16 Palm Beach County Appraiser valued this residence at \$7,140,343</p> <p>17 as of January 1, 2012. I suggest that this is the low end of</p> <p>18 the range of its current value. In speaking with Lawrence</p> <p>19 Moens, the most successful broker in Palm Beach, he would value</p> <p>20 it at \$7,000,500 [sic]. I suspect that this -- that this may</p> <p>21 still be low. My guess is, on the high end, is 8 or even</p> <p>22 9 million, given its proximity to the Mar-A-Lago club, the Trump</p> <p>23 pedigree, and the club privileges the owner would enjoy."</p> <p>24 I believe at your deposition you said you had no</p> <p>25 recollection of having such a conversation with Mr. Rampell, but</p>	<p>L. Moens - Cross by Mr. Wallace Page 6166</p> <p>1 the property in 2013. It says that you advised a value of</p> <p>2 \$2,750,000, and that matches the reported value in the SOFC, but</p> <p>3 your value now is \$4,950,000. Do you see that?</p> <p>4 A I do, but that's easily explained.</p> <p>5 Q That's okay. My question is actually, did you have a</p> <p>6 more detailed understanding of the Palm Beach market as it stood</p> <p>7 in 2013, at the time of the email, August 14, 2013, or August --</p> <p>8 August 2013 or today, a decade later?</p> <p>9 A The email left two important things out.</p> <p>10 Q That's not the question. My question is simply, was</p> <p>11 your knowledge of the market, as it existed in 2013, better in</p> <p>12 August 2013, or ten years later, in 2023?</p> <p>13 A I would say it's the same.</p> <p>14 Q So there's been no loss of knowledge over the ten</p> <p>15 years?</p> <p>16 A I hope not. I think I still got my marbles.</p> <p>17 (Continued on the next page.)</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

<p>L.Moens - Defendants - Cross/Mr.Wallace Page 6167</p> <p>1 Q. Did anyone ever ask you -- let me go back to one</p> <p>2 other point. I believe you said that Mar-a-lago, unlike</p> <p>3 some of these other properties, was a special entity that</p> <p>4 took much more time and effort to value.</p> <p>5 Is that a fair summary about what you said about</p> <p>6 Mar-a-lago?</p> <p>7 I'm happy to restate the question, Mr. Moens. I</p> <p>8 believe you said that Mar-a-lago was a special entity, more</p> <p>9 so than the other properties, and it took much more time and</p> <p>10 effort to value that property; is that fair?</p> <p>11 A. With the elements of carved stone and hand laid</p> <p>12 pieces and all of the things that I had mentioned earlier,</p> <p>13 it took a little bit more effort.</p> <p>14 Q. Okay. And, at no time, from 2011 until 2021, did</p> <p>15 anyone, from the Trump Organization, ask you to help them in</p> <p>16 valuing Mar-a-lago for the purposes of Mr. Trump's Statement</p> <p>17 of Financial Condition; is that correct?</p> <p>18 A. Wait. Could you repeat the question.</p> <p>19 Q. Sure.</p> <p>20 MR. WALLACE: Could we get a read back</p> <p>21 please?</p> <p>22 THE COURT: Read it back, please.</p> <p>23 (The testimony as requested was read by the</p> <p>24 reporter.)</p> <p>25 A. That would be correct.</p>	<p>L.Moens - Defendants - Cross/Mr.Wallace Page 6169</p> <p>1 MR. WALLACE: Yes. We just want to show</p> <p>2 that they received this information.</p> <p>3 MR. ROBERT: So then the answers that the</p> <p>4 witness -- fair enough. I will deal with it on</p> <p>5 redirect.</p> <p>6 THE COURT: So, it is to a defendant.</p> <p>7 MR. KISE: The notice also extends to then</p> <p>8 Mr. Rampell's communication and his estimate as well.</p> <p>9 I mean, we're all -- I just want to make sure we're</p> <p>10 clear if we're talking about notices, it's notice of</p> <p>11 all numbers in there, not just the notice of what</p> <p>12 Mr. Moens, allegedly, provided.</p> <p>13 MR. WALLACE: The entire content of the</p> <p>14 e-mail has been -- the Trump Organization has</p> <p>15 notification of everything that's in the e-mail.</p> <p>16 MR. KISE: I want to be sure. That's not</p> <p>17 always the case with the Government. Okay. That's</p> <p>18 fine.</p> <p>19 THE COURT: Okay. So notice of the entire</p> <p>20 e-mail chain.</p> <p>21 THE WITNESS: Who's Jeff McConney.</p> <p>22 MR. WALLACE: We can take these down.</p> <p>23 Q. Mr. Moens, just one more topic. If we could put</p> <p>24 back up Plaintiff's Exhibit 719 and go to row 207.</p> <p>25 I think you said in your evaluation that you were</p>
<p>L.Moens - Defendants - Cross/Mr.Wallace Page 6168</p> <p>1 Q. Mr. Moens, if we go back --</p> <p>2 MR. WALLACE: Your Honor, I need to move</p> <p>3 Plaintiff's 2310 in Evidence.</p> <p>4 MR. ROBERT: It's an e-mail that's not to or</p> <p>5 from witness. It is from Paul Rampell to Jeff</p> <p>6 McConney.</p> <p>7 MR. WALLACE: It's to Jeff McConney. It's</p> <p>8 authenticated because it's from the defendants. It's</p> <p>9 notice to them.</p> <p>10 MR. ROBERT: I'm sorry. But it can't be</p> <p>11 admitted for the truth of the matter asserted. This is</p> <p>12 a conversation from Paul Rampell saying something to</p> <p>13 Jeff McConney. That's clearly hearsay.</p> <p>14 MR. WALLACE: I can clear it up for everyone</p> <p>15 if you want to ask me to ask it.</p> <p>16 MR. ROBERT: Just a moment.</p> <p>17 MR. WALLACE: Your Honor, it's notice to the</p> <p>18 Trump Organization that they had this report from</p> <p>19 Mr. Rampell. Whether or not it's for the truth of the</p> <p>20 matter asserted, it should certainly come in.</p> <p>21 MR. ROBERT: Notice of what to who? This is</p> <p>22 an e-mail from Paul Rampell to Jeff McConney making</p> <p>23 certain -- you want to make it that there is a e-mail</p> <p>24 from Rampell to McConney but, not for the truth of the</p> <p>25 matter asserted.</p>	<p>L.Moens - Defendants - Cross/Mr.Wallace Page 6170</p> <p>1 adding back in the value of the memberships at Mar-a-lago</p> <p>2 because, that's something that the future owner -- a future</p> <p>3 owner could monetize, that, they could sell the memberships</p> <p>4 and get the benefit of that. Is that a fair summary of how</p> <p>5 you added back in that value.</p> <p>6 A. Yes.</p> <p>7 THE COURT: Five minute warning.</p> <p>8 MR. WALLACE: Yes.</p> <p>9 Q. If we take a look at row 240, here, you will see</p> <p>10 the Trump Organization -- and this is their valuation of</p> <p>11 Mar-a-lago -- has a line that says, "less member deposits"</p> <p>12 where they deduct a little over \$37 million from the overall</p> <p>13 value of the property because, for it to be sold to a</p> <p>14 private individual, the members would have to get their</p> <p>15 money back.</p> <p>16 That's not consistent with your evaluation</p> <p>17 technique, is that fair?</p> <p>18 A. In that, some get paid back and some are</p> <p>19 nonrefundable is what I understand.</p> <p>20 Q. But their deducting the value of memberships,</p> <p>21 whereas you added it back in.</p> <p>22 A. I don't know what their methodology is in those</p> <p>23 numbers.</p> <p>24 MR. WALLACE: Nothing further, your Honor.</p> <p>25 THE COURT: Any redirect?</p>

L.Moens - Defendants - Redirect/Mr.Robert Page 6171

1 MR. ROBERT: Can I do it from here, your
2 Honor.
3 THE COURT: Sure.
4 REDIRECT EXAMINATION
5 BY MR. ROBERT:
6 Q. A few minutes ago, you were asked a question, by
7 Mr. Wallace, about the difference in numbers from the
8 e-mail, Plaintiff's Exhibit 2310 and your chart. And your
9 answer was, it's easily explained. But, Mr. Wallace
10 wouldn't let you explain it.
11 What's your explanation Mr. Moens?
12 A. Well, first, can someone tell me who Jeff somebody
13 is?
14 No, I don't know who he sent it to. But, Paul is
15 a credible guy. And I think that we had the discussion,
16 though, when the Attorney General's Office clearly asked me
17 if I had a conversation that I could recall, ten years
18 earlier, with Paul Rampell, I couldn't recall it. I still,
19 to this day, can't recall it.
20 But I will say that it, probably, happened
21 because, I find Paul to be an honest credible person. Even
22 though he's a lawyer -- sorry. Second one.
23 Paul would have given him whatever he did in the
24 e-mail but, it didn't include my range. I only give two
25 numbers. I don't give one.

L.Moens - Defendants - Redirect/Mr.Robert Page 6172

1 If he took my loan number at two seven fifty to
2 five million or on the other property five million to seven
3 fifty and didn't put the higher number in -- I always give a
4 range. So he didn't give a range when he sent that e-mail
5 to whoever Jeff is.
6 MR. ROBERT: Thank you. I have no further
7 questions your Honor.
8 THE COURT: Any recross?
9 MR. WALLACE: No.
10 THE COURT: If there are no further
11 questions, the witness is excused. Thank you.
12 THE WITNESS: Thank you, Judge.
13 (Witness excused.)
14 THE COURT: Ten o'clock on Thursday.
15 Anything before then or --
16 MR. KISE: The only question I have as
17 regarding the accounting of rebuttal witness, do they
18 know which one it's going to be because, that's a huge
19 difference whether it is Mr. Lewis or --
20 MR. WALLACE: We only have one accounting
21 expert, your Honor. That's professor Lewis. I thought
22 that was clear.
23 MR. KISE: I won't take a shot at him. It
24 is Professor Lewis.
25 MR. WALLACE: It is Professor Lewis.

L.Moens - Defendants - Redirect/Mr.Robert Page 6173

1 MR. KISE: Okay. Thank you.
2 MR. ROBERT: Your Honor, can we have a front
3 bar with the Government for a second.
4 THE COURT: Sure.
5 (Discussion held at the bench, off the
6 record.)
7 (The discussion off the record concluded, and
8 the following occurred in open court:)
9 (The trial was adjourned to December 7, 2023,
10 at 10:00 p.m.)
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PEOPLE OF THE STATE OF NEW YORK v.
DONALD J. TRUMPFREDRICK CHIN, JOHN SHUBIN & LAWRENCE MOENS
December 5, 2023

	\$720 (1) 6124:21	6081:23	active (1) 6044:3	adversely (1) 6068:3
\$	\$725 (1) 6123:16	Absolutely (10) 6049:21;6051:12; 6054:8;6108:4;6113:9; 6132:7,8;6133:4; 6137:18;6146:10	actively (1) 6137:3	advertising (1) 6091:9
\$1,215,000,000 (1) 6126:9	\$735 (2) 6088:9;6124:19	6137:18;6146:10	activities (1) 6066:25	advice (2) 6064:9;6065:12
\$1,395 (1) 6086:14	\$760 (1) 6125:1	Academy (1) 6134:23	activity (1) 6060:18	advise (1) 6137:9
\$1,595 (1) 6086:11	\$790 (1) 6125:5	accept (1) 6104:24	acts (1) 6067:5	advised (2) 6071:17;6166:1
\$11 (1) 6144:2	\$8,300,000 (1) 6148:7	acceptable (4) 6033:23;6073:1; 6074:11;6105:19	actual (13) 6032:17,22;6033:6; 6035:24;6060:18; 6061:12;6110:16; 6114:22;6115:22; 6130:5;6143:3; 6154:19;6161:11	advises (1) 6044:23
\$13,200,000 (1) 6145:2	\$825 (1) 6125:10	access (1) 6111:13	6083:14;6093:15; 6110:11;6111:23; 6119:4;6136:15,16; 6149:11;6156:4; 6157:12;6158:6; 6161:6,14;6162:1; 6166:5	advising (1) 6043:7
\$14,325,000 (1) 6145:7	\$835 (1) 6125:3	accommodate (1) 6071:22	actually (15) 6083:14;6093:15; 6110:11;6111:23; 6119:4;6136:15,16; 6149:11;6156:4; 6157:12;6158:6; 6161:6,14;6162:1; 6166:5	affect (1) 6068:3
\$1400 (1) 6140:7	\$865 (1) 6125:15	accompanied (2) 6057:2;6059:19	add (3) 6103:20;6116:5; 6159:6	affidavits (1) 6128:17
\$2,323,412 (1) 6165:5	\$890 (1) 6125:7	companies (1) 6058:14	added (4) 6111:6,25;6170:5,21	affirm (2) 6042:13;6089:22
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DONALD J. TRUMP ET AL.

PROFESSOR ALI BARTOV
December 7, 2023

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<p>1 SUPREME COURT OF THE STATE OF NEW YORK 2 COUNTY OF NEW YORK - CIVIL TERM - PART 37 3 PEOPLE OF THE STATE OF NEW YORK, BY LETITIA 4 JAMES, ATTORNEY GENERAL OF THE STATE OF 5 NEW YORK, 6 Plaintiff, Index No. 452564/2022 7 -against- DONALD J. TRUMP; DONALD TRUMP JR.; ERIC 8 TRUMP; IVANKA TRUMP; ALLEN WEISSELBERG; 9 JEFFREY McCONNEY; THE DONALD J. TRUMP 10 REVOCABLE TRUST; THE TRUMP ORGANIZATION, 11 INC.; TRUMP ORGANIZATION LLC; DJT HOLDINGS 12 MANAGING MEMBER; TRUMP ENDEAVOR 12, LLC; 13 401 NORTH WABASH VENTURE, LLC; TRUMP OLD 14 POST OFFICE, LLC; 40 WALL STREET, LLC; and 15 seven SPRINGS, LLC. 16 Defendants. 17 TRIAL 60 Centre Street 18 New York, New York 19 December 7, 2023 20 B E F O R E: 21 HONORABLE ARTHUR F. ENGORON, 22 Supreme Court Justice 23 A P P E A R A N C E S: 24 OFFICE OF THE ATTORNEY GENERAL 25 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.)</p>	<p>1 THE COURT: I don't know why but, 2 apparently, there are members of the press here that 3 would like to take some photographs. We'll let them as 4 usual. 5 (Whereupon, the photographers entered and 6 exited the courtroom.) 7 THE COURT: Now, the rest of us know where 8 we stand in life. So we have, at least, one 9 housekeeping matter; the questions about the scope of 10 Mr. Bartov's testimony. 11 Is that correct? 12 MR. KISE: Your Honor, on that, just briefly 13 we planned -- and I didn't get a chance to talk to 14 Mr. Wallace -- to talk to the government about that. 15 We received that late last night at lunch. 16 And, we may be able to resolve it, we may 17 not. But rather than take up the Court's time now, we 18 can deal with it later to the extent it can't be 19 resolved. 20 THE COURT: All right. So, for now -- 21 MR. KISE: There won't be any questions 22 about that. 23 THE COURT: There won't be any questions. 24 MR. KISE: Correct. 25 THE COURT: And pursuant to the AG's letter</p>
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<p>1 Cont'd Appearances</p> <p>2 CONTINENTAL PLLC 3 Attorneys For the Defendant 4 101 North Monroe Street, Suite 750 5 Tallahassee, Florida 6 BY: CHRISTOPHER KISE, ESQ. 7 JESUS SUAREZ, ESQ. 8 9 ROBERT & ROBERT, PLLC 10 Attorneys for Defendants 11 526 RXR Plaza 12 Uniondale, New York 11556 13 BY: CLIFFORD ROBERT, ESQ. 14 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</p>	<p>1 basically. 2 MR. KISE: Correct. Yes, your Honor. 3 THE COURT: All right. 4 AG, did you want to say anything? 5 MR. WALLACE: No, I think there are going to 6 be a number of other issues about the scope of 7 Mr. Bartov's testimony. 8 Some of them Mr. Solomon will raise when they 9 try to qualify him. He also offers opinions about 10 valuation about banking practices that we think go 11 beyond the scope of his actual expertise. And, so 12 we'll see what defendants do when they try and qualify 13 him. 14 As to the scope of his accounting opinions, 15 though, we do want to make a request that we do not 16 think Mr. Bartov should be repeating subject matters 17 that were already covered by Mr. Flemmons. 18 And that, having two experts testify the same 19 way, on the same standards, on the same issues, is 20 cumulative and, quite frankly, a waste of time. And 21 the second expert is no longer providing assistance to 22 the Court because, it's simply being repeated by what 23 the earlier expert testified to. So, to the extent -- 24 and it looks like, from the demonstrative that the 25 defendant circulated, that, he certainly is going to</p>

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<p>1 cover, in a number of ways, the same ground that</p> <p>2 Mr. Flemmons already covered.</p> <p>3 MR. KISE: So, your Honor there will,</p> <p>4 necessarily, for context purposes, obviously, be</p> <p>5 overlap. It's the same subject matter writ large.</p> <p>6 But Mr. Bartov provides, as is indicated in</p> <p>7 his reports, a different perspective. He has different</p> <p>8 points to make about maybe the same definitions or the</p> <p>9 same subjects. But, he has different things to say.</p> <p>10 And, the Court will benefit from his analysis. I</p> <p>11 think, when the Court hears from him, you'll understand</p> <p>12 that quickly.</p> <p>13 We don't intend to duplicate or waste the</p> <p>14 Court's time going over ground that's already been</p> <p>15 covered. But there's, necessarily, some overlap</p> <p>16 because, it's all GAAP, it's all ASC 274. It's the</p> <p>17 same subject matter but, it is not the same points that</p> <p>18 are being made.</p> <p>19 So the things that are -- that Mr. Wallace</p> <p>20 just noted on the demonstratives, yes, those are sort</p> <p>21 of foundational platforms. But, what Mr. Bartov is</p> <p>22 going to say about them is what matters; not</p> <p>23 necessarily just the fact that "ASC 274 says 'X'."</p> <p>24 Well, okay.</p> <p>25 We have to make sure that you hear from him</p>		<p>1 what the defendants ask you to qualify him as.</p> <p>2 COURT OFFICER: Witness entering.</p> <p>3 Raise your right hand. Do you solemnly swear</p> <p>4 or affirm that any testimony you give will be truth the</p> <p>5 whole truth and nothing but the truth?</p> <p>6 THE WITNESS: I do.</p> <p>7 E L I B A R T O V, called as a witness by the Defendants,</p> <p>8 having been first duly sworn, testified as follows:</p> <p>9 COURT OFFICER: Okay. Please, have a seat.</p> <p>10 Please, state your name and either home or business</p> <p>11 address for the record.</p> <p>12 THE WITNESS: Eli Bartov 200 east 65 Street</p> <p>13 New York, New York 10065.</p> <p>14 MR. KISE: Your Honor, you may want to</p> <p>15 give -- I think you're going to -- instruction about</p> <p>16 the microphone.</p> <p>17 THE COURT: Good morning, Mr. Bartov. You</p> <p>18 need to speak right into the microphone, directly,</p> <p>19 close, loudly, slowly, clearly.</p> <p>20 Okay Mr. Suarez, please proceed.</p> <p>21 DIRECT EXAMINATION</p> <p>22 BY MR. SUAREZ:</p> <p>23 Q. Professor Bartov, good morning. I am Jesus Suarez</p> <p>24 and I represent certain of the defendants in this case.</p> <p>25 Professor, what if any economic positions do you</p>	
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<p>1 what his positions are on that. It's not that he's</p> <p>2 going to testify the same way or the same things as</p> <p>3 Mr. Flemmons. And that's really dealt with on an</p> <p>4 individualized basis.</p> <p>5 THE COURT: I'll let him testify even if</p> <p>6 there's some overlap.</p> <p>7 Speaking of Mr. Bartov, are we up to his</p> <p>8 testimony?</p> <p>9 MR. KISE: Yes, he's here, your Honor.</p> <p>10 MR. SUAREZ: Your Honor, the defense calls</p> <p>11 Professor Ali Bartov.</p> <p>12 MR. KISE: Obviously, to the extent that</p> <p>13 they want to raise questions about his qualifications,</p> <p>14 I am sure they will be more than satisfied, as will the</p> <p>15 Court, with Mr. Bartov's qualification.</p> <p>16 In fact, I believe Mr. Wallace qualified him</p> <p>17 as expert in the Exxon case a short time ago. He was</p> <p>18 the government's expert then. So, I'm not sure what</p> <p>19 ground they would have to question his qualification.</p> <p>20 But I'm sure the Court will be more than satisfied.</p> <p>21 THE COURT: The proof of the pudding will be</p> <p>22 in the eating I guess.</p> <p>23 MR. WALLACE: I can, certainly, represent</p> <p>24 that he was not qualified as an expert in banking and</p> <p>25 credit or evaluation of real property. But, we'll see</p>		<p>1 hold?</p> <p>2 A. I'm a full professor with New York University</p> <p>3 Sterns School of Business.</p> <p>4 Q. What does it mean to be a full professor?</p> <p>5 A. Full professor mean that I am the highest rank</p> <p>6 that's possible. So there are two tracks in academia; one</p> <p>7 is research track and the other is teaching track.</p> <p>8 Teaching track is like teacher. In the U.S., they</p> <p>9 are called "professor of practice" or "adjunct professors."</p> <p>10 But in other countries they're simply called "teachers" or</p> <p>11 "lecturer."</p> <p>12 I'm on the research track which means that the</p> <p>13 starting level is assistant professor and then, a person can</p> <p>14 be promoted to be associated professor and then, the next</p> <p>15 level is associate professor with tenure and the last level</p> <p>16 is full professor. So I'm a full professor.</p> <p>17 Q. And what department of the Sterns School of</p> <p>18 Business do you work in?</p> <p>19 A. Accounting.</p> <p>20 Q. And since when have you worked in that accounting</p> <p>21 department?</p> <p>22 A. Since 1992.</p> <p>23 Q. What, if any, academic positions did you hold</p> <p>24 prior to New York University?</p> <p>25 A. I was an assistant professor at the University of</p>	

<p>A.Bartov - Defendants - Direct/Mr. Suarez Page 6182</p> <p>1 Rochester Simon School of Business.</p> <p>2 Q. And, in what department did you work at the</p> <p>3 university of Rochester?</p> <p>4 A. Accounting.</p> <p>5 Q. Professor, what is your educational background</p> <p>6 after high school?</p> <p>7 A. I graduated from undergraduate program in Tel Aviv</p> <p>8 University in accounting and economics. And then, I went to</p> <p>9 UC Berkeley and got my Ph.D in accounting.</p> <p>10 Q. What honors did you receive during your</p> <p>11 undergraduate studies?</p> <p>12 A. When I was an undergraduate student, I was</p> <p>13 included in the president of university list and the</p> <p>14 business school dean list.</p> <p>15 Q. And what, if any, honors did you receive during</p> <p>16 your graduate studies?</p> <p>17 A. During my graduate studies, I received few</p> <p>18 fellowships that recognized my achievement as a good</p> <p>19 student.</p> <p>20 Q. What was your subject of your dissertation?</p> <p>21 A. The subject of my dissertation was open market</p> <p>22 stock repurchases and signals for earnings and risks.</p> <p>23 Q. Where was your dissertation published?</p> <p>24 A. My dissertation was later converted into a paper</p> <p>25 that was published in one of the leading academic journal</p>	<p>A.Bartov - Defendants - Direct/Mr. Suarez Page 6184</p> <p>1 generally accepted accounting principles for 40 years. I</p> <p>2 published many, many papers about generally accepted</p> <p>3 accounting principles in leading academic journals.</p> <p>4 I also provide many consulting services to money</p> <p>5 manager, financial analyst that was about U.S. GAAP.</p> <p>6 Q. And, what if any experience do you have in the</p> <p>7 private practice of accounting?</p> <p>8 A. Well, I serve as an accountant for eight years</p> <p>9 doing audit work for small, medium size firms in Israel.</p> <p>10 Q. What courses do you teach at the Sterns School of</p> <p>11 Business?</p> <p>12 A. Well, currently, I'm teaching the principles of</p> <p>13 financial accounting and financial accounting and reporting.</p> <p>14 But, over the years, I taught many different courses</p> <p>15 including financial statement analysis, international</p> <p>16 financial statement analysis, principle of credit analysis.</p> <p>17 This is on the -- this is for MBA students and for</p> <p>18 our executive custom program courses. I also taught in the</p> <p>19 Ph.D level. And I was the head of the accounting Ph.D</p> <p>20 program for nine years.</p> <p>21 And as a teacher as a professor in the Ph.D</p> <p>22 program, I taught courses regarding how to do research and</p> <p>23 recover a lot of theories and how to test these theories and</p> <p>24 et cetera.</p> <p>25 Q. And what experience, if any, do you have teaching</p>
<p>A.Bartov - Defendants - Direct/Mr. Suarez Page 6183</p> <p>1 which is it Journal of Accounting & Economics.</p> <p>2 Q. Can you explain the subject matter of your</p> <p>3 dissertation?</p> <p>4 A. My dissertation looked at open market repurchases</p> <p>5 which is where companies announces that they are going to</p> <p>6 buy their own stock. And the question was how market</p> <p>7 participant interpret this announcement.</p> <p>8 And it turns out, that, when companies announce</p> <p>9 that they're going to buy their own stock, typically, in the</p> <p>10 future, they report higher earnings than were expected</p> <p>11 before the announcement of the stock repurchases. And</p> <p>12 therefore, at the time of the announcement, the stock price</p> <p>13 goes up.</p> <p>14 Q. Are you a licensed certified public accountant?</p> <p>15 A. I was a licensed public certified public</p> <p>16 accountant in Israel for many years.</p> <p>17 Q. How does being a certified -- excuse me.</p> <p>18 How does being a certified public accountant, in</p> <p>19 Israel, qualify you in the field of accounting in the United</p> <p>20 States?</p> <p>21 A. Well, back then, when I practiced accounting in</p> <p>22 Israel, we didn't have Israeli generally accepted accounting</p> <p>23 principles. So, we used, actually, the U.S. generally</p> <p>24 accepted accounting principles.</p> <p>25 Since I came to the U.S. I've been studying</p>	<p>A.Bartov - Defendants - Direct/Mr. Suarez Page 6185</p> <p>1 credit analysis?</p> <p>2 A. Well, I taught -- credit analysis is part</p> <p>3 really -- it's a very important portion of financial</p> <p>4 accounting. And it's, actually, covered -- any course that</p> <p>5 I teach has a section about credit analysis.</p> <p>6 But, I also taught -- NYU had a contract with one</p> <p>7 of the leading debt rating agencies in the world. And they</p> <p>8 used to send their analyst -- the one that rate the debt of</p> <p>9 the companies -- they used to send them to NYU for a custom</p> <p>10 program. It was, I think, a week or two. And, I taught in</p> <p>11 this program.</p> <p>12 Q. What experience do you have teaching the subject</p> <p>13 of valuation?</p> <p>14 A. With valuation, I teach financial accounting</p> <p>15 report I teach valuation. When I taught financial statement</p> <p>16 analysis course, it was largely about valuations. In the</p> <p>17 Ph.D program, I taught many section about valuations. In</p> <p>18 many of my papers -- if you just look on my resume, many of</p> <p>19 my papers study different aspect of evaluations.</p> <p>20 MR. KISE: Your Honor, maybe we can move the</p> <p>21 microphone just a little closer to the witness because,</p> <p>22 we're having trouble hearing him over here.</p> <p>23 THE COURT: Yeah, we need you to be closer</p> <p>24 to the microphone --</p> <p>25 THE WITNESS: Yes, sir.</p>

<p>A.Bartov - Defendants - Direct/Mr. Suarez Page 6186</p> <p>1 THE COURT: -- maybe a little slower and</p> <p>2 articulate as best you can.</p> <p>3 THE WITNESS: Thank you, Judge.</p> <p>4 THE COURT: Sure recall.</p> <p>5 Q. What experience do you have teaching the</p> <p>6 preparation of personal financial statements?</p> <p>7 A. Well, personal financial statement are governed by</p> <p>8 ASC 274 which is really, in my view, is the stepson of the</p> <p>9 codification.</p> <p>10 It's a very unusual standard with very unusual</p> <p>11 provisions. Many of them are counterintuitive and hard to</p> <p>12 understand unless you're really an expert accountant.</p> <p>13 And they only draw attention of a very, very small</p> <p>14 group of people; and therefore, we, at NYU, don't teach ASC</p> <p>15 274. And, I'm not aware of any program that specifically</p> <p>16 teach ASC 274.</p> <p>17 However, if the facts be said, many times, in</p> <p>18 order to understand accounting you have to have knowledge of</p> <p>19 the entire accounting literature.</p> <p>20 And if you have the knowledge of accounting -- the</p> <p>21 entire accounting literature, which consist of thousands of</p> <p>22 provisions and many, many other type of literature, then,</p> <p>23 when you read the ASC 274, you likely to have a good</p> <p>24 understanding of its content.</p> <p>25 In addition, when I practiced in Israel, I did</p>	<p>A.Bartov - Defendants - Direct/Mr. Suarez Page 6188</p> <p>1 between 2001 and 2004.</p> <p>2 And part of the job description was to meet, at</p> <p>3 least, once a year with the entire board and discuss with</p> <p>4 them, for a full day, what are the current issues that they</p> <p>5 are dealing with exchange ideas and provide them advice.</p> <p>6 And this advice was then communicated to them in a</p> <p>7 written document that nine of them are on my resume.</p> <p>8 Q. Have you taught at any University as a visiting</p> <p>9 professor?</p> <p>10 A. Yes. I taught at UC Berkeley as a visiting</p> <p>11 professor, UCLA as a visiting professor, I taught at Insead.</p> <p>12 Insead is a well known business school in Paris.</p> <p>13 And I taught at Bocconi University in Milan. And</p> <p>14 I gave lectures in many, many universities across the U.S.</p> <p>15 and around the globe.</p> <p>16 MR. KISE: Your Honor, I don't know that the</p> <p>17 record is getting that last university from Milan,</p> <p>18 Italy.</p> <p>19 THE WITNESS: Bocconi.</p> <p>20 MR. KISE: You may want to spell it.</p> <p>21 THE WITNESS: B-O-C-C-O-N-I.</p> <p>22 Q. What subject areas are the focus of your academic</p> <p>23 research?</p> <p>24 A. Well, I have a few area of interest. One of,</p> <p>25 them, obviously is a financial report of misconduct. I</p>
<p>A.Bartov - Defendants - Direct/Mr. Suarez Page 6187</p> <p>1 produce several personal financial statement for my client.</p> <p>2 Q. What if any academic leadership positions have you</p> <p>3 head at NYU Sterns School of Business?</p> <p>4 A. Well, for nine years, I was the head of the</p> <p>5 accounting Ph.D program. And I also served, and currently</p> <p>6 serving, on a number of different -- in different committees</p> <p>7 that contribute significantly to the school in many</p> <p>8 different ways.</p> <p>9 Q. What, if any, work have you undertaken to develop</p> <p>10 other academics in the field of accounting?</p> <p>11 A. Well, I taught in the Ph.D program. And, I have</p> <p>12 Ph.D students that I personally advise, personally guide,</p> <p>13 work with them on their dissertation and then place them.</p> <p>14 And, my placement record includes placement at top</p> <p>15 university of my student; a top university like Stanford</p> <p>16 University, University of Pennsylvania, Walton School of</p> <p>17 Business.</p> <p>18 I also served on a committee. It's called</p> <p>19 American Accounting Association Financial Accounting</p> <p>20 Standard Board Committee which the member of the committees</p> <p>21 are selected by the president of the American accounting</p> <p>22 association.</p> <p>23 And the role of the committee is to advise the</p> <p>24 financial accounting standard board on current accounting</p> <p>25 issues. And I served on this committee for three years,</p>	<p>A.Bartov - Defendants - Direct/Mr. Suarez Page 6189</p> <p>1 published many papers in this area.</p> <p>2 Another area of interest for me is the use or</p> <p>3 capital market use of information when they price stock or</p> <p>4 price debt -- stock price and value of debt.</p> <p>5 And, valuation is another area of research and</p> <p>6 executive conversation is also an area that I am interested</p> <p>7 in.</p> <p>8 Q. What contributions to academic research have you</p> <p>9 made in the field of valuation?</p> <p>10 A. Well, as you can see, from my resume, I published</p> <p>11 several papers in this area. I also, in my consulting</p> <p>12 activities, I perform several evaluations for clients</p> <p>13 including valuations of real estate projects. So, what was</p> <p>14 the question?</p> <p>15 Q. Can you elaborate on the contributions that you</p> <p>16 have made in academic research on the subject of valuation?</p> <p>17 A. Sorry. I wrote all these papers and these papers</p> <p>18 have been drawing lots of attention for my -- for other</p> <p>19 professors. This can be seen by the thousands of citations</p> <p>20 that my paper received in the academic literature.</p> <p>21 Q. With respect to financial reporting misconduct,</p> <p>22 what contributions to academic research have you made in</p> <p>23 that area.</p> <p>24 A. Well, again, I published several papers in this</p> <p>25 area that are heavily -- widely cited by other professors.</p>

<p>A.Bartov - Defendants - Direct/Mr. Suarez Page 6190</p> <p>1 Q. In the area of the effects of financial reporting</p> <p>2 on capital markets, what contributions have you made to</p> <p>3 academic research in that subject?</p> <p>4 A. Well, it's, again, I published many papers in this</p> <p>5 area. Last year, my research was also recognized by the</p> <p>6 American Accounting Association.</p> <p>7 And American Institute of CPAs, they gave me a</p> <p>8 award -- to me and my coauthors. The title of the award is</p> <p>9 Notable Contribution to Accounting Research.</p> <p>10 Q. What is the subject matter of papers that you've</p> <p>11 written on the subject of financial reporting in the capital</p> <p>12 markets?</p> <p>13 A. So, the financial reporting in the capital</p> <p>14 markets, again, I wrote many, many papers in this area that,</p> <p>15 again, are very highly cited.</p> <p>16 Q. And how about in the field of valuation, can you</p> <p>17 describe those papers?</p> <p>18 A. Well, so one paper, for example, looked on the</p> <p>19 valuation of internet companies. So internet companies</p> <p>20 started showing up in the late 1990s and people had trouble</p> <p>21 determining the value of these companies because, it was a</p> <p>22 new business model with new characteristics. And there was</p> <p>23 a big debate how these company should be valued.</p> <p>24 So I wrote the paper to show how information in</p> <p>25 the financial statement can be used in order to value these</p>	<p>A.Bartov - Defendants - Direct/Mr. Suarez Page 6192</p> <p>1 based on accounting data.</p> <p>2 And, I present this model to my students. And, I</p> <p>3 can try to show them how to apply. Because, one thing is to</p> <p>4 setup the model. Another thing is how to estimate the</p> <p>5 model.</p> <p>6 Because every model, every valuation model,</p> <p>7 depends on assumptions. And the assumptions, obviously, are</p> <p>8 very subjective and are, many times, difficult to calculate.</p> <p>9 So, the whole thing about valuations -- so, the</p> <p>10 valuation models are typically well known. There is no --</p> <p>11 there is not much debate about which valuation model should</p> <p>12 be used.</p> <p>13 The debate, typically, is about how to -- what</p> <p>14 assumption to use and how to determine the values of the</p> <p>15 assumptions.</p> <p>16 So, I go over it with my students for maybe five</p> <p>17 or six hours in my course of 40 hours.</p> <p>18 Q. How is financial reporting misconduct covered in</p> <p>19 your teaching?</p> <p>20 A. So financial reporting misconduct is a very, very</p> <p>21 important part of any course that I teach because, if the</p> <p>22 financial statement are, materially, misstated, early</p> <p>23 detection by investors may make them a lot of money.</p> <p>24 And, actually, there are many, many outfit on Wall</p> <p>25 Street, like Muddy Water's Research or Hindenburg Research</p>
<p>A.Bartov - Defendants - Direct/Mr. Suarez Page 6191</p> <p>1 companies. So this is one paper.</p> <p>2 Another paper was to see how whether investors</p> <p>3 valued, correctly, multinational companies. So</p> <p>4 multinational companies its very, very challenging to value</p> <p>5 because, they have operations all around the globe. And,</p> <p>6 they run operations in different currencies.</p> <p>7 So, you have U.S. companies that have operation in</p> <p>8 Japan and in Europe and in Asia. And how you report results</p> <p>9 of the operation of such company?</p> <p>10 So, we develop a model and we show how one way to</p> <p>11 value these companies.</p> <p>12 Q. And what papers have you published concerning</p> <p>13 financial reporting misconduct if any?</p> <p>14 A. So, I reported several papers on financial</p> <p>15 reporting misconduct. The last paper I published in the</p> <p>16 accounting review, which is one of the leading academic</p> <p>17 journals of the world, has to do with how investor says they</p> <p>18 inadvertent error and fraudulent errors in financial</p> <p>19 statements.</p> <p>20 Q. How is the subject of valuation covered in the</p> <p>21 courses that you teach?</p> <p>22 A. Well, I am an accounting professor. So there are</p> <p>23 different ways to value company, different approaches.</p> <p>24 Because, I'm an accounting professor, I'm using accounting</p> <p>25 based valuation models. So this is evaluation models that</p>	<p>A.Bartov - Defendants - Direct/Mr. Suarez Page 6193</p> <p>1 that all they do is looking for fraud that was undetected by</p> <p>2 the market.</p> <p>3 They take short portion on the stock; meaning,</p> <p>4 they would get profit if the stock go down. And then, they</p> <p>5 advertise their findings. And if the market believe them,</p> <p>6 the stock might drop and they make a lot of money.</p> <p>7 Maybe the most famous story was Jim Chanos story</p> <p>8 in 2000. He was young hedge fund person. And Jim Chanos</p> <p>9 was one of the first to uncover the fraud in Enron.</p> <p>10 So, he took huge short positions well before many</p> <p>11 other people realize it. And he continued to increase his</p> <p>12 short position, during the year, as Enron released more and</p> <p>13 more information. And he prepared the analysis correctly.</p> <p>14 Figure out that all this information is fraud.</p> <p>15 And, at the end, when Enron went bankrupt, in</p> <p>16 December of 2001, he made billions of dollars. So, not</p> <p>17 everybody lost money on Enron. Some people -- the one that</p> <p>18 can detect financial fraud before everybody else, these</p> <p>19 people, actually, make a lot of money.</p> <p>20 Q. And how are the affects of financial reporting on</p> <p>21 capital markets covered in our courses?</p> <p>22 A. So, as I said before, I wrote many papers about</p> <p>23 the relationship between accounting data and stock prices.</p> <p>24 And, we discuss it with my students. So I'd share with them</p> <p>25 the finding of my research. I share with them the finding</p>

<p>A.Bartov - Defendants - Direct/Mr. Suarez Page 6194</p> <p>1 of other people research.</p> <p>2 And, I also develop some indicator for them that</p> <p>3 will allow them to assess whether the stock price reflect</p> <p>4 the fundamental value of the company or not.</p> <p>5 For example, I mentioned before Enron. So, I for</p> <p>6 my student when I teach -- in each course that I teach, I</p> <p>7 have a section about credit analysis. So, I wrote a case to</p> <p>8 my student about Enron.</p> <p>9 And I showed them how a careful credit analysis</p> <p>10 the one that probably -- I don't know exactly what Jim</p> <p>11 Chanos did but, I assumed that he used maybe a similar</p> <p>12 technique. And I showed them that if you use this</p> <p>13 technique, you'd be able to uncover the fraud in Enron at</p> <p>14 least a year or even more before Enron went under.</p> <p>15 THE COURT: Professor Bartov, please speak</p> <p>16 slower. I don't think you've slowed down at all since</p> <p>17 I asked you to speak slower. But everybody is hanging</p> <p>18 on every word you're saying. So, make it count. Speak</p> <p>19 slower.</p> <p>20 THE WITNESS: Thank you. I try. You know,</p> <p>21 I've been teaching for 40 years. And my speed of</p> <p>22 talking, you know, is the same. People in my age, it's</p> <p>23 very difficult to change. But, I'll try. I make my</p> <p>24 best.</p> <p>25 THE COURT: I can speak from personal</p>	<p>A.Bartov - Defendants - Direct/Mr. Suarez Page 6196</p> <p>1 literature?</p> <p>2 A. The paper was published in 2018. So, so far it</p> <p>3 received about six hundred citations.</p> <p>4 Q. And what is the stature of the award that you were</p> <p>5 given for that paper?</p> <p>6 A. Well, this award -- you know, we don't have Noble</p> <p>7 Prizes in accounting. But, this award is one of the most</p> <p>8 prestigious awards that a researcher can receive in</p> <p>9 accounting.</p> <p>10 Q. What experience, if any, do you have with the</p> <p>11 Noble Prize?</p> <p>12 A. Well, actually, every year, I get a letter from</p> <p>13 the Noble Prize committee. And they tell me that my input</p> <p>14 is crucial. And, they ask me to nominate an economist to be</p> <p>15 considered for the Noble Prize.</p> <p>16 Q. What awards, if any, have you received for your</p> <p>17 teaching work?</p> <p>18 A. Well, for my teaching work, I received seven</p> <p>19 words. The student seven times picked me as the best</p> <p>20 professor of the year.</p> <p>21 (Whereupon, the following proceedings were</p> <p>22 stenographically recorded Shameeka Harris.)</p> <p>23</p> <p>24</p> <p>25</p>
<p>A.Bartov - Defendants - Direct/Mr. Suarez Page 6195</p> <p>1 experience I suppose.</p> <p>2 THE WITNESS: That's why I mention it. I</p> <p>3 know you will sympathize with me.</p> <p>4 Q. Earlier professor, we spoke of the award that you</p> <p>5 received for notable contributions for accounting research.</p> <p>6 What was the paper that earned you that award?</p> <p>7 A. The paper that earned me this award was "Can</p> <p>8 Twitter Help Investors."</p> <p>9 THE COURT: Wait a minute. It's really</p> <p>10 Twitter, right? Now, it's X. A tweet is what you</p> <p>11 send. It's Twitter not Tweeter.</p> <p>12 THE WITNESS: But you know, I don't have a</p> <p>13 perfect foresight. I didn't know, when I wrote the</p> <p>14 paper six years ago, that, the name will change to X.</p> <p>15 So the paper is still has the title "Twitter."</p> <p>16 So the title of the paper is, can Twitter</p> <p>17 help investors predict future earnings in stock prices.</p> <p>18 And Twitter information can help investors predict</p> <p>19 future earnings and stock prices.</p> <p>20 Now, it may be not hundred percent accurate.</p> <p>21 But, this is more or less the title.</p> <p>22 Q. And where was that paper published?</p> <p>23 A. This paper was published in the Accounting Review,</p> <p>24 which was one of the leading academic journals in the world.</p> <p>25 Q. How has that paper been cited in the accounting</p>	<p>Professor Bartov - by Defendant - Direct (Mr. Suarez) Page 6197</p> <p>1 DIRECT EXAMINATION</p> <p>2 BY MR. SUAREZ:</p> <p>3 Q And have you taught courses in credit analysis?</p> <p>4 A Every course that they teach has a section about credit</p> <p>5 analysis. But in addition, I taught specifically courses that</p> <p>6 focus only on credit analysis which was the principle of</p> <p>7 foundation of credit analysis.</p> <p>8 Q What real world experience do you have, if any,</p> <p>9 evaluating how capital markets use accounting information?</p> <p>10 A Well, this is a very important area of research in</p> <p>11 accounting. And I published a number of papers in this area and</p> <p>12 all it shows is that, I would say, as the first order of</p> <p>13 approximation to reality investors use the accounting</p> <p>14 information in a sophisticated manner meaning they don't take</p> <p>15 the accounting numbers by their face value and as they should</p> <p>16 not. The fact being for reserve, every, every institution tell</p> <p>17 investors that they number, the whole data and the whole data in</p> <p>18 the financial statement should not be used for as a basis of</p> <p>19 making investing or lending decisions. The whole data in the</p> <p>20 function statement is only a first step in a long and complex</p> <p>21 process that culminate in the decision.</p> <p>22 So, so our evidence show our scientific evidence shows</p> <p>23 that, as the first order of approximation to reality, investors</p> <p>24 realize this and they follow a process that, in more or less,</p> <p>25 consistent with what the FABS says, what the Federal Reserve</p>

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1 says, what every single textbook in accounting and finance say,
2 what academics, university agree upon which is that -- which
3 investors like famous investor like Warren Buffet said a few
4 times, you cannot use the wrong numbers in the statement if the
5 bases for making decision. This is -- we'll be completely
6 misleading and if you do that, you are likely to reach the wrong
7 decision.

8 You have to use the numbers as the first step. You
9 have to read the notes. You have to look for other sources of
10 information. And only after you can see there are everything
11 together, only then you have to recast the financial statement
12 using the new numbers that you come up with, the adjusted
13 numbers not the wrong numbers that you are reporting on the
14 statement and based on the adjusted numbers, only based on that,
15 you can make your investing or lending decisions. We document
16 that this indeed what market participants are doing, both
17 lenders and equity investment.

18 Q What, if any, extras have you given in the field of
19 accounting?

20 A Well, I -- I -- you mean outside of Stern?

21 Q Yes.

22 A So, I'm invited regularly to give lectures in
23 accounting conferences, finance conferences. I am invited by
24 other schools to give workshops for the faculty. I was
25 invited -- I mean, I was retained a few years ago at Goldman

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1 Sachs to give a few lectures to their propriety trading desk
2 about how to correctly interpret accounting information and how
3 to use correctly the accounting information when they make
4 investment decisions. And I was also invited by universities
5 in -- around the globe.

6 I gave lecture in Australia, in a couple of
7 universities. I gave lecture in Hong Kong, a few universities.
8 I gave lecture in Singapore, a few universities. I gave
9 lectures in Europe. I gave lectures in Israel. So I gave
10 lectures -- I gave lectures to financial analyst and many
11 managers in the US and abroad. And so I gave lectures to
12 anyone.

13 Q Just so the record is clear, when you say propriety,
14 you mean propriety?

15 A Proprietary trading debt.

16 Q What is the American Accounting Association?

17 A The American Accounting Association is the association
18 of the -- of accountants. And so they -- what they do, they
19 organize, they organize conferences for accountants. They
20 publish the accounting review, the journal and many other
21 journals. So this is a just like any other, you know, trade
22 association.

23 Q What, if anything, involvement have you had with the
24 American Accounting Association?

25 A Well, I -- I'm -- many times I'm invited to give

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1 lectures in a conferences organized by the American Accounting
2 Association American, Accounting Association. They also invited
3 me to serve on committees that they have. For example, this
4 year, I'm the chair of the committee to repeat the paper for the
5 Noble contribution of the accounting research award. I am ahead
6 of the committee. You have about like ten members. And you
7 will receive maybe 30 or 40 papers, will consider these papers,
8 and then we have to pick one paper. And I be going through the
9 annual meeting organized by the American Accounting Association.
10 And in this annual meeting there will be a ceremony and I will
11 give the award to the winner.

12 Q Have you served on the editorial boards of any academic
13 journals?

14 A I have, and I still -- I still am serving on several
15 editorial boards.

16 Q Which journals have you served on the editorial board
17 of?

18 A You know, I -- it's a challenge. The accounting
19 review, I served on the accounting review, journal of accounting
20 auditing and finance. You know, it's listed in my resumé, but
21 I -- I -- right now, as sitting now, I don't remember the whole
22 list.

23 Q And what is the statute of the accounting review in the
24 accounting academic committee?

25 A Well, academic journals are ranked. They are ranks and

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1 there are actually many, many. I don't know if hundreds or but
2 there are many, many academic journals in each field. Each
3 field has its own academic journal. So we have an academic
4 journals in finance. We have academic journals in accounting,
5 academic journals in operation management, operation research,
6 economics. So each field, each area in business has its own
7 journal and so in accounting we have maybe hundred academic
8 journal just or maybe 50. And there are three, that you could
9 see, the top three journals that everybody try to publish in
10 these journals and this journals, a rough estimate, have a
11 rejection rate of about 90 percent meaning if you send a paper
12 and ask the editor to publish the paper in his journal, this
13 journal, you have 90 percent chance that the editor will send
14 you a letter a few months later and tell you that your paper
15 doesn't meet the standards of the journals or the journal and
16 therefore they reject the paper.

17 And this is after a very structured process so every
18 paper that is sent to a journal for consideration undergoes a
19 very, very structured process. So the top journals are in any
20 field are the journals that are most selective meaning everybody
21 wants to publish in this journal but the rejection rate is the
22 highest. And the reason that everybody want to publish in these
23 journals is this journals are the most visible. Everybody read
24 these journals. So if you publish papers in these journals, you
25 are more likely to get cited and draw that attentions of your

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1 colleagues that if you publish papers in the lower ranking
2 journals that most people don't read. So, the accounting review
3 is definitely one of the top three accounting journals in
4 accounting maybe even the top number one.

5 Q What other academic endeavors have formed the basis of
6 your knowledge in the field of accounting and finance?

7 A So I, so I do a lot of research and I do teaching and I
8 do consulting and that's -- and I -- what professors do every
9 day, they study. I go to my office and what I do? I do -- I
10 read papers. I read new textbooks. I think about ideas for
11 research. I write my own papers. So I've been a student of
12 accounting for 50 years and this is how I -- this is how I gain
13 my knowledge in accounting.

14 Q Can you describe generally the consulting work that
15 you've done?

16 A So, consulting work that I did was I provide advice to
17 hedge fund managers, financial analyst. I provide advice about
18 valuations. And I do -- I do expert testimony. And I also --
19 and I do teaching. I do teaching, as I said before, Goldman
20 Sachs invited me to teach few sessions for his people. And I
21 teach other groups as well so that's what I do.

22 Q What work, if any, have you done to evaluate other
23 accounting departments at other universities?

24 A So, a lot of the job description of a professor,
25 especially a full professor, is to help evaluated other

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1 then you tell -- you advise the editor to reject the paper.

2 So I've been doing referee reports just like any other
3 professor. And I'm only talking about professors that aren't on
4 the research rank, track. Professor on teaching track don't
5 have any of these activities. They simply teach. But so I
6 contribute in the way that I regularly send my referee reports
7 to editors and advise them whether to accept the paper or reject
8 them.

9 I also provide advice, for example, to the Hong Kong
10 government for ten years. The Hong Kong government, as a
11 mechanism, where professors apply for research funding from the
12 government. And the Honk Kong government hire experts from
13 around the globe in their respective areas. They send them the
14 research proposal of the Hong Kong professors and then they ask
15 them to advise them should they fund this research proposal or
16 not.

17 So I did, for ten years, I was on the committee or they
18 call it a research, research grant consul. So they have a
19 research grant consul which is government body that manage all
20 of these fundings and this research grant consul approached me
21 and asked me to serve on the committee, that to advise the
22 government whether to support specific project financially or
23 not. So this is another -- and I did it for many other country.
24 I did it for Israel. And I did it just recently for University
25 of Luxembourg and I -- and other -- so that's another type of

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1 professor performance. So in the university, let's say Columbia
2 University, as an assistant professor and they want to consider
3 or to promote them to associate professor, so one part of this
4 processes that Columbia University will identify the most
5 prominent professors in the area in which the candidate is a --
6 contributing to and they will send letters to this professors
7 and ask this professor to provide them advice, is the work of
8 the professor that you are considering for promotion, is the
9 work significant, is the work of high quality, should we -- and
10 the bottom line he ask you should you promote this person.

11 So I regularly receive letters like that for many, many
12 universities including Columbia University, Cornell University,
13 Berkley University, University of Michigan and many others and
14 they ask me to help them decide whether to promote their junior
15 faculty or not. So this is one, one area of activity of
16 contribution.

17 Another area of contribution is that, as I said before,
18 to publish a paper there is a process. And when you submit a
19 paper to a journal, the editor will typically will pick, again,
20 a professor that is not in the area as an expert, they will send
21 the paper and ask for what they call a referee report. A
22 referee report is something like a rebuttal report kind of. So
23 what you have to do is you have to write this little report
24 explaining what are the strengths of the paper but also what are
25 the weaknesses of the paper. And if the weaknesses are severe,

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1 activity that I'm doing.

2 Q How were you retained in this case?

3 A I was retained in this case by Mr. Morian from Morian
4 Law.

5 Q And what is the scope of your engagement?

6 A I was asked to opine whether the allegation in the NYU
7 AG complaint have merits. And if yes, why, yes. And if not,
8 why not.

9 Q And are you offering -- withdrawn.

10 Was the scope of your engagement on behalf of all
11 defendants in this case?

12 A This is my understanding.

13 Q How many times have you served as an expert witness
14 before?

15 A I served maybe 16, 18 times.

16 Q And have you ever been qualified at trial like today?
17 Have you ever testified at a trial like today as an expert?

18 A I testified maybe 5 or 6 times in the position, and one
19 time at trial.

20 Q And in which case did you testify at trial?

21 A I testified at trial in the case of NYU AG versus Exxon
22 Mobile.

23 Q NYAG is the New York Attorney General?

24 A Yes.

25 Q And who retained you in that case?

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1 A The person that called me I don't remember.

2 Q Which side of the case were you retained by?

3 A I was retained by NYU, the New York Attorney General.

4 THE COURT: I don't think you mean NYU. You mean

5 New York not NYU.

6 THE WITNESS: No, NY.

7 THE COURT: You keep saying NYU.

8 THE WITNESS: No. This is not a job offer, not a

9 job offer. No. No, New York Attorney General, sorry.

10 THE COURT: I understand.

11 Q What was the subject matter of your testimony in that

12 case?

13 A Well, in that case, I testified as a valuation expert

14 and as a GAAP expert.

15 MR. SUAREZ: Your Honor, we move to qualify

16 Professor Bartov as an expert in the field of financial

17 accounting, credit analysis, and valuation.

18 THE COURT: You know, I always like to write these

19 down, credit analysis.

20 MR. SUAREZ: Yes, Your Honor.

21 THE COURT: And the third one was?

22 MR. SUAREZ: Valuation.

23 THE COURT: How could I forget that word.

24 Would the Attorney General like to weigh in on

25 this?

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1 MR. SOLOMON: Yes, Your Honor. May I ask a few

2 questions first?

3 THE COURT: Of course.

4 VOIR DIRE EXAMINATION

5 BY MR. SOLOMON:

6 Q Good morning, Professor. Have you ever worked for a

7 bank or other type of lender?

8 A Never.

9 Q Have you ever made a credit decision or been involved

10 in the making of a credit decision for a bank or other type of

11 lender?

12 A Never.

13 Q You testified about a course you taught with, I

14 believe, was it the S&P? Was that the reference to the rating

15 agency?

16 A I think it was S&P.

17 Q That was the only course, I believe, you taught that

18 was dedicated to credit analysis, correct?

19 A That was the only course that was fully --

20 Q That was a course you taught over a summer, one week

21 over a summer?

22 A Something like that. Maybe, less than a week, yeah.

23 Q Maybe, less than a week. You were one of several

24 presenters at that, correct?

25 A That's right.

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1 Q That was roughly 10 or 15 years ago right after the

2 2008 financial crisis?

3 A That's correct.

4 MR. SOLOMON: Your Honor, we would object to any

5 attempt to qualify him as an expert on credit analysis and

6 with respect to valuations I just want to advise the court

7 in his rebuttal report paragraph 67 Professor Bartov states,

8 "I limit my assessment to accounting matters. Valuation

9 experts retained by defendants will opine on valuation

10 issues related to Lewis's opinions." I would also direct

11 the Court or ask the Court to take notice of his deposition

12 transcript in which the witness stated, quote, I didn't

13 opine on the valuation per se. I opined on the accounting

14 guidance for valuation. So based upon those representations

15 both it is -- in his testimony and in his rebuttal report,

16 we object to any attempt to qualify him as a valuation

17 expert here today.

18 THE COURT: Mr. Kise.

19 MR. KISE: Well, I am going to wait and see where

20 your mind is before I say anything because I think the

21 record has already demonstrated everything that Mr. Solomon

22 is saying is perfect for providence to cross-examination. I

23 can go into a lot more detail but if Your Honor is inclined

24 to qualify him as an expert, I'll stop.

25 THE COURT: Let's just say I am taking it under

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1 advisement, and I would like to hear what you have to say.

2 MR. SOLOMON: May I ask should we excuse the

3 witness for this?

4 MR. KISE: It's just his credentials.

5 MR. SOLOMON: Okay. That's fine.

6 MR. KISE: I am not going to talk about anything

7 other his credentials which is what you heard, Your Honor.

8 This individual through study, teaching, research and

9 publications, you've heard it, widely cited publications,

10 have addressed the subject matters of accounting, valuation,

11 valuation from an accounting perspective. I mean, we are

12 certainly not going to be asking him questions about real

13 estate valuation. And I think that's exactly what

14 Mr. Solomon's deposition testimony that he referenced to.

15 But we are going to ask him about valuation from an

16 accounting perspective, the methodologies.

17 You've heard testimony about ASC 274 and the

18 accepted methodologies. From an accounting perspective,

19 this witness is certainly qualified. He's published

20 research. He has published research on how information and

21 financial statements can be used to value companies. That's

22 credit analysis. Its another word for credit analysis. How

23 investors value companies.

24 He's published research about different approaches

25 to valuing companies. So, in looking at statement of

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<p>1 financial condition, any investor or lender or whoever it</p> <p>2 may be, individual commercial, they're going to look at the</p> <p>3 valuation of the company. That's what Professor Bartov is</p> <p>4 here to testify about. He is not here to testify about real</p> <p>5 estate valuations. You are not going to hear him opine on</p> <p>6 the value of Mar-a-Lago. You are not going to hear him</p> <p>7 opine on value of 40 Wall Street, but he is going to talk</p> <p>8 about the process that -- that companies, investors, lenders</p> <p>9 users of financial information, go through in evaluating a</p> <p>10 financial statement.</p> <p>11 That's an accounting analysis. And he has laid out</p> <p>12 in extreme detail his extensive experience in that regard</p> <p>13 and so I don't see any reason -- if they want to</p> <p>14 cross-examine him on the limits, and, again, that's what</p> <p>15 Mr. Solomon and I hear him doing, is cross-examining him on</p> <p>16 the limits of that knowledge, that's fair game. But,</p> <p>17 certainly to say that this witness isn't qualified to render</p> <p>18 an opinion on these subject matter is when you heard almost</p> <p>19 an hour of testimony about his extensive resumé.</p> <p>20 He attached to his reports a resumé that contains</p> <p>21 numerous references to research and publications, lectures,</p> <p>22 lectures to some of the most prominent investors, investment</p> <p>23 banks, Goldman Sachs and the world. So, certainly, he has</p> <p>24 got the requisite qualifications based on knowledge,</p> <p>25 training, experience, study, his teaching, research in</p>	<p>1 reports and the disclosures that they've made.</p> <p>2 Second, with respect to credit analysis, I believe</p> <p>3 the majority, if not all, of the experience described has to</p> <p>4 do with publicly traded companies in a marketplace. We</p> <p>5 heard about Enron. We all know what happened with Enron.</p> <p>6 We heard about stock prices when there is either an</p> <p>7 accidental or intentional misstatement in a financial</p> <p>8 condition, analyzing balance sheets in financial conditions,</p> <p>9 all of those with Professor Bartov work have to do with</p> <p>10 publicly traded companies. They are not the analysis here,</p> <p>11 and they're not the credit analysis with respect to lending</p> <p>12 decisions.</p> <p>13 This witness was never a banker. He never made a</p> <p>14 credit decision. He is not an expert to testify, in</p> <p>15 reviewing documents, as to what Deutsche Bank did or didn't</p> <p>16 do, thought or didn't think or anything with respect to</p> <p>17 Deutsche Bank he has no experience in that field.</p> <p>18 THE COURT: Last few words if you will.</p> <p>19 MR. SOLOMON: Your Honor, I thought I had the last</p> <p>20 word.</p> <p>21 THE COURT: You did until you kept running on and</p> <p>22 on and on.</p> <p>23 MR. KISE: Your Honor, credit analysis is credit</p> <p>24 analysis. What an account -- an accounting expert like</p> <p>25 Professor Bartov has taught and lectured and studied on what</p>
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<p>1 publications demonstrate that. So there's no basis to not</p> <p>2 qualify him as an expert in those areas. It's simply, as</p> <p>3 with all experts, you can take the weight of his testimony</p> <p>4 for what you believe it's worth. And if the government</p> <p>5 wants to cross-examine him about the limits of his</p> <p>6 qualifications, they certainly can do so.</p> <p>7 THE COURT: Well, cross-examine him on the limits</p> <p>8 of his qualifications, that is part of what this is all</p> <p>9 about but let's words, Mr. Solomon.</p> <p>10 MR. SOLOMON: I heard Mr. Kise say that he's going</p> <p>11 to be doing valuations from an accounting prospective.</p> <p>12 Well, we are not challenging his qualifications as an</p> <p>13 accounting expert and everything that Mr. Kise has just</p> <p>14 described his writing, his teachings, his various other</p> <p>15 endeavors, and he mentioned Goldman Sachs several times but</p> <p>16 that was not for credit analysis so let's be clear on that.</p> <p>17 All of those endeavors goes to his expertise as an</p> <p>18 accountant expert.</p> <p>19 If he is doing valuations from an accounting</p> <p>20 prospective, as an accounting expert, period, full stop,</p> <p>21 that's not what we are objecting to. The attempt is to</p> <p>22 qualify him as a valuation expert. As he indicated, he</p> <p>23 hasn't done valuations and he doesn't opine on valuations in</p> <p>24 this case. Number one, he shouldn't be an expert. Number</p> <p>25 two, it would be surprise and beyond the scope of his</p>	<p>1 users of financial information do with that information so</p> <p>2 that can be an investor, that can be a public company, that</p> <p>3 can be a private company, that can be in any context. To</p> <p>4 say that someone like Professor Bartov isn't capable or</p> <p>5 qualified to render his opinions, which the Court can give</p> <p>6 the weight that you believe it accords, but -- but his</p> <p>7 opinions as to what users of financial information do with</p> <p>8 that information there's just no basis to say that.</p> <p>9 Whether his research involves public companies or</p> <p>10 private companies, internet companies, I think the scope of</p> <p>11 his research demonstrates the range of his expertise over</p> <p>12 the last 40 years. I think, if anything, the fact that he's</p> <p>13 been an expert on so many different areas and studied so</p> <p>14 many different companies in so many different concepts,</p> <p>15 demonstrates even more fully his capabilities.</p> <p>16 Again, he's not here to testify about what the</p> <p>17 value of Mar-a-largo is. He is not here to testify about</p> <p>18 what the value of the building is. So he is certainly</p> <p>19 capable of rendering opinions on what information reporting</p> <p>20 data is, what users do with that information, how it's</p> <p>21 evaluated, what the requisite standards are, and all of that</p> <p>22 is what's in his report. Nowhere in his report are you</p> <p>23 going to see anything about a value of a particular piece of</p> <p>24 property, but he's certainly capable of looking and seeing</p> <p>25 what process or processes an investor -- and a bank is no</p>

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<p>1 different than any other investor. They are investing their</p> <p>2 money. They're lending money. So the idea it is a loan</p> <p>3 transaction versus an equity transactions is simply a</p> <p>4 nonstarter.</p> <p>5 THE COURT: That was the last word. Just give me a</p> <p>6 minute. Well, first thing I should say is Professor Bartov</p> <p>7 has one slight edge that hasn't been mentioned. I went to</p> <p>8 NYU Law School so we have that in common. And I did take an</p> <p>9 accounting course there. I can't remember the professor's</p> <p>10 name. This was a while ago because we share that, you know,</p> <p>11 too. We've seen a lot in our lives.</p> <p>12 THE WITNESS: I forgot to mention it but for many</p> <p>13 years they taught LMM students in law school, NYU Law School</p> <p>14 the basic accounting class. It was really very enjoyable,</p> <p>15 very smart people.</p> <p>16 THE COURT: NYU is famous for its LMM programs.</p> <p>17 All right. I will hereby deem Professor Bartov an expert in</p> <p>18 financial accounting, in credit analysis, but with the</p> <p>19 understanding that he's -- his experience has been in</p> <p>20 publicly traded companies and in valuations to the extent</p> <p>21 it's -- basically relies on his accounting expertise.</p> <p>22 There's no jury so I think that makes it a lot</p> <p>23 simpler, much lower bar to deem someone an expert. Of</p> <p>24 course, I'm sure the Attorney General has various items to</p> <p>25 cross-examine and, of course, I've already heard a lot of</p>		<p>1 THE COURT: It was new to me. I expect that</p> <p>2 there are others that will come up based on the</p> <p>3 documents that they have designated but, we'll see what</p> <p>4 they get to. In terms of deeming him an expert, I</p> <p>5 ruled already. Okay. So let's start from here.</p> <p>6 DIRECT EXAMINATION</p> <p>7 BY MR. SUAREZ:</p> <p>8 Q. Professor, are the opinions you're prepared to</p> <p>9 give today given to a reasonable degree of certainty in the</p> <p>10 fields that the Court has qualified you as an expert?</p> <p>11 A. Yes.</p> <p>12 Q. What analysis, if any, have you performed on the</p> <p>13 allegations in the government's complaint?</p> <p>14 A. So, I looked on the complaint a couple of times to</p> <p>15 make sure I don't misunderstand it. And I looked on the</p> <p>16 complaint. I identify the relevant GAAP provisions that</p> <p>17 relate to this complaint. I looked on the Statements of</p> <p>18 Financial Condition. And, I looked on many documentary</p> <p>19 evidence and other documents.</p> <p>20 Particularly in my mind, the most important -- the</p> <p>21 most important -- evidence is the credit reports of Deutsche</p> <p>22 Bank because, the credit report of Deutsche Bank really tell</p> <p>23 you the whole story. You can spin it any way you want but,</p> <p>24 everything is there.</p> <p>25 And as I said, in the deposition -- I didn't even</p>	
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<p>1 what the defendants' witnesses have to say.</p> <p>2 Mr. Wallace.</p> <p>3 MR. WALLACE: I'm just going to repeat, reframe</p> <p>4 that I have made many times that being able to cross-examine</p> <p>5 witnesses does not cure the prejudice from defendants</p> <p>6 inserting new opinions and new subjects into experts whose</p> <p>7 disclosure were due back in May and June. So I'm sure --</p> <p>8 I'm a broken record on that, but Mr. Solomon, I'm sure, will</p> <p>9 raise objections to the extent there is specific opinions</p> <p>10 that Mr. Bartov discusses that have not been disclosed</p> <p>11 before today.</p> <p>12 (Continued on next page)</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>		<p>1 need to review the testimony transcript what people say ten</p> <p>2 years later. The documents that were produced in realtime,</p> <p>3 they were very detailed. And they tell you, in my mind, the</p> <p>4 whole story of this case.</p> <p>5 So, I review all of these materials. I considered</p> <p>6 the accounting literature. I considered the economic</p> <p>7 literature. I considered what the Federal Reserve has to</p> <p>8 say about it. And, after I considered all of these sources,</p> <p>9 I came up with my opinions.</p> <p>10 MR. SOLOMON: Your Honor, we renew our</p> <p>11 application to the extent the witness just testified</p> <p>12 that he reviewed the Deutsche Bank credit memos.</p> <p>13 This is the exact thing that we were seeking</p> <p>14 to have your Honor decide at the outset number one.</p> <p>15 Number two, that testimony is now cumulative,</p> <p>16 from Mr. Unell, who was here for several hours and</p> <p>17 several hundred pages of the transcript testifying. I</p> <p>18 believe he was qualified as a -- and I'm using the term</p> <p>19 loosely because, I don't have it in front of me --</p> <p>20 banking expert in order to review those and give</p> <p>21 testimony on those.</p> <p>22 He's a banking expert. With all due</p> <p>23 respect, Professor Bartov is an accounting expert. The</p> <p>24 banking and the review of a Deutsche Bank credit memo</p> <p>25 is not in his wheelhouse.</p>	

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<p>1 THE COURT: Well, I don't know that he's</p> <p>2 opining -- well, I guess, he did opine about it</p> <p>3 already.</p> <p>4 MR. SOLOMON: He did, your Honor. They just</p> <p>5 opened the door on that. That's why I stood up and</p> <p>6 waited patiently until Professor Bartov had concluded</p> <p>7 his answer.</p> <p>8 THE COURT: Let's, at this time, excuse the</p> <p>9 witness. We'll be brief -- I hope. Depends how long</p> <p>10 Mr. Kise talks.</p> <p>11 MR. AMER: Your Honor, I think it won't be</p> <p>12 brief.</p> <p>13 MR. KISE: Your Honor, I think we've had</p> <p>14 more objections on this witness, in the last five</p> <p>15 minutes or ten minutes, than anything else. Which</p> <p>16 tells me what I already knew, which is that they're</p> <p>17 terrified of this witnesses' expertise. There's no</p> <p>18 question.</p> <p>19 MR. SOLOMON: No, your Honor. We follow New</p> <p>20 York Practice where you have to disclose what the</p> <p>21 opinions of an expert are in advance of trial. And New</p> <p>22 York does not countenance trial by surprise.</p> <p>23 MR. KISE: There's no surprise. If you</p> <p>24 didn't read the reports, that's not a surprise. You</p> <p>25 just didn't read them.</p>		<p>1 that, he is going to testify about credit memos and the</p> <p>2 Deutsche Bank process and Deutsche Bank conclusions.</p> <p>3 So there is nothing at all inconsistent. I</p> <p>4 fully reject the notion because, the record supports</p> <p>5 me, that, there is any surprise here. The only</p> <p>6 surprise would be if they didn't read it.</p> <p>7 THE COURT: Objection overruled without</p> <p>8 prejudice to raise an objection as to specific</p> <p>9 questions. I think this was, basically -- "Are you</p> <p>10 familiar with this case or the complaint." He said</p> <p>11 what he's read.</p> <p>12 MR. SOLOMON: Your Honor, I was trying to</p> <p>13 get ahead of it, obviously, to save the Court time.</p> <p>14 But, if your Honor is directing us to do it question by</p> <p>15 question, we'll do so.</p> <p>16 THE COURT: Yes, let's do that.</p> <p>17 Witness, please.</p> <p>18 (Witness entered the court room.)</p> <p>19 THE COURT: Okay. Next question.</p> <p>20 DIRECT EXAMINATION</p> <p>21 BY MR. SUAREZ:</p> <p>22 Q. Professor, what was the result of your analysis?</p> <p>23 A. Well, the result of my analysis, briefly, was that</p> <p>24 not only -- and, let me just clarify. I testify here as an</p> <p>25 accounting expert. So, this is not a legal opinion. This</p>	
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<p>1 So in his reports, he references the credit</p> <p>2 report specifically. There are specific references, in</p> <p>3 his expert report, to the credit memos. He goes</p> <p>4 through them. They're in there. He's rendered these</p> <p>5 opinions.</p> <p>6 And he goes through and says that his</p> <p>7 analysis is based on accounting principles. You're</p> <p>8 going to hear it. It's in the reports.</p> <p>9 It is very different than Mr. Unell's</p> <p>10 perspective. As the Government has just conceded,</p> <p>11 Mr. Unell was a banking expert. This is an accounting</p> <p>12 expert.</p> <p>13 And he is fully qualified to give his</p> <p>14 opinion, from an accounting perspective, as to what</p> <p>15 users of financial information do.</p> <p>16 A bank is one kind of user. An investor is</p> <p>17 another kind of user, a hedge fund is another kind of</p> <p>18 user. But, they're all users.</p> <p>19 So his opinion is confined to what is in his</p> <p>20 reports. They were all disclosed.</p> <p>21 I mean, as you've heard before, as you have</p> <p>22 already ruled, every last detail of everything he's</p> <p>23 going to say was not disclosed in the report. You</p> <p>24 can't. It's subject matter based. It is not possible.</p> <p>25 But, we disclosed, fully, in his reports,</p>		<p>1 is from the accounting standpoint, how accountants perform</p> <p>2 the analysis and how accountant will come to the</p> <p>3 conclusions.</p> <p>4 Both, in my affirmative report and rebuttal</p> <p>5 report, I analyze, extensively, the credit report of</p> <p>6 Deutsche Bank.</p> <p>7 And I teach -- I teach how to do this credit</p> <p>8 report. I teach how to do this credit report. These people</p> <p>9 that produce this credit report might as well be my</p> <p>10 students.</p> <p>11 And about valuation, I opine on valuation in my</p> <p>12 report. I assess the validity of the valuation of</p> <p>13 Mr. Korogolos and I assess the validity of the evaluation of</p> <p>14 Mr. Hirsch. So in my report, I already opined the</p> <p>15 valuation.</p> <p>16 What I meant is, I'm not going to provide an</p> <p>17 independent valuation of these assets because, it's not</p> <p>18 necessary. Not because I can't do it.</p> <p>19 I perform -- in my consulting business, I perform</p> <p>20 evaluation of real estate projects. So there is confusion</p> <p>21 here. But, to your question, my main finding is that there</p> <p>22 is no evidence, whatsoever, for any accounting fraud. And</p> <p>23 on the other hand, my analysis show that the</p> <p>24 financial -- statement of financial condition for all the</p> <p>25 years were not, materially, misstated.</p>	

<p>A.Bartov - Defendants - Direct/Suarez Page 6222</p> <p>1 THE COURT: So I just want to understand.</p> <p>2 So, your expert opinion is that, from an accounting</p> <p>3 perspective, the Attorney General's complaint had no</p> <p>4 merit?</p> <p>5 THE WITNESS: That is, absolutely, my</p> <p>6 opinion. Absolutely.</p> <p>7 THE COURT: Okay.</p> <p>8 THE WITNESS: Yes.</p> <p>9 Q. Why is that professor?</p> <p>10 A. Well, you know, first, from big-picture</p> <p>11 perspective, you read the complaint. The complaint has</p> <p>12 numerous, numerous allegation of violation of GAAP. There</p> <p>13 is not a single reference to a specific provision in GAAP</p> <p>14 that was violated.</p> <p>15 Accounting is rule based discipline. If you</p> <p>16 allege, if you allege, if anyone allege that there was an</p> <p>17 accounting violation, they have to tell us what provision</p> <p>18 was violated.</p> <p>19 You read the complaint and you'll find so many</p> <p>20 violations. Some of them really border on the absurd. Some</p> <p>21 of them, student that took few hours of accounting, will see</p> <p>22 that this allegation are simply -- you don't need to do</p> <p>23 analysis.</p> <p>24 For example, they call the fix asset valuation</p> <p>25 approach, which is totally acceptable valuation approach,</p>	<p>A.Bartov - Defendants - Direct/Suarez Page 6224</p> <p>1 report says, "this is violation, this is violation." And,</p> <p>2 then, in the footnote, he references, in one case, four not</p> <p>3 one but, four provisions that were violated.</p> <p>4 So you go and you check the provisions and they</p> <p>5 had nothing to do with the subject matter at all.</p> <p>6 MR. WALLACE: Your Honor --</p> <p>7 A. So --</p> <p>8 MR. WALLACE: I'm just going to note our</p> <p>9 objection. Oh, he's still. I apologize.</p> <p>10 A. So, my point is, I read the complaint. I couldn't</p> <p>11 find any support to their claim. Most of their claims were</p> <p>12 simply unsupported. There are some claims that, factually,</p> <p>13 are correct.</p> <p>14 For example, there is one claim about the Triplex.</p> <p>15 The Triplex was the -- the price was inflated. There's no</p> <p>16 question about it.</p> <p>17 It was in 2012, it was valued at 180 million and</p> <p>18 in 2011 it was valued at 80 million. And, the reason was an</p> <p>19 error in the calculation.</p> <p>20 Let me just be very clear about it because, people</p> <p>21 who don't know accounting can say, "No, this is a terrible</p> <p>22 thing. This is awful. This is evidence of fraud."</p> <p>23 Errors like that are not unusual. If you look on</p> <p>24 my paper from 2021, when I study inadvertent error and</p> <p>25 fraudulent error, you'll see that about -- it various a lot</p>
<p>A.Bartov - Defendants - Direct/Suarez Page 6223</p> <p>1 most on the economic theory and, specifically, under ASC</p> <p>2 274. They call it scheme. They call it fraud.</p> <p>3 Why? Because they didn't subtract the</p> <p>4 depreciation. This is in the complaint. They didn't</p> <p>5 subtract depreciation. This is why it is a fraud.</p> <p>6 And Mr. Hirsch, their evaluation expert, copy and</p> <p>7 paste the statement and said that the valuation of the fix</p> <p>8 asset is wrong, because they didn't subtract depreciation.</p> <p>9 Depreciation had nothing to do with any definition</p> <p>10 of market value. Depreciation has nothing to do with this.</p> <p>11 So, this is obvious that there is to merit here let alone</p> <p>12 that they didn't reference a single provision in GAAP that</p> <p>13 support their position. And I can go on and on and on.</p> <p>14 And, what I did -- and I feel really bad that I</p> <p>15 had to spend so much time on this engagement because, there</p> <p>16 was no justification for any of this allegations.</p> <p>17 So what I would to do is to take allegation by</p> <p>18 allegation, run through my mind thousand and thousand of</p> <p>19 GAAP provisions and try to find, at least, something, some</p> <p>20 clue, that would give some basis for this allegation.</p> <p>21 But, obviously, I cannot remember a thousand</p> <p>22 thousand of GAAP provisions. So, I have to consult the</p> <p>23 codification. And, it takes a long time. I couldn't find a</p> <p>24 single GAAP Provision that was violated, couldn't find one.</p> <p>25 And when I looked on Dr. Lewis report, Dr. Lewis</p>	<p>A.Bartov - Defendants - Direct/Suarez Page 6225</p> <p>1 over the years. But, in the normal year, about three or</p> <p>2 four percent of companies report that they had errors in</p> <p>3 previously issued financial statement. Errors in accounting</p> <p>4 are inevitable. We're talking about audited financial</p> <p>5 statement.</p> <p>6 The Federal Reserve advise banks not to rely on</p> <p>7 statement of financial condition because they say this</p> <p>8 statement are not audited and, therefore they, are likely to</p> <p>9 contain many, many errors. This is inevitable.</p> <p>10 The accounting process is such that -- I served as</p> <p>11 an auditor for eight years. There is not one company</p> <p>12 financial statement that I audited that I didn't find many</p> <p>13 errors. This is the nature of accounting. So these are</p> <p>14 non-audited financial statement. Error like that are likely</p> <p>15 to happen unfortunately.</p> <p>16 So I looked on the supporting document for</p> <p>17 example. So what is the number one indicator for fraud if</p> <p>18 you talk about fraud in accounting? I'm not talking about</p> <p>19 legal.</p> <p>20 From accounting purposes, the number one indicator</p> <p>21 of fraud is concealment. Why? Because, if you try to</p> <p>22 defraud someone, you want to conceal it so it won't be</p> <p>23 detected.</p> <p>24 If you don't conceal it, obviously, the auditor or</p> <p>25 whoever do the compilation will immediately find the</p>

<p>A.Bartov - Defendants - Direct/Suarez Page 6226</p> <p>1 misstatement.</p> <p>2 So, if you do intention -- fraud, in accounting,</p> <p>3 is an intentional misstatement as opposed to inadvertent or</p> <p>4 accidental misstatement. So, if you do fraudulent</p> <p>5 misstatement, you'll do all you can to hide this</p> <p>6 misstatement.</p> <p>7 Look on the supporting document. Last year</p> <p>8 80 million, this year 180 million. Is this line item was</p> <p>9 hidden? No, it was the top of the document, the most</p> <p>10 prominent line item in the document.</p> <p>11 MR. WALLACE: Your Honor, this is a lecture</p> <p>12 at this point. This is not a response to a question.</p> <p>13 THE COURT: Keep going.</p> <p>14 A. Mazars was paid to do the compilation. What do I</p> <p>15 mean compilation? He needs to read -- they submitted to</p> <p>16 him -- there is no dispute that they submitted to him the</p> <p>17 supporting document.</p> <p>18 If you just -- any person that have one year</p> <p>19 experience in auditing -- I'm not talking about somebody</p> <p>20 with 30 years of experience of auditing, one year of</p> <p>21 experience of auditing will immediately see that there is a</p> <p>22 jump from 80 million to 180 million in one year. This is</p> <p>23 unreasonable. This is an error that should be caught. But,</p> <p>24 definitely there is no evidence here of concealment?</p> <p>25 If they want to conceal it, you know what they do?</p>	<p>A.Bartov - Defendants - Direct/Suarez Page 6228</p> <p>1 Five-minute warning. I'll make it seven minutes.</p> <p>2 Certainly, there are things that the professor said</p> <p>3 that were not responsive to the question. I'm not</p> <p>4 going to go through, line by line, and strike anything.</p> <p>5 I'll just note that I understand there was extraneous</p> <p>6 matter.</p> <p>7 But Mr. Wallace?</p> <p>8 MR. WALLACE: I just want to flag then --</p> <p>9 the issue I want to flag is some relevance here. We</p> <p>10 just had this extensive speech about the complaint with</p> <p>11 no discussion of the actual evidence as coming into</p> <p>12 trial, the record as it existed in summary judgment.</p> <p>13 I believe the professor said that he didn't</p> <p>14 review trial testimony. So, I think there's some</p> <p>15 relevance issues with the extensive opinion we just</p> <p>16 heard.</p> <p>17 I assume this can be addressed, more clearly,</p> <p>18 if he responds directly to specific questions and is</p> <p>19 clear on exactly what he's talking about.</p> <p>20 But, he talked about, yeah, experts who the</p> <p>21 Attorney General did not put in on either summary</p> <p>22 judgment or its trial case. And so, for the Court to</p> <p>23 spend time hearing his response to experts that aren't</p> <p>24 in evidence -- and most of them will not come into</p> <p>25 evidence -- is not relevant testimony to the trial.</p>
<p>A.Bartov - Defendants - Direct/Suarez Page 6227</p> <p>1 They will write 2011, 180; 2012, 180. And this is fraud.</p> <p>2 This is fraud because they tried to conceal the 180. They</p> <p>3 didn't know that this was an error. They just put an error.</p> <p>4 That happens all the time. So, it's truly this is an error.</p> <p>5 But this is no fraud.</p> <p>6 So but most of the problems that included in the</p> <p>7 complaint are not violations at all. They are no violations</p> <p>8 at all.</p> <p>9 So, that's what kind of my analysis indicated even</p> <p>10 before I read the credit report. Now, if you want to think</p> <p>11 that -- if you want to think that -- in order for you to</p> <p>12 believe, in order for anyone to believe, that Deutsche Bank</p> <p>13 was mislead by the financial statement -- the statement of</p> <p>14 financial condition, if you want to believe that, you have</p> <p>15 to believe that Deutsche Bank doesn't listen to FASB.</p> <p>16 They tell them, don't take the number by the face</p> <p>17 value. They don't listen to the Federal Reserve. They tell</p> <p>18 them don't rely on unaudited financial statement. They</p> <p>19 don't know anything about what every textbook and accountant</p> <p>20 tell them "Don't rely on this numbers, the raw numbers in</p> <p>21 the financial statement."</p> <p>22 Q. And we'll break for those?</p> <p>23 A. Okay.</p> <p>24 Q. We'll break through those separately?</p> <p>25 THE COURT: That's one way to stop him.</p>	<p>A.Bartov - Defendants - Direct/Suarez Page 6229</p> <p>1 THE COURT: I'll direct the witness to just</p> <p>2 answer the question as we say.</p> <p>3 THE WITNESS: I also remind my train of</p> <p>4 thought. But, I just want to correct the incorrect</p> <p>5 statement here. I did not say that I didn't review the</p> <p>6 testimony of others. I said, I didn't have to because,</p> <p>7 the credit report -- I did but, I didn't have to</p> <p>8 because, the credit report tell you the whole story.</p> <p>9 But, I still review the testimony of many of the</p> <p>10 witness in this case. But I say, it was not necessary.</p> <p>11 I did it anyway. Just to clarify.</p> <p>12 MR. WALLACE: I believe the testimony will</p> <p>13 be more clear if it's in response to specific questions</p> <p>14 and not offered as an extensive narrative.</p> <p>15 THE COURT: Everybody, 11:45.</p> <p>16 (A recess was taken.)</p> <p>17 (After the recess the following occurred:)</p> <p>18 THE COURT: Bring the witness back to the</p> <p>19 stand.</p> <p>20 COURT OFFICER: Witness entering.</p> <p>21 THE COURT: The magic words are slowly,</p> <p>22 loudly, clearly, and right in the mike.</p> <p>23 Mr. Suarez, go ahead.</p> <p>24 MR. SUAREZ: I got the same advice from</p> <p>25 Justice Engoron at the beginning of the case.</p>

<p>A.Bartov - Defendants - Direct/Suarez Page 6230</p> <p>1 If we could please pull up demonstrative</p> <p>2 DD8-2.</p> <p>3 DIRECT EXAMINATION</p> <p>4 MR. SUAREZ:</p> <p>5 Q. Professor, do you recognize this demonstrative?</p> <p>6 A. Yes.</p> <p>7 MR. SOLOMON: We would object to this</p> <p>8 demonstrative. Before we have a discussion, we would</p> <p>9 ask that the witness be excused.</p> <p>10 THE COURT: Okay.</p> <p>11 Witness, I'll have to ask you to excuse</p> <p>12 yourself.</p> <p>13 MR. SOLOMON: Your Honor, this</p> <p>14 demonstrative, that we received last night, are,</p> <p>15 effectively, cue cards for the witness' testimony.</p> <p>16 There are a couple of pages that are not</p> <p>17 objectionable; EDA-4, 5 and 6 which simply have quotes</p> <p>18 or cite provisions.</p> <p>19 But, the rest of it your Honor can look at</p> <p>20 and scroll through it while we are talking about this.</p> <p>21 You'll see that this is nothing more than an outline</p> <p>22 for the witness' testimony.</p> <p>23 THE COURT: Well, that's what it looks like</p> <p>24 for a very short amount of time that I've seen it. I</p> <p>25 can't scroll through it.</p>	<p>A.Bartov - Defendants - Direct/Mr.Suarez Page 6232</p> <p>1 six.</p> <p>2 MR. SOLOMON: Yes, your Honor.</p> <p>3 THE COURT: Okay.</p> <p>4 Mr. Kise, ever at the ready. Go ahead.</p> <p>5 MR. KISE: Well, again, not if you're</p> <p>6 prepared to use it as a demonstrative. It's a bench</p> <p>7 trial. All of this is just statements from his report</p> <p>8 which he could have a copy of his report sitting with</p> <p>9 him. There's no coaching him at all.</p> <p>10 DD5 -- DD8-5 are simply definitions taken</p> <p>11 straight out of GAAP. They're just copies of the</p> <p>12 definition; DD5 fair value one, fair value two. You've</p> <p>13 probably seen the definition of estimated current value</p> <p>14 more times than you care to see.</p> <p>15 The others are just simply straight copies</p> <p>16 out of GAAP. The first page is basically a definition</p> <p>17 of what GAAP is. This is really just, for lack of</p> <p>18 better word, a teaching aid for the fact finder, just</p> <p>19 to walk-through the specific things.</p> <p>20 I mean, the witness -- there's no jury here</p> <p>21 and there's no, like, cue cards. As you can see, the</p> <p>22 witness doesn't need any cue cards. He is can --</p> <p>23 THE COURT: If he doesn't need any cue cards</p> <p>24 then --</p> <p>25 MR. KISE: But the point is it is to have</p>
<p>A.Bartov - Defendants - Direct/Mr.Suarez Page 6231</p> <p>1 MR. SOLOMON: They have a copy for the</p> <p>2 Court.</p> <p>3 THE COURT: Let's get a copy.</p> <p>4 MR. SOLOMON: Mine is marked up.</p> <p>5 THE COURT: Well, I'd like to see that.</p> <p>6 But, it wouldn't be fair.</p> <p>7 You said you did not object to pages four,</p> <p>8 five, six. Was that it?</p> <p>9 MR. SOLOMON: That's right, your Honor. I</p> <p>10 think page four is simply -- if we have the same</p> <p>11 version -- EDA-4 is just a quote from what's described</p> <p>12 to be a run on valuation expert.</p> <p>13 Page five is -- excuse me. Page six is</p> <p>14 simply from the ASC 274 provisions. And to</p> <p>15 the -- actually, we do have an objection to seven.</p> <p>16 There's some items on there that we think go beyond</p> <p>17 just merely quotes as to what the provisions are or</p> <p>18 from another source.</p> <p>19 THE COURT: So, just so we're on the same</p> <p>20 page, the ones that you're not objecting to are --</p> <p>21 MR. SOLOMON: DD8-4.</p> <p>22 THE COURT: You can just say the four.</p> <p>23 MR. SOLOMON: Okay. Four and five. No, I'm</p> <p>24 sorry. Again, I am being corrected. Six.</p> <p>25 THE COURT: You're not objecting to four and</p>	<p>A.Bartov - Defendants - Direct/Mr.Suarez Page 6233</p> <p>1 demonstratives that we can point to for the Court so</p> <p>2 that when his point is being made, he can point to the</p> <p>3 specifics of this.</p> <p>4 As with all demonstratives, your Honor, it's</p> <p>5 designed to help the fact finder. So that's it. It's</p> <p>6 not evidence. And it's not coaching.</p> <p>7 I think it will be useful because, these are</p> <p>8 complicated subjects; words matters, specific words</p> <p>9 matter. So I don't think, again, in a bench trial,</p> <p>10 that there's any -- you have wide latitude -- there's</p> <p>11 any harm in allowing you to reference it. You're fully</p> <p>12 capable of looking at and taking it for what its -- for</p> <p>13 face value.</p> <p>14 MR. SOLOMON: Your Honor, we don't object if</p> <p>15 the Court has a copy of it. What we don't want is for</p> <p>16 it to be up on the screen for the witness during his</p> <p>17 testimony.</p> <p>18 So if they want to have the witness conclude</p> <p>19 his testimony, at the end of his testimony, where they</p> <p>20 have rested after either cross and any redirect, we can</p> <p>21 address it at that point. But, to have this up now,</p> <p>22 during the witness' testimony, would be improper.</p> <p>23 MR. KISE: Well, again, your Honor.</p> <p>24 THE COURT: You don't have to say again.</p> <p>25 That's a bad word remember? Just give me a second</p>

<p>A.Bartov - Defendants - Direct/Mr.Suarez Page 6234</p> <p>1 here.</p> <p>2 Using the last digit of the numbers, but I'll</p> <p>3 start with DD8-2 out, three out, four in, five in, six</p> <p>4 in, seven out basically for the reasons that</p> <p>5 Mr. Solomon has said and over defendant's objection.</p> <p>6 MR. KISE: Your Honor, one other thing.</p> <p>7 THE COURT: Yes.</p> <p>8 MR. KISE: To the extent the witness</p> <p>9 testifies to this, can we put it up after he says it on</p> <p>10 the stand. Then it's just --</p> <p>11 THE COURT: Then it's not a demonstrative,</p> <p>12 is it?</p> <p>13 MR. KISE: It's there just to reference back</p> <p>14 while he's on the stand.</p> <p>15 MR. SUAREZ: It will help move things along</p> <p>16 your Honor.</p> <p>17 MR. KISE: Right. It will just help move</p> <p>18 things along. He's already testified to the fact that</p> <p>19 the goal of financial reporting -- he's already</p> <p>20 testified to this in the trial -- to help user make</p> <p>21 decisions about providing resources.</p> <p>22 And he's already testified to the fact that</p> <p>23 they provide that this is the beginning not the end of</p> <p>24 a complex highly subjective valuation.</p> <p>25 Most of what you see up there, due to his</p>	<p>A.Bartov - Defendants - Direct/Mr.Suarez Page 6236</p> <p>1 Mr. Suarez, go ahead.</p> <p>2 DIRECT EXAMINATION</p> <p>3 MR. SUAREZ:</p> <p>4 Q. Professor Bartov, what is GAAP?</p> <p>5 A. Where's the slide?</p> <p>6 Q. We'll just run through the definitions and we'll</p> <p>7 upload the slides a little later.</p> <p>8 THE WITNESS: Okay. I just want you to</p> <p>9 know, Judge, that even in class that I have been</p> <p>10 teaching for 40 years, I always bring slide to class</p> <p>11 because, it's easier for me and it is easier on the</p> <p>12 student.</p> <p>13 So, you know, this is not a memory test I</p> <p>14 don't think. But I can also answer the question</p> <p>15 without the slides but, it will be more difficult for</p> <p>16 you to follow and more difficult for me to remember all</p> <p>17 the details.</p> <p>18 THE COURT: I studied GAAP in law school.</p> <p>19 We've had a lot of testimony on GAAP. I think the</p> <p>20 question is sort of a generic question. Nope, can't</p> <p>21 put the slides up at this point.</p> <p>22 THE WITNESS: Okay.</p> <p>23 Q. What is GAAP, Professor?</p> <p>24 A. So GAAP is a set of standards conventions and</p> <p>25 rules that applies to all publically traded companies and</p>
<p>A.Bartov - Defendants - Direct/Mr.Suarez Page 6235</p> <p>1 long narrative, he said most of it already. So it's</p> <p>2 not like it's coaching him or anything. It's just</p> <p>3 simply a reference point.</p> <p>4 And I do agree with Mr. Suarez, it will help</p> <p>5 us keep the witness in --</p> <p>6 MR. SOLOMON: Your Honor, that's precisely</p> <p>7 the problem. It's to guide the witness' testimony.</p> <p>8 THE COURT: That's why I excluded what I</p> <p>9 did.</p> <p>10 MR. SOLOMON: If you want them to put it up</p> <p>11 after he's testified --</p> <p>12 THE COURT: I'm not going to allow that.</p> <p>13 MR. SOLOMON: Thank you.</p> <p>14 THE COURT: There have been some very good</p> <p>15 classic demonstratives in this case. These pages I've</p> <p>16 taken out are not that. Let's just go ahead.</p> <p>17 Witness, please.</p> <p>18 THE COURT: I have a quick question for</p> <p>19 professor.</p> <p>20 Who has the hardest job in this whole room?</p> <p>21 THE WITNESS: You.</p> <p>22 THE COURT: No. My job is easy I guess.</p> <p>23 No. The two reporters that are sitting in front of</p> <p>24 you. So, please, slow, clearly and right into the</p> <p>25 mike.</p>	<p>A.Bartov - Defendants - Direct/Mr.Suarez Page 6237</p> <p>1 private and nonpublic nongovernmental companies that prepare</p> <p>2 financial statement according to GAAP.</p> <p>3 (Whereupon, the following proceedings were</p> <p>4 stenographically recorded Shameeka Harris.)</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

<p>Professor Bartov - by Defendant - Direct (Mr. Suarez) Page 6238</p> <p>1 DIRECT EXAMINATION</p> <p>2 BY MR. SUAREZ:</p> <p>3 Q What rules govern GAAP?</p> <p>4 A GAAP, GAAP is a -- GAAP is a -- is a rule based, rule</p> <p>5 based set of standouts in ruling conventions and the company</p> <p>6 they prepare they go by GAAP, if they follow GAAP. However,</p> <p>7 GAAP allow -- allows -- GAAP allow a substantial, substantial</p> <p>8 discretion for preparer both in terms of picking a rule out of</p> <p>9 many of rules. So GAAP is not -- is not very distinctive in a</p> <p>10 sense that each rule -- many rules offer a menu and the preparer</p> <p>11 can pick from the menu the rule that he believes or the preparer</p> <p>12 believe is most, most informative -- would be more informative</p> <p>13 to the users and also GAAP, based on, on assumption. And an</p> <p>14 assumption by definition is subjective meaning different people</p> <p>15 will make different assumption under the same circumstances.</p> <p>16 Q What role, if any, does intuition have in interpreting</p> <p>17 GAAP?</p> <p>18 A Intuition activity is, you know, intuition has no role</p> <p>19 in GAAP. I always tell my students when you are asked an</p> <p>20 accounting question either you know the rule or you look it up.</p> <p>21 You never use intuition. If you see a company report an item on</p> <p>22 the financial statement and you don't like the way they report</p> <p>23 them or they don't seem intuitive to you, this is not a reason</p> <p>24 to decide that there is a GAAP violation.</p> <p>25 The only way to decide that there is a GAAP violation</p>	<p>Professor Bartov - by Defendant - Direct (Mr. Suarez) Page 6240</p> <p>1 assumption -- under the assumption that the numbers in the</p> <p>2 financial statement is just the first step in the analysis and</p> <p>3 the second step would be to look on the footnotes, to look on</p> <p>4 other information, to restate the reported numbers in a way that</p> <p>5 treats the needs of the users. This is problem number one.</p> <p>6 Problem number two, which refer to GAAP limitation is</p> <p>7 the GAAP limitation means that the accounting rules are often at</p> <p>8 odds with economic principles and, therefore, the accounting</p> <p>9 numbers that are reported on the financial statement cannot be</p> <p>10 used by any -- by any user because users are interested in</p> <p>11 economic values not in accounting values. So, because of this</p> <p>12 problem, because of this GAAP limitation, again, this is not the</p> <p>13 reason that the users cannot use the numbers on financial</p> <p>14 statements as reported.</p> <p>15 Q How does GAAP address the true economic value of an</p> <p>16 asset if at all?</p> <p>17 A GAAP does not -- GAAP is not designed to give you the</p> <p>18 true economic value of an asset. As I said before, GAAP give</p> <p>19 you valuations based on accounting rules that, as I said, in</p> <p>20 many cases they are at odds, contradicting. They are</p> <p>21 contradicting economic theory and, therefore, the numbers are</p> <p>22 completely different. If it's helpful, I can give examples that</p> <p>23 demonstrate what do I mean by GAAP limitations. So just</p> <p>24 recently there was Silicone Valley Bank that went bankrupt.</p> <p>25 Q Yes, please, please give us the --</p>
<p>Professor Bartov - by Defendant - Direct (Mr. Suarez) Page 6239</p> <p>1 is if you can point to a specific provision in GAAP that was</p> <p>2 violated.</p> <p>3 Q What is the goal of financial reporting?</p> <p>4 A The goal of financial reporting is to provide</p> <p>5 information to users that will help them in their lending and</p> <p>6 investment decisions.</p> <p>7 Q What are the limitations of GAAP?</p> <p>8 A So, so while the goal is to provide helpful information</p> <p>9 to users, the intention -- the -- the statement -- the financial</p> <p>10 statements are not designed -- are not designed to report values</p> <p>11 but rather they are designed to provide initial information</p> <p>12 that -- that users will use as the first step in their long and</p> <p>13 complex process of valuation. And the reason that they cannot</p> <p>14 use the numbers in the financial statement as reported are two</p> <p>15 reasons.</p> <p>16 Reason one is the financial report. FASB adopted a</p> <p>17 general purpose financial statement meaning the companies could</p> <p>18 use only one set of financial statement but different users have</p> <p>19 different needs. So, for some users, they need the valuation to</p> <p>20 be based on one definition of value. Another user need the</p> <p>21 financial statement to report valuation on another definition of</p> <p>22 value. So FASB decided they are not going to have companies</p> <p>23 report multiple sets of financial statement. They are going to</p> <p>24 have companies produce one set of financial statements that</p> <p>25 really provide no information about value to no user under the</p>	<p>Professor Bartov - by Defendant - Direct (Mr. Suarez) Page 6241</p> <p>1 A So GAAP limitation -- so Silicon Valley Bank just</p> <p>2 before they went bankrupt, a couple of weeks before, they issued</p> <p>3 financial statement. And they issue the financial statement,</p> <p>4 the net worth of Silicon Valley Bank was \$16 billion. What does</p> <p>5 the economic true value of net worth. It was zero. Why they</p> <p>6 get to 16 billion and not zero, because they follow accounting</p> <p>7 rules. And in particular, they are one, one category of assets</p> <p>8 that they labeled held to maturity debt securities, the held to</p> <p>9 maturity debt securities debt value on the balance sheet at 91</p> <p>10 billion knowing for sure that the economic value was only 76</p> <p>11 billion.</p> <p>12 In the language of the plaintiffs, they inflated the</p> <p>13 value of debt securities to maturity -- held to maturity debt</p> <p>14 security by \$15 billion, but they didn't inflate it. They</p> <p>15 simply were following accounting rules. They issued the</p> <p>16 financial statement. It took depositors and investors a couple</p> <p>17 of weeks to figure out that the numbers, the \$16 billion net</p> <p>18 worth that they reported, is the started in terms of economic</p> <p>19 reality.</p> <p>20 The economic reality was that the net worth was close</p> <p>21 to zero. Once you figured it out, it was right on the bank and</p> <p>22 the bank went bankrupt. So this is an example -- a textbook</p> <p>23 example, I would say, of what GAAP limitation is all about.</p> <p>24 They give you accounting valuations that have little to do with</p> <p>25 the true valuations. And by true valuation, I mean valuation</p>

Professor Bartov - by Defendant - Direct (Mr. Suarez) Page 6242

1 that will be computed based on economic principles.
2 Q And can you give me, Professor, an example of a time
3 when GAAP results in undervaluing of the true economic value of
4 a company?

5 A There are many example like that. One example would be
6 Coca-Cola. Coca-Cola, if you look on the financial statement,
7 the most recent annual report, according to the balance sheet
8 the net worth of Coca-Cola is \$25 billion. If you look on the
9 market cap, our market, the stock market, that value of
10 Coca-Cola, the value of Coca-Cola is \$250 billion, ten times
11 more, ten times more than the net worth based on the balance
12 sheet.

13 Q Why is that, Professor?

14 A The reason again is another example of GAAP limitation
15 because according to GAAP, internally develop, intangible asset
16 such as brand value cannot be reported on balance sheet. It is
17 an economic asset. It may be the most important economic assets
18 that Coca-Cola own. But because of GAAP limitation, because
19 GAAP does not attempt to provide economic values, GAAP said you
20 cannot put these valuable assets on your balance sheet but
21 investors do their homework and they say the fact you didn't put
22 it on the balance sheet doesn't mean anything to us. We know
23 that the numbers cannot be used as reported. So this is known
24 as latent assets. Latent assets are unrecognized. Latent
25 assets means assets that are there but you cannot see them.

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1 They are intangible asset. According to GAAP, you cannot record
2 them on the balance sheet. Investors do their homework, but
3 they price the stock as if these assets were on the balance
4 sheet. So in this case, the market valuation is much, much
5 higher than the net worth according to GAAP.

6 Q And how is the example that you just used in Coca-Cola
7 similar to the issues in this case?

8 A Well, if you look on the statement of financial
9 condition, it's obvious that the major, major effort is missing
10 from the statement and this asset is the brand value of the
11 Trump Organization. There is no question that the brand value
12 of Mr. Trump, President Trump worth billions. There is no
13 question about it. And actually there is evidence in the case
14 that it off about \$3 billion, but it is nowhere to be found on
15 the statement of financial condition. Why? Because there's a
16 statement of financial condition clearly states they follow GAAP
17 and GAAP does not allow to include brand value that was
18 internally developed as a standard alone asset.

19 This should not be confused with using, considering the
20 fact of brand value on the value of tangible asset. Tangible
21 assets like hotels and gulf courses they are valued under a
22 different GAAP and this GAAP require that when you do the
23 valuation you include the brand value effect on the value of the
24 tangible asset. So the fact that the statement of financial
25 condition indicates that brand value does not show up as a stand

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1 alone asset should not be confused with valuation of tangible
2 assets.

3 So, but what is the consequence? The consequence is if
4 you edit the economic value of the brand name to the statement
5 of financial condition, the net worth would be \$3 billion
6 higher. So in other words, if you look at it this way from the
7 economic prospective, the net worth of the statement of
8 financial condition is really understated not overstated.

9 Q What is the difference between price and value,
10 Professor?

11 A So, price is an objective measure of value derived from
12 an market transaction and this is objective because it's
13 determined by the market.

14 Q And are there any other objective, objective measures
15 of value?

16 A Not that I am he aware of. I think that the price is
17 the only objective measure of value. Price derive from a market
18 transaction not, for example, price that derive from related
19 party transaction or anything like that. So the price is
20 derived from a market transaction, then the price is objective.
21 And I don't know any other measure of value that would be
22 objective.

23 Q What is a valuation then, Professor?

24 A Valuation is an opinion. It's an opinion on price.
25 It's an opinion on price derived from a valuation model.

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1 Q Are valuations objective, Professor?

2 A By definition, they cannot be objective because they
3 are opinions. Opinion can never be objective. So valuation are
4 subjective. Price is objective.

5 Q How is an asset valued for purposes of GAAP?

6 A Well, for the purpose of -- for any purpose, when you
7 do a valuation for any purpose, you first have to pick the
8 definition of value. There are many different definition of
9 value and each definition obviously will give a different
10 valuation. So the first step in valuation process is to pick
11 the valuation of value. For example, in GAAP, there are four
12 different definition of value. Each definition will give you
13 different valuation. Once the valuator pick the definition of
14 value, the second step would be to pick a valuation model in
15 assumption and to produce the valuation.

16 Q And in the case of a personal financial statement or a
17 statement of financial condition, what perspective must a
18 preparer use in preparing a valuation?

19 A Well, when you -- when a user -- I mean, a preparer
20 produce financial statement based on the provision of ASC 274,
21 they have to follow the definition of value that is provided by
22 ASC 274 which is very unusual. It is used nowhere else in -- in
23 the qualifications and this is the estimated current value.
24 Estimated current value is the definition of value according to
25 ASC 274 and it's very unusual. It is not used anywhere else.

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<p>1 There are many, many standouts, maybe 30 or 40 standouts that</p> <p>2 use the definition of value. None of them use estimated current</p> <p>3 value. Estimated current value is very unique used only in ASC</p> <p>4 274.</p> <p>5 Q Professor, are valuations subject to substantial</p> <p>6 variations?</p> <p>7 A By definition because if something is subjective</p> <p>8 anything that is subjective is subject to valuation because</p> <p>9 different people have different opinions about everything.</p> <p>10 Q And why are valuations subject to substantial</p> <p>11 valuations?</p> <p>12 A Valuation are subject to substantial variation for</p> <p>13 three reasons. Number one, they are different definition of</p> <p>14 value. So if one valuator pick one definition and another</p> <p>15 valuator pick another definition, right there you get different</p> <p>16 opinions about price and it's critical that when you pick</p> <p>17 definition about value you understand the definition. And in</p> <p>18 order to understand the definition of value under ASC 274, you</p> <p>19 need to be an accountant because the definition is not</p> <p>20 intuitive.</p> <p>21 So if you are an accountant you know that the</p> <p>22 definition is -- is estimated -- estimated accounting value. So</p> <p>23 now, once you understand the definition, then you have to pick a</p> <p>24 valuation model. And you in order to pick the valuation model,</p> <p>25 you need to consult with the implementation guidelines. The</p>	<p>1 So the AICPA actually issued an opinion and said to</p> <p>2 users ASC 820 that provide the definition for fair value does</p> <p>3 not apply to ASC 274 to use this unique and unusual definition</p> <p>4 of estimated current value.</p> <p>5 MR. SUAREZ: Your Honor, may I put up Demonstrative</p> <p>6 DD8-4, the quote.</p> <p>7 THE COURT: Sure.</p> <p>8 Q Professor, who's is Aswath Damodaran?</p> <p>9 A Aswath Damodaran is a very distinct professor, and he</p> <p>10 is a colleague of mine. And he's known on Wall Street as the</p> <p>11 dean of valuations because he's, perhaps, the number one</p> <p>12 authority of valuation and he wrote the book The Damodaran on</p> <p>13 Valuation.</p> <p>14 Q Did you prepare the slide, Professor?</p> <p>15 A I did, yeah.</p> <p>16 Q Why was it important to include this quote from the</p> <p>17 dean of valuations?</p> <p>18 A This just demonstrates that -- the fact that the</p> <p>19 valuation are subjective is a universally accepted notion. This</p> <p>20 is not a radical opinion of mine. If somebody tells you the</p> <p>21 valuation is objective, this person has to have his head</p> <p>22 examine. This is absurd. It is just like to say two plus two</p> <p>23 is six, but I just want to show you that it is not my own view.</p> <p>24 It is widely accepted by providing this definition for Professor</p> <p>25 Damodaran book and it says, "valuation is neither the science</p>
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<p>1 definition alone tell you nothing without the limitation</p> <p>2 guidelines. So there is a limitation guidelines that you have</p> <p>3 to review and pick one of the models that are suggested by this</p> <p>4 implementation guide or a model that is at least consistent with</p> <p>5 the economic principles that are -- that are reflected in these</p> <p>6 models. And then once you pick the model, you have to pick the</p> <p>7 assumption. Now, different people will pick different</p> <p>8 assumptions. So, obviously, if you take all of this together,</p> <p>9 even under the same definition, different people will pick</p> <p>10 different models, different people will pick different</p> <p>11 assumptions, you'll get different answers.</p> <p>12 Q And how is a statement of financial condition prepared</p> <p>13 under ASC 274 different, if at all, than a financial statement</p> <p>14 prepared otherwise under GAAP?</p> <p>15 A So, ASC 274 in the way I see it I consider the</p> <p>16 stepchild of GAAP because the provision there are in many cases,</p> <p>17 many cases are at odds with provisions in other -- in other</p> <p>18 standouts. For example, the key -- one key element of ASC 274</p> <p>19 is obviously the notion of estimated current value.</p> <p>20 Now, those are confusion among preparer because this</p> <p>21 notion of estimated current value is so confusing. So there was</p> <p>22 a confusion because in most of the standouts the definition of</p> <p>23 value is fair value. It is not estimated current value. If you</p> <p>24 use fair value, you got a completely different valuation than if</p> <p>25 you use estimated current value.</p>	<p>1 that some of its proponent make it out to be nor the objective</p> <p>2 search for the truth, for the true value that idealist would</p> <p>3 like you to become. The models that we use in valuation may be</p> <p>4 quantitative but the inputs, means the assumptions, leave plenty</p> <p>5 of room for subjective judgments. Thus the final value that we</p> <p>6 obtain from this model is colored by the bias that we bring into</p> <p>7 the process."</p> <p>8 Q And how, if at all, Professor, is this concept laid out</p> <p>9 by Professor Damodaran applied in connection with the</p> <p>10 preparation of statements of financial condition under ASC 274?</p> <p>11 A Well, the implication is that under ASC 274 you have to</p> <p>12 value all the assets based on estimated current value. An</p> <p>13 estimated current value in the current situation must be used</p> <p>14 valuation model, and it means that if the preparer use valuation</p> <p>15 model and come up with a value, obviously, if you ask other</p> <p>16 people they will come up with different values.</p> <p>17 So the fact that some people with varying level of</p> <p>18 expertise or maybe no expertise come up with different values</p> <p>19 than what is in the statement of financial condition, there is</p> <p>20 no evidence, there is no evidence that anything is wrong with</p> <p>21 the valuation in the statement of financial condition. It just</p> <p>22 means that these people have different opinion.</p> <p>23 Q And what are the subjective judgments that a preparer</p> <p>24 of a statement of financial condition under ASC 274 must make,</p> <p>25 Professor?</p>

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1 A Well, first of all, and I think this is critical for
2 this litigation, first of all, they have to understand the
3 definition of estimated current value. From reading some of the
4 testimony, it is my impression that there is a lot of confusion
5 about what the definition even means but --
6 MR. SUAREZ: Your Honor, may I show the professor
7 DD8-five which have the definition.
8 Q Can you read the definition of estimated current value
9 into the record?
10 A Estimated current value for asset, the amount at which
11 the item could be exchanged between the buyer and the seller
12 each of whom is well informed and willing and neither of whom is
13 compelled to buy or sell.
14 Q So, I'd like to set this aside on the screen and bring
15 up Plaintiff's Exhibit 787 and put it here on the right side.
16 Do you recognize this document, Professor?
17 A I do.
18 Q What is this document?
19 A This is a statement of financial condition of a
20 President Trump for June 30, 2011.
21 Q Could you please turn to the fourth page of this
22 document? What do these numbers mean, Professor?
23 A This number?
24 Q Yes.
25 A These are the list of the assets that Mr. -- Mr. --

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1 President Trump owns as of June 30, 2011. So the list of the
2 asset and the estimated current value of this assets.
3 Q And reading them alone on this page, what meaning can
4 be ascribed to these numbers?
5 A Nothing. There is no meaning to these numbers because
6 you need to understand this statement is two page long. You
7 have another 18 pages of notes. If you don't read the notes,
8 this number means nothing.
9 Q And if you could turn to the second page or the
10 following page of this document. What do these numbers mean on
11 this page?
12 A This number list the liabilities, how much money
13 Mr. Trump -- President Trump owes to banks and other lenders and
14 service providers.
15 Q And an estimate of financial condition, Professor, who
16 is the user of a statement of financial condition?
17 A Say it again?
18 Q Who's the user?
19 A User?
20 Q Yes.
21 A It depends on the intention of the preparer. If you
22 talk about publicly traded companies, the user are millions of
23 people. If you talk about this particular statement, the users
24 are small number of banks, small number of banks.
25 Q And if we turn to the prior page with a list of assets

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1 and you see the statement down at the bottom that says, "the
2 accompanying notes are an integral part of this financial
3 statement," what does that refer to?
4 A This is a warning to the -- this is a standout. This
5 is not unique to this statement. This appear on every single
6 statement that a preparer, according to GAAP. And this warn the
7 user that if that failure to read and consider the information
8 in the footnote will be hazardous to their financial health just
9 like the warning of the surgeon general on a box of cigarettes.
10 Q And if you turn to page six of the exhibit, do you see
11 where it says basis of presentation?
12 A Yes.
13 Q And do you see where it says in the second paragraph,
14 "considerable judgment is necessary to interpret market data and
15 develop the related estimates of current value?
16 A I do.
17 Q What does estimates of current value mean?
18 MR. WALLACE: Objection, Your Honor. This is
19 grounds that has been plowed time and time again including
20 by this witness already.
21 THE COURT: Sustained unless you can come up with
22 something different.
23 Q Does the term estimates of current value means
24 estimated current value?
25 A You know, this is not --

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1 THE COURT: Isn't that a yes or no question? If
2 the question is yes or no and you can answer it yes or no,
3 just answer it yes or no.
4 A Okay. This is not exactly the way I would phrase it.
5 I would phrase it develop -- a considerable judgment is
6 necessary to interpret market data and develop the related
7 estimated, not estimate, estimated current value.
8 Q And what does that mean?
9 A That means that -- that means that the user should be
10 aware that the valuation on this statement are very subjective
11 and they should carefully evaluate whether this valuation meets
12 their needs or whether they need to produce their own estimated
13 current values measures.
14 (Continued on next page)
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<p>A.Bartov - Defendant - Direct/Mr.Suarez Page 6254</p> <p>1 Q. What does the statement tell the user.</p> <p>2 A. This is what they tell the user. They tell the</p> <p>3 users that the numbers that are reported on the asset side</p> <p>4 of the statement are subjective and they should consider</p> <p>5 very carefully what they mean to them. They should not just</p> <p>6 take the numbers for granted. This is wrong numbers.</p> <p>7 (Pause in proceeding.)</p> <p>8 Q. I'm sorry. I think technology interrupted an</p> <p>9 answer.</p> <p>10 A. I just meant to say that estimates of current</p> <p>11 value are simply -- I think it is a typo. It should be</p> <p>12 estimated current values.</p> <p>13 Q. And why is that important?</p> <p>14 A. Because estimate of current values are not --</p> <p>15 current values are not defined in GAPP. "Estimated current</p> <p>16 value" is a terminology that is defined by GAAP.</p> <p>17 And just because statement follows GAAP, they</p> <p>18 should use the terminology that is dictated by GAAP. But,</p> <p>19 it's a typo. Typos like that happen all the time.</p> <p>20 Q. And then, it says, "Accordingly, the estimates</p> <p>21 printed herein are not, necessarily, indicative of the</p> <p>22 amounts that could be realized upon the disposition of the</p> <p>23 assets or payment of the related liabilities."</p> <p>24 Do you see that?</p> <p>25 A. I do.</p>	<p>A.Bartov - Defendant - Direct/Mr.Suarez Page 6256</p> <p>1 need -- no evidence of fraud.</p> <p>2 Because, if you want to fraud -- if you want to</p> <p>3 deceive someone, you don't provide this type of warning.</p> <p>4 This type of warning is only can be provided by people or by</p> <p>5 preparers that want to do the opposite of deceive or</p> <p>6 defraud. They want to make sure that the reader, the user,</p> <p>7 fully understand the limitation of the statement.</p> <p>8 Although, because, it was only directed to</p> <p>9 sophisticated investors, I think it is redundant that</p> <p>10 sophisticated investors know about it. This is not</p> <p>11 something that they need to be advised about. But, this is</p> <p>12 unusual.</p> <p>13 But, it's, again, just provide additional evidence</p> <p>14 of transparency and of the willingness of the preparer to be</p> <p>15 totally honest and fully honest and fully transparent with</p> <p>16 the users.</p> <p>17 MR. WALLACE: Just note an objection, your</p> <p>18 Honor, to the extent the witness is testifying about</p> <p>19 people's intent. I think we've shown, that expert</p> <p>20 testimony of what an individual intends is not</p> <p>21 appropriate. So to the extent that's what he was</p> <p>22 getting at, I think that's inappropriate for expert</p> <p>23 testimony.</p> <p>24 MR. KISE: I was waiting.</p> <p>25 THE COURT: All right. You're using that</p>
<p>A.Bartov - Defendant - Direct/Mr.Suarez Page 6255</p> <p>1 Q. What does that statement tell the user about the</p> <p>2 statement of financial condition?</p> <p>3 A. This statement simply double down on the previous</p> <p>4 statement and provide another warning to the user that,</p> <p>5 again, they should not rely on the raw data that is produced</p> <p>6 in this statement but, rather they have to do their own</p> <p>7 analysis. They have to develop their own valuation model,</p> <p>8 their own assumptions and come up with their own values.</p> <p>9 Q. And why is that professor?</p> <p>10 A. Because estimate current values is an opinion</p> <p>11 about value. And this opinion involved prediction about the</p> <p>12 future. And, nobody can foresee the future.</p> <p>13 So, every prediction is subject to a substantial</p> <p>14 predicting error. And, what this tell the user is "Hey, you</p> <p>15 do your own valuation analysis and come up with your own</p> <p>16 values because, our values will be wrong for sure."</p> <p>17 Obviously, every estimate is wrong. So, they tell</p> <p>18 the reader -- the user "Listen, our values will be wrong for</p> <p>19 sure. So maybe you want to consider coming up with your own</p> <p>20 values."</p> <p>21 Q. And why is it telling the user that?</p> <p>22 A. Well, you know, that's a good question. I don't</p> <p>23 think they need to do it. I think it's redundant.</p> <p>24 And, this type of language is very unusual. And,</p> <p>25 it just mean to me, it indicate again, that, there is no</p>	<p>A.Bartov - Defendant - Direct/Mr.Suarez Page 6257</p> <p>1 strategy on me, huh? In other words, as a general</p> <p>2 matter, opinion testimony on intend is not</p> <p>3 admissible -- expert opinion.</p> <p>4 MR. KISE: I think what he's saying is --</p> <p>5 he's not saying that's what they intended --</p> <p>6 THE COURT: Should we excuse the witness?</p> <p>7 MR. KISE: Depends on if you're going to</p> <p>8 just overrule the objection and move on or if we need</p> <p>9 to debate it. I think his testimony is clear.</p> <p>10 THE COURT: That wasn't the objection. The</p> <p>11 objection is that to the extent that he's testified as</p> <p>12 to intent -- and I think you can only do that as an</p> <p>13 expert because, he doesn't know the individuals or</p> <p>14 wasn't part of the process. I think that -- again, I'm</p> <p>15 not going to strike it. What if we just -- I'll take</p> <p>16 note that he's opining in an area that the law says</p> <p>17 he's not allowed to.</p> <p>18 MR. WALLACE: I think it's improper that</p> <p>19 it's in the record but, if your Honor is not going to</p> <p>20 consider it, that's all we can ask for I guess.</p> <p>21 THE COURT: All right. So we'll just move</p> <p>22 on.</p> <p>23 MR. KISE: I think so, your Honor. I mean,</p> <p>24 take it for what its worth. But, he's not</p> <p>25 testifying -- I mean, to be clear, our position is that</p>

<p>A.Bartov - Defendant - Direct/Mr.Suarez Page 6258</p> <p>1 he's not testifying about intent. He's testifying</p> <p>2 about what from an accounting professional's</p> <p>3 perspective, an expert's perspective, this communicates</p> <p>4 to the user. That was the question. That was the</p> <p>5 answer.</p> <p>6 THE COURT: He did talk about intent. Even</p> <p>7 if you don't want --</p> <p>8 MR. KISE: Well, to the extent --</p> <p>9 THE COURT: "If you're not intending fraud,</p> <p>10 you won't put in a statement like this."</p> <p>11 MR. KISE: He's saying that's what it</p> <p>12 communicates from an accounting professional, from an</p> <p>13 expert who has expertise in reviewing financial</p> <p>14 statements and looking at financial reporting</p> <p>15 misstatements, he's saying that this is an indication</p> <p>16 that there isn't financial reporting intent. He's not</p> <p>17 talking about specific --</p> <p>18 MR. WALLACE: Well, now we're at a level</p> <p>19 where the witness should probably be excused. You</p> <p>20 could excuse the witness if you'd like.</p> <p>21 THE COURT: Let's move on. We all</p> <p>22 understand each other even if we disagree.</p> <p>23 A. Maybe I can clarify. No? No need?</p> <p>24 Q. No.</p> <p>25 THE COURT: There is no question.</p>	<p>A.Bartov - Defendant - Direct/Mr.Suarez Page 6260</p> <p>1 preparer. The preparer prepare the statement. The other</p> <p>2 side is the user. This statement are not to be used by the</p> <p>3 preparer.</p> <p>4 The preparer did not prepare this for themselves.</p> <p>5 The preparer prepared it for the users. So this warning was</p> <p>6 directed to the users.</p> <p>7 Just like when you have the Surgeon General</p> <p>8 warning on the box of cigarettes, this warnings is not</p> <p>9 Philip Morris. This warning is for the smokers.</p> <p>10 Q. Now, Professor, the Attorney General claims that</p> <p>11 the Surgeon General warning is not intended for the users of</p> <p>12 the statement of financial condition but, rather for Mazars</p> <p>13 or President Trump.</p> <p>14 What's your opinion of that claim concerning who</p> <p>15 the intended recipient of the Surgeon General warning is?</p> <p>16 MR. WALLACE: Objection. I don't know what</p> <p>17 the basis for that characterization is. And I'll just</p> <p>18 note, if we're reclassifying the worthless statements</p> <p>19 as Surgeon General's warning, this is law of the case,</p> <p>20 it's been covered, it's been decided.</p> <p>21 THE COURT: It is, certainly, law of the</p> <p>22 case to the extent that I found it's not a disclaimer</p> <p>23 that would insulate the client.</p> <p>24 Mr. Kise?</p> <p>25 MR. KISE: Your Honor, I would reject the</p>
<p>A.Bartov - Defendant - Direct/Mr.Suarez Page 6259</p> <p>1 Mr. Suarez, go, ahead.</p> <p>2 Q. Then, it goes on to say, "The use of different</p> <p>3 market assumptions and/or estimation methodologies may have</p> <p>4 a material affect on the estimated current value amounts."</p> <p>5 Do you see that?</p> <p>6 A. Yes, I do.</p> <p>7 Q. What does that statement tell the user?</p> <p>8 A. So, again, all this statement, actually, indicate</p> <p>9 the same thing. "Be aware. You have to do your own</p> <p>10 analysis. The numbers that are reported they're raw numbers</p> <p>11 that are reported on the financial statement cannot be used</p> <p>12 by you to do any type of analysis."</p> <p>13 This is the financial statement. The numbers are</p> <p>14 only two pages out of 20 pages. You cannot overlook the</p> <p>15 other 18 pages.</p> <p>16 So you can read these two pages in the context of</p> <p>17 the other 18 pages that allow you to do your own analysis</p> <p>18 and to come up with your own estimate.</p> <p>19 I never saw anything that is clearer than that</p> <p>20 even a, you know, even my nine-year old granddaughter, Emma,</p> <p>21 will understand this language.</p> <p>22 Q. Professor, you refer to the Surgeon General</p> <p>23 warning in the Statement of Financial Condition. To be</p> <p>24 clear, who is the recipient of that warning?</p> <p>25 A. So there are two sides to this. One side is the</p>	<p>A.Bartov - Defendant - Direct/Mr.Suarez Page 6261</p> <p>1 notion that it's law of the case in the context of</p> <p>2 these counts first of all.</p> <p>3 Secondly, he's testifying about an accounting</p> <p>4 perspective, about accounting principles. And so,</p> <p>5 respectfully, there was no legal determination to be</p> <p>6 made as to the impact of this language from an</p> <p>7 accounting perspective.</p> <p>8 And so, the Court is not free to ignore the</p> <p>9 accounting impact of this language in the context of</p> <p>10 GAAP. This witness is testifying about GAPP. And so,</p> <p>11 this is how the statements are prepared in GAPP and</p> <p>12 this is what they mean under GAAP.</p> <p>13 And so, the Court isn't free to just ignore</p> <p>14 that and say, "A matter of law, this language doesn't</p> <p>15 apply the way GAAP intends it to apply." It's just not</p> <p>16 plausible to ignore the facts.</p> <p>17 That's like saying, "Okay. Today is Monday."</p> <p>18 No, it's not Monday. Today is Thursday. So I don't</p> <p>19 see that there is anything -- number one, I don't think</p> <p>20 this witness is invading on the province of the Court</p> <p>21 or changing anything that's in the record.</p> <p>22 Number two, I think the question is fully</p> <p>23 supportable because, that is the opinion of the</p> <p>24 Attorney General as expressed multiple times.</p> <p>25 And number three, he is providing his</p>

<p>A.Bartov - Defendant - Direct/Mr.Suarez Page 6262</p> <p>1 experience in this field. This is how these statements 2 are interpreted. This is how they're prepared. This 3 is how this works. 4 And so, that is highly relevant and probative 5 evidence with respect to the remaining counts that 6 we're here on trial about. No question. 7 THE COURT: I think we're getting far afield 8 of where we started on this discussion. The witness, 9 basically, said, in so many words to a certain extent, 10 those three sentences all say the same thing. And 11 anybody can read them and decide for him or herself 12 what they mean. 13 I don't -- it's all right with me to the 14 extent that the witness has opined on what they mean 15 from an accounting perspective. 16 My summary judgment decision is law of the 17 case on the legal affect of this paragraph or these 18 sentences. So, but -- 19 MR. KISE: The only thing I'll add, your 20 Honor, is, to be more precise about what I said a 21 moment ago, and that is that, to the extent that the 22 testimony from experts demonstrates that, in fact, this 23 is the correct way to interpret these provisions and 24 this is the purpose of them in accounting statements, 25 then either one, I don't think it's inconsistent with</p>	<p>A.Bartov - Defendant - Direct/Mr.Suarez Page 6264</p> <p>1 preparer and the user. 2 From the prepare's perspective, they're 3 disclaiming certain things -- although, I wouldn't use 4 the word legal disclaimer. From the perspective of the 5 user, it tells the user what the preparer thinks the 6 user should do. 7 THE WITNESS: From the accounting 8 standpoint, the accounting standpoint does not consider 9 the benefits for the preparer when they prepare 10 financial statement. 11 The only criterion for financial statement is 12 what works for the user and what the user need. The 13 financial statement are not being -- there is no 14 provision in GAAP that says to the user "Hey, use this 15 language to protect yourself." It doesn't exist. 16 So this is a communication between the 17 preparers and the users. The preparer prepare the 18 statements, not for themselves. They know that. They 19 prepare it for the users. And it's only -- it's one 20 way street. There are no two ways here. 21 And, there is no -- I'm quite familiar with 22 the codification in the accounting literature. I never 23 ever heard this very argument before. This is a very, 24 very unusual argument. And I cannot find any support. 25 As I said before, GAAP is all about</p>
<p>A.Bartov - Defendant - Direct/Mr.Suarez Page 6263</p> <p>1 our position, number two, to the extent that it would 2 require your Honor to reconsider your ruling on this 3 regard, as to this provision in this case, I would, 4 respectfully, ask that you do so. Because, the 5 evidence is there. So I would ask that you take that 6 under advisement and consider it. 7 THE COURT: I'm fairly liberal in 8 reconsidering my decisions. 9 MR. KISE: Thank you, Judge. 10 THE COURT: But to get back to Mr. Wallace. 11 MR. WALLACE: The question included 12 assumptions about what the Attorney General was 13 presenting and referred to a Surgeon General's warning, 14 we would ask that that question, certainly, be 15 rephrased. 16 MR. SUAREZ: I'll ask it differently. 17 Q. If a student walked into your class and suggested 18 that these statements were here for the benefit of the 19 people that prepared the statement as opposed to the user, 20 what would you tell that student? 21 A. I'd kick him out of my class immediately. 22 Q. Why is that? 23 A. Because it's absurd. 24 THE COURT: Let me ask you this. Isn't it 25 possible that it's there for the benefit of both, the</p>	<p>A.Bartov - Defendant - Direct/Mr.Suarez Page 6265</p> <p>1 provisions that need to be followed. There is no 2 provision in accounting that consider this 3 interpretation. 4 So I cannot support this interpretation. 5 With all due respect, I cannot support this 6 interpretation based on GAAP. 7 And again, I'm not a 6312 person. I'm not 8 section 6312 guy. I'm an accounting guy. From 9 accounting perspective, the statement it's one way. 10 It's going from the preparer to the user. And 11 everything that is in the statement are only for the 12 use of the preparer -- for the user. 13 THE COURT: Let me ask you this. Have you 14 ever heard the saying to a hammer all the world is a 15 nail. Have you ever heard that statement. 16 THE WITNESS: I have heard it many times. 17 But, not in this context. 18 THE COURT: Okay. I understand it's your 19 testimony that from an accounting perspective 20 everything is done for the user. The Attorney General 21 may have a different perspective. So let's just move 22 on. And five minute warning. 23 Q. What then professor does this language that we 24 just read communicate to a user of statement of financial 25 condition?</p>

<p>A.Bartov - Defendant - Direct/Mr.Suarez Page 6266</p> <p>1 A. Well, it communicate to the user of financial</p> <p>2 condition the obvious, that, they cannot take the raw data</p> <p>3 the numbers, in the statement, by their face value. And</p> <p>4 rather, they have to do their own analysis.</p> <p>5 And, the last -- the last sentence, actually, is</p> <p>6 instrumental to the two other sentences because, the last</p> <p>7 sentence talks, specifically, about valuation models and</p> <p>8 draw the attention of the user that specifically about the</p> <p>9 valuations. It is explained to the user what is the</p> <p>10 problem.</p> <p>11 The problem specifically -- so, it's not general</p> <p>12 anymore like the first two sentences. The third sentence is</p> <p>13 very specific and draw the user attention to the facts that</p> <p>14 the assumption are estimates that are subjective. And they</p> <p>15 have to do their own analysis in using their own estimate.</p> <p>16 Q. And what evidence, Professor, have you seen in</p> <p>17 this case that user, like Deutsche Bank, followed this</p> <p>18 warning if any?</p> <p>19 A. Can you, maybe, show the credit report?</p> <p>20 Q. We'll get to that after lunch?</p> <p>21 A. Okay.</p> <p>22 Q. In general terms, have you seen evidence of users,</p> <p>23 like, Deutsche Bank following this warning?</p> <p>24 A. I see, very convincing, and unquenchable evidence</p> <p>25 that Deutsche Bank follow the guidance of FASB, follow the</p>	<p>A.Bartov - Defendant - Direct/Mr.Suarez Page 6268</p> <p>1 analysis and rely on the numbers in the report, you have to</p> <p>2 believe that DB doesn't listen to FASB, doesn't listen to</p> <p>3 the Federal Reserve, doesn't listen to any textbook in</p> <p>4 accounting, doesn't listen to market participant by Warren</p> <p>5 Buffett that tell you, you cannot use the raw data -- even</p> <p>6 without reading the credit report, it clearly show that they</p> <p>7 follow. It's obvious that they will follow it.</p> <p>8 Q. And Professor --</p> <p>9 MR. WALLACE: Objection. I'm going to</p> <p>10 interpose an objection. That went way beyond any</p> <p>11 expertise he has established that he has in the credit</p> <p>12 market.</p> <p>13 The question was about the bank unwriting</p> <p>14 these specific loans. He's not a banker. He's never</p> <p>15 underwritten location. This is pure speculation from</p> <p>16 someone that they've hired to say just whatever it is</p> <p>17 they want in this case.</p> <p>18 MR. SUAREZ: Oh, that's nasty, man.</p> <p>19 MR. WALLACE: It is.</p> <p>20 MR. SUAREZ: Very rude.</p> <p>21 THE WITNESS: You ought to be ashamed of</p> <p>22 yourself for talking like that. You make up allegation</p> <p>23 that never existed. There is no evidence of this.</p> <p>24 And you say that I'm saying whatever I was</p> <p>25 asked to tell? I am here to tell the truth. You</p>
<p>A.Bartov - Defendant - Direct/Mr.Suarez Page 6267</p> <p>1 guidance of the Federal Reserve, follow the guidance in</p> <p>2 every single accounting book, follow the guidance in this --</p> <p>3 in this disclaimer or whatever you want to call it. And</p> <p>4 they definitely performed their own analysis when it comes</p> <p>5 to evaluation of the investment property in the statement of</p> <p>6 financial condition.</p> <p>7 Q. Is the Statement of Financial Condition the</p> <p>8 beginning or the end of a lender's evaluation?</p> <p>9 MR. WALLACE: Objection, leading.</p> <p>10 Q. At what point of the underwriting process does a</p> <p>11 lender use the Statement of Financial Condition?</p> <p>12 A. The underwriting, before they underwrite -- before</p> <p>13 they give the loan to the borrower, they have to perform</p> <p>14 credit risks analysis.</p> <p>15 And, the credit analysis is based on analysis of</p> <p>16 financial information. And one source of this financial is</p> <p>17 the Statement of Financial Condition.</p> <p>18 But it's not the two pages that give you the list</p> <p>19 of the assets and liabilities. It's the entire statement.</p> <p>20 That's why the statement contains 20 pages and not two</p> <p>21 pages.</p> <p>22 If you think that DB took the numbers as reported</p> <p>23 in the statement, you would not provide them with 20 pages</p> <p>24 of report. You will give them two pages.</p> <p>25 In addition, if you believe that DB did not do</p>	<p>A.Bartov - Defendant - Direct/Mr.Suarez Page 6269</p> <p>1 should be ashamed of yourself talking to me like that.</p> <p>2 THE COURT: All right.</p> <p>3 MR. KISE: Should we take our break.</p> <p>4 THE COURT: Why don't we break now and come</p> <p>5 back when cooler heads prevail.</p> <p>6 MS. FAHERTY: Your Honor, can you give an</p> <p>7 instruction to the witness, please?</p> <p>8 THE COURT: Mr. Bartov, I hereby order you</p> <p>9 not to discuss this case, your testimony or anything</p> <p>10 related during your lunch break.</p> <p>11 (A luncheon recess was taken.)</p> <p>12 (After the luncheon recess, the following</p> <p>13 occurred:)</p> <p>14 ***</p> <p>15 A F T E R N O O N S E S S I O N .</p> <p>16 (The trial continued.)</p> <p>17 THE COURT: Is there a pending objection</p> <p>18 still at this point?</p> <p>19 MR. WALLACE: I believe the pending</p> <p>20 objection was to the last answer that the witness</p> <p>21 provided insofar as he was talking about what Deutsche</p> <p>22 Bank knew, might have done or was doing. The answer</p> <p>23 covered a great deal of ground.</p> <p>24 THE COURT: But the answer --</p> <p>25 MR. WALLACE: Covered a great deal of</p>

<p>A.Bartov - Defendants - Direct/Mr.Suarez Page 6270</p> <p>1 ground. That went beyond that as well.</p> <p>2 THE COURT: You're just objecting to the</p> <p>3 things you just mentioned.</p> <p>4 MR. WALLACE: Correct. The discussion of</p> <p>5 what Deutsche Bank knew, who have done, how it analyzed</p> <p>6 the Statements of Financial Condition.</p> <p>7 THE COURT: Overruled. Let's just move on.</p> <p>8 COURT OFFICER: Bring the witness in, Judge?</p> <p>9 THE COURT: Yes. Thanks.</p> <p>10 COURT OFFICER: Witness entering.</p> <p>11 MR. SUAREZ: Can we pick up where we left</p> <p>12 off with the two demonstratives that were on the screen</p> <p>13 or rather with the exhibit and the demonstrative.</p> <p>14 THE COURT: Mr. Suarez, can your microphone</p> <p>15 be raised.</p> <p>16 MR. SUAREZ: I think I'm up. Can we take</p> <p>17 this down and go back to the alternative GAAP</p> <p>18 definitions of value professor.</p> <p>19 DIRECT EXAMINATION</p> <p>20 BY MR. SUAREZ:</p> <p>21 Q. What are the four different definitions of value</p> <p>22 on this demonstrative?</p> <p>23 A. These are the four different definitions defined</p> <p>24 by GAAP for value.</p> <p>25 Q. What is the definition of fair value one?</p>	<p>A.Bartov - Defendants - Direct/Mr.Suarez Page 6272</p> <p>1 However, generally speaking, these talk about an</p> <p>2 asset that could be bought. "Could" mean, hypothetically,</p> <p>3 someday. Not today. Someday.</p> <p>4 Hypothetical, because this transaction cannot be</p> <p>5 happening because they talking about non-traded asset. So</p> <p>6 this definition relate only to ASC 718 stock compensation</p> <p>7 when they talk about valuation on non-traded option grounds.</p> <p>8 So there is no market. So there is no actual transaction.</p> <p>9 So they talk about hypothetical transaction that</p> <p>10 will appear -- that will occur someday. So they use</p> <p>11 "could." But, they want to amend the "could" to a specific</p> <p>12 date. So, they say in the current transaction. So an asset</p> <p>13 could be bought in a current transaction.</p> <p>14 Now, you don't know what current transaction is.</p> <p>15 In order to understand what current transaction is, you need</p> <p>16 to go to ASC 718. And they will tell you what it is.</p> <p>17 And therefore, you always have to read the</p> <p>18 definition in the context of the standard to which it apply.</p> <p>19 And, you must rely, refer, also to the implementation</p> <p>20 guidance. Otherwise, it is not very informative.</p> <p>21 Q. Is the same true of estimated current value?</p> <p>22 A. It's true for all definitions. All definitions is</p> <p>23 the same. You cannot rely on the definition by itself. The</p> <p>24 definition by itself is subject to multiple interpretations</p> <p>25 and cannot be interpreted. But, if you combine it with the</p>
<p>A.Bartov - Defendants - Direct/Mr.Suarez Page 6271</p> <p>1 A. Fair value one the definition is the amount at</p> <p>2 which in asset could be sold but, are sold in a current</p> <p>3 transaction between willing parties; that is, other then in</p> <p>4 a forced or liquidation sale.</p> <p>5 Q. How is the definition of fair value one used in</p> <p>6 GAAP?</p> <p>7 A. Well, it's hard to understand the definition</p> <p>8 without referring to the implementation guidance.</p> <p>9 Implementation guidance and the definition go together.</p> <p>10 If you look on the definition alone, it's like you</p> <p>11 look on GPS on ways when they first show you a picture of</p> <p>12 the general big map and they show you point one -- point A</p> <p>13 point B and they show you a straight line.</p> <p>14 So, they just tell you "Hey, you have to go east</p> <p>15 20 miles" and it will take you half an hour. But they don't</p> <p>16 give you exact direction how to get there.</p> <p>17 Then, they show you another slide where they give</p> <p>18 you specific direction how to get there. You go to this</p> <p>19 street, you go to that street, et cetera.</p> <p>20 So, you cannot understand how to get from point A</p> <p>21 to point B by looking on the first screen of ways much.</p> <p>22 Same thing is here. This is the first screen of Waze.</p> <p>23 So without going to the pronouncement and looking</p> <p>24 on the implementation guide and looking to some more data</p> <p>25 there, it's very difficult to understand it.</p>	<p>A.Bartov - Defendants - Direct/Mr.Suarez Page 6273</p> <p>1 implementation guides, then you get a clear idea of what the</p> <p>2 definition really means.</p> <p>3 Q. If we look at demonstrative DD8.6, which I believe</p> <p>4 your Honor has permitted me to put up on the screen, it's</p> <p>5 the estimated current value implementation guidance.</p> <p>6 THE COURT: Yes.</p> <p>7 Q. Is this the implementation guidance with respect</p> <p>8 to estimated current value that you just referred to in your</p> <p>9 answer?</p> <p>10 A. Yes.</p> <p>11 Q. And if I could direct you to 274-10-55-6, do you</p> <p>12 see where it says, "Information that may be used in</p> <p>13 determining the estimated current values of investments in</p> <p>14 real estate, open parenthesis, including lease holds, close</p> <p>15 parenthesis, includes any of the following."</p> <p>16 And then, in B it says, "The discounted amounts of</p> <p>17 projected cash receipts and payments relating to the</p> <p>18 property or the net realizable value of the property, based</p> <p>19 on plan courses of action, including lease holds whose</p> <p>20 current rental value exceeds the rent in the lease."</p> <p>21 Do you see that?</p> <p>22 A. I do.</p> <p>23 Q. What is the meaning of the term based on planned</p> <p>24 courses of action in this definition?</p> <p>25 A. You know, I think it will be helpful if it's</p>

<p>A.Bartov - Defendants - Direct/Mr.Suarez Page 6274</p> <p>1 consistent with the procedure, to go back to the previous</p> <p>2 slide and to see what is the definition of net realizable</p> <p>3 value because, this is another definition of value. Each</p> <p>4 definition of value will result in different valuation.</p> <p>5 Q. Can we put the two upside by side?</p> <p>6 A. Okay. So, you see that they say there "All net</p> <p>7 realizable value." Net realizable value is a term of art.</p> <p>8 It's defined in the master glossary of the codification.</p> <p>9 And so, what does "net realizable value" means?</p> <p>10 It means, estimated selling price in the ordinary course of</p> <p>11 business.</p> <p>12 What does this mean, "estimated selling price in</p> <p>13 the ordinary course of business?" This means that the</p> <p>14 entity -- this means that the entity will, from their</p> <p>15 perspective, from what they believe, they will pick up the</p> <p>16 price that they believe -- that they believe -- they will</p> <p>17 receive when the asset will be sold. Not today. Someday</p> <p>18 when the asset will be sold.</p> <p>19 What is the someday? The someday is determined by</p> <p>20 a revenue focused model. So the preparer -- not outsiders,</p> <p>21 not the market, not investors, the preparer -- of the</p> <p>22 financial statement, have to come up with revenue</p> <p>23 forecasting model that will predict when the item will be</p> <p>24 sold, will predict for what price it will be sold -- it</p> <p>25 will be sold. And this will be the price, that they use</p>	<p>A.Bartov - Defendants - Direct/Mr.Suarez Page 6276</p> <p>1 the idea of net realizable value.</p> <p>2 Now, why I mention it because, net realizable</p> <p>3 value -- as you can see if you go back to the implementation</p> <p>4 guide, if you see the net realizable value is closely</p> <p>5 related to estimated current value.</p> <p>6 Estimated current value is not the value today.</p> <p>7 It's the value of the asset someday. And "someday" mean</p> <p>8 when the asset -- when -- can you go to B.</p> <p>9 So what is "someday." Someday is based on the</p> <p>10 plan course of action. So the "someday" will be when you</p> <p>11 complete your all your plans. This will be when you make</p> <p>12 the valuation call.</p> <p>13 So let's say you have a lot today that you bought</p> <p>14 it for a million dollars today. And you plan to build a</p> <p>15 hotel that will take you five years to build. But, after</p> <p>16 five years you believe that once you complete the building</p> <p>17 of the hotel you can sell the hotel for fifty million</p> <p>18 dollars. So the value of the -- after expenses.</p> <p>19 So the value today of this lot is not one million</p> <p>20 dollar, it's fifty million. But fifty million is what</p> <p>21 you're going to get five years from now. So, what you have</p> <p>22 to do, you have to compute the present value, the current</p> <p>23 value is the present value of the fifty million dollars;</p> <p>24 meaning, you have to discount the future value to the</p> <p>25 present.</p>
<p>A.Bartov - Defendants - Direct/Mr.Suarez Page 6275</p> <p>1 today, to estimate the value of this item.</p> <p>2 Let me give you an example because, this create a</p> <p>3 lot of confusion in this case. Let's say that we talking</p> <p>4 about a antique furniture store.</p> <p>5 In this antique furniture store has two identical</p> <p>6 unit in the inventory. One unit, they sell today for one</p> <p>7 million dollar. And today, they have to prepare a balance</p> <p>8 sheet. What will be the value of that other unit.</p> <p>9 Well, if you use intuition, you'll say, "Hey, they</p> <p>10 just sold identical unit by one million. So maybe the value</p> <p>11 should be one -- the market value of this other unit that</p> <p>12 was not sold yet should be at one million."</p> <p>13 But, this will be wrong. Because the statement</p> <p>14 tell you don't take the market price today. Take the price</p> <p>15 that you will collect when you sell it.</p> <p>16 So if model tell you that you will sell this item,</p> <p>17 six months from now, for two million dollars, then the value</p> <p>18 today on the balance sheet will not be million dollars it</p> <p>19 will be two million dollars because, this is what your model</p> <p>20 tell you the asset will be sold when it will be sold.</p> <p>21 On the other hand, if your model tell you "Listen,</p> <p>22 the market is going down. And, six months from now, I'm</p> <p>23 going to be able to sell it only for \$400,000," then the</p> <p>24 value today will be four hundred thousand not the million</p> <p>25 that you just sold in the other item. So this is kind of</p>	<p>A.Bartov - Defendants - Direct/Mr.Suarez Page 6277</p> <p>1 And this is where the "current" coming from.</p> <p>2 Estimated current value, is not the value of the transaction</p> <p>3 that would happen currently that would happen today.</p> <p>4 "Estimated current value" mean that you take your</p> <p>5 prediction about the future and you collapse it to the</p> <p>6 present to compute the present value or the current estimate</p> <p>7 the value. So this is the current estimated value.</p> <p>8 And while you can argue whether this is the</p> <p>9 correct interpretation or not based on the definition alone,</p> <p>10 the implementation guide make it very clear that this is the</p> <p>11 case.</p> <p>12 It says there that -- yes, I see it -- that the</p> <p>13 estimated current value is the discount amount of the</p> <p>14 projection -- projected cash receipt and payment relating to</p> <p>15 the property.</p> <p>16 What does it mean "projected"? Projected mean</p> <p>17 not today. "Projected" mean, when you will complete the</p> <p>18 project.</p> <p>19 Projected by who. Not by the AG. Not by the AG</p> <p>20 not by the AG expert. The projection is made by the entity.</p> <p>21 Q. And in the case of the statement of financial --</p> <p>22 MR. SOLOMON: In his last answer, earlier</p> <p>23 on -- I was just waiting -- he used the term</p> <p>24 "preparer." And, I'd just like clarification who the</p> <p>25 witness was referring to; whether it be the individual,</p>

<p>A.Bartov - Defendants - Direct/Mr.Suarez Page 6278</p> <p>1 the outside accounting firm or someone else just</p> <p>2 because it was unclear. And if we could have clarity</p> <p>3 on that, I think it would enhance the record.</p> <p>4 THE COURT: Do you remember using the word</p> <p>5 preparer and to whom were you referring?</p> <p>6 THE WITNESS: Sure. So, preparer is the</p> <p>7 person that is responsible to prepare the financial</p> <p>8 statement. But it doesn't mean that this is the person</p> <p>9 that actually prepare the financial statement.</p> <p>10 The preparer can hire an expert accountant to</p> <p>11 produce the financial statement. So, but when I say</p> <p>12 preparer, it's the entity. The company is the</p> <p>13 preparer.</p> <p>14 (Whereupon, the following proceedings were</p> <p>15 stenographically recorded Shameeka Harris.)</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Professor Bartov - by Defendant - Direct (Mr. Suarez) Page 6280</p> <p>1 A Fair value two is the most, most often referred to in</p> <p>2 GAAP. So there are many, many -- maybe 20, maybe 30 different</p> <p>3 standouts that say to the preparer you have to use fair value</p> <p>4 when you determine the estimated market value of the item. ASC</p> <p>5 274 is unique. It's the only one that define value as estimated</p> <p>6 current value.</p> <p>7 Q Okay. And if we could just focus in on the distinction</p> <p>8 between the term could and would. If you see estimated current</p> <p>9 value, as you pointed out, Professor, uses could and fair value</p> <p>10 two uses would. What the effect on the definition under GAAP of</p> <p>11 the different word?</p> <p>12 A Could mean hypothetical some day, would mean every</p> <p>13 transaction at a sudden day which tell you here the date is the</p> <p>14 measurement date.</p> <p>15 Q If we can pull up page 5978 at line two of the trial</p> <p>16 transcript and scroll down just a little bit. And at line 21 it</p> <p>17 says, "Would you agree, regardless of what method or technique</p> <p>18 one uses to value properties for personal financial statement,</p> <p>19 at the end of the day, the resulting value must be the amount at</p> <p>20 which the asset would be exchanged between a willing buyer and a</p> <p>21 willing seller both well informed and neither of whom is, scroll</p> <p>22 down, compelled to buy or sell, yes or no."</p> <p>23 Is that the definition of estimated current value?</p> <p>24 A No.</p> <p>25 Q Why?</p>
<p>Professor Bartov - by Defendant - Direct (Mr. Suarez) Page 6279</p> <p>1 DIRECT EXAMINATION</p> <p>2 BY MR. SUAREZ:</p> <p>3 Q And in the context of a statement of financial</p> <p>4 condition, who's the preparer?</p> <p>5 A The preparer in the context of the financial condition</p> <p>6 is Trump Organization.</p> <p>7 Q And under ASC 274, who's the preparer of a statement of</p> <p>8 financial condition?</p> <p>9 A The entity. So if you apply ASC 274 to the current</p> <p>10 case, Trump Organization is the preparer.</p> <p>11 Q Now, when it comes to estimated current value and the</p> <p>12 difference between estimated current value with fair value to</p> <p>13 the second definition, why are their two definitions of fair</p> <p>14 value in GAAP?</p> <p>15 A So fair value, fair value is -- I can read it. Fair</p> <p>16 value number two is the price not is the language. Estimated</p> <p>17 current value is the amount at which the item could be</p> <p>18 exchanged, could be exchanged, hypothetically, between buyer and</p> <p>19 seller most of them are willing form. When you look at fair</p> <p>20 value, it is the price that would be, not could, that would be</p> <p>21 received to sell an asset in the ordinary between market</p> <p>22 participant not between well-informed buyer and well-informed</p> <p>23 seller but between market participant when the measurement date</p> <p>24 not some day but the measurement date.</p> <p>25 Q And in what context is fair value two used under GAAP?</p>	<p>Professor Bartov - by Defendant - Direct (Mr. Suarez) Page 6281</p> <p>1 A Because it use would and not could. It is a big</p> <p>2 difference. Could is hypothetical at some day. Would is a</p> <p>3 transaction at the sudden point in time, at the time that you</p> <p>4 make the measurement.</p> <p>5 Q And would that one small change in the terminology used</p> <p>6 change the definition?</p> <p>7 A Let me be very clear, you know. I say every day to my</p> <p>8 student in class, in accounting, every word matter, every single</p> <p>9 word matters. If you switch -- there is a reason -- there is</p> <p>10 a -- FASB is not in the business of confusing preparers and</p> <p>11 users. They would not use two different definitions if they</p> <p>12 meant the same thing. So the reason we have two different</p> <p>13 definitions is they are completely different meaning and would</p> <p>14 and could is one of the reasons that fair value is substantially</p> <p>15 different than estimated current value.</p> <p>16 Q All right. We can set this aside and go back to the</p> <p>17 demonstrative 8-5.</p> <p>18 How else, if at all, is estimated current value unique</p> <p>19 from fair value?</p> <p>20 A So estimated current value, first of all, say could</p> <p>21 which mean one day not would in a specific day and second is you</p> <p>22 can see fair value talked about an ordinary transaction between</p> <p>23 market participants, what does this mean. It means that the</p> <p>24 preparer cannot use his own assumption. He has to put his</p> <p>25 shoes -- he has to put himself in the shoes of market</p>

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1 participant meaning people that are active in this particular
2 market and they -- the preparer should ask themselves what are
3 the people that are active in this market, how they would price
4 this asset and this is what they should use for the valuation.
5 Estimated current value is not then formed at the standpoint of
6 the market. It is done from the standpoint of the preparer
7 because it doesn't say, it doesn't say transaction between
8 market participants. It said transaction between a
9 well-informed buyer and a well-informed seller meaning that it's
10 from the perspective from the entity.

11 The entity has to come up with what they believe the
12 value would be after they completed their plans and they believe
13 that they would find a well-informed seller meaning a seller
14 that will be aware of all of the plans and will price the asset
15 accordingly. And this is a huge difference between marketable
16 participants because marketable participants do not know the
17 specific plans that in the mind of the -- of the preparer.
18 Market participant is just general knowledge about the market.
19 And based on this, they determine the value so it is a huge
20 difference. If you use fair value in market -- in estimated
21 current value, you would get, as the definition of value, this
22 would get you for the same asset huge difference in valuation.

23 Q And why does GAAP permit a huge difference in valuation
24 under these circumstances?

25 A It's not that they permit it. They have different

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1 people including the SEC that definition are very similar.
2 Q How does GAAP apply to immaterial items if at all?
3 A GAAP does not apply to immaterial items at all. So, if
4 you deviate from GAAP but the deviation -- but materiality test
5 show that the deviation is not resolved in the material
6 misstatement, then the misstatement doesn't count. The
7 misstatement, as you concede there, GAAP compliant.

8 Q What do you mean by the concept that the absolute value
9 doesn't apply to materiality?

10 A So materiality test consist of two step. Step number
11 one you have to quantify the misstatement. You have to quantify
12 the error and there is a process that you have to follow in
13 quantifying the error.

14 Number two, once you quantify the error, you have to
15 decide whether it is material or not based on qualitative
16 effector. So, the number, the SEC say many times, the absolute
17 value of the number by itself does not tell you whether the
18 error was material or not. You can only decide if an error is
19 material, and therefore it is a valuation of GAAP, only if you
20 apply the qualitative analysis.

21 Q Is there a mathematical test to determine whether
22 something is material?

23 A No. Materiality test, materiality test relies a lot on
24 subjective. There is a lot of subjective judgment in deciding
25 whether a misstatement is material or not. But the first step

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1 definition and each definition will get you a different number.
2 But remember in ASC 274, you cannot use both definition. You
3 can use only one. When you apply estimated current value, you
4 get only one value for each asset based on the plan causes of
5 action of the entity.

6 Q And how, if at all, Professor, is the concept of
7 materiality incorporated into the definition of estimated
8 current value?

9 A No. Materiality is independent of the value of the
10 concept of estimated market value. Materiality apply to any
11 financial statement item. And the idea of materialities the --
12 FASB understand that -- that sometimes it's better from the user
13 perspective to give some leeway, some flexibility in the -- in
14 the preparation of the financial statement and allow -- and
15 allow the preparer sometimes to deviate, to deviate from GAAP.
16 And the deviation is not considered a violation of GAAP if the
17 deviation is small meaning small in terms of materiality. It is
18 small as defined in the context of materiality which doesn't
19 mean small in absolute value but small relative to the
20 definition of materiality.

21 Q What is the basis of the definition of materiality in
22 accounting?

23 A So, there are two different definitions of materiality.
24 One, you can find in the accounting literature. Another was
25 defined by the Supreme Court of the U.S. and the view of many

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1 is to identify a misstatement. First, you have to value GAAP.
2 Then you have to decide if it is immaterial it doesn't count as
3 a violation. If it is material, then it is a violation.

4 Q And what are the real world implications of the
5 materiality -- withdrawn.

6 What are the real world implications of GAAP not
7 applying to immaterial items?

8 A The real world implication is that if company violated
9 GAAP, they sometimes call it GAAP departures. If the departure
10 is immaterial, then it's okay. Then you are allowed the
11 statement of steal concede of GAAP compliant.

12 Q Let's pull up Plaintiff's Exhibit 787 again. Have you
13 reviewed the statements of financial condition of President
14 Trump from 2011 through 2021?

15 A I did.

16 Q And what opinion do you have concerning the disclosures
17 contained in the notes through President Trump's statement of
18 financial condition during those years?

19 A You know, over the years, I have reviewed hundreds of
20 statements. And I must tell you I never seen a statement
21 that -- and, you know, every day I learn something, so I would
22 be glad if the plaintiff can show me an accountant example. I
23 never seen a statement that provide so much details and it is so
24 transparent as this statement. It doesn't exist. It's, you
25 know --

<p>Professor Bartov - by Defendant - Direct (Mr. Suarez) Page 6286</p> <p>1 Q How do you know that?</p> <p>2 A Because I read the statement. I read the footnote.</p> <p>3 And the footnote provide awesome amount of information that</p> <p>4 these -- I never saw any statement that provide so much</p> <p>5 information like the statement of financial condition.</p> <p>6 Typically, the information is much more concise and the reason</p> <p>7 is that FASB tell preparer that financial statement must be</p> <p>8 concise. It must be short. You don't want to provide long</p> <p>9 statement because users have limited ability of processing the</p> <p>10 information.</p> <p>11 Q Let's take a look at page seven of this exhibit</p> <p>12 specifically with respect to Trump Tower?</p> <p>13 A Sure.</p> <p>14 Q Do you see that?</p> <p>15 A Yeah.</p> <p>16 Q Can you take a second. You can read it to yourself to</p> <p>17 review the note. What does --</p> <p>18 A Hold on. Sorry. Okay.</p> <p>19 Q What, if anything, does this note disclose about the</p> <p>20 net operating income of Trump Tower?</p> <p>21 A Nothing.</p> <p>22 Q And what, if anything, does this note disclose about</p> <p>23 the cap rate used to value Trump Tower?</p> <p>24 A Nothing.</p> <p>25 Q Can we pull up, side by side, Plaintiff's Exhibit 293</p>	<p>Professor Bartov - by Defendant - Direct (Mr. Suarez) Page 6288</p> <p>1 Q And if you could see the section here in the middle of</p> <p>2 the page it says for trophy properties?</p> <p>3 A Yes.</p> <p>4 Q And I think this is a typo here in the Deutsche Bank</p> <p>5 credit analysis. It says Trump Towers; do you see that?</p> <p>6 A That's not uncommon. All documents have typos,</p> <p>7 inadvertent errors.</p> <p>8 Q Do you see where it says in the second sentence the</p> <p>9 property has an NOI of 17.1 million?</p> <p>10 A Yeah.</p> <p>11 Q And the guarantor use the cap rate of 3.5 to derive</p> <p>12 reported value?</p> <p>13 A I do see that, yes.</p> <p>14 Q How would Deutsche Bank know what the NOI is and what</p> <p>15 the cap rate is if it's not in the statement of financial</p> <p>16 condition?</p> <p>17 A So, FASB qualifications relate to general purpose</p> <p>18 financial statement which mean it relate to publicly traded</p> <p>19 companies where the user, the user don't have access to the</p> <p>20 preparer. In this case, it's not a general purpose financial</p> <p>21 statement because the user did have access to Mr. Trump. So the</p> <p>22 way to evaluate, to assess the information that was received by</p> <p>23 the Deutsche Bank is to consider the information in the</p> <p>24 statement, the information in the footnote, and that additional</p> <p>25 information that the preparer receive directly for Mr. Trump</p>
<p>Professor Bartov - by Defendant - Direct (Mr. Suarez) Page 6287</p> <p>1 already in evidence. Professor, can you please take a look at</p> <p>2 Plaintiff's Exhibit 293?</p> <p>3 A You blow it up.</p> <p>4 Q You can look at it, whatever is easier for you. You</p> <p>5 have it there in hard copy in front of you.</p> <p>6 A Hold on. I have to put my glasses on. Sorry. Yes,</p> <p>7 okay.</p> <p>8 Q What is Exhibit 293?</p> <p>9 A Exhibit -- you mean this page or the entire thing?</p> <p>10 Q 293.</p> <p>11 A This is credit report prepared by Deutsche Bank private</p> <p>12 Wealth Management Group.</p> <p>13 Q Is this credit report similar to that which you teach</p> <p>14 your students to prepare?</p> <p>15 A Absolutely.</p> <p>16 Q And have you had an opportunity to review this report?</p> <p>17 A Of course.</p> <p>18 Q Now, if I could turn your attention to page six of this</p> <p>19 report and will use the small numbers at the bottom of the page,</p> <p>20 page 6 of 16. And it may be easier to see this up on the</p> <p>21 screen?</p> <p>22 A I think this is page five.</p> <p>23 Q It is page five of the document, page six of the</p> <p>24 exhibit. Every page has two different page numbers?</p> <p>25 A Gotcha.</p>	<p>Professor Bartov - by Defendant - Direct (Mr. Suarez) Page 6289</p> <p>1 and this is an example.</p> <p>2 First of all, the statement of financial condition, the</p> <p>3 statement of financial condition provide only balance sheet.</p> <p>4 They do not provide income statement and they do not provide</p> <p>5 cash flow statement. So no one in his right mind can perform an</p> <p>6 analysis based on balance sheet only. It's unheard of. I</p> <p>7 challenge you to show me one textbook or one academic paper that</p> <p>8 tells you that you can do a credit analysis based on balance</p> <p>9 sheet information alone. This is impossible. It doesn't exist.</p> <p>10 There is no issue -- there is no -- no reason academic or no</p> <p>11 reasonable person would know anything about trade analysis would</p> <p>12 tell you that you can perform credit analysis based on balance</p> <p>13 sheet information alone.</p> <p>14 So, obviously, Deutsche Bank, they know what they're</p> <p>15 doing so they contacted Trump and tell him, listen, we need more</p> <p>16 information. The information that you delivered to us by</p> <p>17 definition is incomplete. There is no way we can do any</p> <p>18 analysis based on this information. So, I don't know. I was</p> <p>19 not in the room, but I assumed that something like that they</p> <p>20 communicated with Mr. Trump. Mr. Trump was cooperative with</p> <p>21 them and provide them the NOI, Net Operating Income, that is</p> <p>22 based on income statement information. It was not even included</p> <p>23 in the statement of financial condition.</p> <p>24 So just because of this, it's impossible, it's</p> <p>25 impossible to argue. It's really absurd to argue that the</p>

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1 Deutsche Bank or any bank or any lender would make lending
2 decision based on the statement of financial condition. They
3 don't make decision based on 20 percent of the information.
4 They want the full information and this is they evidence. So
5 the net operating income, which they probably received skeleton
6 income statement, an abbreviated version of the income statement
7 or the full income statement and based on this additional report
8 they received from Trump it not part of the statement of
9 condition. They determined that the net operating income is
10 17.1 million.

11 Q Then this goes on to say, "for purposes of adjusting
12 DBVSG used a 4.5 percent cap rate. The 27.7 million in
13 outstanding debt, which is nonrecourse in nature, is due to
14 mature in February 2013." What does that statement tell you
15 about the analysis that Deutsche Bank conducted?

16 A Well, this is -- this would close the book on this case
17 because you see that Deutsche Bank not only didn't rely on the
18 information of the financial statement they have a specific
19 group. VSG is an acronym for value -- Valuation Services Group.
20 So they have an entire group. They are all job is to do
21 independent valuation. If they took the numbers from the
22 statement, the statement of financial condition, then they don't
23 need the Valuation Services Group. They can take a high school
24 dropout that will copy, paste the numbers from the statement of
25 financial condition to an Excel sheet and they're done.

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1 This is absurd. Everywhere you look you see the
2 argument that Deutsche Bank relied upon the numbers, on their
3 own numbers on the financial statement. Everywhere you look you
4 see that this is simply an absurd argument. It's really -- I
5 don't know why we discuss it so much. As you see here, as you
6 see here, they know that Mr. Trump used 3.5 percent cap rate.
7 They didn't hide it from them. He told them right here. I am
8 using 3.5 percent. What they use, they use 4.5 percent. Is
9 this, the AG, the plaintiff, interpret this as fraud.

10 This is not fraud. This is obvious. This is an
11 expected difference because Mr. Trump use estimated current
12 value as he must in his financial statement. They are lenders,
13 they are lenders. They are using, I assume, either liquidation
14 of value or fair value and what does it mean? That if you use a
15 different definition of value, you use a different number for
16 the cap rate. That doesn't mean fraud. It just mean an
17 expected difference between two different -- two groups that
18 have different perspective of value. That's all.

19 Q And how, if at all, that is consistent with evidence
20 that you've reviewed in this trial?

21 A That's not inconsistent. There are many, many times
22 when I see the plaintiffs call an expected difference they call
23 it fraud. It's absurd. We expect that Deutsche Bank will come
24 up with completely different valuations than Mr. Trump. We
25 expect the valuation of Deutsche Bank would be much lower than

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1 the valuation of President Trump. This is totally expected.
2 Q What other evidence, if any, do you see here on the
3 screen that Deutsche Bank conducted its own analysis?

4 A Well, you see here that they use the Net Operating
5 Income that is not even given in the statement of financial
6 condition. And you see that they use cap rate of 4.5 percent.
7 Not 3.5 percent. So, you also see that they use the -- the data
8 that they -- financial statement -- statement of financial
9 condition provided about the number of stories and another
10 commercial, the size of the commercial space and the size of the
11 retail space, this is all -- it's not in the -- these are
12 additional information.

13 So they did what I teach. I have been teaching for
14 40 years that users need to do. And if this was submitted to me
15 as a term project in my class, they will get an "A".

16 Q And what, if any, analysis do you see on the triplex,
17 for example?

18 A The triplex is not here. The triplex is not included
19 here.

20 Q Does that surprise you?

21 A No.

22 Q Why?

23 A Because the triplex doesn't produce money. It is not a
24 cash producing item. It is a private residence.

25 Q And why would Deutsche Bank leave that off of its

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1 analysis?

2 A Because Deutsche Bank -- Deutsche Bank want to estimate
3 the value of the assets that are producing cash and related to
4 the Net Operating Income.

5 Q And why do you say triplex does not produce cash?

6 A Because it's used, my understanding, it's used by the
7 president as his private residence. It is not rented out or
8 anything.

9 Q And if you keep turning, if you see here they've
10 conducted analysis of four trophy properties?

11 A Yes.

12 Q Why would you focus on those trophy properties if you
13 were teaching a course on credit analysis?

14 A Well, because these are the -- these are the most
15 important assets that are -- are owned by the Trump Organization
16 and given -- given the context, the DB is looking to -- to make
17 a decision about a loan of \$125 million where this loan is
18 secured by \$150 million asset. This would be more than enough
19 to satisfy their confidence that the buyer is -- is a --

20 financial health is fantastic and they don't need to do any more
21 analysis. This would be enough evidence for them to decide the
22 financial health of the Trump Organization is top, top rated.

23 Q And if we turn to page seven of this document. Do you
24 see the analysis of net cash flow?

25 A Yeah.

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1 Q Why in your experience is an analysis of net cash flow
2 relevant to Deutsche Bank's underwriting process?

3 A So, first, net cash flows are not included in the
4 statement of financial condition. Statement of financial
5 condition that not provide the statement of cash flow. It's not
6 part of it. So they had to get it directly from Mr. Trump as
7 additional information. All of this additional information must
8 have been conceded by NYU AG experts when they determined the
9 valuation of the assets. My recollection is that none of them
10 rely on any of this information when they prepared their, their
11 analysis.

12 Q And why would Deutsche Bank need this information to
13 perform their underwriting?

14 A Because some -- so when you -- when you want to -- when
15 you want to characterize their risk profile of a buyer, one way
16 to do it is to rely on the number of financial ratios. And some
17 of financial ratios are based on cash flow operation, net cash
18 flow, different types. So the cash that the company -- the
19 company generate is an important input in the process, in the
20 valuation process of the risk profile of the buyer. But, again,
21 this information is not part of the statement of financial
22 condition.

23 Q Having analyzed the credit report and the statement of
24 financial condition, what conclusions can you draw from the
25 manner in which Deutsche Bank used the statement of financial

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1 additional information that you get from Mr. Trump, based on the
2 information you get from other resources and you're not relying
3 on the numbers -- your own numbers that are reported in the
4 statement of financial condition and that's what they tell you
5 here.

6 They use an adjusted basis. They did not use, as they
7 should, they did not use the raw data to make their decision.
8 So the 2.4 net worth contrast with the 4.2 net worth that is
9 reported on the statement of financial condition. Again, the
10 4.2 number that is reported on the statement of financial
11 condition and the 2.4 number that was the conclusion of DBF,
12 after their analysis, this is an expected difference. There is
13 no fraud here. There is no -- this is completely expected
14 because, because DB use different definition of value than the
15 definition used by Donald Trump. If you use different
16 definition of value, you get different valuations. This is
17 totally -- so, again, you can't refer to an expected difference
18 as fraud. It's simply absurd.

19 MR. WALLACE: I am going to object to that answer,
20 Your Honor, on what DB did. There has been a lot of pretty
21 speculative testimony about what Deutsche Bank was doing and
22 what Deutsche Bank did in preparing the valuation. There is
23 no foundation for that. It is also speculative.

24 THE COURT: I will let it in for what it's worth.

25 A You know, speculative, can you go back to the chart

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1 condition in performing its underwriting?

2 A I'm saying they use it just the way I am teaching it in
3 class. They did not rely at all on their reported number, the
4 valuation in the financial statement. They rely on the notes.
5 They collected additional information about the net operating
6 income, about cash flows. And based on their own analysis, they
7 come up with a conclusion about the riskiness of or the
8 financial health of the Trump Organization.

9 Q And if we turn to page three of the credit report in
10 the section titled recommendation, do you see where it says
11 financial strength of the guarantor?

12 A I do.

13 Q And it says, "The financial profile of the guarantor,
14 includes on an adjusted basis 135 million in unencumbered
15 liquidity, 2.4 billion in net worth and approximately 48 million
16 in adjusted recurring net cash flow." Do you see that?

17 A I do.

18 Q Is the net worth figure on an adjusted basis different
19 from that which is reported on the statement of financial
20 condition?

21 A Of course, it is. But let me just explain what
22 adjusted basis mean. As I said before, the process of analyzing
23 the financial health of the company started with you take the
24 numbers as reported and then you adjust them. You adjust them
25 based on the information in the footnote, based on that

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1 just to explain it.

2 Q Let's walk it through.

3 A Can you go back to page five, what you call page six.

4 Q Let's go to the financial analysis. Right here?

5 A Page six, can you blow it up?

6 Q Sure. Before trophy properties?

7 A The table. You see what it says on the left, DJT
8 meaning Donald J. Trump valuation. You see it says Trump Tower
9 490. You see DB valuation, Trump Tower 380. This is not
10 speculation. This is right here. This is not speculating. I
11 am reading from the table. DB performed their own independent
12 valuation and got the value for Trump Tower of 380. Trump, the
13 financial statement condition reported at 490. So there is no
14 speculation here. It's all in the document.

15 Q And why does it all have to be in the document,
16 Professor?

17 A Because any bank has to have the accommodation because
18 there is review and another review and another review. This is
19 done by one person. But then a few other person -- few other
20 people have to double and triple check to make sure that the
21 process was correct and to approve the loan so everything must
22 be in writing.

23 Q And if we turn to page five of the exhibit and go to
24 the top where it says signatures, do you see all the signatures
25 up there?

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1 A Yeah.

2 Q Is that consistent with your expectation as to how the

3 bank would use the credit report in your experience?

4 A Of course. That's the way to do it. You need to

5 double check, triple check and to make sure that they follow the

6 procedures as described in the DB Manual and which is totally

7 consistent with what I teach in class.

8 Q And if we could pull up Defendant's Exhibit 312 and put

9 that next to the credit report? I'm sorry, Defendant's

10 Exhibit 312.

11 Have you seen this document before, Professor?

12 A The e-mails, yes. One of them is in my report

13 actually. One of them is in my report.

14 Q And if you turn your attention to page two --

15 MR. WALLACE: I'm sorry. Could we just clarify.

16 The witness said one of them is my report and there are two

17 documents on the screen.

18 MR. SUAREZ: He is referring to e-mails.

19 Q You've seen this e-mail before?

20 A Yes.

21 Q And do you see in the second page it says, "the

22 following are some additional details on both DJT's financial

23 profile and the resort"?

24 A Yes, I see it.

25 Q And you see where it says "DJT financial profile and

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1 liquidity. It says 230 million held in the name of DJT, open

2 paren, 178 million in cash and 52 million in Marketable

3 Securities?

4 A I lost you. Hold on a second. Hold on a second. Yes,

5 I see it. Yeah.

6 Q Do you see at the bottom of the page it says net worth?

7 A Yes.

8 Q If you scroll over, it says reported 4.2 billion and

9 adjusted based on DB due diligence the 2.4 billion?

10 A I do see that, yes.

11 Q Now, if you were teaching a class on credit analysis,

12 Professor, and you saw a difference on the adjusted net worth in

13 that magnitude, what conclusion would you tell your students to

14 draw?

15 A Well, I tell them that this is totally expected because

16 banks use different definition for value than preparer of

17 personal financial statement and their ASC 274. They use

18 different definition, you get different numbers. And I think

19 that -- I think it seems that DB agrees with me because I don't

20 see any reference here from DB to say, hey, this is fraudulent.

21 He reported 4.2 billion. Our calculation say 2.4 billion. We

22 don't deal with him. He's a fraudster. I don't see it anywhere

23 on the contrary.

24 Q As a matter of fact, if you turn to Defendant's 312 at

25 page two, if you go back to the prior page, I'd like to draw

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1 your attention to the section that reads, "through our due

2 diligence, we have concluded that DJT has an exceptionally

3 strong financial profile consisting of a reported net worth of

4 4.2 billion which we have adjusted to 2.4 billion including 230

5 million in unencumbered liquidity, an extensive real estate

6 portfolio including 1 billion in adjusted net equity held in

7 four wholly owned low leveraged class A New York City

8 properties, only 2 million in personal debt and 114 million in

9 secured contingents."

10 What does this analysis tell you, Professor?

11 A This analysis tell me what I've been saying all along,

12 that the difference between 2.4 billion and 4.2 billion it was

13 totally expected and that based on this analysis they concluded,

14 although they are aware of the 2.4 billion so there is -- and,

15 therefore, there is no news in the complaint. We know that the

16 valuation in the statement of financial condition is much higher

17 than the valuation that you would get if you use a different a

18 different definition of value. There is no surprise here but

19 this is not fraud. This is an expected difference based on

20 different definition and different approaches. And they

21 concluded that based on this analysis, not only that they didn't

22 say there was fraud we are staying away, we don't deal with

23 President Trump, they are saying he is very strong, he is in a

24 very strong financial position and this is the right way to do

25 it.

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1 Q If you look at the focus on an extensively real estate

2 portfolio, extensive, including 1 billion in adjusted net equity

3 held in four wholly owned low leverage class A New York City

4 properties; do you see that?

5 A I do.

6 Q Now, in all of President Trump's real estate holdings,

7 if you were teaching a course on credit analysis, why would it

8 be relevant to focus on just those four wholly owned low

9 leverage class A New York City properties?

10 A Because what are we talking about here? We're talking

11 about \$125 million loan that is secured by \$150 million asset.

12 So, in worst-case scenario, what is the exposure of Deutsche

13 Bank. In the worst-case scenario, the exposure is 50 million,

14 60 million, \$1 billion is 20 times that amount. You don't need

15 that much. You don't need to go do any more analysis. This

16 analysis by itself tell you that the risk profile is extremely

17 healthy and there is nothing you need to worry about. You do

18 not need to go to do any other analysis. And, actually, that's

19 pretty much the strategy of DB. They don't want to waste money

20 and doing additional valuation that are not needed. This is the

21 answer. He is a very strong financial health so they can stop

22 the analysis right here.

23 Q Now, we turn --

24 MR. WALLACE: I am going to note my objection. I

25 can't object to the questions because the questions, answers

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1 are related. The question -- the answer about Deutsche Bank		1 excuse me, makes it a remarkably safe deal given the strength of	
2 would not want to spend any more money or do anything, it is		2 the guarantor." Do you see that?	
3 more speculation about what's happening at DB that this		3 A I do.	
4 witness does not -- I would say beyond the expertise which		4 (Continued on next page)	
5 he has been authorized to testify about. And it is contrary		5	
6 to the facts as they established at trial.		6	
7 THE COURT: Overruled. I think it's just common		7	
8 sense. He basically said that their collateral was worth		8	
9 way more than the risk so I don't think you need an expert		9	
10 for that.		10	
11 MR. WALLACE: I think he said more than that. He		11	
12 was talking about strategy, but it seems like it is coming		12	
13 in.		13	
14 THE COURT: He also said they wouldn't want to		14	
15 waste money.		15	
16 Q What do you expect Deutsche Bank --		16	
17 A This assumption, the banks --		17	
18 MR. WALLACE: There is no question pending, Your		18	
19 Honor. At some point, this witness needs to follow the		19	
20 rules like everybody else.		20	
21 THE COURT: I've been sort of meaning to say this.		21	
22 Professor, I know you are more researched than the		22	
23 alternative but you teach classes occasionally, right?		23	
24 THE WITNESS: I do.		24	
25 THE COURT: And you lecture occasionally?		25	
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1 THE WITNESS: I do.		1 Q. Is that consistent with your evaluation,	
2 THE COURT: This is not a classroom. This is not		2 Professor.	
3 lecture. This is answering questions. So sometimes your		3 A. Hundred percent.	
4 answer could be compressed and just answer the question not		4 Q. And then, it goes on to say, "Mention, that it is	
5 talk about what you think people might want to know.		5 among the strongest personal balance sheets we have seen and	
6 THE WITNESS: Thank you. Thank you for the		6 totally unlike any of our major real estate developer	
7 feedback.		7 clients in that we observe an absence of personal debt, with	
8 Q Would you expect Deutsche Bank to conduct credit		8 huge asset base and diversified CF."	
9 analysis in a manner consistent with which it's taught at the		9 Do you see that?	
10 NYU Stern School of Business?		10 A. I do.	
11 A I expect them to follow the credit analysis process		11 Q. And, are those conclusions consistent with what	
12 that is being taught everywhere around the globe. NYU does not		12 you would draw if conducting credit analysis on President	
13 teach something that other schools don't teach. This is		13 Trump's Statement of Financial Condition?	
14 universally accepted, and I don't think it's speculative to say		14 A. Absolutely. As I said before, the analysis	
15 that banks don't like to burn money. It is common sense. The		15 indicate, unusually, strong financial health. There is no	
16 banks are in the business of making money not of losing money		16 question about it.	
17 and they are not going to get engaged in activities that cost		17 Remember, we're talking about exposure of fifty	
18 them money and get them no benefit.		18 million dollars. Fifty million dollar exposure with one	
19 Q If we can turn to the prior page of this e-mail. I		19 billion dollar of a top quality asset. How often do you see	
20 would like to draw to your attention to where it says in this		20 that?	
21 e-mail dated December 23, 2011, from the head of private wealth		21 Q. Returning to Plaintiff's Exhibit 291, you see the	
22 management Americas at Deutsche Bank, Tom Bower it says, "I		22 date on the upper right-hand corner October 24, 2012?	
23 would conclude first paragraph by saying we recommend on the		23 A. Yes.	
24 basis that it is a sound credit and even in the absence of a		24 Q. And, do you see the borrower 401 North Wabash?	
25 personal guarantee, but that the PG makes it remarkably --		25 A. Yes, this is Chicago.	

<p>A.Bartov - Defendant - Direct/Mr.Suarez Page 6306</p> <p>1 Q. Chicago. Do you recognize this credit memo?</p> <p>2 A. I do.</p> <p>3 Q. And have you reviewed this credit memo?</p> <p>4 A. I did. It was some time ago. So I don't</p> <p>5 remember. If you refresh my memory, I could remember the</p> <p>6 details.</p> <p>7 Q. Was your analysis of this memo consistent with</p> <p>8 that of the prior memo that we just reviewed in detail?</p> <p>9 A. All the memos that I analyze, they all indicate --</p> <p>10 they all direct me to the same conclusion. I didn't find</p> <p>11 one credit report that suggest any concern about the risk</p> <p>12 profile of President Trump.</p> <p>13 Q. If we turn to page five of this document, do you</p> <p>14 see there the financial strength of guarantor as a basis of</p> <p>15 recommendation for the facility?</p> <p>16 A. I do.</p> <p>17 Q. It says, "The financial profile of the guarantor</p> <p>18 includes, on an adjusted basis, 146 million in unencumbered</p> <p>19 liquidities, 2.4 billion in net worth and approximately, 13</p> <p>20 million in adjusted recurring net cash flow."</p> <p>21 Do you see that?</p> <p>22 A. I do.</p> <p>23 Q. Is that consistent with the manner in which you</p> <p>24 would anticipate someone performing credit analysis to use</p> <p>25 the Statements of Financial Condition?</p>	<p>A.Bartov - Defendant - Direct/Mr.Suarez Page 6308</p> <p>1 on the results of this due diligence" -- in the middle of</p> <p>2 the first paragraph, fourth line -- "we have made certain</p> <p>3 assumptions that have resulted in adjustments to reported</p> <p>4 values."</p> <p>5 Do you see that?</p> <p>6 A. I do.</p> <p>7 Q. Why would Deutsche Bank make assumptions when</p> <p>8 conducting credit analysis?</p> <p>9 A. Everyone, when they perform valuation, must make</p> <p>10 assumptions. Valuation does not exist without assumptions.</p> <p>11 Assumptions are integral part of the valuation process. An</p> <p>12 assumption, by definition, are subjective. Different people</p> <p>13 will make different assumptions.</p> <p>14 Q. And how are the assumptions that a bank</p> <p>15 underwriting credit would make different than those of a</p> <p>16 preparer of a Statement of Financial Condition under ASC 274</p> <p>17 if at all. Well, they are hugely different.</p> <p>18 Under the ASC 274, the preparer must use estimated</p> <p>19 current value. Under economic theory, lenders, typically,</p> <p>20 use liquidation value as a measure of market value.</p> <p>21 So, there is huge difference between in the</p> <p>22 outcome in the valuation between using estimated current</p> <p>23 value as a definition of value and using liquidation value</p> <p>24 as the definition of value.</p> <p>25 And the liquidation value which may be 70 percent</p>
<p>A.Bartov - Defendant - Direct/Mr.Suarez Page 6307</p> <p>1 A. Based on Statement of Financial Condition alone,</p> <p>2 of course, not. How do you get the liquidity number, how do</p> <p>3 you get the adjusted net worth, if they base their analysis</p> <p>4 on the Statement of Financial Condition?</p> <p>5 The numbers are not given anywhere in the</p> <p>6 Statement of Financial Condition. They are not even can be</p> <p>7 guessed based on the Statement of Financial Condition.</p> <p>8 These numbers are the result of a very thorough</p> <p>9 analysis that rely on many, many different sources of</p> <p>10 information.</p> <p>11 Q. Earlier, professor, you said that this type of</p> <p>12 credit analysis is taught around the world?</p> <p>13 A. Absolutely. This is credit analysis 101.</p> <p>14 Q. Is the manner in which Deutsche Bank used the</p> <p>15 information provided to perform credit analysis consistent</p> <p>16 with what you would expect?</p> <p>17 A. The information provided by whom?</p> <p>18 Q. The information that was provided to it by the</p> <p>19 Trump Organization?</p> <p>20 A. Yeah, this is how preparer provide information</p> <p>21 absolutely.</p> <p>22 Q. And, do you see the financial analysis that</p> <p>23 appears at page seven?</p> <p>24 And if I could draw your attention to where it</p> <p>25 says, "guarantor financial summary." And, it says, "Based</p>	<p>A.Bartov - Defendant - Direct/Mr.Suarez Page 6309</p> <p>1 less or 80 percent less or 50 percent less than estimated</p> <p>2 current value depending on the economic circumstances and</p> <p>3 also in the personal assumptions made by the evaluators.</p> <p>4 MR. SUAREZ: And if we could show witness</p> <p>5 Plaintiff's Exhibit 294.</p> <p>6 Q. You recognize this document, Professor?</p> <p>7 A. Yes, this is from May 2, 2014. I did review it.</p> <p>8 Q. And if you look at reasons for presentation, you</p> <p>9 see there at the bottom "(C) approval of a new 170 million</p> <p>10 first mortgage facility to the borrower Donald Trump Old</p> <p>11 Post Office PLLC to be used for the development of the Old</p> <p>12 Post Office property in Washington D.C."</p> <p>13 A. I do see it, yes.</p> <p>14 Q. What was the --</p> <p>15 THE COURT: Five minute warning.</p> <p>16 Q. How is the credit analysis performed by Deutsche</p> <p>17 Bank reflected in this credit memorandum?</p> <p>18 A. Well, you need to go and look on this report.</p> <p>19 Q. Okay. Let's turn to page ten of the report.</p> <p>20 Do you see where it says, "All facilities" in the</p> <p>21 "basis for recommendation?"</p> <p>22 A. Yeah.</p> <p>23 Q. And then, again, it says, "The financial strength</p> <p>24 of the guarantor?"</p> <p>25 A. Yes.</p>

<p>A.Bartov - Defendant - Direct/Mr.Suarez Page 6310</p> <p>1 Q. You see that?</p> <p>2 A. Yes.</p> <p>3 Q. And then it says, "The financial profile of the</p> <p>4 guarantor includes, on an adjusted basis, a net worth of 2.6</p> <p>5 billion with 154.5 million in unencumbered liquidity."</p> <p>6 Do see that?</p> <p>7 A. I do.</p> <p>8 Q. What does the bank mean by "adjusted basis?"</p> <p>9 A. Every time you see "adjusted basis," it means,</p> <p>10 that, the bank performed its own independent analysis. The</p> <p>11 bank did not rely on the raw numbers that are reported in</p> <p>12 the Statement of Financial Condition.</p> <p>13 It is totally expected.</p> <p>14 Q. How can you know that, Professor? How can you</p> <p>15 know what the bank did? You weren't there.</p> <p>16 A. It says. I can read. It says, "Adjusted basis."</p> <p>17 What does "adjusted basis" mean? "Adjusted" -- we saw</p> <p>18 before, when you reviewed the other statement, we saw what</p> <p>19 "adjusted basis" means.</p> <p>20 We tell you, this is the number reported by</p> <p>21 President Trump. This is our number. That's what mean by</p> <p>22 adjusted basis.</p> <p>23 They did their own analysis. They develop their</p> <p>24 own valuation models and they came up with their own</p> <p>25 assessment of what is the appropriate values from their</p>	<p>A.Bartov - Defendant - Direct/Mr.Suarez Page 6312</p> <p>1 THE WITNESS: Yeah. She is in the red. So</p> <p>2 I will talk to her.</p> <p>3 THE COURT: You can talk to her but, not</p> <p>4 about the case.</p> <p>5 (A recess was taken.)</p> <p>6 (After the recess the following occurred:)</p> <p>7 THE COURT: Okay. Let's continue.</p> <p>8 MR. SUAREZ: All right. If we could pull up</p> <p>9 Plaintiff's Exhibit 787, again. And, put it up next to</p> <p>10 Plaintiff's Exhibit 293.</p> <p>11 DIRECT EXAMINATION</p> <p>12 BY MR. SUAREZ:</p> <p>13 Q. Professor, if you could please turn to page four</p> <p>14 of the Statement of Financial Condition.</p> <p>15 Do you see this is -- you see the Statement of</p> <p>16 Financial Condition for the year June 30, 2011?</p> <p>17 A. Yes, I do.</p> <p>18 Q. Do you see "Cash and Marketable Securities?"</p> <p>19 A. I do.</p> <p>20 Q. What can you tell us about cash and Marketable</p> <p>21 Securities in this Statement of Financial Condition?</p> <p>22 A. The cash and Marketable Security are, typically,</p> <p>23 liquid asset that can be, very quickly, turn into cash</p> <p>24 almost twice as much -- more than twice than the loan</p> <p>25 received, from Deutsche Bank, by Mr. Trump.</p>
<p>A.Bartov - Defendant - Direct/Mr.Suarez Page 6311</p> <p>1 perspective.</p> <p>2 Q. And in conducting this credit analysis, what, if</p> <p>3 any, judgment does the bank need to use in developing</p> <p>4 adjusted basis?</p> <p>5 A. Well, just like anybody else, when you do</p> <p>6 evaluation analysis, you have to make assumptions. For</p> <p>7 example, you have to assume what is that appropriate -- what</p> <p>8 is the appropriate cap rate. You see before that, for</p> <p>9 Mr. Trump's purposes, when use estimated current value, the</p> <p>10 appropriate cap rate was 3.5 percent?</p> <p>11 From the standpoint of the bank, they use a</p> <p>12 different definition of value. And, from their perspective,</p> <p>13 the appropriate cap rate was 4.5 percent.</p> <p>14 So, this is -- the 4.5 percent cap rate, used by</p> <p>15 the bank, is an assumption. If you give it to another bank</p> <p>16 employee, they may use four percent or they may use six</p> <p>17 percent. It's all subjective.</p> <p>18 MR. SUAREZ: Your Honor, I'm at a good</p> <p>19 stopping point to take a break.</p> <p>20 THE COURT: Okay. See everybody at 3:45.</p> <p>21 And the witness, Mr. Bartov, remember, don't talk about</p> <p>22 the case or your testimony -- yeah, who wants to talk</p> <p>23 about it?</p> <p>24 THE WITNESS: My wife is here.</p> <p>25 THE COURT: Your wife is here?</p>	<p>A.Bartov - Defendant - Direct/Mr.Suarez Page 6313</p> <p>1 The loan was 125 and the cash in the market</p> <p>2 security and other items -- because, you cannot just read</p> <p>3 cash in market securities, you have to read it together with</p> <p>4 the footnote to get the full description of all the item in</p> <p>5 this section.</p> <p>6 But knowing all that, the items in the section for</p> <p>7 my previous review, most of these items are very liquid.</p> <p>8 Definitely, Mr. Trump did not need this loan. He could</p> <p>9 self-finance it -- he could self-finance the project from</p> <p>10 his own money.</p> <p>11 Q. What would that kind of liquidity, relative to the</p> <p>12 amount of the loan in 2011, what would that inform the</p> <p>13 bank's underwriting decisions?</p> <p>14 A. Well, it would tell them that the risk is not very</p> <p>15 scary. Because, one criteria to decide about the riskiness</p> <p>16 of the borrower is how much cash they have on hand. So, the</p> <p>17 more cash you have on hand, the less risky you are.</p> <p>18 Q. And how would that impact any decision as to what</p> <p>19 interest rate to accept on the loan?</p> <p>20 A. Obviously --</p> <p>21 MR. WALLACE: Objection, your Honor.</p> <p>22 THE COURT: Why?</p> <p>23 MR. WALLACE: I think we're, again, well</p> <p>24 past the expertise of the witness.</p> <p>25 THE COURT: I would argue, from the other</p>

<p>A.Bartov - Defendant - Direct/Mr.Suarez Page 6314</p> <p>1 side, that, it's so obvious, we don't need an expert. 2 I wrote it in my decision. Another expert had agreed. 3 MR. WALLACE: I guess I'm objecting to where 4 this is going if he's going to be testifying about 5 banks setting interest rates on loans that he's never 6 underwritten. 7 THE COURT: Mr. Suarez, would you agree that 8 this witness is not an expert on how banks would set 9 interest rates since he's not a banking expert. 10 MR. SUAREZ: No, I wouldn't. But I'd differ 11 to Mr. Kise. 12 MR. KISE: Right, your Honor, I don't think 13 that that's what the testimony is. I think what the 14 witness is testifying about is what Mr. Trump would 15 accept on the loan. 16 That's the point about self finance. He just 17 made the point about self finance. If you can't get 18 the interest rate that you want, you would self 19 finance. 20 MR. WALLACE: That wasn't the question that 21 was pending. 22 MR. KISE: That is the question. That's 23 what it relates to. 24 MR. SUAREZ: I said, "to accept on a loan." 25 MR. KISE: To accept on a loan meaning what</p>	<p>A.Bartov - Defendant - Direct/Mr.Suarez Page 6316</p> <p>1 loan for Deutsche Bank were not available for him. 2 MR. WALLACE: So objection to this answer 3 would be either it is so self evident that someone 4 would prefer a lower rate that it is not an appropriate 5 subject of expert testimony or (B) if he is testifying, 6 as I understood from that answer, from the perspective 7 of a real estate developer well, that's a whole nother 8 category of expertise that Professor Bartov has not 9 been qualified under. 10 THE COURT: I'm going to strike that answer. 11 It's beyond his stated expertise or what I've deemed 12 him to be an expert. And let's not argue it. Let's 13 move on. 14 MR. KISE: Objection noted. 15 THE COURT: Okay. Objection noted. 16 Q. And if we pull up 2013 Statement of Financial 17 Condition, Plaintiff's Exhibit 707, and again turn to the 18 statement of assets, what does the -- 19 MR. KISE: Your Honor, sorry just briefly, I 20 don't know that -- I thought you said that the first 21 part of your answer before you said, "I'll strike that 22 answer" is that it's obvious and then "It's beyond his 23 stated expertise." 24 THE COURT: And/or beyond. 25 MR. KISE: Right. But that's not included</p>
<p>A.Bartov - Defendant - Direct/Mr.Suarez Page 6315</p> <p>1 Mr. Trump would accept -- maybe he can clarify. 2 MR. SUAREZ: We'll clarify. 3 Q. How would having that amount of cash on hand 4 impact the decision, by the borrower, as to what interest 5 rate to accept on a loan? 6 A. So, in economics, we have the law of demand. The 7 law of demand says that the higher the price, the lower the 8 quantity that someone will by. 9 It applies also to the demand for loans. If 10 interest rate is higher the demand for loans will go down. 11 You just see today, these days, what happened with the 12 mortgages the rate went up and up and up. What happened to 13 the demand of mortgages? The demand went down. 14 The same thing applies here. The Trump 15 Organization borrowed 125 million-dollar from Deutsche Bank 16 because, the interest rate was attractive to them 17 relative -- and, this is standard economic theory -- 18 relative to their opportunity cost. 19 If you want to double or triple the interest rate, 20 Mr. Trump will say, "Hey, I have over 200 million dollars 21 sitting in a bank account that get one percent interest 22 rate. Why should I pay ten percent interest rate on a loan. 23 I will self finance it and I won't take the loan at all." 24 So this is, definitely, a consideration when you 25 think about the alternatives available for Mr. Trump if the</p>	<p>A.Bartov - Defendant - Direct/Mr.Suarez Page 6317</p> <p>1 in the record. I want to make sure that your statement 2 is captured. 3 THE COURT: Let's go off the record for a 4 second. 5 (A discussion was held off the record.) 6 THE COURT: I struck the last answer, 7 directed that it be stricken, because, it was obvious 8 commonsense and or beyond what I had deemed this 9 witness to be an expert on. 10 MR. SUAREZ: And if we could put up, on the 11 right hand of the screen, Plaintiff's Exhibit 291. 12 Q. What does the 2013 Statement of Financial 13 Condition tell us about cash and Marketable Securities of 14 President Trump? 15 THE WITNESS: I have a question. Can I just 16 clarify my previous answer because, my previous answer 17 Mr. Wallace, obviously, did not understand, at all, my 18 previous answer given his objection. 19 Can I clarify it. Is that okay? 20 THE COURT: No. Nope. 21 THE WITNESS: Okay. 22 THE COURT: Your lawyers are redirect you on 23 this. They can ask you. 24 THE WITNESS: Okay. 25 Q. Now, if you take a look at the cash position, how</p>

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<p>1 much -- what is the cash and marketable securities listed in</p> <p>2 2013.</p> <p>3 A. 339,100,000.</p> <p>4 Q. And what was the amount of the Chicago facility?</p> <p>5 A. 170 million if I remember. Is that right. Where</p> <p>6 is this? Can you blow it up?</p> <p>7 Q. There's a limit of 128.65 in total exposure up</p> <p>8 there?</p> <p>9 A. So 225. Yeah.</p> <p>10 Q. Okay. So, that's Doral and Chicago?</p> <p>11 MR. WALLACE: Objection; leading.</p> <p>12 THE COURT: Sustained.</p> <p>13 Q. What was the amount of the Doral loan?</p> <p>14 A. The Doral loan was 125.</p> <p>15 Q. And the Chicago facility?</p> <p>16 A. I don't think on the -- 225?</p> <p>17 Q. If we turn to page three of the credit memo, do</p> <p>18 you see where it says, "loan amount?"</p> <p>19 A. No. Yes. So this says, "107 million."</p> <p>20 Q. 107?</p> <p>21 A. Yes, 107.</p> <p>22 Q. Okay. So how much was the exposure to the bank of</p> <p>23 the Doral and Chicago facilities put together?</p> <p>24 A. 107 plus 125 is what? Is 232?</p> <p>25 Q. 232?</p>		<p>1 that if he would be offered a loan of ten percent interest</p> <p>2 rate, he will take it too.</p> <p>3 Q. Why not?</p> <p>4 MR. WALLACE: Your Honor, I have an</p> <p>5 objection to that last answer which is -- and I think</p> <p>6 this is the reason we're well beyond Professor Bartov's</p> <p>7 area of expertise. His description of how guarantees</p> <p>8 worked in this loan are completely wrong. They do not</p> <p>9 go to liquidation and then President Trump would cover</p> <p>10 whatever in cash.</p> <p>11 I'm talking with the witness here. I should</p> <p>12 stop. If we could excuse the witness, I could</p> <p>13 extrapolate on my objection.</p> <p>14 THE COURT: Mr. Bartov, I have to ask you to</p> <p>15 step aside.</p> <p>16 MR. WALLACE: The nature of the objection is</p> <p>17 he has misdescribed how the guarantees work. Mr. Trump</p> <p>18 owes, as the guarantor, the full amount of the loan.</p> <p>19 And liquidation, the bank does not have to</p> <p>20 liquidate. He's assuming there is liquidation and that</p> <p>21 Mr. Trump is only on the hook for the rest of it.</p> <p>22 That's simply not how the guarantees are</p> <p>23 setup. That's not how other witnesses have testified</p> <p>24 about it.</p> <p>25 And so that's, I think, a reason you don't</p>	
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<p>1 A. I think.</p> <p>2 Q. From an underwriting perspective, how does that</p> <p>3 exposure compare to the amount of cash and marketable</p> <p>4 securities that President Trump had on hand at the end of</p> <p>5 June 30, 2013?</p> <p>6 A. Your question, actually, magnifies the exposure</p> <p>7 because, remember it was secure loan. So if they are secure</p> <p>8 loan, the exposure is not the full amount of the loan.</p> <p>9 Because, you can assume that, at least, half of it will be</p> <p>10 obtained through liquidation.</p> <p>11 But let's take the worst case scenario where the</p> <p>12 exposure is the 232. Obviously, it's much less than the</p> <p>13 cash held by Mr. Trump.</p> <p>14 So, my point is, I'm not talking from the</p> <p>15 perspective of real estate developer. I'm talking from the</p> <p>16 perspective of economic theory that applies to all economic</p> <p>17 actors. It applies to real estate developer. It applies to</p> <p>18 grocery store owners, it applies to Judges, it applies to</p> <p>19 you, it applies to everybody.</p> <p>20 The concept is, that, when price goes up the</p> <p>21 demands go down. And when interests go up, the demand to</p> <p>22 loans go down by every rational human being. This is not</p> <p>23 unique to real estate developers.</p> <p>24 And I am saying, if any human being is offered a</p> <p>25 loan with 3 percent rate and he takes it, it doesn't mean</p>		<p>1 have a witness testify outside the scope of their true</p> <p>2 expertise.</p> <p>3 If he understands credit generally, that's</p> <p>4 fine. But he is not someone who has ever underwritten</p> <p>5 or, much less, enforced a guaranty on a loan.</p> <p>6 THE COURT: Can you say that again but,</p> <p>7 using numbers.</p> <p>8 MR. WALLACE: Sure. I don't have in front</p> <p>9 of me -- I believe Professor Bartov said that they</p> <p>10 would maybe, at most, a 50 million-dollar exposure</p> <p>11 because, you would liquidate the property first and</p> <p>12 remaining exposure is the only amount that President</p> <p>13 Trump would be on the hook for.</p> <p>14 That's not the way the guarantees work.</p> <p>15 Instead, he is in the first position. They're able to</p> <p>16 get their money, just directly, from him without having</p> <p>17 to foreclose upon --</p> <p>18 THE COURT: Liquidate.</p> <p>19 MR. WALLACE: -- and liquidate the property.</p> <p>20 And this is why I think it is inappropriate for him to</p> <p>21 be going into this great a detail about some of these</p> <p>22 banking issues which is beyond the scope of his</p> <p>23 expertise.</p> <p>24 THE COURT: I totally understand your point.</p> <p>25 I am not saying I agree with it. I hope everybody else</p>	

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<p>1 did.</p> <p>2 Mr. Kise, go ahead.</p> <p>3 MR. KISE: So your Honor, he's testifying</p> <p>4 about economic theory. He didn't testify about how the</p> <p>5 guarantee works. He testified about -- he didn't</p> <p>6 mention the guaranty specifically. He just</p> <p>7 mentioned -- he mentioned how it would work in his</p> <p>8 experience pragmatically this is what would happen.</p> <p>9 He's not countering any evidence that's in the record.</p> <p>10 And, I believe we had a bank witness,</p> <p>11 Mr. Haigh, that referenced this about liquidity and</p> <p>12 what would happen with the collateral. I mean, we can</p> <p>13 go back and revisit all of that. I don't think it's</p> <p>14 necessary to do that.</p> <p>15 This witness is providing his expertise -- as</p> <p>16 he said, he's not providing conception of what the bank</p> <p>17 would do or a real estate developer would do. He's</p> <p>18 talking standard, economic principles that are</p> <p>19 established in the industry.</p> <p>20 Accounting, economics principles I mean,</p> <p>21 that's all he's testifying to. So he's not doing</p> <p>22 anything contrary.</p> <p>23 If they want to cross examine him on it, I'm</p> <p>24 sure they will. Then they can cross examine him on it</p> <p>25 and ask the questions and explore the limits of his</p>		<p>1 the cash held by Mr. Trump."</p> <p>2 That is, explicitly, testifying about how</p> <p>3 this works. I would just add that this is why we</p> <p>4 object to making a mess of the record with a witness</p> <p>5 who is testifying beyond the scope of their expertise</p> <p>6 because, the idea is we now have to go unpack</p> <p>7 uninformed speculation from a witness who is not a</p> <p>8 banker, who does not do guaranties, does not do</p> <p>9 foreclosures on these kinds of loans. Us being able to</p> <p>10 cross examine people, does not solve every problem</p> <p>11 under the rules of evidence.</p> <p>12 MR. KISE: Your Honor, he's testifying about</p> <p>13 credit analysis. That is classic credit analysis.</p> <p>14 He's testifying in his opinion the credit analysis that</p> <p>15 the bank would go through is they're going to figure</p> <p>16 out "Okay. How much money do I need to recover from</p> <p>17 the guarantor," irrespective of the terms.</p> <p>18 I mean, banks deal -- you've heard it. Banks</p> <p>19 deal in getting money. So, this witness is testifying</p> <p>20 about the credit analysis process, in his opinion, that</p> <p>21 they would go through.</p> <p>22 "Okay. I look at my net exposure? What's my</p> <p>23 net exposure?" yes, there's \$232 million worth of</p> <p>24 loans. Number one, this individual, the guarantor, has</p> <p>25 \$339 million worth of cash. So, in any event, he's got</p>	
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<p>1 knowledge or the basis for his knowledge or why he's</p> <p>2 come to these conclusions. But, the conclusion is</p> <p>3 there. And it's a basic proposition.</p> <p>4 What the bank would, actually, do under these</p> <p>5 circumstances, none of us actually know. So he's just</p> <p>6 giving his opinion. And you decide what weight to give</p> <p>7 that opinion. I think it's fair to have it in there.</p> <p>8 It is certainly relevant to the subject matter. And</p> <p>9 then, you decide whether to count it. They're going to</p> <p>10 have their opinions as well.</p> <p>11 MR. WALLACE: I'm happy to just read the</p> <p>12 section that I was objecting to if it would help.</p> <p>13 THE COURT: Yes. Go ahead.</p> <p>14 MR. WALLACE: The question was "From an</p> <p>15 underwriting perspective, how does that exposure</p> <p>16 compare to the amount of cash and market the securities</p> <p>17 that President Trump had on hand at the end of June 30,</p> <p>18 2013."</p> <p>19 "ANSWER: Your question, actually, magnify</p> <p>20 the exposure because, remember it was secure loan. So,</p> <p>21 if they are secure loan, the exposure is not the full</p> <p>22 amount of the loan because, you can assume that, at</p> <p>23 least, half of it will be obtained through liquidation.</p> <p>24 But, let's take the worse case scenario where</p> <p>25 the exposure is 232, obviously, it is must less than</p>		<p>1 enough cash to cover all of it. That's point that the</p> <p>2 witness has made.</p> <p>3 Point two that the witness has made is that</p> <p>4 the bank will look at this from a credit analysis</p> <p>5 standpoint, which he's testified about, which he's</p> <p>6 qualified as expert on, that, I'm going to look at my</p> <p>7 net exposure. I'm going to take the total value of the</p> <p>8 loans, 232, and then I'm going to subtract what I think</p> <p>9 the collateral is worth.</p> <p>10 Because, as you heard Mr. Haigh testify -- I</p> <p>11 believe Mr. Williams, but I know Mr. Haigh testified to</p> <p>12 that banks look first to collateral. That's the first</p> <p>13 thing they do in situation; guarantor or no guarantee,</p> <p>14 the first thing they look to is the collateral. That's</p> <p>15 in the record. That's established. That's undisputed.</p> <p>16 So, Professor Bartov is testifying about what</p> <p>17 his view of the credit analysis would be. Again, if</p> <p>18 they want to disagree with that or cross examine him</p> <p>19 about it, that's fine. But, it is certainly within his</p> <p>20 area of expertise. He's certainly capable of</p> <p>21 testifying about how the bank would look at this.</p> <p>22 And that's all he's saying is this is how a</p> <p>23 bank would look at it. They look at net exposure.</p> <p>24 They would see that this individual has \$339,000,000 in</p> <p>25 cash and decide the net exposure her is less than 107.</p>	

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1 So they're going to make that judgment. That's part of		1 economic theory that we teach in Econ 101. You don't need	
2 their credit analysis. It has to be. You heard that		2 to know anything about real estate and you don't need to	
3 from the bank itself. So it's not contrary.		3 know anything about banking. This is Econ 101.	
4 And this witness is not contravening the		4 I'm a financial economist. I publish papers in	
5 terms of the guaranty or saying that the guaranty		5 the leading accounting and finance journal in the world.	
6 doesn't apply. He's not testifying, at all, about		6 You can take this, what I said, to the bank -- Deutsche	
7 that. He's just saying, "This is how a bank would look		7 Bank.	
8 at it from a credit analysis perspective." And that's		8 (Whereupon, the following proceedings were	
9 certainly within the areas -- well within the areas		9 stenographically recorded Shameeka Harris.)	
10 that he's been qualified to testify about.		10	
11 THE COURT: Well, Mr. Wallace, to the extent		11	
12 that you're saying that the testimony is just plain		12	
13 wrong, that's not a ground to strike.		13	
14 To the extent you're saying that it's beyond		14	
15 the witnesses' expertise, I'm not going to strike it,		15	
16 I'm going to allow it.		16	
17 Any other objections to that testimony or did		17	
18 I cover my basis?		18	
19 MR. WALLACE: No. But since you put it on		19	
20 the record, I'll also say that Mr. Kise is wrong about		20	
21 how the credit agreements work. But that's something		21	
22 for posttrial briefing. So I'll save it for that.		22	
23 MR. KISE: What that is for is the actual		23	
24 testimony in the record which they don't want to read.		24	
25 That's what that's for.		25	
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1 MR. WALLACE: You can read Mr. Unell, you		1 DIRECT EXAMINATION	
2 can read Mr. Haigh, you can read the others.		2 BY MR. SUAREZ:	
3 THE COURT: Let's stop squabbling and just		3 Q And what ability would President Trump in this instance	
4 get the witness.		4 have to self-finance projects instead of relying on a loan?	
5 DIRECT EXAMINATION		5 A Say it again?	
6 BY MR. SUAREZ:		6 Q Yes. What ability, having read his statement of	
7 Q So, just to be clear, from a credit perspective,		7 financial and at least as of June 30, 2013, did President Trump	
8 how does cash on hand effect the decision to accept, as a		8 have to self-finance his projects as opposed to doing business	
9 brother, a particular interest rate if at all?		9 with Deutsche Bank?	
10 A Well, the more cash you have on hand, you're less		10 A Absolutely, absolutely able to self-finance most of the	
11 willing to pay higher interest rates. So if you have a lot		11 project. He didn't need the loan from the bank to do that.	
12 of cash in hand, you can be very choosy.		12 Q And how does a rational economic actor decide whether	
13 And if you find a loan with low interest rate, you		13 to do business with a bank and use a loan or deploy his own cash	
14 will take it. If the loan charge higher interest rate, you		14 typically?	
15 may do what every economic actor does, according to economic		15 A It simply depend on the interest rate. If the interest	
16 theory, which is to compare the interest rate on the loan to		16 rate is low enough, you would borrow. If the interest go higher	
17 your opportunity cost. Meaning, to your next best available		17 and higher, the demand for the loan would be lower and lower	
18 option.		18 until it the limit they will self-finance the entire project.	
19 And if the rate is too high your best next		19 Q Now, we can take a look at Plaintiff's Exhibit 302.	
20 economic option would be to self-finance it. So when the		20 And, again, Professor Bartov, I'd ask you to review this	
21 rate getting higher and higher, you self-financing more and		21 document.	
22 more and then you reduce the amount of the loan more and		22 A Okay.	
23 more.		23 THE COURT: He said okay.	
24 In the limit, you'll take zero loan and you		24 Q If we could turn to page nine of the exhibit which	
25 self-finance the whole thing on your own. That's standard		25 describes, again, the financial analysis of the guarantor. What	

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1 does the financial analysis performed by Deutsche Bank in this
2 credit memo --
3 A Can you blow it up a little bit, please if possible?
4 Q I'll draw your attention to the first paragraph. It
5 says, "based on the results of this due diligence, we have made
6 certain assumption --
7 A Where are you? Can you highlight it?
8 Q Yes. "Based on the results of this due diligence --
9 A Can you highlight it in yellow?
10 Q "Based on the results of this due diligence, we have
11 made certain assumptions that have resulted in adjustments to
12 reported values."
13 A Yes.
14 Q "The details on such adjustments are included in the
15 analysis that follows: Additional details are included in the
16 guarantor's financial statements. " Do you see that?
17 A I do.
18 Q What does this tell you about Deutsche Bank's use of
19 President Trump's statements of financial condition?
20 A Well, it tells the obvious that they, first, they
21 performed due diligence meaning they performed their own
22 analysis. They did not take the numbers from the statement of
23 financial condition by the face value. So they performed their
24 own analysis as every, every bank in the world would do.
25 Number two, they pick up their own assumption. They

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1 did not use Mr. Trump's assumption. Again, this is obvious.
2 Every single bank in the world would do the same thing, so they
3 pick up their own assumption. And if they pick up their own
4 assumption, it means that they come up with their own valuation
5 because the valuation -- the assumption shape the valuations.
6 So when they say we use the -- made the own assumption,
7 this tells you that they do not rely on the valuation in the
8 statement of financial condition. They rely on their own
9 valuation and they say that have resulted in adjustments. Why
10 it resulted in adjustment because they use their own assumption
11 and they made their own valuation. So, again, it just tells you
12 that they prepared their own statement. They did not use the
13 numbers in -- as the own numbers that are reported in the
14 statement of financial condition.
15 Q And is that consistent with how Deutsche Bank use the
16 statements of financial condition from the period of 2011
17 through 2021 as reflected in the credit memos?
18 A Yes. All the credit memos are the same. They simply
19 following the basic credit analysis theory. That's all they're
20 doing, every bank. This is not erratical or controversial or
21 surprising. This is what every single bank supposed to do and
22 that's what they're doing.
23 Q And in reviewing --
24 THE COURT: One hold. The phrase part which is
25 underlined, resulted in adjustments to reported values.

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1 Now, the reported values were statements of financial
2 condition you assume?
3 THE WITNESS: Yes. This is not an assumption.
4 This is correct.
5 THE COURT: Okay. It doesn't say we made up our
6 own values. It says we adjusted the reported values. What
7 if the reported values are incorrect?
8 THE WITNESS: You know, this is a great question.
9 You see, what they say here, we have made certain
10 assumptions, certain assumptions mean that they perform
11 their own valuation. What does it mean adjustment? Let's
12 say that the statement of financial condition state that
13 Trump Tower is \$600 million, they, based on their valuation
14 model and based on their assumption. Deutsche Bank pick
15 their own model, their own assumption and independently
16 arrive at the value of 400 million.
17 In their language, we adjusted the 600 to 400.
18 This is -- so the adjustment does not mean that they rely in
19 any way on the original number. It just mean that they
20 reconcile the two numbers that will independently computed
21 and this is the standard approach in accounting. You
22 also -- you always in cases you computed numbers
23 independently in two different ways. You then reconcile
24 them by subtracting certain numbers from one number in order
25 to arrive to the other number. But this doesn't show in any

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1 way that the numbers will develop -- it doesn't mean that
2 the number will develop relying on one number or another.
3 So the two numbers will develop independently.
4 Trump came with 600 million. Deutsche Bank independently
5 came with 400 million. They want to show a reconciliation
6 table. So they say, hey, 600 minus 200 equal 400.
7 THE COURT: So twice you used the phrase in any way
8 as in Deutsche Bank did not rely on the Trump numbers in any
9 way. So then why get them in the first place?
10 THE WITNESS: Because they -- the financial
11 statement, the reports are two pages of numbers and 18 pages
12 of footnotes. So the numbers save sometimes a starting
13 point in -- that you then adjust them or then you adjust
14 them based on your own calculations. In this case, they
15 didn't do it this way at all because Mr. Trump provide them
16 with so much information that they can compute the numbers
17 on their own.
18 So the reason that they produce this financial
19 statement is not because of the statement, the two page
20 statement. It's because of the 18 pages of footnotes that
21 allow them to compute the number on their own.
22 THE COURT: So why not just take the 18 pages? Why
23 bother with the two pages?
24 THE WITNESS: Because this is, you know, you may
25 write to the FASB and tell them but, you know, but or may or

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1 may not be a good suggestion but you have to read the
2 context. You have the list of all the assets. You have the
3 valuation as viewed by Mr. Trump and, again, this situation
4 is very unique because the valuation will base on estimated
5 current values which is very, as I said, these are very,
6 very unusual measure of market values.

7 In many other situations, the numbers are more
8 meaningful and, therefore, they could be used in some ways.
9 But in the case of the -- in the case of statement of
10 financial condition, because of the definition of -- because
11 of the definition of estimated current value is so unique
12 and it also depends on the user. We are talking here about
13 a bank. From the standpoint of the bank, the numbers are --
14 the number per se are not useful. What is useful is
15 information in the footnote.

16 But if he -- Mr. Trump, for example, want to raise
17 more capital and want to get a partner into these
18 businesses, this -- somebody that want to put capital in a
19 business, they have a completely different approach to
20 valuation and for them this number may be more informative.
21 But in this case when you talk about the lender and you talk
22 about the also amount of information that Mr. Trump provide
23 them and you talk about the bank that has an independent
24 valuation services group, in this case, they are using their
25 own independent analysis based on the footnote information

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1 and based on information that they directly receive from The
2 Trump Organization because this information is only
3 20 percent or 30 percent of the information that is needed
4 to do the analysis. There is no income statement here.
5 There is no statement of cash flow here. It must be
6 provided as part of their analysis. So even if they want to
7 rely on the statement, they cannot because you cannot do an
8 analysis with 20 percent of the information.

9 THE COURT: Okay. Mr. Suarez, how much longer on
10 direct would you say? I am trying to figure out when to
11 break.

12 MR. KISE: Your Honor, as has been this may be
13 seven out of seven. If we break here shortly, I can
14 probably truncate tomorrow morning considerably.

15 THE COURT: If we break for 3 or 4 minutes?

16 MR. KISE: I don't know if we can break for 3 or
17 4 minutes. I can try. I think if we go back to figure out
18 what we've covered tonight. Then tomorrow morning -- we are
19 going to get to tomorrow morning with direct. It is a
20 question of how long we will go. And what I'm proposing to
21 the Court is trying to make that maybe 30 minutes or less as
22 opposed to longer if we can do it, but I would need to look
23 to see where we are before making that decision.

24 THE COURT: We'll just keep going. Thanks for the
25 offer. We didn't ruin your perfect record.

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1 MR. KISE: No, we can still do it in any event.

2 Q Professor, what experience, if any, do you have in
3 identifying fraud in financial statements?

4 A Well, I wrote many papers in this area and, actually,
5 one of my papers evaluates. So in academic literature, we have
6 a number of models that can be used to identify certain types of
7 financial reporting misconduct. And in all of my papers, one of
8 my papers it was published in the journal of accounting of
9 economics which is another top rated academic journal in this
10 you asked me about my citation. This paper got well over 1,000
11 citation.

12 So this paper were on different methodologies to detect
13 a financial reporting misconduct and recommend a methodology
14 that we found to work the best and identify financial reporting
15 misconduct. There are many papers in this area.

16 Q What metrics do you use to detect fraud in financial
17 statements?

18 A You know, this is -- I don't think I can explain it
19 here because these are sophisticated models that you -- I didn't
20 prepare any demonstrative for that. Generally speaking, you
21 have models that -- that choose some accounting, some accounting
22 variables and based on these models you get -- you get an
23 indicator of the -- an indicator of the quality of the financial
24 statement and the indicator tells you if the quality of the
25 financial statement is poor, then it may suggest that the

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1 company may commit a financial, financial reporting misconduct.

2 There are some other criterias that also help you
3 determine this. For example, for example, there is a literature
4 that says that management for public traded companies try to bid
5 certain benchmarks. So the idea is if you see that they -- that
6 the indicator, that the variable that they're trying to meet or
7 beat if you see the reported number is close to -- to the area
8 where they may miss the benchmark, this may be another indicator
9 of fraud.

10 So there are many, many indicators of fraud. But once
11 you -- but this quantitative -- these are quantitative
12 methodologies. They just screen 6 or 7,000 companies to tell
13 you which one is more likely to commit financially reporting
14 misconduct. At the end of the day, once you identify this
15 potential companies, at the end of the day, you have to look on
16 the financial statement, look on the -- on the different
17 indicators. And for me, for example, based on my analysis, one
18 indicator is therefore to conceal.

19 If I read the financial statement and I see that the
20 financial statement is completely not transparent, I don't
21 understand what they are talking about, the numbers -- you don't
22 know where the numbers are coming from and, and so this is, this
23 would be another indicator that, that the company may be
24 committing fraud.

25 MR. WALLACE: Objection to the entire answer as

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<p>1 relevance. It is beyond the scope of what this witness has</p> <p>2 been qualified as an expert for. It is also beyond the</p> <p>3 scope of anything that I think with we can figure out was</p> <p>4 disclosed in his expert report.</p> <p>5 THE COURT: That might be the easiest, the last</p> <p>6 one. Is there anything in the expert report about detecting</p> <p>7 financial fraud in statements?</p> <p>8 MR. KISE: He discussed in his expert report, and</p> <p>9 we can look at it overnight to provide specific examples,</p> <p>10 but he discussed in his expert report his analysis process</p> <p>11 and financial reporting misconducting, the nature of the</p> <p>12 financial reporting misconduct, may have been in his second</p> <p>13 report. I don't know if it was in the first report the one</p> <p>14 that related more to specifics. But, again, he can't -- he</p> <p>15 can't put in his report every last thing. It is the subject</p> <p>16 matter and so, yes, I can say the subject matter is there.</p> <p>17 MR. WALLACE: We have not found the words fraud or</p> <p>18 misconduct in his report. If there is a specific part --</p> <p>19 and this is the continuing reframe of the defendants to try</p> <p>20 to get new opinions in to their witnesses, oh, I can't</p> <p>21 disclose every single thing. Professor Bartov produced</p> <p>22 about 140 plus pages of report. I think if he was going to</p> <p>23 discuss his expertise in fraud and his technique that he</p> <p>24 developed in his articles, that should be disclosed. We</p> <p>25 have not found it in his reports.</p>	<p>1 believe is the 2013 statement of financial condition. If we can</p> <p>2 turn to the accountant's compilation report on page one. What</p> <p>3 is the accountant's -- independent accountant's compilation</p> <p>4 report communicate to the user?</p> <p>5 A Well, it communicate to the user that, first, the</p> <p>6 compilation was done by a certified public accountant not by the</p> <p>7 company alone and, second, it provide information that the</p> <p>8 accountant concede they are important to the users of this</p> <p>9 financial statement.</p> <p>10 Q And why is this important for the user of the financial</p> <p>11 statement to understand?</p> <p>12 A Because if he understand -- if this information is</p> <p>13 relevant, it will help them in their analysis because as I said</p> <p>14 before they -- the statement of financial condition and the</p> <p>15 information in the statement of financial condition is only the</p> <p>16 first step in a long process. So, the comments in the letter of</p> <p>17 the independent accountant compilation report supposed to</p> <p>18 further help the user in their independent analysis.</p> <p>19 Q Now, if we can turn to the notes, to the statement of</p> <p>20 financial condition, and go to the following page for cash and</p> <p>21 Marketable Securities. What does this note disclose about -- to</p> <p>22 the user about the cash and marketable security holdings of</p> <p>23 the --</p> <p>24 A So, first, you must understand that the notes is part</p> <p>25 of the body of the statement. They are not on the body of the</p>
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<p>1 THE COURT: Sustained. And we didn't even have to</p> <p>2 get to the other two reasons. So stricken the last answer.</p> <p>3 We can go to 4:50 today. I will give you a warning at 4:45.</p> <p>4 I hope everybody is good with that. Remember, we only have</p> <p>5 a half day tomorrow. So let's move along.</p> <p>6 Q Have you compared the disclosures in President Trump's</p> <p>7 statements of financial condition to those of other reporting</p> <p>8 entities?</p> <p>9 A Yeah. You know, so I look, as I said, 11 of disclosure</p> <p>10 is a very good indicator for the quality of the financial</p> <p>11 statement. And when you see the financial statement, they</p> <p>12 providing lots of details about how the valuation process took</p> <p>13 place, what assumption will underlying the valuation process,</p> <p>14 what is the physical attributes of the building, where is the</p> <p>15 building. This make it much less likely that, that the preparer</p> <p>16 is trying to commit a fraud in general and but they did look on</p> <p>17 the competitor financial statement which is a Club Corp.</p> <p>18 You can compare the financial statement of Mr. Trump to</p> <p>19 the financial statement of Club Core to get an idea whether the</p> <p>20 financial statement of the Trump Organization is forthcoming and</p> <p>21 transparent relative to this statement.</p> <p>22 MR. WALLACE: I am going to object this Club Corp</p> <p>23 analysis is nowhere contained in his expert report.</p> <p>24 THE COURT: Sustained.</p> <p>25 Q If we can pull up Plaintiff's Exhibit 707 which I</p>	<p>1 statement because there is no room on the body of the statement</p> <p>2 to include them, but they is just like the information is</p> <p>3 provided on the body of the financial statement. And here the</p> <p>4 footnote provided detail explanation of the components of the</p> <p>5 cash and marketable security. They tell you all the components,</p> <p>6 cash and marketable security means common stock, mutual fund,</p> <p>7 hedge fund, corporate notes and bonds, United States Treasury</p> <p>8 Security, Marketable Securities, etc.</p> <p>9 Q And if we turn to the real and operating properties,</p> <p>10 what do the notes tell the user of a statement of financial</p> <p>11 condition about President Trump's real estate holdings?</p> <p>12 A Well, the notes provide the detail explanation. It is</p> <p>13 a description of the characteristics that they the preparer</p> <p>14 consider important that will help the user in understanding the</p> <p>15 nature of the assets and help them in their independent analysis</p> <p>16 to determine independently the value of the assets based on the</p> <p>17 definition of value that is relevant for them.</p> <p>18 Q And can you describe how these notes are descriptive,</p> <p>19 relative to others that you've analyzed?</p> <p>20 A So I just -- I just --</p> <p>21 THE COURT: Is there going to be an objection?</p> <p>22 MR. WALLACE: The objection is this has been asked</p> <p>23 and answered several times at this point. Well, unless he</p> <p>24 is talking about Club Corp in which case there is an</p> <p>25 objection on Club Corp, but I think he is asked many times</p>

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1 how descriptive are these statements compared to other
2 others that you've read as a general question. I think at
3 least this is the third time he's asked this question.
4 THE COURT: What is the objection? It wasn't in an
5 expert report?
6 MR. WALLACE: No, this has been asked and answered
7 with respect to this question.
8 THE COURT: I didn't think to this exact statement.
9 Mr. Suarez, the question is how does this compare to other.
10 MR. SUAREZ: The level of disclosure, correct.
11 MR. WALLACE: Your Honor.
12 THE COURT: Can we get like a one word answer, the
13 same, more or less instead of a speech.
14 MR. SUAREZ: I would like him to describe the
15 analysis that he's conducted. We can take it in turn.
16 A I can answer.
17 THE COURT: I would let you answer with a one word.
18 THE WITNESS: You know, one word may be misleading,
19 Your Honor.
20 THE COURT: One sentence.
21 THE WITNESS: One sentence.
22 A So in one sentence, as I tell you that this disclosure
23 is unusually, unusually descriptive and unusually informative.
24 It is, I think I mentioned before, reading hundreds of financial
25 statement it's very unusual to find in a footnote so many

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1 details.
2 MR. SUAREZ: It is a run-on sentence.
3 THE COURT: I expected that.
4 Q And if you were performing credit analysis on the
5 statement of financial condition, what conclusions could you
6 draw from the descriptive nature of the notes?
7 A Well, if I do my credit analysis, I need to come up
8 with my own valuation of which property. So, to do my own
9 valuation, I need data. And some of the data may be here and
10 because the user had direct access to The Trump Organization.
11 If they are some items that are missing here, the user can
12 always, and they did, contact The Trump Organization and get
13 additional information that will help them in their independent
14 valuation.
15 Q And if you were evaluating the totality of the notes,
16 what, from a credit analysis perspective, could you -- could you
17 determine based on the quality of the descriptions in the notes,
18 if anything?
19 A Well, for me, big picture standpoint, if I look on the
20 entire document, to me, the chances of intentional errors my
21 judgment is very low because the elements that are required for
22 a document to contain in order to be fraudulent the elements are
23 not here. You have full disclosure of everything. You don't
24 have any concealment so, so if there is fraud here, this
25 statements, it would be a big surprise.

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1 MR. WALLACE: Objection to the prior -- this is the
2 same opinion that he took ten minutes to get to that we
3 objected to before. This fraud analysis that he's
4 describing from the stand right now is also not included in
5 his expert reports.
6 THE COURT: It's up to you at this point.
7 MR. KISE: Again, so just speaking to the prior
8 objection, and we'll develop this perhaps more later, but
9 maybe the nomenclature is the problem here. I mean, opinion
10 four in Professor Bartov second report talks about
11 allegations of material accounting misstatements and use of
12 inappropriate valuation methods in the compilation --
13 allegations of material accounting misstatements and use of
14 inappropriate valuation methods in the compilation reports
15 due to GAAP violations are based on invalid premises and
16 incomplete and flawed analysis of relevant fact. So that's
17 just the top line.
18 So it's clear that Professor Bartov was addressing
19 allegations of misstatement also known as fraud. That's
20 certainly they're calling it fraud. So the idea that they
21 are not on notice that he is going to talk about
22 misstatement. Now, if they prefer the witness to use the
23 word misstatement instead of fraud, the defense can
24 certainly live with that. But the idea that they are not on
25 notice that he is going to talk about these things, just

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1 from that top line opinion, is a nonstarter. So I would ask
2 the court to reconsider the ruling striking his prior answer
3 or at least allow us to ask the question again. If you
4 would prefer him to use the language of a misstatement as
5 opposed to fraud but it's all the same genre and his answer
6 here is the same.
7 THE COURT: Well, I'll be Solomonic. I will
8 revisit striking the last answer, but I will allow one. I
9 don't see the prejudice here not to mention there's no jury,
10 but he's giving his some of his common sense and its is an
11 interesting answer so overruled.
12 Q Professor, in reviewing the statements of financial
13 condition, have you identified any instances of intentional
14 misstatements from an accounting perspective?
15 A I do not.
16 Q And how do you know that?
17 A Well, because most of the allegations are completely
18 baseless. Most of the allegation of -- of violation of GAAP,
19 are simply not violation. And the one that are violation, for
20 example, they said the first that come to mind is the triplex.
21 This, in my judgment, after reviewing the -- after reviewing the
22 supporting documents, in my judgment, this is an, obviously, an
23 error but it's an inadvertent error. There is no -- there is
24 no -- there is no indicators there to indicate fraud. As I said
25 before they're --

<p style="text-align: right;">Page 6346</p> <p>1 THE COURT: You spoke a lot about the triplex 2 already. Let's move on from the triplex. 3 (Continued on next page) 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 6348</p> <p>A.Bartov - Defendant - Direct/Mr.Suarez</p> <p>1 A. A misstatement is the difference between the 2 required number, required disclosure or required 3 classification in the financial statement and the actual 4 number, actual classification, actual disclosure, in the 5 financial statement. So it is the difference between what's 6 required and GAAP and what was reported. This is 7 misstatement. 8 THE COURT: That's his answer. Whatever. 9 Q. And setting aside consideration of the Triplex, 10 have you identified any misstatements in the Statement of 11 Financial Condition? 12 A. Well, I did not look for misstatement. I 13 looked -- I just was guided by the complaint. So I list all 14 the misstatement that were alleged in the complaint and I 15 tried to evaluate whether they are misstatement or not. 16 And as I said before, most of the allegation about 17 misstatement in my mind are not any stated at all. 18 Obviously, plaintiff was not helpful in provide any clue 19 what is the provisions of the GAAP provisions that, based on 20 which, they decided that this is a misstatement. 21 So again, as I told you, I have to use all the 22 knowledge that I have, and I have to review the literature 23 and I have to review the codification trying to find a basis 24 for the allegations. And, in most cases, I could not find a 25 basis.</p>
<p style="text-align: right;">Page 6347</p> <p>A.Bartov - Defendant - Direct/Mr.Suarez</p> <p>1 Q. What is an intentional misstatement? 2 A. Intention misstatement -- 3 THE COURT: Wait. What is an intentional 4 misstatement? 5 mr. sua: Under the accounting. 6 THE COURT: If he's an expert, we're all 7 experts. 8 Q. What was a misstatement from an accounting 9 perspective? 10 A. Misstatement. 11 MR. WALLACE: Accounting? I think we've had 12 this issue before. All of accounting? What's a 13 misstatement? Can we direct this just at least a 14 little bit. 15 THE COURT: I can't see allowing that 16 question. What's a misstatement from an accounting 17 perspective? It's hard to explain because -- it's hard 18 to find a synonym because, that's what it's called a 19 misstatement. 20 MR. KISE: But, there needs to be parameters 21 placed around that. And that's why we call experts who 22 can define for the Court what is considered a 23 misstatement accounting. 24 THE COURT: From an accounting perspective, 25 what is a misstatement. I'll allow it.</p>	<p style="text-align: right;">Page 6349</p> <p>Proceedings</p> <p>1 As I said, in the Triplex I did find a basis. 2 There are maybe a couple of other allegations where I did 3 find a basis. 4 But again, there was no evidence of intentional 5 misstatement i.e. fraud. It appeared to me that these are 6 inevitable errors that contain in any unaudited financial 7 statement. 8 THE COURT: I believe there's some law. I 9 don't know the parameters of it. I think we've 10 mentioned it. Experts cannot testify as to intent. 11 Can both sides give me, you know, their one 12 minute understanding of what that means and whether 13 this statement would violate that. 14 Mr. Solomon, do you want to start the ball 15 rolling or Mr. Wallace? 16 MR. WALLACE: I think the statement is so 17 broad it's hard to understand what intent he's actually 18 referring to. But, yes, he cannot provide an expert 19 opinion about what is happening inside a defendant's 20 mind. So whether or not something is intentional is 21 not the proper subject of expert testimony. 22 THE COURT: Mr. Kise. 23 MR. KISE: Your Honor, again, what he's 24 testifying to are how its viewed in accounting, which 25 is what this case is about. This case is about how</p>

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<p>1 statements are prepared under the accounting rules.</p> <p>2 And so, what this witness is testifying to is</p> <p>3 evidence of an intentional misstatement. That's</p> <p>4 something that's defined in accounting word. That's</p> <p>5 something that's knowable in the accounting world.</p> <p>6 He's not talking about specific intent with</p> <p>7 respect to an individual which is what the government</p> <p>8 is conflating with what this witness is testifying</p> <p>9 about.</p> <p>10 The Government likes to conflate. That's</p> <p>11 probably the best descriptor of them in the whole case</p> <p>12 because, they want to push all of this together in one</p> <p>13 ball. No.</p> <p>14 What this witness is testifying about is</p> <p>15 there's a set of accounting rules. You heard him say</p> <p>16 it. Everything in accounting -- it's a rules base</p> <p>17 discipline.</p> <p>18 So if you want to say there's a misstatement</p> <p>19 or an intention misstatement, you have to look to the</p> <p>20 rules. And those rules tell you how to interpret. And</p> <p>21 he's just informing the fact finder as to how you go</p> <p>22 about this process and what he found in his experience</p> <p>23 in looking at it.</p> <p>24 He said there's no evidence of intentional</p> <p>25 misstatement; meaning, based on applying the</p>		<p>1 the basis of eyewitness testimony and physical</p> <p>2 evidence.</p> <p>3 The opinion, offered by the doctor,</p> <p>4 concerning the defendant's intent was an error."</p> <p>5 And I will also add just, we keep talking</p> <p>6 about the complaint. The complaint was filed over a</p> <p>7 year ago. We've had summary judgment and now more than</p> <p>8 two months of trial. The record is well beyond what's</p> <p>9 in the complaint.</p> <p>10 THE COURT: I assume the case you were</p> <p>11 quoting from is a criminal case.</p> <p>12 MR. WALLACE: Correct, your Honor.</p> <p>13 THE COURT: Do you have a civil case? The</p> <p>14 rules may be different.</p> <p>15 MR. WALLACE: Well, except that intent is</p> <p>16 not an element in the purely civil piece. This is for</p> <p>17 the elements of the criminal statutes that -- they were</p> <p>18 within the 6312 standard, which is why we're talking</p> <p>19 about intent I believe.</p> <p>20 THE COURT: If it's such a black letter</p> <p>21 ubiquitous rule, there must be some civil case because,</p> <p>22 in a criminal case there are different concerns</p> <p>23 freedoms are at stake. I mean, they make</p> <p>24 constitutional provisions.</p> <p>25 MR. WALLACE: I would guess Securities and</p>	
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<p>1 appropriate accounting principles, which, clearly</p> <p>2 govern here because, their complaint is replete with</p> <p>3 allegations that we violated GAAP; although, you've</p> <p>4 heard from the witness correctly, they don't specify</p> <p>5 which provisions of GAAP. They just say, "GAAPs</p> <p>6 violated, GAAPs violated, GAAPs violated," but they</p> <p>7 don't specify.</p> <p>8 So this witness is testifying about the</p> <p>9 specific provisions that would govern and his</p> <p>10 interpretation of an evaluation based on the rules that</p> <p>11 actually apply.</p> <p>12 At some point -- I know the Government</p> <p>13 doesn't want to hear this but, at some point the rules</p> <p>14 that actually govern the preparation and presentation</p> <p>15 of these financial statements have to be considered in</p> <p>16 the case.</p> <p>17 THE COURT: Plaintiff, do you have, any at</p> <p>18 your fingertips, authority for the proposition that an</p> <p>19 expert can't testify as to intent.</p> <p>20 MR. WALLACE: People v Kinsey 168 AD 2d 231</p> <p>21 at 232. "It was highly improper and prejudicial to</p> <p>22 allow him to testify concerning the defendant's intent.</p> <p>23 "Whether or not defendant intended to,</p> <p>24 seriously, injure or kill the victim was the central</p> <p>25 issue in the case and was for the jury to determine on</p>		<p>1 Exchange Commission versus American Growth Funding Two</p> <p>2 LLC 2019, Westlaw 1772509 at one.</p> <p>3 "Through his expert report, chase repeatedly</p> <p>4 opines on the PAA defendant's state of mind, including</p> <p>5 whether the PAA defendants acted with intent to</p> <p>6 defraud."</p> <p>7 Court did not allow that testimony finding</p> <p>8 that opinions concerning state of mind are an</p> <p>9 inappropriate topic for expert opinion. Which is in</p> <p>10 turn citing a number of Southern District cases.</p> <p>11 THE COURT: Intent is equivalent to state of</p> <p>12 mind. So Mr. Kise, how do you get around this?</p> <p>13 MR. KISE: Your Honor, once again, the</p> <p>14 communication process is broken down. This witness is</p> <p>15 not testifying about the defendant's specific state of</p> <p>16 mind.</p> <p>17 That's what that case was talking about.</p> <p>18 That's what all the cases are talking about. He's</p> <p>19 talking about under the accounting rules.</p> <p>20 You can ask him yourself, he's testified,</p> <p>21 under the accounting rules, based on those rules, what</p> <p>22 are indicia of accounting misstatement. He's talking</p> <p>23 about evidence. "Did I see evidence of misstatement?"</p> <p>24 He's not saying, "Do I know what was in the mind of the</p> <p>25 defendants." He's not testifying to the defendant's</p>	

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1 state of mind.		1 Mr. Solomon, "Intentional misstatement." I have it up	
2 He's looking at the evidence meaning the		2 here. Did you found it?	
3 documents and providing an interpretation from an		3 MR. KISE: Intentional misstatement as	
4 accounting standpoint and a financial reporting		4 governed under the accounting rule.	
5 misconduct standpoint as to "Is there evidence."		5 MR. SOLOMON: But again, "There was no	
6 That's it. That's not testifying about --		6 evidence of intentional misstatement of fraud -- i.e.	
7 If he were to testify that "Well, I believe		7 fraud." Excuse me.	
8 that President Trump had a specific subjective state of		8 MR. KISE: From an accounting perspective.	
9 mind," that would be an entirely different matter.		9 MR. SOLOMON: That's not his testimony.	
10 That's what those cases are talking about		10 THE COURT: That's not what it said.	
11 that the Government is citing. That's why I say the		11 Objection sustained. And let's pick up, again,	
12 communication process has broken down completely. They		12 tomorrow at usual time, ten o'clock. And I'll admonish	
13 are conflating and confusing concepts.		13 the witness, again, please don't discuss --	
14 The issue here is this witness is testifying		14 THE WITNESS: Thank you so much.	
15 about accounting misstatements. What is a misstatement		15 THE COURT: You don't have to thank me now.	
16 in accounting because, that's the rules that govern.		16 We'll see you tomorrow.	
17 We don't just take misstatement in the abstract and		17 THE WITNESS: Oh, okay.	
18 decide on our own, where these statements, that were		18 THE COURT: Sorry about that. Ten o'clock.	
19 prepared in accordance with accounting rules, are		19 And don't discuss the case or any of your testimony or	
20 misstated without reference to the rules. It doesn't		20 anything related thereto in the evening not even with	
21 make any sense.		21 your wife who's here.	
22 You heard the witness say that, that it's		22 THE WITNESS: Ten to one?	
23 absurd to do that. You have to look at the governing		23 THE COURT: Ten to one tomorrow. It's only	
24 rule because, accounting is a rules base discipline.		24 a half day.	
25 That's all he's testifying to. He's testifying about		25 MR. SOLOMON: Your Honor, was that last	
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1 what the rules provide and what evidence he sees in the		1 answer stricken or that part.	
2 documentary record that indicate "misstatement not		2 THE COURT: Yes, last answer stricken.	
3 misstatement."		3 MR. SOLOMON: Thank you.	
4 And it has nothing to do with a subjective		4 (The trial was adjourned to December 8, 2023,	
5 state of mind of the defendant's. It has everything to		5 at 10:00 a.m.)	
6 do with what does the object evidence, the documents,		6	
7 tell him as an expert. And that's, fully, within the		7	
8 province of this expert's expertise.		8	
9 THE COURT: Yeah, I basically accept your		9	
10 point of indicia. I think the testimony was "intent"		10	
11 or "intentional."		11	
12 Plaintiff, do you have any, allegedly,		12	
13 offending statement in that last answer. And then,		13	
14 we'll break in a minute or two.		14	
15 MR. KISE: I mean, your Honor, additionally,		15	
16 the disclaimer itself -- he's already testified about		16	
17 this -- the disclaimer itself is also another indicia		17	
18 of misstatement and transparency. So, all of this is		18	
19 before the Court.		19	
20 MR. WALLACE: They're using the expert to		20	
21 establish there is no intent. I don't think I am		21	
22 misunderstanding a single thing.		22	
23 MR. KISE: No, we're not.		23	
24 THE WITNESS: Can I clarify something.		24	
25 THE COURT: Not yet. Ms. Wallace,		25	

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

Professor Ali Bartov
December 8, 2023

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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
13 DONALD J. TRUMP; DONALD TRUMP JR.; ERIC
14 TRUMP; IVANKA TRUMP; ALLEN WEISSELBERG;
15 JEFFREY McCONNEY; THE DONALD J. TRUMP
16 REVOCABLE TRUST; THE TRUMP ORGANIZATION,
17 INC.; TRUMP ORGANIZATION LLC; DJT HOLDINGS
18 MANAGING MEMBER; TRUMP ENDEAVOR 12, LLC;
19 401 NORTH WABASH VENTURE, LLC; TRUMP OLD
20 POST OFFICE, LLC; 40 WALL STREET, LLC; and
21 seven SPRINGS, LLC,
22
23 Defendants.
24
25 TRIAL 60 Centre Street
New York, New York
December 8, 2023
B E F O R E:
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Supreme Court Justice
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(Whereupon, appearances continued on the following page.)

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3
4
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24 CHERYL-LEE LORIENT
25 SHAMEEKA HARRIS
SENIOR COURT REPORTERS

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1 THE COURT: Okay. Let's get yesterday's
2 witness.
3 MR. KISE: We don't have to address it now.
4 We have a few housekeeping items.
5 THE COURT: Good. Let's do that.
6 MR. KISE: Ms. Hernandez, I think has some
7 exhibits that we discussed the other day that have been
8 agreed to.
9 MS. HERNANDEZ: Hi, your Honor. We're going
10 to move in a few documents that plaintiff has no
11 objection to being admitted into the record.
12 So, we would like to move in D-1068, D-1069,
13 D-1070, D-1071 and D-1072 into Evidence.
14 THE COURT: Plaintiff, agreed?
15 MR. SOLOMON: Agreed, your Honor. No
16 objection.
17 THE COURT: Okay. Success. They are in
18 evidence.
19 What's next?
20 MR. KISE: So, briefly, your Honor, I want
21 to revisit the subject yesterday about the scope of
22 Mr. Bartov's testimony with respect to -- particularly,
23 with respect to "misstatement," that issue.
24 I know that the government cited some cases.
25 I have a case to cite for your Honor on that

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1 proposition and also want to reference, particularly,
2 the notice issue that they raised.
3 The issue that he's seeking to testify about
4 and has testified, in some extent, about is whether the
5 SOFCs were, materially, misstated based on GAAP and
6 governing accounting standards.
7 So in his May 26th report at paragraphs 25 to
8 32 and paragraphs 36 to 43, he addresses this subject
9 matter. He addresses it in a lot of other places but,
10 I'm trying to pinpoint it for the Court.
11 In June 30th report, as I mentioned
12 yesterday, he directly speaks to -- or speaks directly
13 to allegations of material misstatements, purported
14 GAAP violations and talks about how they're based on
15 invalid premises and fraud analysis -- again, noticed
16 to the government that he was going to address this
17 subject matter.
18 In his affidavit that was submitted in the
19 summary judgment papers, he has sections on the SOFCs
20 not being materially misstated from an accounting
21 standpoint.
22 THE COURT: Let me stop one second. Would
23 an affidavit in opposition to the AG's summary judgment
24 motion be sufficient as opposed to official expert
25 disclosure? Let me just see the plaintiff's view of

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1 that.		1 He's offering an opinion. He's not making	
2 MR. WALLACE: No, that would be,		2 the ultimate determination. That's what you would do.	
3 potentially, a new opinion. But, it was not disclosed		3 But, he's providing input that would go to the ultimate	
4 during the period in which the Court ordered the		4 determination as to the counts that remain at issue	
5 parties to provide their expert disclosure.		5 here. These determinations must include the governing	
6 THE COURT: So, I don't think being in the		6 accounting standards.	
7 affidavit, on a summary judgment motion would -- I		7 I don't think it's a secret. No, we don't	
8 don't know.		8 believe that your summary judgment ruling, in this	
9 MR. KISE: Respectfully, your Honor, it is		9 regard, actually, took into account the full GAAP	
10 because with summary judgment, we are responding to		10 Standards and the Governing Accounting Standards. Be	
11 their summary judgment just like they submitted things		11 that as it may, we are where we are.	
12 in response to our summary judgment.		12 But, the defense cannot be precluded from	
13 So the experts -- I can't predict, with		13 introducing expert testimony regarding the appropriate	
14 certainty, exactly, what it is that the Government is		14 standards and expert opinion as to whether, based on	
15 going to say in their summary judgment.		15 those standards, there is evidence of a material	
16 MR. WALLACE: We presented no experts in our		16 misstatement.	
17 summary judgment motion.		17 The Attorney General's complaint is replete	
18 MR. KISE: And, if I could finish.		18 with claims that the SOFC's violated GAAP. You heard	
19 THE COURT: Right.		19 the witness say that yesterday.	
20 MR. KISE: But I know I do that to them all		20 But, as Professor Bartov testified, no GAAP	
21 the time. So, I'm only kidding, Mr. Wallace.		21 violations were identified. The Attorney General's	
22 So, in affidavit paragraphs 27 and 28, I will		22 response to that is, simply, "Oh well, the complaint	
23 point out that Professor Bartov referenced his report.		23 was a long time ago."	
24 There is nothing really new in his affidavit,		24 That is, respectfully, an untenable and	
25 with respect to these issues, that wasn't in his		25 absurd position. The governing standard is the	
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1 report. I'm just pointing out that this is another		1 governing, whether it was in the complaint a long time	
2 source of notice -- a word that we hear a lot about.		2 ago or whether we talk about it here, GAAP is the	
3 An expert testimony that helps clarify an		3 standard. It's not different because that referenced	
4 issue calling for professional or technical knowledge,		4 it last year.	
5 possessed by the expert, is properly admitted.		5 So Professor Bartov is entitled to opine on	
6 That's the DeLong, D-E-L-O-N-G, case, Court		6 the preparation and presentation of the SOFCs, their	
7 of Appeals 60 NY2d 296.		7 compliance with GAAP and whether under governing	
8 As the Court knows, Professor Bartov was		8 accounting standards there was any material	
9 qualified as an expert in accounting, credit analysis,		9 misstatement under those standards, based on that	
10 valuation and financial reporting misconduct; clearly		10 review.	
11 entitled to provide an opinion about whether the		11 And I'll cite the Court to the Hudson	
12 documents he reviewed support his opinion as to the		12 Insurance case. It is found at 31 misc -- M-I-S C --	
13 SOFC's compliance with GAAP or any violations of GAAP.		13 3d 1203(A) where, in that case, the defense called an	
14 This opinion includes whether he determined		14 accounting expert to testify regarding his review of	
15 there was any evidence of a material misstatement in		15 the documentary and other evidence and offer an opinion	
16 the SOFCs. That's, verbatim, allegations of material		16 as to whether or not there was any indicia of fraud.	
17 misstatements from his June 30th report.		17 The plaintiffs argue, similarly to here, that	
18 It also includes his opinion, disclosed, that		18 the issue of whether evidence of fraud exists was not	
19 not all accounting errors or departures from GAAP have		19 properly within the expert's purview but, is instead an	
20 a significant impact on financial statement users.		20 issue to be decided by, in that case, the jury -- a	
21 His views on what the documents provide,		21 much higher standard, as you know, for admission of	
22 respectfully, Judge, is no different than what you did		22 expert testimony when there's a jury present.	
23 on summary judgment. You looked at the SOFCs. You		23 This is a bench trial. So the opportunity	
24 looked at documents and made determinations about those		24 for confusion and misleading is limited, if it, at all,	
25 documents based on the evidence.		25 exists.	

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<p>1 The Court in that case held that the expert</p> <p>2 may opine, as he had, regarding his opinion on the</p> <p>3 defendant's activities.</p> <p>4 He may testify as to how the defendant's</p> <p>5 activities compared to accepted accounting practices;</p> <p>6 and in doing so, the expert may thus provide a standard</p> <p>7 against which the fact finder may judge the defendant's</p> <p>8 activities.</p> <p>9 Further, the expert may state his opinion</p> <p>10 upon whether fraud occurred. He may not broach the</p> <p>11 next step and state that fraud occurred as a matter of</p> <p>12 law. It is up to the Court to make that determination.</p> <p>13 I would say that, that case is about as close</p> <p>14 to on point as you're going to find in this context.</p> <p>15 The Attorney General cases, that they cited</p> <p>16 yesterday -- as I mentioned yesterday but, I'll be more</p> <p>17 specific today -- are wholly inapposite.</p> <p>18 The SEC case involved testimony as to a</p> <p>19 specific state of mind of the defendant. The Kinsey,</p> <p>20 K-I-N C E-Y, case involved testimony as to whether the</p> <p>21 defendant, quote, intended to seriously injure or kill</p> <p>22 the victim. I don't think that there's anything, at</p> <p>23 all, that we could borrow from that analysis in this</p> <p>24 case.</p> <p>25 Most particularly, Professor Bartov is not</p>		<p>1 matters that were disclosed in his report.</p> <p>2 THE COURT: Mr. Kise, I admire your</p> <p>3 thoroughness. I'm open to or I will revisit --</p> <p>4 especially because the witness is still available.</p> <p>5 Sometimes less is more. But that's not your style. I</p> <p>6 understand.</p> <p>7 What I would like to do is ask you, as simply</p> <p>8 as possible, what you want the witness to say. He's</p> <p>9 not here, obviously, so I don't think there's any</p> <p>10 prejudice. However, that's what I would like to know.</p> <p>11 But, if the Attorney General would rather</p> <p>12 weigh in first, go ahead.</p> <p>13 MR. WALLACE: I'm eager to hear what this</p> <p>14 testimony would entail. So, I will wait until Mr. Kise</p> <p>15 answers the question before I weigh in.</p> <p>16 THE COURT: Are we talking about ten</p> <p>17 questions and answers, three questions and answers</p> <p>18 thirty?</p> <p>19 MR. KISE: Two things on that. Number one,</p> <p>20 to the extent the testimony from yesterday isn't</p> <p>21 stricken, if you lift that ruling -- you revisit that</p> <p>22 ruling and don't strike that testimony, number one,</p> <p>23 that solves a lot of issues because, then, the</p> <p>24 testimony is already in the record. We don't have to</p> <p>25 revisit those questions.</p>	
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<p>1 offering an opinion on, as I said yesterday, on the</p> <p>2 intent or state of mind of anyone -- the defendants or</p> <p>3 anyone else.</p> <p>4 His testimony is directly related to disputed</p> <p>5 issues at trial. He's testifying as to whether he</p> <p>6 found evidence of material misstatements in the SOFCs</p> <p>7 and other documentation based on his understanding of</p> <p>8 GAAP and other governing accounting standards.</p> <p>9 The question of misstatement, with respect to</p> <p>10 these counts -- and frankly, we think the whole case,</p> <p>11 must be considered in the context of GAAP and the</p> <p>12 governing accounting standards.</p> <p>13 And, the defense cannot be precluded from</p> <p>14 introducing expert opinions as to the compliance with</p> <p>15 those standards and or whether, in the opinion of the</p> <p>16 expert, there was any indicia of material misstatement</p> <p>17 or fraud pursuant to those standards.</p> <p>18 It is then up to the Court to take that</p> <p>19 evidence and do what it will with it. But, we're</p> <p>20 entitled to put on that defense because, that's meeting</p> <p>21 the allegation that's been made against us as</p> <p>22 defendants.</p> <p>23 So, for all those reasons and based on the</p> <p>24 cases that I cited, we would ask the Court to revisit</p> <p>25 the ruling and allow Professor Bartov to testify about</p>		<p>1 THE COURT: I'm not going to do that. But,</p> <p>2 I'm giving you the chance to say what you want him to</p> <p>3 be able to say.</p> <p>4 MR. KISE: Okay. What we want him to be</p> <p>5 able to say is ostensibly what he said yesterday; that,</p> <p>6 based on my review of the SOFCs, the relevant</p> <p>7 supporting documentation, the relevant testimony, that,</p> <p>8 that I saw in indicia of material misstatement or</p> <p>9 fraud. And that's the short of it.</p> <p>10 And I would think that, that can be</p> <p>11 accomplished -- I mean, I'm not going to speak for my</p> <p>12 colleague, Mr. Suarez. But, I would think that that's</p> <p>13 a half a dozen questions or so. I mean, it's not a</p> <p>14 complicated proposition. But, the point is, he's done</p> <p>15 a review, he's looked at the --</p> <p>16 THE COURT: Okay. To me, that's one</p> <p>17 question. Having reviewed everything -- you don't have</p> <p>18 to repeat what he reviewed -- did you find any indicia</p> <p>19 of fraud -- except that's leading but, something like</p> <p>20 that.</p> <p>21 MR. KISE: Well, something like that. I</p> <p>22 mean, you asked me in sum and substance.</p> <p>23 THE COURT: That's what I wanted to know.</p> <p>24 You want him to be able to say I examined the SOFCs,</p> <p>25 blah, blah, blah and I didn't see any indicia of fraud.</p>	

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<p>1 MR. KISE: The only caveat to that, in terms</p> <p>2 of the numbers of question is, there would just be a</p> <p>3 series of questions.</p> <p>4 As you know, we have to go year by year.</p> <p>5 It's the same question, like, in 2016, you examined the</p> <p>6 SOFC, did you determine any -- based on your review of</p> <p>7 these records, was there any indicia of fraud or what</p> <p>8 did that reveal to you. But, '16, '17, '18.</p> <p>9 THE COURT: He's going to say "no" for every</p> <p>10 year. Why do we --</p> <p>11 MR. KISE: Because it's important;</p> <p>12 particularly, when we get to the statute of limitation</p> <p>13 question that we have in the record that this is</p> <p>14 segregated out because, I do think that is going to</p> <p>15 become very important on appeal -- without question it</p> <p>16 is.</p> <p>17 THE COURT: *Fine. You can ask that</p> <p>18 question.</p> <p>19 MR. KISE: You asked me "that's it?" That's</p> <p>20 it on what we want to ask. I don't think I'm leaving</p> <p>21 anything out unless Mr. Robert has anything to add.</p> <p>22 MR. ROBERT: I don't.</p> <p>23 THE COURT: So, Attorney General, would</p> <p>24 you -- do you object --</p> <p>25 MR. WALLACE: I do.</p>		<p>1 He has not really reviewed much of the</p> <p>2 testimony. He hasn't reviewed the testimony of -- or</p> <p>3 he, certainly, doesn't rely in his reports on the</p> <p>4 testimony of Mr. Weisselberg or Mr. McConney or</p> <p>5 Mr. Birney or any of the people who actually prepared</p> <p>6 the reports.</p> <p>7 So this is a reason why you disclose, in your</p> <p>8 report, what your opinions are and the foundation for</p> <p>9 those opinions. So, we could have investigated that at</p> <p>10 the time we were doing expert discovery.</p> <p>11 So this fraud opinion is new. It is not</p> <p>12 disclosed in his reports. And, I will note, I'm</p> <p>13 looking at the first citation Mr. Kise gave us,</p> <p>14 paragraph 25 to 32 of his report.</p> <p>15 Paragraph 25 says, clearly, the original</p> <p>16 financial statement information serves as the -- it</p> <p>17 doesn't relate to fraud. It relates to the process for</p> <p>18 preparing financial statements. It relates to standard</p> <p>19 credit analysis theory which is in paragraph 27.</p> <p>20 Paragraph 28 begins, "To what extent do</p> <p>21 lenders rely on financial statement information in</p> <p>22 their credit risk analysis?"</p> <p>23 So I don't know if Mr. Kise is citing to the</p> <p>24 wrong paragraphs but, any proprietary or academic</p> <p>25 analysis that Professor Bartov performed in order to</p>	
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<p>1 THE COURT: -- to what you judgment heard?</p> <p>2 MR. WALLACE: Yes, I still object. I think</p> <p>3 we're confusing the issues. Yesterday we objected to,</p> <p>4 indeed, questions that would have Professor Bartov talk</p> <p>5 about intent of defendants.</p> <p>6 That is the reason we cited the cases we</p> <p>7 cited. We were not citing that as the basis to exclude</p> <p>8 his testimony about some investigation he conducted and</p> <p>9 the determinations as to whether or not there was fraud</p> <p>10 in this case.</p> <p>11 Those questions we objected to because, as a</p> <p>12 new opinion, it was not included in his original</p> <p>13 disclosures. And if he -- I believe the introductory</p> <p>14 question to that was, do you have some process that you</p> <p>15 follow for determining whether or not there is fraud in</p> <p>16 the financial statement.</p> <p>17 I believe this was going to go to some</p> <p>18 econometric or academic analysis he performs when he</p> <p>19 looks at statements. And that's how he knows -- just</p> <p>20 by looking at the face of the statement -- whether or</p> <p>21 not there's fraud.</p> <p>22 So he is applying some sort of professional</p> <p>23 technique to determine there's fraud. Because, I will</p> <p>24 posit, Professor Bartov has not read the supporting</p> <p>25 data. He testified to that in his deposition.</p>		<p>1 determine whether or not there was fraud, was not</p> <p>2 disclosed in his report and is, therefore, not an</p> <p>3 appropriate grounds for him to be testifying now.</p> <p>4 I will just add that Professor Bartov has</p> <p>5 been granted broad latitude to testify about how</p> <p>6 Deutsche Bank should have done credit analysis, what</p> <p>7 his thoughts are on the quality of Statements of</p> <p>8 Financial Condition -- they're not tethered to much</p> <p>9 except "I look at the documents and it's obvious."</p> <p>10 This witness has been given broad latitude to</p> <p>11 go, well beyond, the scope of his core expertise. We</p> <p>12 would posit he, actually, has demonstrated very little</p> <p>13 to no expertise to someone doing a credit analysis.</p> <p>14 But I think letting him now bootstrap and</p> <p>15 bring in a new opinion about fraud, they should have</p> <p>16 disclosed it in his report. And he's not allowed to</p> <p>17 testify to it now.</p> <p>18 MR. KISE: So, I am just going to read from</p> <p>19 page 36 of the June 30, 2023 report. Allegations of</p> <p>20 material accounting misstatements -- otherwise known as</p> <p>21 fraud in this case -- allegations of material</p> <p>22 accounting misstatements and use of inappropriate</p> <p>23 valuation methods in the compilation reports, due to</p> <p>24 GAAP violations, are based on invalid premises and</p> <p>25 incomplete and flawed analysis of relevant facts.</p>	

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<p>1 So the invalid premises would be the</p> <p>2 interpretation of GAAP and the GAAP violations.</p> <p>3 No, we did not disclose every word of what</p> <p>4 Professor Bartov was going to testify to. The trial</p> <p>5 testimony of the witnesses that he's referencing was</p> <p>6 not available at the time he prepared his reports.</p> <p>7 The subject matter, though -- to say that the</p> <p>8 subject matter of material accounting misstatements and</p> <p>9 his testimony and his views on whether or not the SOFCs</p> <p>10 contain material accounting misstatements is</p> <p>11 disingenuous at best. And far worse, from a different</p> <p>12 perspective, for the Government to argue that they</p> <p>13 weren't on notice of these opinions, I mean, they</p> <p>14 there.</p> <p>15 The subject matter that I referenced earlier</p> <p>16 is in the broader sense subject matter. But if the</p> <p>17 Court is concerned about the use of "misstatement"</p> <p>18 versus the use of the word "fraud" as I said yesterday,</p> <p>19 fine, then he can say material accounting misstatements</p> <p>20 if that's going to satisfy the notice requirement</p> <p>21 then -- I don't see a different because, that's really</p> <p>22 what's at issue in the case.</p> <p>23 Fraud is judged based on whether or not there</p> <p>24 are material accounting misstatements. Frankly, a 6312</p> <p>25 Violation is judged based on whether or not there are</p>		<p>1 Mr. Wallace, you're as loquacious as Mr. Kise. I mean,</p> <p>2 I, specifically, said I wasn't going to revisit what</p> <p>3 happened yesterday. And then, you go into a whole</p> <p>4 speak about yesterday. No harm done. I'm just</p> <p>5 pointing that out.</p> <p>6 And also, what really surprises me is, I got</p> <p>7 Mr. Kise to limit what he wanted to do so narrowly and</p> <p>8 you open a whole can of worms about what expert reports</p> <p>9 say or don't say. But, all right. I don't want to be</p> <p>10 more loquacious than the attorneys. I stopped being</p> <p>11 that a long time ago.</p> <p>12 How about this? Here's my suggestion. I</p> <p>13 like to, you know, have compromise and agreement.</p> <p>14 We'll let Mr. Suarez ask Mr. Bartov, whether having</p> <p>15 read -- and, you can list the things he read -- for the</p> <p>16 year -- each year as Mr. Kise wanted -- whether he</p> <p>17 found any indicia of material accounting misstatement.</p> <p>18 Mr. Solomon is happy. And let's keep in mind</p> <p>19 we only have this morning.</p> <p>20 Mr. Wallace, do you agree with your colleague</p> <p>21 there?</p> <p>22 MR. WALLACE: If Professor Bartov is</p> <p>23 answering the questions and not providing speeches,</p> <p>24 than yes.</p> <p>25 THE COURT: Who would give speeches?</p>	
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<p>1 material accounting misstatements. And that's why I</p> <p>2 say that the GAAP considerations were relevant for</p> <p>3 purposes of summary judgment.</p> <p>4 So, I don't see there's any disclosure issue.</p> <p>5 And, it appearances as though we're in violent</p> <p>6 agreement on the idea that he can testify to this</p> <p>7 subject matter. It's just they're claiming it wasn't</p> <p>8 disclosed. Just that one quote from page 36 of this</p> <p>9 June 30th report places him on notice.</p> <p>10 MR. WALLACE: I will be, exceedingly, brief.</p> <p>11 It doesn't say, "fraud." He was asked a question about</p> <p>12 how you detect fraud in the financial statement.</p> <p>13 If he was asked questions about material</p> <p>14 misstatements, we would, probably, have a different</p> <p>15 response but, judge the questions as they were asked.</p> <p>16 I will just also note, I'm not suggesting the</p> <p>17 problem with Professor Bartov is that he didn't review</p> <p>18 trial testimony. The problem is he didn't review</p> <p>19 investigative testimony from any of those people.</p> <p>20 The issues with reliability of anything on</p> <p>21 this count and the failure to disclose on this subject</p> <p>22 matter remain. And there was no disclosure of any</p> <p>23 fraud analysis that Professor Bartov performed.</p> <p>24 THE COURT: And that's the short response.</p> <p>25 I'm going to speak freely and maybe subjectively.</p>		<p>1 And defendants, are you okay with that?</p> <p>2 MR. KISE: Yes, your Honor.</p> <p>3 THE COURT: Okay. Any other housekeeping</p> <p>4 matters?</p> <p>5 MR. KISE: One other item -- which now that</p> <p>6 I've looked at it, I know we said we were going to</p> <p>7 converse with the AG about the issue of Professor</p> <p>8 Bartov's supplemental disclosure relative to the</p> <p>9 monitor reports, once I had an opportunity -- through</p> <p>10 no fault of theirs -- to, actually, review everything</p> <p>11 and their position, I realized that while they're nice</p> <p>12 to talk to, negotiation wouldn't go anywhere because,</p> <p>13 they have a -- their position is "A" and ours "B".</p> <p>14 And, I don't see any compromise.</p> <p>15 So in that regard, I'll just state briefly,</p> <p>16 that, this supplemental disclosure is necessary because</p> <p>17 the items about which Professor Bartov is opining,</p> <p>18 number one, most particularly the August 3rd and</p> <p>19 November 29, 2023, reports of the monitors were not</p> <p>20 available to Professor Bartov prior to him issuing his</p> <p>21 reports.</p> <p>22 Number two, the reports that predate that</p> <p>23 don't contain much of anything. But they needed to be</p> <p>24 reviewed by him. But there wasn't a basis to</p> <p>25 draw -- there wasn't a need to draw any conclusion</p>	

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<p>1 prior to this Court's issuance of the summary judgment</p> <p>2 quite frankly.</p> <p>3 Number three, because of this Court's</p> <p>4 issuance of the summary judgment and its apparent</p> <p>5 reliance on the August 3, 2023, report of the</p> <p>6 monitor -- which I'll note for the record, nowhere</p> <p>7 contains the words "fraud, indicia of fraud, suspected</p> <p>8 fraud or suspicious activity;" nonetheless, the Court</p> <p>9 went on to conclude that somehow or another the August</p> <p>10 2023 letter was evidence of ongoing fraud. I believe</p> <p>11 that's the words in the order.</p> <p>12 The defense needs to meet that assertion</p> <p>13 somehow. You have precluded our ability from calling</p> <p>14 the actual author of the letters -- which, for the</p> <p>15 record, we have disagreed with and continue to.</p> <p>16 But, nonetheless, Professor Bartov is the</p> <p>17 only option the defense has to meet those allegations</p> <p>18 and that concern.</p> <p>19 I fully anticipate that the Attorney General</p> <p>20 will argue, again, that these letters, somehow,</p> <p>21 indicate that there's a need for ongoing monitoring or</p> <p>22 there's some other problem. And so, the defense is,</p> <p>23 certainly, entitled to meet that allegation.</p> <p>24 It's new evidence that wasn't available</p> <p>25 before. There's no prejudice to them. They've had the</p>		<p>1 estate company. I don't even know -- they literally</p> <p>2 said -- he just said he's the last witness and that's</p> <p>3 why they're going to have him do this.</p> <p>4 So it's not anything that requires expertise.</p> <p>5 And, it's not an appropriate subject for expert</p> <p>6 testimony.</p> <p>7 MR. KISE: Your Honor --</p> <p>8 THE COURT: Briefly.</p> <p>9 MR. KISE: Your Honor, it clearly requires</p> <p>10 expertise. It clearly requires -- if someone -- if the</p> <p>11 fact finder is going to take the letters from the</p> <p>12 monitor and make determinations that there's persistent</p> <p>13 fraud when the word "fraud" isn't even used, that tells</p> <p>14 me, respectfully, that there's expertise required,</p> <p>15 that, someone with an accounting background needs to</p> <p>16 address the issues.</p> <p>17 Professor Bartov is not opining on the</p> <p>18 ultimate issue. Professor Bartov is saying, based on</p> <p>19 the accounting issue -- it says it right here. Based</p> <p>20 on the minor accounting issues identified in the</p> <p>21 reports, he's got vast experience in evaluating</p> <p>22 financial statements. He's got vast experience in</p> <p>23 making determinations about whether or not there's</p> <p>24 financial reporting misconduct. That's been</p> <p>25 established.</p>	
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<p>1 letters the same time we've had the letters. And, if</p> <p>2 they want to rebut it somehow or they want to cross</p> <p>3 examine Professor Bartov, that's fine.</p> <p>4 But, the idea that we can't meet evidence</p> <p>5 that is clearly going to be used or considered in a</p> <p>6 manner that might result in prejudice to the defense, I</p> <p>7 think would be -- not only is it objectionable but, I</p> <p>8 think it would be, respectfully, reversible.</p> <p>9 THE COURT: And plaintiff?</p> <p>10 MR. WALLACE: Does your Honor have -- I'm</p> <p>11 not sure how much background you need on the proposed</p> <p>12 affidavit, again. But, it's, basically, Professor</p> <p>13 Bartov reads the reports from the monitor, reviews</p> <p>14 Mr. Hawthorn's testimony and says, "It's my conclusion</p> <p>15 they have been cooperating and there is no fraud."</p> <p>16 If they want evidence to meet this challenge,</p> <p>17 those are the pieces of evidence; the actual reports</p> <p>18 from the monitor and the testimony from Mr. Hawthorn.</p> <p>19 And that's a legal argument to say, "These</p> <p>20 don't use the word fraud," as Mr. Kise just said. And</p> <p>21 that's it. This isn't anything that requires</p> <p>22 expertise.</p> <p>23 This isn't anything that Professor Bartov has</p> <p>24 a particular expertise in. He's never been a monitor.</p> <p>25 He's never been in the oversight function of a real</p>		<p>1 And so, he can look and see the types of</p> <p>2 issues that were identified and opine as from an</p> <p>3 accounting perspective "Does this indicate that there's</p> <p>4 a problem, that, there's fraud, that, there's suspected</p> <p>5 fraud?"</p> <p>6 So, I don't think it's -- with all due</p> <p>7 respect to my colleague, I don't think it's</p> <p>8 something -- particularly, given the history of the use</p> <p>9 of these letters -- that can be decided in the absence</p> <p>10 of someone who has this expertise.</p> <p>11 And, it's not because he's the last witness.</p> <p>12 It's because he's a qualified witness and because we're</p> <p>13 not allowed to speak to the authors of the letters.</p> <p>14 (Whereupon, the following proceedings were</p> <p>15 stenographically recorded Shameeka Harris.)</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	

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<p>1 THE COURT: That testimony is absolutely precluded.</p> <p>2 I read every monitor report. I don't need an expert to tell</p> <p>3 me what they mean. To the extent that the monitor did not</p> <p>4 use the word fraud and I did, somewhat based on what was</p> <p>5 written, maybe that was my interpretation. Maybe, I should</p> <p>6 have chosen a different, slightly different word. In terms</p> <p>7 of appeal, Defendants, you have the reports. You have --</p> <p>8 you'll -- you have what the summary judgement decision said.</p> <p>9 You'll have what the post-trial decision say. You can</p> <p>10 appeal but there is no way I am going to let Professor</p> <p>11 Bartov expertly opine on reports written for my benefit.</p> <p>12 I appointed her as an honor of the court, and I</p> <p>13 found her reports very, what's the word, easy to digest.</p> <p>14 That's more than one word. So, that's the ruling.</p> <p>15 MR. KISE: So then, Your Honor, the only other ask</p> <p>16 we have is, I believe, that as we did with Mr. Shubin, that</p> <p>17 we put this into the record as a proffer just so that it's</p> <p>18 there in the record for appellate purpose. Otherwise, the</p> <p>19 appellate court will not see what's there. We did this the</p> <p>20 other day with the witness with Mr. Shubin. You allowed us</p> <p>21 to just mark it and include it as part --</p> <p>22 THE COURT: I understand. What's the harm in that?</p> <p>23 MR. WALLACE: Purely as a determination as a matter</p> <p>24 to go into the record that Your Honor has decided not to</p> <p>25 allow in, that's fine. It's hearsay. There are other</p>		<p>1 A L I B A R T O V, a witness called by and on behalf</p> <p>2 of the Defendant, upon being previously duly sworn, was examined</p> <p>3 and testified as follows:</p> <p>4 THE COURT: As usual, I will remind you you are</p> <p>5 still under oath. We are trying, and I'm sure I hope the</p> <p>6 attorneys will agree with me, to finish your testimony, your</p> <p>7 cross-examination, your -- any redirect this morning. So, I</p> <p>8 would appreciate answers that are short and to the point.</p> <p>9 Do you think we can finish this morning?</p> <p>10 MR. SOLOMON: If Mr. Suarez has another 40 minutes</p> <p>11 for direct, it will be unlikely we will finish.</p> <p>12 THE COURT: Witness, we may need you Tuesday or</p> <p>13 Wednesday.</p> <p>14 MR. KISE: Tuesday. He teaches on Monday. I know</p> <p>15 he is not available in addition to the other witness.</p> <p>16 MR. WALLACE: Sometimes things happen. Why don't</p> <p>17 we discuss this after the break.</p> <p>18 MR. KISE: It's their cross. If they want to waive</p> <p>19 it on Monday --</p> <p>20 MR. WALLACE: I am going to ask about other</p> <p>21 witnesses. Let's do it on the break.</p> <p>22 THE COURT: Mr. Suarez, why don't you continue now.</p> <p>23 MR. SUAREZ: Thank you, Your Honor.</p> <p>24 DIRECT EXAMINATION</p> <p>25 BY MR. SUAREZ:</p>	
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<p>1 issues. It's not evidence. It's actually in the record.</p> <p>2 Just as notice for the basis of your decision that you</p> <p>3 reviewed that proposed affidavit and said you are not going</p> <p>4 to allow it, that's fine by our -- that's fine from our end.</p> <p>5 THE COURT: The bottom line is you agree as with</p> <p>6 the Shubin proffer that this can go into the record but it</p> <p>7 won't be part of the testimony.</p> <p>8 MR. WALLACE: And it won't be evidence, correct.</p> <p>9 THE COURT: Okay. Great. Let's -- and let me just</p> <p>10 make sure.</p> <p>11 Mr. Suarez, I'm sure you have been listening</p> <p>12 intently and you understand basically for every year for</p> <p>13 everything he read, you want to ask him did he -- again,</p> <p>14 this is sort of leading but let's just call it preliminary</p> <p>15 matter. Did you find any indicia of material accounting</p> <p>16 misstatements, right?</p> <p>17 MR. WALLACE: Not to be too loquacious, Your Honor,</p> <p>18 I will add going through having the witness explain exactly</p> <p>19 what he reviewed to reach those conclusions is one of the</p> <p>20 things we also wanted to hear. If he wants to put the</p> <p>21 testimony in as the foundational basis for the testimony.</p> <p>22 THE COURT: All right. Let's get the witness.</p> <p>23 And, Mr. Suarez, about how long will your direct</p> <p>24 continue, just trying to balance the morning?</p> <p>25 MR. SUAREZ: About 40 minutes.</p>		<p>1 Q Good morning, Professor Bartov.</p> <p>2 A Good morning.</p> <p>3 Q In connection with your review of materials in this</p> <p>4 case, have you identified any indicia of material accounting</p> <p>5 misstatements in President Trump's Statements of Financial</p> <p>6 Condition?</p> <p>7 MR. WALLACE: Objection, lacks foundation.</p> <p>8 THE COURT: You would like the documents.</p> <p>9 MR. WALLACE: What exactly did he review that is</p> <p>10 going to lead to the opinions that we will hear.</p> <p>11 MR. SUAREZ: We went through it yesterday. I am</p> <p>12 happy to do it again. I am happy to --</p> <p>13 THE COURT: He will tie it more closely to this</p> <p>14 particular response.</p> <p>15 MR. SUAREZ: If I can get an answer, then I can</p> <p>16 walk him through everything and then I'll get it out.</p> <p>17 THE COURT: I will have to walk him through, then</p> <p>18 get the answer I think.</p> <p>19 CONT'D DIRECT EXAMINATION</p> <p>20 BY MR. SUAREZ:</p> <p>21 Q Okay. In that case, Professor Bartov, I'd like to show</p> <p>22 you what's been premarked Plaintiff's Exhibit 34, 39.</p> <p>23 A Yes.</p> <p>24 Q What is this document, Professor Bartov?</p> <p>25 A This is Conceptual Framework of Financial Reporting</p>	

<p>Professor Bartov - by Defendant - Direct (Mr. Suarez) Page 6386</p> <p>1 Chapter Three Quantitative Characteristics of useful financial 2 information. 3 Q And what does this conceptual framework provide? 4 A Conceptual framework is the foundation based on which 5 FASB, the Financial Accounting Standard Board, developed the 6 accounting standards. 7 Q And if I could please turn your attention to page eight 8 of this document to a section entitled materiality. And I'd 9 like to specifically draw your attention to QC-11 which states, 10 "Relevance and materiality are defined by what influences or 11 makes a difference to an investor or other decision maker; 12 however, the two concepts can be distinguished from each other. 13 Relevance is a general notion about what type of information is 14 useful to investors, materiality is entity specific. 15 The omission or misstatement of an item in a financial 16 report is material if, in light of surrounding circumstances, 17 the magnitude of the item is such that it is probable that the 18 judgment of a reasonable person relying upon the report would 19 have been changed or influenced by the inclusion or correction 20 of the item." 21 Do you see that, Professor? 22 A I do. 23 Q What does that mean? 24 A This is the definition of materiality according to the 25 accounting literature.</p>	<p>Professor Bartov - by Defendant - Direct (Mr. Suarez) Page 6388</p> <p>1 So the analysis is from the perspective of the user what 2 information the user relied on when they made the decision. 3 MR. WALLACE: Objection, Your Honor. The answer 4 was not responsive. The question is what information did 5 you review. 6 MR. SUAREZ: He is describing broadly the 7 information that he needed to review. 8 THE COURT: No. Sustained. Clearly. Let me just 9 say, common sense, I find that completely clear. I don't 10 need an expert to tell me what that means. Your explanation 11 went here, there, everywhere. Sometimes less is more. It 12 seems to be the phrase of the day. So, but to get back to 13 the basics, the question was what did you review not what 14 this means, right? 15 CONT'D DIRECT EXAMINATION 16 BY MR. SUAREZ: 17 Q In order to conduct this analysis, Professor, what 18 specific information did you -- 19 THE COURT: No, the question was what documents you 20 reviewed, right? 21 MR. SUAREZ: Not just documents. It could be trial 22 testimony. It could be deposition testimony. 23 A The key information is the credit reports because the 24 credit reports show you the -- the credit report show you what 25 information, credit to be used when they make their decision so</p>
<p>Professor Bartov - by Defendant - Direct (Mr. Suarez) Page 6387</p> <p>1 Q And in order to assess materiality in connection with a 2 statement of financial condition, what information would you 3 need to review? 4 A Well, in order to decide materiality, I need to review 5 the information from the user perspective. So through the lens 6 of the user, what information user used and whether a 7 misstatement, had it been corrected, the correction would change 8 the -- would change the judgment of the user. 9 Q And in performing your analysis in this case, what 10 information did you review in order to conduct the materiality 11 analysis? 12 A So a good question is what information was used by the 13 user. So the starting point is what information was used by the 14 user and then the question is what was the true information, the 15 information that should have been reported based on the correct 16 application of GAAP. So, this is the question. 17 So if Deutsche Bank used -- used a net worth of 2 18 billion or 2.4 billion and the true net worth, based on the 19 correct application of Generally Accepted Accounting Principle, 20 is around this number -- because there is a lot of uncertainty 21 around the estimation of the items on the statement of financial 22 condition. So, obviously, you don't -- you don't expect the 23 number to be accurate but -- but the point is that if -- if the 24 user arrived at a correct information, then, then there is no -- 25 then from the perspective of the user, there is no misstatement.</p>	<p>Professor Bartov - by Defendant - Direct (Mr. Suarez) Page 6389</p> <p>1 that's what the key information for me to -- to analyze when I 2 consider whether there was a material misstatement in the 3 statement of financial condition. 4 Q And was there any other information that you reviewed 5 in connection with that analysis? 6 A Yes. I obviously reviewed also the information in the 7 statement of financial condition. And I want to make sure that 8 there was no violation of GAAP. And as I said yesterday, every 9 financial statement, especially an audited financial statement 10 where you contain an error, but the fact that a financial 11 statement contain an error, if the error is -- if the error was 12 inadvertent and then the error is inadvertent and they would not 13 effect, would not change the judgment of the -- of the user. 14 Had the user had the correct information then it's -- then the 15 financial statements are not -- are not a -- materially 16 misstated. 17 Q And just to give a complete picture as to everything 18 that you looked at, can you please walk us through all of the 19 different categories of information that you looked at? 20 A Yes, I looked on the statement of financial condition. 21 I looked on the -- I looked on the credit reports. I looked on 22 the manuals to understand better the process that DB used in 23 order to come up with the information. I looked on some trial 24 testimony, before that deposition testimony, and before that 25 even I looked on -- on very briefly -- I didn't spend much time</p>

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1 on it but if memory serves, this was like 7 or 8 years -- 7 or 8
2 months ago, I think that I reviewed quickly, I think, that I
3 reviewed quickly a few -- very few work papers that were -- that
4 were provided to Mazars.
5 I didn't focus on it. But if memory serve, I
6 definitely reviewed them through the report of Dr. Lewis because
7 Dr. Lewis cut and paste some of the -- some of the work papers
8 used by Mazars. So it was eight months ago so I don't
9 remember -- so I can't tell you accurately but I look on
10 testimony. I look on the reports of also the other experts,
11 Dr. -- Mr. Haigh and Mr. Korologos. That's about it.
12 MR. WALLACE: Your Honor, since this is proceedings
13 subject to agreement, can the witness expand on the trial
14 testimony and deposition testimony that he actually
15 reviewed?
16 THE COURT: Please, let's get that out in the open.
17 Q What trial testimony did you review from the trial from
18 these proceedings?
19 A From the trial, I reviewed -- I reviewed the testimony
20 of McConney, the testimony of Mr. McConney, the testimony of
21 Mr. Flemmons. I reviewed a couple more, the testimony of
22 Mr. McCarty. And I reviewed the testimony of Mr. Bender. You
23 know, I can't remember right now all of them, but I think this
24 is the most important ones.
25 Q Did you review the testimony of any of the Deutsche

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1 Bankers?
2 A Oh, yes, sorry. Thank you. I reviewed -- you know,
3 sorry, you know --
4 THE COURT: That's okay.
5 A I didn't know I come to a memory test. To my students
6 are allowed to bring material to the exam. So I don't give them
7 memory test. So thank you. I looked on Mr. Williams and
8 Mr. Haigh, and Miss Vrablic.
9 MR. WALLACE: I don't want to put the witness
10 through a deposition test. I definitely interrupted. I
11 apologize for that. For the deposition testimony, was that
12 all disclosed in your reports or is there any additional
13 deposition testimony?
14 MR. SUAREZ: This strikes me as stuff for
15 cross-examination.
16 MR. WALLACE: We agreed to this as a compromise
17 which is the reason I am acting out of order. I acknowledge
18 and I apologize.
19 MR. KISE: As the compromise allows them to get
20 into an examination in the middle of a direct? I don't see
21 how that matters.
22 MR. WALLACE: It is akin to voir dire.
23 THE COURT: It seems to me axiomatic. If the
24 witness is going to offer an expert opinion and the other
25 side is entitled to know what he relied on when he formed

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1 his opinions.
2 MR. KISE: He is testifying about it on direct. If
3 they want to followup on cross like they normally can, did
4 you review anything else, did you review this or that as
5 opposed to this other stuff.
6 MR. WALLACE: I apologize. Your Honor had said the
7 witness should explain what trial and deposition testimony
8 that he reviewed. I was trying to offer a means, since I
9 didn't want to offer it as a memory test, for everything he
10 may have done. That's why I suggested that as an option.
11 THE COURT: Let's just continue.
12 CONT'D DIRECT EXAMINATION
13 BY MR. SUAREZ:
14 Q Are there any materials that you reviewed that you can
15 think of right now?
16 A Other materials?
17 Q Yes.
18 A No. Right now, I don't remember. If you remind -- if
19 you ask me specific questions, then I can maybe, maybe I can
20 respond more specifically.
21 Q In connection with preparing your reports, did you
22 review any deposition transcripts?
23 A Deposition transcripts? I did. I did review -- I
24 actually attended -- I attended the deposition of Dr. Lewis.
25 And I -- I reviewed the depositions. You know, I think I -- I

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1 think -- I also look on the deposition of Wisselberg. I -- and
2 I look on a few of the deposition testimony too but I can't
3 remember now what they are.
4 Q And in your report, did you include a list of the
5 documents that you relied on in coming up with your opinions?
6 A I did, yeah. I didn't list everything that I reviewed.
7 I list only the material that I relied on in my report.
8 Q And in connection with the materials that you reviewed
9 in this case, have you identified any indicia of material
10 accounting misstatement in President Trump's Statements of
11 Financial Condition?
12 MR. WALLACE: I am just going to note our
13 objection. We don't think this witness has laid a
14 foundation for this opinion.
15 THE COURT: Read back, please.
16 (Whereupon, the requested testimony was read back
17 by the court reporter.)
18 THE COURT: Overruled.
19 Q You can answer.
20 A As my report clearly indicate, I did not find any
21 evidence of material misstatement in any of the statement of
22 financial condition.
23 Q And how was this standard QC11 relevant to that
24 analysis?
25 A Well, given the definition of materiality that you have

<p>Professor Bartov - by Defendant - Direct (Mr. Suarez) Page 6394</p> <p>1 to -- so materiality is a test and this definition tell you how</p> <p>2 to -- how, from the accounting standpoint, you need to perform</p> <p>3 this test. You need to perform this test based on this</p> <p>4 definition.</p> <p>5 Q And then QC11A says, "A decision not to disclose</p> <p>6 certain information or recognize an economic phenomenon may be</p> <p>7 made, for example, because the amounts involved are too small to</p> <p>8 make a difference to an investor or other decision marker,</p> <p>9 (they're immaterial)." Then it says, "However magnitude by</p> <p>10 itself without regard to the nature of the item and the</p> <p>11 circumstances in which the judgment has to be made, generally is</p> <p>12 not a sufficient basis for a materiality judgment."</p> <p>13 How does this section of the guidance of -- apply to</p> <p>14 your analysis?</p> <p>15 A Well, the section -- this section actually makes two</p> <p>16 points. Point one is actually a -- it's actually mentioned in</p> <p>17 ASC 105 Generally Accepted Accounting Principles, principles</p> <p>18 when it says that GAAP need not be applied to immaterial items</p> <p>19 which means that if you deviate from GAAP but the deviation does</p> <p>20 not arise to material deviation, then you're still within GAAP.</p> <p>21 So GAAP does not require that every single item will be prepared</p> <p>22 according to GAAP. Only material items must be prepared</p> <p>23 according to GAAP. This is the first sentence.</p> <p>24 The second sentence says, what I think I already said</p> <p>25 before, which is that when you judge whether an alleged</p>	<p>Professor Bartov - by Defendant - Direct (Mr. Suarez) Page 6396</p> <p>1 qualitative analysis to decide whether the misstatement that was</p> <p>2 quantified in step one is material or not. And all this tells</p> <p>3 you is, number one, you have to be an accounting expert to do</p> <p>4 this analysis and number two that this analysis is to a large</p> <p>5 extent subjective and require a lot of knowledge about the</p> <p>6 details of the company and the surrounding circumstances.</p> <p>7 Q And if we can pull up Plaintiff's Exhibit 290. Do you</p> <p>8 recognize this document, Professor?</p> <p>9 A I do, yeah. Yes, I do.</p> <p>10 Q What is it?</p> <p>11 A It is a credit report prepared by the commercial real</p> <p>12 estate group of DB on July 24, 2013, as opposed to the Private</p> <p>13 Wealth Management Group.</p> <p>14 Q And do you see, Professor -- if I could -- is it the</p> <p>15 CRE mean Commercial Real Estate or Commercial Real Estate Group.</p> <p>16 I think it is the CRE report for the Private Wealth Management</p> <p>17 Group?</p> <p>18 MR. WALLACE: Objection. Leading. He just gave</p> <p>19 the witness the answer.</p> <p>20 A You know what, sorry. Go to the bottom of the --</p> <p>21 Q I withdraw the -- I just want to --</p> <p>22 THE COURT: That's stricken.</p> <p>23 MR. WALLACE: The damage is done.</p> <p>24 A Sorry.</p> <p>25 Q Do you see --</p>
<p>Professor Bartov - by Defendant - Direct (Mr. Suarez) Page 6395</p> <p>1 misstatement is material, you cannot look on the magnitude by</p> <p>2 itself. The magnitude by itself is -- the magnitude mean the</p> <p>3 difference between the correct number and the stated number.</p> <p>4 The difference by itself is insufficient to decide whether there</p> <p>5 is material or not. You have to apply additional consideration</p> <p>6 which in accounting they're called qualitative analysis. You</p> <p>7 have to perform qualitative analysis that will guide you whether</p> <p>8 the omission of the misstatement is material or not.</p> <p>9 Q And the following section QC11B, Professor, it says,</p> <p>10 "No general standards of materiality could be formulated to take</p> <p>11 into account all the considerations that enter into judgments</p> <p>12 made by an experienced reasonable provider of financial</p> <p>13 information. That is because materiality judgments can properly</p> <p>14 be made only by those that understand the reporting entity's</p> <p>15 pertinent facts and circumstances. Whenever an authoritative</p> <p>16 body imposes materiality rules or standards, it is substituting</p> <p>17 generalized collective judgments for specific individual</p> <p>18 judgments, and there is no reason to suppose that the collective</p> <p>19 judgments always are superior."</p> <p>20 Do you see that?</p> <p>21 A I do.</p> <p>22 Q How does this section apply to your analysis if at all?</p> <p>23 A So this section is talking about the second step. So</p> <p>24 there are two steps in materiality test. Step number one is to</p> <p>25 quantify the misstatement. Step number two is to apply</p>	<p>Professor Bartov - by Defendant - Direct (Mr. Suarez) Page 6397</p> <p>1 MR. KISE: Your Honor, I think Mr. Wallace's</p> <p>2 cynicism is continuing over from yesterday, and I don't</p> <p>3 understand it. I really don't. He didn't give him the</p> <p>4 answer. The document is up there on the screen.</p> <p>5 MR. WALLACE: If the witness wants to leave, I'm</p> <p>6 happy to discuss it. I don't think we need to discuss it.</p> <p>7 THE COURT: Let's just move on.</p> <p>8 MR. SUAREZ: We can put the whole document up.</p> <p>9 Q Do you have a copy of it in front of you?</p> <p>10 A Yeah. Sorry. This is Deutsche Bank Private Wealth</p> <p>11 Management Group.</p> <p>12 Q Does this refresh your recollection?</p> <p>13 A Yes. On the bottom, yeah. That's what I -- sorry.</p> <p>14 Yeah. So, yes. So I -- it's definitely there. Other reports</p> <p>15 that I reviewed actually are from the Private Wealth Management</p> <p>16 Group. So, yeah, it says on the bottom. That's why I asked you</p> <p>17 to look on the bottom of the document.</p> <p>18 Q And what conclusion, if any, did you reach about</p> <p>19 whether Deutsche Bank relied on the president's statements of</p> <p>20 financial condition in 2013?</p> <p>21 A So -- so, you can see, and this is common to all the</p> <p>22 credit reports, you can see that in page seven and page eight</p> <p>23 they have the Donald J. Trump valuation and they have DB</p> <p>24 valuation. And you see that the numbers used by DB for their</p> <p>25 purpose are substantially different than the number used by</p>

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<p>1 Donald J. Trump. And, for example, on page eight, if you can go</p> <p>2 to page eight, the total portfolio of the 4 Trophy properties</p> <p>3 was valued at 1.6 billion by Trump, was valued by 1.2 billion by</p> <p>4 DB. So you see substantial differences here. And you see that</p> <p>5 the total portfolio was valued by Donald Trump is 3.6 billion</p> <p>6 and by DB was valued at 2.1 billion.</p> <p>7 So, obviously, they use their own numbers for, you</p> <p>8 know, when they made their -- when they made their lending</p> <p>9 decision. They did not rely on the numbers reported by Donald</p> <p>10 Trump and the reason is obviously. They used different</p> <p>11 definition of value. So when you use different definition of</p> <p>12 value, you get different valuations.</p> <p>13 Q And if I could ask you to take a look at Plaintiff's</p> <p>14 Exhibit 298.</p> <p>15 (Continued on next page)</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 fraud and there's a, you know, street definition of</p> <p>2 fraud. But, all right, I'll strike the conclusion</p> <p>3 that -- the statement about fraud because, that's a</p> <p>4 legal conclusion.</p> <p>5 MR. KISE: Well, your Honor, consistent with</p> <p>6 our agreement, is the objection the word "fraud" as</p> <p>7 opposed to the word "misstatement" back to where --</p> <p>8 THE COURT: That's basically it, right?</p> <p>9 MR. WALLACE: Misstatement versus fraud is</p> <p>10 different. And if they want to clarify that this is</p> <p>11 based on that review that he performed and only that</p> <p>12 review. That's fine.</p> <p>13 I will, though, note this is all cumulative.</p> <p>14 This has been covered extensively. And he keeps saying</p> <p>15 these things are obvious. Which would suggest they're</p> <p>16 not an appropriate subject for expert testimony.</p> <p>17 But I'm going to stick to the fraud objection</p> <p>18 the way it was put in by the witness. If they want to</p> <p>19 redirect him on that, you know, we may not object.</p> <p>20 MR. KISE: He can just ask another question.</p> <p>21 But, it's not obvious. It's obvious to someone with 40</p> <p>22 years experience.</p> <p>23 THE COURT: You don't have to go over that</p> <p>24 part. I'll strike the word "fraud" as "a legal</p> <p>25 conclusion." And we'll substitute "misstatement" -- is</p>
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<p>1 Q. If I can ask you to look at Plaintiff's Exhibit</p> <p>2 298.</p> <p>3 And, again, I'll ask you if you recognize this</p> <p>4 document. Let's keep the full document up.</p> <p>5 A. Yes, this document, again, is prepared by Deutsche</p> <p>6 Bank Private Wealth Management, their risk management group.</p> <p>7 And, this is, again -- this is annual report. They do an</p> <p>8 annual review. And this is dated July 20, 2015.</p> <p>9 Q. What conclusion, if any, Professor, did you reach</p> <p>10 about whether Deutsche Bank relied on President Trump's</p> <p>11 Statement of Financial Condition in 2015?</p> <p>12 A. So, again, if you go to page eight on this report,</p> <p>13 you see that they listed, again, the valuation by Donald J.</p> <p>14 Trump in their own valuation. And, again, you see</p> <p>15 substantial differences. Donald J. Trump used 4.3 billion</p> <p>16 for the valuation. For their purposes, they use 2.5 billion</p> <p>17 valuation.</p> <p>18 So obviously there is considerable difference</p> <p>19 between the Donald J. Trump number and DB number. This is</p> <p>20 not fraud or an error. This simply because they use</p> <p>21 different definition of value. And, this is totally</p> <p>22 expected.</p> <p>23 MR. WALLACE: Objection. Move to strike the</p> <p>24 portion about fraud.</p> <p>25 THE COURT: There's a legal definition for</p>	<p>1 that --</p> <p>2 MR. KISE: He can ask him the question</p> <p>3 again. He can use the word misstatement. Fine. I</p> <p>4 mean, I think we're really descending to a very narrow</p> <p>5 dispute here that's pointless. But, nonetheless --</p> <p>6 THE COURT: And to the extent that there's</p> <p>7 an allegation that we're plowing the same field, it</p> <p>8 seems like déjà vu to me.</p> <p>9 MR. KISE: Right, but no one is getting it.</p> <p>10 That's the problem. No one is getting it. I think the</p> <p>11 folks in the back are getting it -- at least, from what</p> <p>12 I saw yesterday. I think they're getting it. I think</p> <p>13 they're seeing what's going on. But, I don't think</p> <p>14 anyone else in the courtroom, except at this table, is</p> <p>15 getting it. So that's why we have to have witnesses</p> <p>16 come in and lay it all out -- particularly them.</p> <p>17 THE COURT: Without responding to the</p> <p>18 allegation that plaintiffs are not getting it, that</p> <p>19 would not be a reason to go over it again if somebody</p> <p>20 didn't get something.</p> <p>21 I could summarize his testimony but, then</p> <p>22 we'd have to ask him to leave the room. But, I don't</p> <p>23 want to bother to do that. He's saying the same thing</p> <p>24 he said yesterday.</p> <p>25 MR. KISE: But, they objected to it</p>

<p>A.Bartov - Defendants - Direct/Mr. Suarez Page 6402</p> <p>1 yesterday, which is why we're going through this</p> <p>2 exercise today.</p> <p>3 THE COURT: To the extent there was an</p> <p>4 objection, I overruled it. I let him say his</p> <p>5 conclusion about these credit reports. As is often the</p> <p>6 case, let's just move on. Okay? The record says what</p> <p>7 it says.</p> <p>8 DIRECT EXAMINATION</p> <p>9 BY MR. SUAREZ:</p> <p>10 Q. Professor, within the context of a material</p> <p>11 accounting misstatement, what conclusion, if any, did you</p> <p>12 reach about Deutsche Bank's reliance on the Statements of</p> <p>13 Financial Condition?</p> <p>14 A. Yes, you know when --</p> <p>15 Q. In this year in particular.</p> <p>16 A. I just want to make a comment. When people don't</p> <p>17 understand me, it's my fault. It's on me. So, I have a</p> <p>18 continuous communication problem with Mr. Wallace. So let</p> <p>19 me just explain the language. So maybe it will save a lot</p> <p>20 of time of objection.</p> <p>21 When I say, "obvious," it's obvious to someone --</p> <p>22 an accounting expert. When I say, "fraud," if there's no</p> <p>23 misstatement -- if there's no misstatement, there is no</p> <p>24 fraud. These are interchangeable.</p> <p>25 In order to qualify for a fraud, you first have to</p>	<p>A.Bartov - Defendants - Direct/Mr. Suarez Page 6404</p> <p>1 if any, did you reach about Deutsche Bank's reliance on</p> <p>2 President Trump's Statement of Financial Condition in the</p> <p>3 year 2016?</p> <p>4 A. So, I see here a detailed analysis of a few pages</p> <p>5 just like before. And, this analysis is summarized on page</p> <p>6 11; when again, they show a chart that compare Deutsche Bank</p> <p>7 valuation to the DGT valuation.</p> <p>8 They show that they are aware of DGT valuation.</p> <p>9 In this case, the total portfolio, according to the DGT</p> <p>10 valuation is 5.7 billion. According to their own analysis,</p> <p>11 it's 2.5 billion.</p> <p>12 So again, consider the entire report. And</p> <p>13 particularly, the summary on page 11, clearly indicate, to a</p> <p>14 reasonable expert, that, Deutsche Bank performed their own</p> <p>15 analysis of valuation before they make their lending</p> <p>16 decisions.</p> <p>17 Q. And what conclusion, if any, did you reach</p> <p>18 concerning their reliance on the Statement of Financial</p> <p>19 Condition in this year?</p> <p>20 A. So there is no evidence here of a material</p> <p>21 misstatement.</p> <p>22 Q. And, if we turn to Plaintiff's Exhibit 3137, I'd</p> <p>23 ask you if you recognize this document Professor? And they</p> <p>24 will hand you a paper copy just now.</p> <p>25 A. Yes. So again, this is Deutsche Bank Private</p>
<p>A.Bartov - Defendants - Direct/Mr. Suarez Page 6403</p> <p>1 have a misstatement. So if you like me to say there is no</p> <p>2 misstatement, I'll say there's no misstatement here. There</p> <p>3 is no material misstatement here. There's to evidence here</p> <p>4 of material misstatement.</p> <p>5 Q. Thank you.</p> <p>6 MR. WALLACE: Objection. That wasn't</p> <p>7 responsive to a question, your Honor. And I don't</p> <p>8 think the witness is supposed to be addressing me.</p> <p>9 He's supposed to be asking you.</p> <p>10 MR. KISE: You keep asking raising</p> <p>11 objections.</p> <p>12 THE COURT: We can't keep doing this as a</p> <p>13 short question and a long answer and then it wasn't</p> <p>14 responsive. I have to get a read back.</p> <p>15 Mr. Wallace, is it important? If it is, I</p> <p>16 will get a read back.</p> <p>17 MR. WALLACE: It is not important.</p> <p>18 THE COURT: Let's move on.</p> <p>19 MR. SUAREZ: Can you pull up Plaintiff's</p> <p>20 Exhibit 300.</p> <p>21 Q. Do you recognize this document, Professor?</p> <p>22 A. Yes. This is the review for July 20 -- this is</p> <p>23 the review for July 20, 2016.</p> <p>24 Q. And again in the context of accounting -- excuse</p> <p>25 me of a material accounting misstatement, what conclusion,</p>	<p>A.Bartov - Defendants - Direct/Mr. Suarez Page 6405</p> <p>1 Wealth Management Risk Management Group analysis of debt</p> <p>2 from July 20, 2017.</p> <p>3 Q. What conclusion, if any, did you reach about</p> <p>4 Deutsche Bank's reliance on President Trump's Statement of</p> <p>5 Financial Condition in July of -- in the year 2017? Excuse</p> <p>6 me.</p> <p>7 A. So again, the recent report -- the credit report</p> <p>8 is very detailed. They did a number of different</p> <p>9 independent analysis. And the conclusion, again, from all</p> <p>10 of this report -- this report contain a lot of analysis,</p> <p>11 just like the other report.</p> <p>12 And based on this analysis -- sorry. Just give me</p> <p>13 a second. so based on this analysis, this data and</p> <p>14 analysis, page twelve they show you the results which they</p> <p>15 say the valuation is 2.5 billion, where Donald J. Trump says</p> <p>16 the valuation is 4.3 billion which indicate that the</p> <p>17 financial statement -- the Statement of Financial Condition</p> <p>18 were not, materially, misstated.</p> <p>19 Q. If we can turn to Plaintiff's Exhibit 302, I will</p> <p>20 ask you professor if you recognize this document.</p> <p>21 A. Yes, the same thing. It is a document but,</p> <p>22 different date. The date here is July 20, 2018. It was</p> <p>23 produced by the risk management group of Deutsche Bank</p> <p>24 Private Wealth Management.</p> <p>25 Q. And what conclusion, if any, did you reach about</p>

<p>A.Bartov - Defendants - Direct/Mr. Suarez Page 6406</p> <p>1 Deutsche Bank's reliance on President Trump's Statement of 2 Financial Condition in the year 2018?</p> <p>3 A. Again, there is a very detailed independent 4 analysis, just like in all the other ones. And, at the end 5 of this analysis, on page -- let me just find the page. So 6 there is a very detailed analysis here of many different 7 type of analysis as you would expect from a bank.</p> <p>8 And, again, if you look, for example, on page ten, 9 they summarize the detailed analysis that they performed and 10 they show that the total portfolio, based on the Statement 11 of Financial Condition, was 4.39 billion. According to 12 their end analysis, it was 2.515 billion.</p> <p>13 The evidence will show that they did not rely on 14 the Statement of Financial Condition numbers but, they 15 relied on their own numbers that were almost 50 percent or 16 40 percent lower than the number in the Statement of 17 Financial Condition.</p> <p>18 Q. From credit analysis perspective, as with the 19 other years, what does this tell you Professor?</p> <p>20 A. It tell you that they rely -- that, they did a 21 very detailed analysis, independent analysis, using 22 information in the footnotes and using additional 23 information that they received directly from Mr. Trump. 24 And, they based their conclusion on their own analysis, not 25 on the numbers -- not on the raw numbers -- that were</p>	<p>A.Bartov - Defendants - Direct/Mr. Suarez Page 6408</p> <p>1 property, for example, in the Statement of Financial 2 Condition, it was reported at value of two billion. They 3 arrived to the conclusion, on their analysis, that, the 4 value, for their purposes, is one point 1.16 billion, almost 5 50 percent lower than the number reported in the Statement 6 of Financial Condition.</p> <p>7 So, they did not -- to me, as an expert, it's 8 obvious that they did not rely on the raw numbers that are 9 reported in the Statement of Financial Condition but, 10 instead, they do a very extensive independent analysis 11 derived, completely, different numbers and rely on this 12 adjusted numbers in their lending decisions.</p> <p>13 Q. Was that consistent with the analysis that 14 Deutsche Bank performed in each year of the credit 15 relationship?</p> <p>16 A. Yes, they -- in each year, they perform, in 17 spirit, more or less the same type of analysis. And the 18 analysis relies, substantially, on information that is not 19 even available in the Statement of Financial Condition.</p> <p>20 As I said yesterday, the information of financial 21 condition, does not provide income statement, does not 22 provide statement of cash flow and there is no way that any 23 bank can rely on the statement when they make their lending 24 decisions.</p> <p>25 Q. And if we could move on, I'd like to show you</p>
<p>A.Bartov - Defendants - Direct/Mr. Suarez Page 6407</p> <p>1 reported in the Statement of Financial Condition.</p> <p>2 Q. And, if I could show you Plaintiff's Exhibit 498.</p> <p>3 A. Thank you.</p> <p>4 Q. Do you recognize this document, Professor?</p> <p>5 A. I do this is the credit report for -- dated 6 September 17, 2019.</p> <p>7 Q. And what conclusion, if any, did you reach about 8 whether Deutsche Bank relied on President Trump's Statement 9 of Financial Condition in the year 2019?</p> <p>10 A. Again, you see, just like the all other reports, 11 you see a very detailed analysis or a variety of independent 12 analysis that is not available, at all, in the Statement of 13 Financial Condition. It's based on additional information 14 that they received from Mr. Trump.</p> <p>15 And based on this analysis, they arrived to their 16 independent conclusion. Let me just see where it is. 17 Sorry. So this is here at page nine. So based on this 18 detailed -- very detailed -- analysis of -- most of the 19 information that they used for the analysis is not even 20 available on Statement of Financial Condition. So, the 21 Statement of Financial Condition, obviously, didn't play 22 very -- play very little role in their analysis other than 23 some information in the footnote.</p> <p>24 Based on this information, on page nine, they 25 derived the value of -- in this case, the four trophy</p>	<p>A.Bartov - Defendants - Direct/Mr. Suarez Page 6409</p> <p>1 Plaintiff's Exhibit 519.</p> <p>2 A. Thank you.</p> <p>3 Q. Do you recognize this document, Professor? If you 4 turn to the second page of the hard copy.</p> <p>5 A. Yes, this is the credit report dated July 30, 6 2020.</p> <p>7 Q. What conclusion, if any, did you reach about 8 Deutsche Bank's reliance on President Trump's Statement of 9 Financial Condition in 2020?</p> <p>10 A. Again, you see a very detailed analysis here of a 11 different type of analysis. And, based on this analysis, on 12 page 11 of this document, they provide a table that 13 contrast, just like they did in other statement -- other 14 credit report, they contrast the valuation on the Statement 15 of Financial Condition with the valuation that will develop 16 by DB independently.</p> <p>17 And you see that the total portfolio value, based 18 on the Statement of Financial Condition is 4.7 billion, 19 approximately. But, the DB valuation is only 2.7, 20 approximately, billion. So, you see there's another 21 differential of 43 percent.</p> <p>22 Now, you see also that every year the differential 23 in percentage is not the same. Which tell you that they did 24 not use a mechanical, automatic discount to the asset.</p> <p>25 And you see also that each asset -- the difference</p>

<p>A.Bartov - Defendants - Direct/Mr. Suarez Page 6410</p> <p>1 between the valuation on the Statement of Financial</p> <p>2 Condition and the valuation of the DB, each asset get a</p> <p>3 different discount; which again, show you that they did not</p> <p>4 use a standardized haircut when they computed their own</p> <p>5 valuation.</p> <p>6 Q. And in connection with Plaintiff's Exhibit 561 if</p> <p>7 we could pull up plaintiff's 56.</p> <p>8 MR. WALLACE: Your Honor, I just want to</p> <p>9 note an objection to the testimony about the last</p> <p>10 document. That document did not appear in either of</p> <p>11 the disclosures that Professor Bartov issued.</p> <p>12 So, I don't know when he, actually, reviewed</p> <p>13 these documents. But, it appears not to have been as</p> <p>14 part of his preparation of the two reports.</p> <p>15 THE COURT: Overruled.</p> <p>16 Q. Do you recognize Plaintiff's Exhibit 561?</p> <p>17 A. Yes. So, this is the credit report for July 30,</p> <p>18 2021.</p> <p>19 Q. What conclusions, if any, did you reach about</p> <p>20 whether Deutsche Bank relied on President Trump's Statement</p> <p>21 of Financial Condition in the year 2021?</p> <p>22 A. Again, if you review -- if you go page by page,</p> <p>23 you see that they perform an extensive analysis using</p> <p>24 information not only from other sources as well information</p> <p>25 from the footnotes of the Statement of Financial Condition.</p>	<p>A.Bartov - Defendants - Direct/Mr. Suarez Page 6412</p> <p>1 So, in accounting, we determine fraud by objective</p> <p>2 criteria. And the objective criteria are, as I said before,</p> <p>3 falsified documents, concealment of facts, faked</p> <p>4 transaction, forged document are provided to the accountant.</p> <p>5 If it would be helpful for the Judge, I can give</p> <p>6 couple of examples that would demonstrate what is the</p> <p>7 difference between accidental error and fraud in accounting.</p> <p>8 THE WITNESS: If I give you real world</p> <p>9 example, would that be helpful?</p> <p>10 THE COURT: How about start with one</p> <p>11 example.</p> <p>12 THE WITNESS: One example. So let's take an</p> <p>13 example for Computer Associates. Computer Associates</p> <p>14 is a company that quarter was in Long Island.</p> <p>15 What they did, they took revenues, in</p> <p>16 January, and they booked them as if the revenue was</p> <p>17 earned in December. So they take revenues that were</p> <p>18 earned in January and they book them --</p> <p>19 THE COURT: They took earnings from December</p> <p>20 and put them in the later year.</p> <p>21 THE WITNESS: They did transaction in</p> <p>22 January and they book it as if it is December in order</p> <p>23 to reflect the revenue in December.</p> <p>24 Now, this maybe -- as I describe it so far --</p> <p>25 it may be an accidental error or a fraud. What make it</p>
<p>A.Bartov - Defendants - Direct/Mr. Suarez Page 6411</p> <p>1 And you can see here, on page 11, that total portfolio,</p> <p>2 according to the Statement of Financial Condition, was 3.8</p> <p>3 billion and DB valuation was only 2.2 billion.</p> <p>4 And again, you see, that for each asset the</p> <p>5 difference between the DB valuation and the Statement of</p> <p>6 Financial Condition valuation, the difference in percentage</p> <p>7 is different.</p> <p>8 Again, inconsistent with the claim that they use</p> <p>9 standardized haircut to arrive at the suggested numbers and</p> <p>10 not detailed independent analysis.</p> <p>11 Q. Is there anything in the materials that you</p> <p>12 reviewed that demonstrate the Statements of Financial</p> <p>13 Condition were altered or manipulated to conceal a material</p> <p>14 accounting misstatement?</p> <p>15 A. So concealment is a major criterion for fraud in</p> <p>16 accounting. So, in accounting, we have objective criteria</p> <p>17 to identify fraud. Concealment is one of them.</p> <p>18 Falsification of material that is provided to the accountant</p> <p>19 is another one. Fake transaction is a third one.</p> <p>20 So, there is a number of indicators that indicate</p> <p>21 fraud. Because, otherwise, how would you distinguish</p> <p>22 between accidental error and fraud?</p> <p>23 Fraud is an error. An accidental error is also an</p> <p>24 error. Fraud is an intentional error. But, in accounting</p> <p>25 we don't do -- I am not psychiatrist.</p>	<p>A.Bartov - Defendants - Direct/Mr. Suarez Page 6413</p> <p>1 a fraud was that when they provided the documents about</p> <p>2 this transaction to the auditors, they white out the</p> <p>3 date of the contract, which was January 15th, and</p> <p>4 they replace it with December 5. So this make it fraud</p> <p>5 rather than accidental error.</p> <p>6 If, for example, they did not forge the</p> <p>7 document then, it would be considered an accidental</p> <p>8 error. Accidental errors occur all the time. But, if</p> <p>9 you've deceived your auditor, if you provide your</p> <p>10 auditor forged documents, if you provide your auditors</p> <p>11 documents that conceal the true evidence, then the</p> <p>12 accidental error become fraud.</p> <p>13 THE COURT: That one example is fine.</p> <p>14 Let's move on.</p> <p>15 MR. SUAREZ: You Honor, I'm at a helpful</p> <p>16 point in my outline to take a morning break if</p> <p>17 possible.</p> <p>18 THE COURT: How much longer is your direct?</p> <p>19 MR. SUAREZ: I don't think I have got a</p> <p>20 whole lot left. But, it would be helpful to review</p> <p>21 that over the break. And, I also need a break.</p> <p>22 THE COURT: Okay. Let's break. I will see</p> <p>23 you all at 11:45. Let's make is 11:40 -- a quickie.</p> <p>24 Professor, as usual, I always say, you can</p> <p>25 leave everything just take your wallet. And don't</p>

<p>A.Bartov - Defendants - Direct/Mr. Suarez Page 6414</p> <p>1 discuss the case, of course, during the break.</p> <p>2 THE WITNESS: Sure.</p> <p>3 (Whereupon, the following proceedings were</p> <p>4 stenographically recorded Shameeka Harris.)</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Proceedings Page 6416</p> <p>1 Professor Lewis and Mr. Sneddon.</p> <p>2 THE COURT: That's all the information you can</p> <p>3 give?</p> <p>4 MR. WALLACE: Correct.</p> <p>5 MR. KISE: He certainly can narrow it down. They</p> <p>6 have, like we had, dozens of witnesses on their list. He</p> <p>7 certainly can narrow it down to, okay, if it's somebody, it</p> <p>8 can be these handful of people. I am not asking them to do</p> <p>9 it right this moment, but the idea that we are going to get</p> <p>10 to Monday afternoon or Tuesday morning and say, oh, we have</p> <p>11 to add this person or that person it would just be</p> <p>12 extraordinarily unfair.</p> <p>13 THE COURT: I will make sure they won't abuse the</p> <p>14 privilege.</p> <p>15 MR. KISE: With respect to Mr. Sneddon, and</p> <p>16 Mr. Robert may be the better person to do this but I'll</p> <p>17 introduce it, we would like a proffer as to what exactly</p> <p>18 Sneddon is going to testify about and what that would be in</p> <p>19 rebuttal to.</p> <p>20 MR. WALLACE: What basis? He's been on our list.</p> <p>21 He worked at TIR. He was a Trump Organization employee.</p> <p>22 They have his documents.</p> <p>23 MR. KISE: But what issues is he rebutting in our</p> <p>24 case. They could have called him in their case. What issue</p> <p>25 in our case is he rebutting?</p>
<p>Proceedings Page 6415</p> <p>1 (Whereupon a recess was taken.)</p> <p>2 COURT OFFICER: All rise. Part 37 is back in</p> <p>3 session. Please be seated and come to order.</p> <p>4 MR. KISE: Your Honor, just one brief housekeeping</p> <p>5 matter. At this point, Monday is occupied with President</p> <p>6 Trump's testimony. I did confirm with Miss Greenfield that</p> <p>7 Professor Bartov will be available at 10 a.m. on Tuesday</p> <p>8 ready to go to finish his testimony. And then I just want</p> <p>9 to be sure from the government because I got an answer but</p> <p>10 I'm not sure it's a complete answer. As of -- we have</p> <p>11 Professor Lewis and Mr. Sneddon are the two that they've</p> <p>12 identified as potential rebuttal witnesses. I just want to</p> <p>13 be sure. It is Friday and these witnesses are going to come</p> <p>14 next week. If there is anybody else they have in mind,</p> <p>15 theoretically, we are entitled to know that. We can at</p> <p>16 least be prepared, not wait until we get to Monday or</p> <p>17 Tuesday. Is there anyone else?</p> <p>18 MR. WALLACE: I am going to tell Mr. Kise the same</p> <p>19 thing I told him at sidebar. Those are the people we are</p> <p>20 planning to bring. This witness is saying a lot of things</p> <p>21 about Deutsche Bank. Maybe, I want to recall a Deutsche</p> <p>22 Bank witness. I don't know. President Trump can say any</p> <p>23 number of things on the stand as we are all aware. I may</p> <p>24 want to call those people. They would be on our list.</p> <p>25 Right now, the only people we are planning to call are</p>	<p>Proceedings Page 6417</p> <p>1 THE COURT: You feel obligated to answer that?</p> <p>2 MR. WALLACE: I don't think I'm under an obligation</p> <p>3 to answer that.</p> <p>4 MR. KISE: He is clearly under an obligation to</p> <p>5 answer that. It is a rebuttal case. Unless we are going to</p> <p>6 have this fight next week when he shows up and he starts</p> <p>7 asking questions, it would be for more efficient to</p> <p>8 determine in advance if he's an appropriate rebuttal</p> <p>9 witness. We didn't call Mr. Weisselberg in our case. The</p> <p>10 only relevance we can see in his testimony relates to some</p> <p>11 purported communication between Mr. Sneddon and</p> <p>12 Mr. Weisselberg that should have been introduced on their</p> <p>13 case-in-chief. They can't use rebuttal to backfield their</p> <p>14 case-in-chief. What issue is it that he is being called to</p> <p>15 testify about?</p> <p>16 THE COURT: I don't know the answer to what extent,</p> <p>17 if any, somebody has to announce the subject matter of a</p> <p>18 rebuttal witness. So I'll accept any advice. You can send</p> <p>19 it to me at midnight tonight. So, I just have to leave it</p> <p>20 at that at this point. So, okay. Let's get the witness</p> <p>21 back.</p> <p>22 (Whereupon, the witness resumes the witness stand.)</p> <p>23 THE COURT: Okay, next question.</p> <p>24 MR. SUAREZ: Thank you. Your Honor, just a</p> <p>25 housekeeping matter, Plaintiff's Exhibit 34 and 39, which we</p>

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1 previously discussed with the witness, I'd like to move that
2 into evidence.
3 THE COURT: Granted. It's in.
4 MR. SUAREZ: And I'd like to show the witness
5 Defendant's Exhibit 1068, Defendant's Exhibit 1068.
6 CONT'D DIRECT EXAMINATION
7 BY MR. SUAREZ:
8 Q Mr. Bartov, if I could draw your attention to this
9 letter, the subject matter being The Trump International Tower
10 at 401 North Wabash Avenue in Chicago?
11 A Yes.
12 Q And it says, "Dear Miss Trump, copies of the following
13 externally generated reports of the above referenced property
14 are being made available to you for information purposes only?"
15 A Yes.
16 Q Why does Deutsche Bank order appraisals of property
17 that's pledged to it as collateral?
18 MR. WALLACE: Objection. This is beyond the scope
19 of this witness's expertise, and I would also say painfully
20 obvious and covered by other witnesses.
21 THE COURT: What was that third point and it's --
22 MR. WALLACE: Covered by other witnesses why
23 Deutsche Bank orders appraisals.
24 MR. SUAREZ: I am trying to lay a very brief
25 foundation for the next couple of questions I am going to

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1 ask, but if Your Honor would rather I just jump into it.
2 THE COURT: If it's brief, go ahead and do it.
3 A The -- this is standard practice by banks when they
4 give you a mortgage they order an appraisal to know the value of
5 the -- of the asset according to their definition of value.
6 Q And then it goes on in the third paragraph to say, "It
7 should be noted that the subject reports were prepared for
8 Deutsche Bank trust company Americas and/or its affiliates,
9 successors or assigns for a specific purpose and should not be
10 relied on by you for any other purpose."
11 Do you see that?
12 A I do.
13 Q And with that in mind, would it be appropriate to use
14 appraisals commissioned by a bank for other purposes when
15 valuing property on a statement of financial condition?
16 MR. WALLACE: Objection. What is the basis for
17 this witness offering an opinion on this? He is not an
18 appraisal expert. I'll also note this document was not
19 reviewed by the witness in the course of preparing his two
20 reports so this is new.
21 THE COURT: Sustained for various reasons.
22 MR. SUAREZ: I am asking the witness what the
23 utility of that report would be in placing a value on an
24 asset in a financial statement.
25 THE COURT: What utility would an appraisal be in

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1 determining the value of an asset in a financial statement?
2 MR. SUAREZ: So here is a letter from Deutsche Bank
3 that says that you can't --
4 MR. WALLACE: At this point, can we excuse the
5 witness if he is going to explain the relevance of this
6 testimony.
7 THE COURT: I will have to excuse the witness if
8 you are going to do this.
9 (Whereupon, the witness was excused from the
10 stand.)
11 THE COURT: Okay. Can you give us the whole smear
12 here.
13 MR. SUAREZ: Yeah. I think I know what that means.
14 THE COURT: That's because there are a lot of
15 northerners in Florida I think.
16 MR. SUAREZ: One of the theories of the plaintiff's
17 case is that we have had appraisals that we ought -- that we
18 had ought to have disclosed to Mazars and somehow failed to
19 do so. But what's clear from this evidence is that those
20 appraisals could not be used as the basis of generating
21 values because they were given to us under very strict
22 restrictions from Deutsche Bank that they could not be used
23 for any other purpose.
24 MR. WALLACE: Your Honor, this is Chicago which
25 does not appear on the statement of financial condition.

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1 They got appraisals from Deutsche Bank for Doral which they
2 did use on the financial statement. This letter is
3 addressed from Emile Pereless whom they could have asked
4 about this when she was on the stand. Professor Bartov is
5 not a buffet platter where they can go up and make sure
6 they're getting all of their theories into the case. I
7 don't know what expertise he is providing on this. It is
8 not available to the Court to just read a document and make
9 an assessment of it.
10 THE COURT: For some or all of those reasons,
11 sustained.
12 MR. SUAREZ: Okay.
13 THE COURT: Let's get the witness.
14 (Whereupon, the witness resumes the witness stand.)
15 CONT'D DIRECT EXAMINATION
16 BY MR. SUAREZ:
17 Q I'd like to pull back up Plaintiff's Exhibit 293 and
18 I'd like to direct the witness to page 6 of 293. And, again,
19 pull up the tower, the Trophy Property valuation chart there in
20 the middle.
21 Do you see the column for the Deutsche Bank valuations
22 in 2011 of the 4 Trophy Properties?
23 A Yes, I do.
24 Q If you could take a second just to review the document.
25 It says 2011?

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<p>1 A Yeah, it's December 20, 2011.</p> <p>2 Q Okay. Do you see the Deutsche Bank values Trump Tower</p> <p>3 at 308.2 million that year?</p> <p>4 A I do.</p> <p>5 Q The New York Attorney General values Trump Tower that</p> <p>6 year at \$369.2 million?</p> <p>7 MR. WALLACE: Objection. What is the evidentiary</p> <p>8 foundation for how the Attorney General valued this</p> <p>9 property?</p> <p>10 THE COURT: It's not on that sheet, is it? Am I</p> <p>11 missing something?</p> <p>12 MR. SUAREZ: Do you deny that that's the value you</p> <p>13 assigned to the property?</p> <p>14 MR. WALLACE: Based on what? It is a big record.</p> <p>15 MR. KISE: We can ask as a hypothetical.</p> <p>16 THE COURT: Hold on. You can ask it as a</p> <p>17 hypothetical. I don't know that it's going to mean much but</p> <p>18 go ahead. If the New York Attorney General valued Trump</p> <p>19 Tower at 369 million.</p> <p>20 Q If the New York Attorney General valued Trump Tower at</p> <p>21 369 million that year, what would that tell you about the New</p> <p>22 York Attorney General's analysis?</p> <p>23 A To me it would be -- to me it would be very surprising</p> <p>24 because the NY Attorney General was supposed to value the Trump</p> <p>25 Tower based on the definition of estimated current value.</p>	<p>1 hypothetical questions but that hypothetical, what would</p> <p>2 that tell you if the Attorney General valued it, the witness</p> <p>3 wouldn't -- wouldn't have any basis to say what would that</p> <p>4 tell you. I don't understand. That whole answer was a</p> <p>5 cockamamie --</p> <p>6 MR. KISE: On the hypothetical, the witness would</p> <p>7 have a basis to determine in his opinion -- the witness</p> <p>8 would have a basis to opine as to what conclusion he would</p> <p>9 draw from the number being lower than the Deutsche Bank</p> <p>10 number and he's answering a hypothetical. If the number</p> <p>11 is -- if the number were higher -- he's just provided the</p> <p>12 testimony that if estimated current value is going to result</p> <p>13 in a higher valuation, then he said it, liquidation value or</p> <p>14 fair value.</p> <p>15 THE COURT: For one thing, there was -- I don't</p> <p>16 think -- I don't know that he could say because the number</p> <p>17 was low, oh, that must have been a liquidation value.</p> <p>18 MR. KISE: That's in the record already. They are</p> <p>19 using fair value and liquidation value. Mr. Haigh testified</p> <p>20 to that.</p> <p>21 THE COURT: Is that the case?</p> <p>22 MR. KISE: Mr. Haigh testified to that. That's</p> <p>23 what they're doing, yes.</p> <p>24 MR. WALLACE: I think he said adverse scenario.</p> <p>25 MR. KISE: He's basically -- what Professor Bartov</p>
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<p>1 Deutsche Bank value their -- the building based on liquidation</p> <p>2 value. Liquidation value is the lowest value. The definition</p> <p>3 of liquidation value would get you the lowest valuation. And</p> <p>4 you can see that consistently every time every comparison DB</p> <p>5 valuation is lower than Donald Trump valuation. This is</p> <p>6 expected because by definition they're using a measure that will</p> <p>7 give you much lower number.</p> <p>8 AG was supposed to value this asset not by liquidation</p> <p>9 value, which is not recognized by GAAP as a legitimate</p> <p>10 methodology. They were supposed to value it based on estimated</p> <p>11 current value. So you would expect their valuation for each and</p> <p>12 every asset to be higher than the valuation of Deutsche Bank.</p> <p>13 If their valuation is even lower than the valuation of Deutsche</p> <p>14 Bank, it tells you that something is -- that their valuation</p> <p>15 is -- it's an indication that their indication is unreliable to</p> <p>16 me as an expert in valuation.</p> <p>17 Q And if the New York Attorney General in the year 2011</p> <p>18 valued Nike Town --</p> <p>19 THE COURT: Hold on. Would there be an objection</p> <p>20 to that last answer?</p> <p>21 MR. WALLACE: None of this is relevant. I don't</p> <p>22 know why we need hypothetical questions about what the</p> <p>23 Attorney General has valued things as. All of this is</p> <p>24 irrelevant.</p> <p>25 THE COURT: As you've all heard me say, I allow</p>	<p>1 is testifying to is from an accounting perspective that the</p> <p>2 valuation estimated current value is always going to be</p> <p>3 higher than liquidation value or fair value. So that's the</p> <p>4 proposition that he is responding to in the hypothetical.</p> <p>5 That's certainly fully relevant because the Attorney General</p> <p>6 is challenging our numbers.</p> <p>7 MR. WALLACE: Your Honor, I think I can clarify</p> <p>8 that they're apparently referring to a recalculation that</p> <p>9 was run by Constantine Korologos, an expert we have not put</p> <p>10 into evidence. We are not seeking to run values on these</p> <p>11 properties for years. So I think that is the height of the</p> <p>12 relevance. He is now rebutting an expert who has not</p> <p>13 testified and is not in front of the court and we're</p> <p>14 definitely not planning on calling Mr. Korologos on Tuesday.</p> <p>15 So, I'll also -- the witness is here, but he did something</p> <p>16 different than just do estimated current value. He was</p> <p>17 rerunning the same numbers provided by the Trump</p> <p>18 Organization.</p> <p>19 THE COURT: I mean, my issue, objection, is still</p> <p>20 hypothetically, if they did this, would they have done this</p> <p>21 because. Well, they didn't do it so how does he know</p> <p>22 what -- why they would have done it if they didn't do it or</p> <p>23 assuming they didn't do it.</p> <p>24 MR. KISE: The allegation in the complaint, which I</p> <p>25 know they don't want to talk about the complaint anymore, is</p>

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<p>1 that we overvalued our properties and the correct value</p> <p>2 should be something different. So we're just using</p> <p>3 hypotheticals. We are using actual evidence. We're</p> <p>4 responding to that allegation. Just because they chose not</p> <p>5 to call an expert doesn't mean that we're limited in the</p> <p>6 presentation of our defense. These are very simple</p> <p>7 questions and had the Attorney General not objected we would</p> <p>8 be done by now.</p> <p>9 MR. WALLACE: These are asinine questions.</p> <p>10 THE COURT: I was the one who objected to them to</p> <p>11 set the record straight. Since the Attorney General didn't</p> <p>12 object, let's move on.</p> <p>13 MR. WALLACE: I objected to the next round of</p> <p>14 questions as a relevance. Why don't we get an actual</p> <p>15 question in front of the witness.</p> <p>16 MR. SUAREZ: Your Honor, I'd like to -- I have</p> <p>17 three more questions on this.</p> <p>18 THE COURT: Go ahead.</p> <p>19 CONT'D DIRECT EXAMINATION</p> <p>20 BY MR. SUAREZ:</p> <p>21 Q If the New York Attorney General had valued Nike Town</p> <p>22 at 136.5 million what would that tell you about the valuation?</p> <p>23 MR. WALLACE: Objection, irrelevant.</p> <p>24 THE COURT: Objection, irrelevant. Sustained.</p> <p>25 MR. KISE: So then, Your Honor, how is it possible,</p>	<p>1 way, this gets us back to something that I had said and you</p> <p>2 disagreed and we never really discussed it. To me, the case</p> <p>3 isn't about valuation. It's about statements and financial</p> <p>4 condition. Section 6312 in the Executive Law basically says</p> <p>5 you can't use false statements in business. That's what the</p> <p>6 summary judgement motion was -- decision was all about. I</p> <p>7 think it is pretty much what the rest of this case is about.</p> <p>8 So whether a particular property is worth "X" dollars or "Y"</p> <p>9 dollars, that's not what the case is about.</p> <p>10 MR. KISE: So how then -- so then, respectfully,</p> <p>11 this is a completely rudderless ship. You are just going to</p> <p>12 determine on your own whether the right values, whether</p> <p>13 there is a misstatement of values based on your own</p> <p>14 determination. That's why we have experts.</p> <p>15 MR. WALLACE: We are rearguing summary judgement.</p> <p>16 THE COURT: I'm not determining values.</p> <p>17 MR. KISE: The only way to know if there is a</p> <p>18 misstatement is to know whether the value is correct. The</p> <p>19 statements contain values. That's it. If the value of</p> <p>20 Trump Tower is acceptable and accurate under accounting</p> <p>21 principles and it's done correctly, then by definition there</p> <p>22 can't be a misstatement. We just can't make up</p> <p>23 misstatements like the Attorney General wants to do and say</p> <p>24 it's wrong because I say it's wrong. I have been saying</p> <p>25 since the beginning and now this is what's bearing out in</p>
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<p>1 if they are not introducing any evidence that our values</p> <p>2 aren't accurate, they haven't called anybody to dispute our</p> <p>3 values, how is it then possible that they've proven their</p> <p>4 case? I'm back to directed verdict. I know you didn't want</p> <p>5 to hear it. I was going to put a sign up here so every time</p> <p>6 I open my computer it says directed verdict, but I don't</p> <p>7 see -- we have to meet the allegations in the complaint.</p> <p>8 This is meeting the allegations in the complaint. It's four</p> <p>9 questions. And I frankly think it's highly relevant and</p> <p>10 highly probative of the claims that they have made in this</p> <p>11 case. They are given to extraordinary hyperbole in their</p> <p>12 arguments, in their analysis and so we are meeting</p> <p>13 everything that we can possibly meet given the constraints</p> <p>14 that we have been provided. But they can't tactically box</p> <p>15 us out by saying, well, I am going to save my expert for</p> <p>16 rebuttal. We will get to that argument next week about</p> <p>17 Professor Lewis but that's a whole different set of</p> <p>18 arguments.</p> <p>19 So I think this witness can clearly testify and</p> <p>20 respond to hypotheticals. If they want to ask him about</p> <p>21 different hypotheticals, they can as well. But it is highly</p> <p>22 relevant and probative to the issues that are in the case.</p> <p>23 THE COURT: Again, the question was if the Attorney</p> <p>24 General had valued the property at a certain amount what</p> <p>25 would that tell you. I don't see the point. And by the</p>	<p>1 the record. This is exactly what's going on here. They are</p> <p>2 just basically saying, oh, I don't like 490. Why don't you</p> <p>3 like 490. It's wrong. Why it wrong? If we don't get down</p> <p>4 to the value and why the value is wrong, there's no way to</p> <p>5 determine it. You can't just say it is a misstatement</p> <p>6 because we feel like it. There has to be a standard.</p> <p>7 Otherwise, it's completely --</p> <p>8 THE COURT: The standard is truth.</p> <p>9 MR. KISE: Truth. What's truth? The truth based</p> <p>10 on -- the truth based on the Attorney General? The truth</p> <p>11 based on the Court? The truth based on the person on the</p> <p>12 street? This has to be -- it has to be more to some sort of</p> <p>13 standard. Otherwise, I mean, otherwise, this entire</p> <p>14 thing -- I really don't want to be back here trying this</p> <p>15 again, but if it is not worth to a standard, that's exactly</p> <p>16 where we are going to be.</p> <p>17 MS. HABBA: I agree with my co-counsel's</p> <p>18 sentiments. I just want to be heard on where I think there</p> <p>19 is a major problem in fairness and commonly. We have heard</p> <p>20 now for a second day a witness who is an expert on</p> <p>21 accounting, accounting, which is the core of the AG's</p> <p>22 complaint. It's a GAAP violation. It is. We can't have</p> <p>23 fraud. We can't have misstatements without some violation</p> <p>24 of the rules.</p> <p>25 So, I think what my co-counsel is saying is that if</p>

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1 you are going to argue that DJT's valuations had to be
2 subjectively wrong in your mind or in the AG's mind, then
3 there is fraud and that's what I am hearing. We're simply
4 trying a case -- I'm not even sure why we're trying a case
5 if that's what we are saying, quite honestly, because we
6 have had experts come in here and say that that's not how
7 this works, that they didn't violate -- the witness can
8 leave.

9 (Whereupon, the witness was excused from the
10 stand.)

11 MS. HABBA: I tend to not object unless I really
12 feel there is a moment to object. I am incredibly
13 frustrated at this moment. I've heard numerous objections
14 from the AG on an expert that they frankly have used
15 themselves to shut down any relevant information that says
16 exactly what is true which is that these are not -- this is
17 not fraud. There was no fraud and their complaint has no
18 merit.

19 We heard that but no one on their side and,
20 frankly, it feels like no one on the bench cares to hear it
21 because you keep referring back to a summary judgement
22 motion. Why do we have experts here and why are we wasting
23 our time if nobody is actually considering the words coming
24 out of our experts mouth. I truly have to ask that. They
25 have not proven their case, Your Honor. They have not. And

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1 I can echo everything that my colleagues have said,
2 materiality, all of those things have to be proven. That's
3 why we have laws, 6312. Whether they want to use it in this
4 cockamamie way or not, fine, but they still have a case to
5 prove. And I think we are sitting here wasting time and
6 money from looking at your responses and looking at their
7 objections because they are not accountant experts. They
8 are lawyers. And we have experts here to teach us what
9 happened.

10 Accountants did this, not lawyers. Accounting
11 firms, not lawyers. So, quite honestly, Your Honor, I also
12 echo that we should have a directed verdict. We should have
13 had a directed verdict ten weeks ago. They haven't proven
14 their case and now they are -- frankly, I also have to
15 address Mr. Wallace, who likes to giggle and be disruptive
16 and I find it highly offensive, frankly. I think this is
17 not a joke. You are talking about a company. We have to
18 take this seriously, and we have to apply law to facts and
19 that is what is not being heard.

20 All that's being heard is commotions and he gets
21 all worked up. I've never seen anything like it, quite
22 honestly. But we have to stop what we're doing if we are
23 not going to seriously listen to these experts and take what
24 they are saying as expert opinion. We are not experts on
25 accounting. Nobody in this room is. He is. I also move

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1 for a directed verdict again. Quite honestly, Your Honor,
2 this case -- they have not proven their case. They have
3 not. Thank you.

4 THE COURT: Denied. Would the plaintiff like to
5 respond about anything that has been said?

6 MR. AMER: Just briefly, Your Honor. We had an
7 extensive briefing on summary judgement which the CPLR
8 allows voluminous exhibits including affidavits from all of
9 the experts we have been hearing from. The Court issued its
10 decision and resolved the issues against defendant that are
11 relevant to valuation. We didn't put on any valuation
12 experts because it was unnecessary.

13 Their arguments about valuation are for appeal
14 because the issues have already been decided. This is a
15 very narrow trial about intent to defraud, about the
16 equitable relief we're seeking and about disgorgement. They
17 want to put on their experts. It's the one thing I agree
18 with Miss Habba about it's a complete waste of time. The
19 issues that their experts are speaking to other than their
20 banking expert, who addressed the disgorgement question, is
21 simply irrelevant to the case. Those issues are no longer
22 here. They had been decided and so I don't know why they
23 are constantly rearguing things that they lost on summary
24 judgement and make those arguments on appeal. That's fine.
25 We're wasting a huge amount of time in this courtroom on

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1 issues that have already been decided. That's all I want to
2 say, Your Honor.

3 MR. KISE: So, Your Honor, Mr. Amer just
4 contradicted you because he said you decided values. You
5 just told us that you didn't decide values. The --

6 MR. AMER: I said valuation issues.

7 MR. KISE: Valuation issues. And it's not possible
8 to decide valuation issues without deciding values at least
9 not in the world that I live in so that's first.

10 Secondly --

11 THE COURT: I disagree with that. It almost sounds
12 commonsensical but how you got to those values. We see
13 documents that show how certain individuals got to certain
14 values. Whether or not the absolute number is right is not
15 the main issue here.

16 MR. KISE: How they got to the number is exactly
17 the issue and it's certainly the issue irrespective of
18 summary judgement, irrespective of summary judgement. In
19 summary judgement, there was no question of intent. There
20 was no question of materiality. There was no question of
21 reliance. No question of damages. So we threw all of that
22 out the window and now what the Attorney General wants to
23 do, and it's clear, is say, no, no, we are going to take a
24 statute that doesn't require any of the elements of fraud
25 and then use that to prove elements of statutes that clearly

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<p>1 require elements of the actual elements of fraud, intent,</p> <p>2 materiality, reliance.</p> <p>3 And so you can't just collapse it all in one</p> <p>4 analysis. That's preposterous that you could do that on a</p> <p>5 legal basis. The issue of the propriety of the valuation</p> <p>6 derivation, they're propriety under GAAP. Whether or not</p> <p>7 the statements were prepared in accordance with GAAP, that</p> <p>8 all goes squarely to intent. It is not possible to</p> <p>9 determine that someone had an intent to defraud if they</p> <p>10 followed every rule that Professor Bartov says they needed</p> <p>11 to follow. It's not possible.</p> <p>12 It is highly relevant and probative in this case</p> <p>13 irrespective of the summary judgement. The summary</p> <p>14 judgement is a whole nother set of issues but certainly with</p> <p>15 respect to this proceeding all of the issues that we're</p> <p>16 dealing with now goes squarely to intent. They go squarely</p> <p>17 to materiality and they go squarely to disgorgement</p> <p>18 including Professor Bartov's testimony. So I don't see</p> <p>19 where the Attorney General is coming from in that regard at</p> <p>20 all.</p> <p>21 THE COURT: Just one very small slice of what you</p> <p>22 just said. I still believe the law is that expert testimony</p> <p>23 on intent is not admissible.</p> <p>24 MR. KISE: He's not testifying about intent, Your</p> <p>25 Honor. He is testifying about what happened. He's telling</p>		<p>1 Q. Professor, after reviewing this credit report,</p> <p>2 assume a student walked into your class, with respect to</p> <p>3 Niketown, in 2011, and told you that they had valued it at</p> <p>4 \$136.5 million, what would you tell that student?</p> <p>5 A. I would ask the student "What is the definition of</p> <p>6 value that you used."</p> <p>7 Q. If the student told you "estimated current value."</p> <p>8 A. If he told me "estimated current value" I would</p> <p>9 say, "Listen, this is impossible because, liquidation value</p> <p>10 must be much lower than estimated current value. If you</p> <p>11 find the estimated current value is much lower than</p> <p>12 liquidation value, this is simply impossible."</p> <p>13 Q. If that same student walked in, in 2011, and told</p> <p>14 you that 40 Wall Street, after having reviewed this credit</p> <p>15 memo, was worth \$200 million, what would you tell that</p> <p>16 student?</p> <p>17 A. Again, I would tell them the same thing. I will</p> <p>18 say, "This is impossible."</p> <p>19 Q. And in 2011, if that same student walked in and</p> <p>20 told you that, after reviewing this credit memo, they had</p> <p>21 concluded that the Trump Park Avenue was worth</p> <p>22 \$95.7 million, what would you tell that student?</p> <p>23 A. Well, at that point, I'll give up on him.</p> <p>24 Q. If that student was the New York Attorney</p> <p>25 General -- I'll withdraw the question.</p>	
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<p>1 you whether or not it satisfied the rules of accounting.</p> <p>2 THE COURT: Well, the specific thing that got us</p> <p>3 off this was assume that the Attorney General had done</p> <p>4 something that we don't know that they actually did. So,</p> <p>5 enough. Let's move on.</p> <p>6 Witness.</p> <p>7 (Whereupon, the witness resumes the witness stand.)</p> <p>8 THE COURT: Okay. Continue, please.</p> <p>9 (Continued on next page)</p>		<p>1 A. No. These are good people.</p> <p>2 Q. Professor --</p> <p>3 MR. SUAREZ: Your Honor, may I confer with</p> <p>4 Mr. Kise for a moment?</p> <p>5 THE COURT: Sure.</p> <p>6 MR. SUAREZ: Thank you.</p> <p>7 (Pause in proceedings.)</p> <p>8 MR. SUAREZ: Can we please pull up the 2015</p> <p>9 supporting data, which is Plaintiff's Exhibit 731.</p> <p>10 Q. You see there, Professor, where it says, "PBC?"</p> <p>11 A. Yes.</p> <p>12 Q. Does that mark indicate that it was provided by</p> <p>13 the client to the --</p> <p>14 MR. WALLACE: Objection, leading.</p> <p>15 THE COURT: Sustained. He knows. We all</p> <p>16 know at this point.</p> <p>17 Q. What does that mark indicate Professor?</p> <p>18 A. Provided by client.</p> <p>19 Q. If we turn to the Trump National Golf Club in</p> <p>20 Colts Neck, which is at page ten of my hard copy but, that</p> <p>21 reference might not work.</p> <p>22 Do you see that calculation of estimated current</p> <p>23 value for the Trump National Golf Club at Colts Neck?</p> <p>24 A. Hold on a second.</p> <p>25 Q. If you are having trouble with the screen I can --</p>	

<p>A.Bartov - Defendant -Direct/Mr.Suarez Page 6438</p> <p>1 A. No, I don't have trouble. I'm good. I just want 2 to -- there are two views. There is fourteen and fifteen. 3 There are two comparative years. 4 Q. Right. Fifteen is column G and fourteen is column 5 H. 6 A. What are you referring to now? 7 Q. Do you see there it has value of fixed asset? 8 A. I see, yes. 9 Q. Do you see that it has a premium for a fully 10 operational branded facility? 11 A. Yes. 12 Q. From an accounting perspective, Professor, what, 13 if anything, is inappropriate about adding that fully 14 operational branded facility -- 15 MR. WALLACE: Objection, leading. Also, 16 your Honor, you explicitly rejected these opinions from 17 Professor Bartov on summary judgment. 18 THE COURT: That was based on the wording of 19 the SFCs? Is that -- can you expand a little on what I 20 did? 21 MR. WALLACE: In direct, your Honor, pages 22 28 and 29 of the summary judgment. 23 THE COURT: We need to have the witness go 24 out again? 25 MR. WALLACE: Sure.</p>	<p>A.Bartov - Defendant -Direct/Mr.Suarez Page 6440</p> <p>1 incorrect." 2 This is the law of the case. It's been 3 decided you saw his opinions on summary judgment I 4 should say, saw and considered. 5 THE COURT: Objection, overruled. Let's let 6 it in. 7 Get the witness, please. 8 MR. WALLACE: I still maintain the leading 9 objection, your Honor. 10 THE COURT: I don't remember the exact 11 wording. I didn't think it was leading or material. 12 MR. WALLACE: I think he said why was it 13 improper. 14 THE COURT: Okay. Go ahead, please. 15 DIRECT EXAMINATION 16 BY MR. SUAREZ: 17 Q. Professor, if I can draw your attention back to 18 the Trump National Golf in Colts Neck and, specifically, to 19 the inclusion of a premium for a fully operational branded 20 facility, how, if at all, is the inclusion of that premium 21 for a fully operational branded facility consistent with 22 GAAP? 23 A. Well, you know, I think the confusion about this 24 item coming from misinterpretation of the footnotes. In the 25 footnote, Mr. Trump says, that those went to GAAP.</p>
<p>A.Bartov - Defendant -Direct/Mr.Suarez Page 6439</p> <p>1 THE WITNESS: It is good exercise. 2 THE COURT: I appreciate that. 3 MR. WALLACE: Your Honor, on page 4 28 -- there's two aspects. They're is discussion of 5 this on page 29. There's discussion of fixed assets. 6 You write that defendants further rely on the 7 Bartov affidavit, which states in wholly conclusory 8 fashion that the assertion that, quote, using fixed 9 assets approach, does not present the golf clubs at 10 their estimated current value because, the approach 11 ignores market condition and the behavior of informed 12 buyers and sellers is unsubstantiated and false. You 13 then state, Bartov is incorrect and explain your 14 reasoning. 15 On page 28, "Regarding the Trump Brand 16 Premium, which I assume is also going to be discussed 17 here, you write that, in opposition, the defendants 18 submit the affidavit of Eli Bartov, an accounting 19 professor in New York University who distinguishes 20 between overall brand value and brand value ascribed to 21 individual golf courses. 22 "His points, ensconced in numerous lines of 23 academic jargon, seems to be that the defendant said 24 that they were issuing the former and opting only for 25 the latter. This is a red herring and, factually,</p>	<p>A.Bartov - Defendant -Direct/Mr.Suarez Page 6441</p> <p>1 Following GAAP, he does not recognize the brand value of the 2 Trump name on the Statement of Financial Condition as a 3 standalone asset. Following GAAP he doesn't do that. 4 GAAP limit the ability -- as I discussed 5 yesterday, GAAP limit the ability of companies to recognize 6 internally developed intangible asset as a standalone asset 7 on the balance sheet. 8 GAAP does not limit the ability of companies to 9 include the effect of brand name on the value of tangible 10 assets. 11 Tangible assets are subject to a completely 12 different valuation rules than intangible asset; and 13 therefore, and actually, as I explained in my report, GAAP 14 require companies to include, as part of the valuation of 15 intangible asset, any intangible asset that is related to 16 them. 17 I put it in my report. I also cite opinion from 18 Price Waterhouse Coopers, one of the leading accounting firm 19 in the U.S., that says the same thing. 20 So, when Mr. Trump included the premium associated 21 with his grand name in the valuation of tangible asset, 22 there's no GAAP violation here. 23 Now, when I say that I'm not doing valuation here, 24 it means that I'm not opining whether the 30 percent is the 25 right number or maybe it should be 27 or maybe it should be</p>

<p>A.Bartov - Defendant -Direct/Mr.Suarez Page 6442</p> <p>1 32. I'm not doing expert analysis in term of valuation. 2 But, I do opine on the methodology. I do say -- I 3 did opine in my report and I am able to opine now whether 4 methodology, in general, is consistent with GAAP or if it is 5 inconsistent with GAAP. 6 This was also, according to the accounting rules, 7 this was also the responsibility of the external accountant 8 that performed the compilation. 9 ARC 80 clearly states that the accountant that 10 performed the compilation -- and it's also in my report. 11 The accountant that performed the compilation must review 12 the methodologies used by the preparer. Moreover, they also 13 must inform themselves of the methodologies that are used in 14 the industry. 15 And if they find that the methodology used by the 16 preparer violated GAAP or inconsistent with the position in 17 the industry, they have to flag it as a GAAP departure. 18 Q. What, if anything, about this valuation here -- 19 withdrawn. 20 How, if at all, does this valuation method 21 disclose this supporting data? 22 A. You know, to be honest with you, if I were to do 23 this compilation report, I would ask maybe -- it's also 24 not -- it is not the responsibility of the person performing 25 the compilation report, it's not his responsibility to check</p>	<p>A.Bartov - Defendant - Cross/Mr.Solomon Page 6444</p> <p>1 A. No. 2 MR. SUAREZ: No further questions on direct 3 examination. 4 THE COURT: And, I'm sorry, the per hour was 5 \$1000. 6 THE WITNESS: 350. 7 THE COURT: Fifteen. 8 THE WITNESS: Fifty. One three five zero. 9 THE COURT: Okay. Will there be any cross 10 examination? 11 MR. SOLOMON: Yes, your Honor. 12 THE COURT: Can we start now? 13 CROSS EXAMINATION 14 BY MR. SOLOMON: 15 Q. Good afternoon, Professor. 16 A. Good afternoon. 17 Q. Following up on the last couple of questions that 18 you were asked, who is paying your fees in this matter? 19 A. So, I submit the bills, my invoices, to the Trump 20 Organization. And, on the -- some of it get paid by the 21 Trump Organization and some of it is paid by Save America. 22 Q. That's the Save America PAC, Political Action 23 Committee, is that correct? 24 A. I have no idea. I can tell you just what I see on 25 my bank statement. On my bank statement, some number say</p>
<p>A.Bartov - Defendant -Direct/Mr.Suarez Page 6443</p> <p>1 whether the 30 percent is the correct number or not. 2 But, there is no details here how the 30 percent 3 and 50 percent was computed. If I want to be extra careful 4 and I perform this evaluation, perhaps I would ask for some 5 information that will help me understand how this 30 percent 6 or 15 percent was derived. 7 But again, this is -- formerly, it's not the 8 responsibility of the company. This is an audit. In audit 9 you have to do this. When you do compilations, you don't 10 have to do it. 11 MR. WALLACE: Objection, your Honor. That 12 answer was not responsive. And this is also an area 13 that this witness has already said he didn't focus on. 14 So, I'm not sure what the foundation is for this 15 testimony. 16 THE COURT: Overruled. I thought it 17 answered the question. 18 Q. Professor, how are you being compensated in this 19 case? 20 A. My billing rate is \$1,350 per hour. 21 Q. How many hours have you spent working on this 22 engagement? 23 A. About 650 hours. 24 Q. Is your compensation, in any way, contingent on 25 the opinions that you've expressed?</p>	<p>A.Bartov - Defendant - Cross/Mr.Solomon Page 6445</p> <p>1 "Trump Organization." And some number says, "Save America." 2 I got no additional detail that I can share with you. 3 Q. Other than -- let's just go through some 4 background if we can. 5 Other than for yourself, have you prepared a 6 personal financial statement, for anyone else, in the last 7 30 years. 8 A. The last time I prepare it, I think it was 1984 or 9 1985. So you do the math. If it was 30 years ago or 10 longer. But, the last one I think it was around 1984 or 11 1985. 12 Q. Other than for yourself, have you valued real 13 property, for inclusion, on a financial statement in the 14 last 30 years? 15 A. No. 16 Q. Other than for yourself, have you valued any 17 property, for inclusion, on a personal financial statement 18 in the last 30 years? 19 A. No. 20 Q. Prior to issuing your reports in this case and 21 providing your testimony, yesterday and today, did you 22 perform any valuation of any of the assets on Donald Trump's 23 Statements of Financial Condition for any year? 24 A. No. 25 MR. SOLOMON: Could we please pull up PX</p>

<p>A.Bartov - Defendant - Cross/Mr.Solomon Page 6446</p> <p>1 3439 and go to page eight.</p> <p>2 It might be in front of the witness. It was</p> <p>3 used on his direct examination earlier.</p> <p>4 THE WITNESS: No, this is not it.</p> <p>5 MS. FAHERTY: It is PX 3439.</p> <p>6 A. Thank you.</p> <p>7 Q. Professor, do you recall being asked several</p> <p>8 questions about the materiality section, beginning on page</p> <p>9 eight of this document QC11?</p> <p>10 A. I do.</p> <p>11 Q. And in rendering your opinions, had you previously</p> <p>12 reviewed the materiality section from this document?</p> <p>13 A. I did.</p> <p>14 Q. Did you rely on the material amount section from</p> <p>15 this document?</p> <p>16 A. I rely on this and other references.</p> <p>17 Q. My question was, did you rely on this document.</p> <p>18 This will go a lot faster if you just listen to my</p> <p>19 questions and answer my questions, please. You'll have an</p> <p>20 opportunity to explain anything you need to on redirect.</p> <p>21 So did you rely, in any way, on the materiality</p> <p>22 section contained in PX 3439?</p> <p>23 A. I did.</p> <p>24 Q. And does that include QC11, 11-A and 11-B?</p> <p>25 A. Yes.</p>	<p>A.Bartov - Defendant - Cross/Mr.Solomon Page 6448</p> <p>1 basically?</p> <p>2 I want to ask about the second step there,</p> <p>3 qualitative analysis.</p> <p>4 THE WITNESS: Yes.</p> <p>5 THE COURT: What I remember from the</p> <p>6 document was "Well, it's -- it was all very vague." It</p> <p>7 was, you had to look at the particular reporting</p> <p>8 entity, et cetera.</p> <p>9 Wouldn't one of the main elements of</p> <p>10 materiality be the relative -- the discrepancy relative</p> <p>11 to the absolute number?</p> <p>12 THE WITNESS: So, you know, I am instructed</p> <p>13 to give short answers.</p> <p>14 THE COURT: To give --</p> <p>15 THE WITNESS: I am instructed to give short</p> <p>16 answers. So I didn't tell you the whole story. If you</p> <p>17 want to tell me the whole story about materiality, I</p> <p>18 can tell you the whole story.</p> <p>19 THE COURT: I'm not looking for the whole</p> <p>20 story. I am just looking for an answer to my question.</p> <p>21 Wouldn't relative difference between --</p> <p>22 THE WITNESS: So, as I said, there are two</p> <p>23 steps. You can't see it from here because, this is</p> <p>24 just a general framework. You have to look to the</p> <p>25 accounting literature.</p>
<p>A.Bartov - Defendant - Cross/Mr.Solomon Page 6447</p> <p>1 Q. Did the information contained in QC11, 11-A and</p> <p>2 11-B provide the framework for your opinions about</p> <p>3 materiality?</p> <p>4 A. General framework, yes.</p> <p>5 Q. As an accounting expert, sir, are you aware that</p> <p>6 the Statement of Financial Accounting concepts are not,</p> <p>7 actually, part of the SAB Accounting Standards Codification,</p> <p>8 presently, in effect.</p> <p>9 A. Of course.</p> <p>10 Q. Did you disclose that in your direct testimony</p> <p>11 that you were aware that this was not part of this existing</p> <p>12 codification?</p> <p>13 A. I don't remember. Maybe I didn't.</p> <p>14 Q. Isn't it true, sir, that these concepts are merely</p> <p>15 concepts that will be considered in developing future</p> <p>16 financial reporting standards.</p> <p>17 "Yes" or "no," question, sir.</p> <p>18 A. Yes.</p> <p>19 MR. SOLOMON: Can we, please, mark PX3437?</p> <p>20 THE COURT: Before we get there -- sorry to</p> <p>21 backtrack a bit. Professor, I appreciated your two</p> <p>22 step test for materiality.</p> <p>23 THE WITNESS: Yes.</p> <p>24 THE COURT: Quantitatively having a</p> <p>25 difference between the realty and the report, right,</p>	<p>A.Bartov - Defendant - Cross/Mr.Solomon Page 6449</p> <p>1 So, the idea is, if accounting question is</p> <p>2 not answered by the codification, then in order to</p> <p>3 answer the question, you refer to other sources of the</p> <p>4 accounting literature.</p> <p>5 So there is a source in the accounting</p> <p>6 literature that lists potential -- that lists potential</p> <p>7 element that must be considered when you do the</p> <p>8 qualitative analysis.</p> <p>9 It is very clear from this guidance, that,</p> <p>10 the absolute value of the discrepancy may affect your</p> <p>11 decision or conclusion whether it is material or not.</p> <p>12 But, this is just one of many other consideration.</p> <p>13 For example, what are other consideration?</p> <p>14 One consideration will be, according to the accounting</p> <p>15 literature -- and again, if you want me to emphasize, I</p> <p>16 will say, this is not in the codification but, it's</p> <p>17 still in the accounting literature; and therefore, it's</p> <p>18 a guidance that people are using. So, one element, for</p> <p>19 example, would say, you have to consider --</p> <p>20 THE COURT: No. No. I asked a simple "yes"</p> <p>21 or "no," question.</p> <p>22 THE WITNESS: Yes.</p> <p>23 THE COURT: Should I ask it again? I don't</p> <p>24 want a speech. I just want an answer, "yes" or "no."</p> <p>25 THE WITNESS: This is one of many element</p>

<p>A.Bartov - Defendant - Cross/Mr.Solomon Page 6450</p> <p>1 that need to be considered when you determine</p> <p>2 materiality.</p> <p>3 THE COURT: Okay. And I think my specific</p> <p>4 question was, is it one of the important -- is it a</p> <p>5 fairly important factor?</p> <p>6 THE WITNESS: According to literature, no.</p> <p>7 THE COURT: Okay.</p> <p>8 THE WITNESS: If you want, I can give you an</p> <p>9 example.</p> <p>10 MR. SOLOMON: Your Honor, I am going to</p> <p>11 explore this issue on my cross. I don't know if it</p> <p>12 would be beneficial to see if we cover that during the</p> <p>13 cross or if you want to have the witness continue on.</p> <p>14 I want to volunteer that as a possibility.</p> <p>15 THE COURT: He answered my question. I want</p> <p>16 you to ask the next one.</p> <p>17 MR. SOLOMON: I will, Your Honor.</p> <p>18 CROSS EXAMINATION</p> <p>19 BY MR. SOLOMON:</p> <p>20 Q. Sir, are you familiar with what's been marked as</p> <p>21 PX 3437?</p> <p>22 A. I am.</p> <p>23 MR. SOLOMON: Can we offer it into evidence?</p> <p>24 Your Honor, can we offer it into Evidence.</p> <p>25 THE COURT: Sorry. Granted. It's in.</p>	<p>A.Bartov - Defendant - Cross/Mr.Solomon Page 6452</p> <p>1 on redirect.</p> <p>2 MR. ROBERT: Your Honor, the witness said,</p> <p>3 "It is not capable of being answer 'yes or no'." Under</p> <p>4 the way we've been proceeding here, that would be</p> <p>5 acceptable to his.</p> <p>6 THE COURT: Was that his response?</p> <p>7 MR. ROBERT: He was trying to explain. And</p> <p>8 Mr. Solomon said "yes or no" pointing at the witness.</p> <p>9 MR. SOLOMON: I was pointing at the</p> <p>10 document. I wasn't pointing at the witness. Would be?</p> <p>11 MR. ROBERT: It didn't look way.</p> <p>12 MR. KISE: You've already harassed him. You</p> <p>13 had him on the stand fifteen minutes and you're already</p> <p>14 being insulting. It is obvious what --</p> <p>15 MR. SOLOMON: Your Honor, I object to this</p> <p>16 characterization. Mr. Kise is here wasting time now.</p> <p>17 We already have to bring this witness back on Tuesday.</p> <p>18 If I can proceed with my cross I'd appreciate it. Any</p> <p>19 claims I'm harassing the witness are wholly without</p> <p>20 merit.</p> <p>21 MR. KISE: His tone and demeanor are</p> <p>22 extraordinarily harassing. I've wasted fifteen months</p> <p>23 of my life in this courtroom because of these folks and</p> <p>24 so has my client. He needs to ask proper questions and</p> <p>25 not be so hostile to a person who has earned with</p>
<p>A.Bartov - Defendant - Cross/Mr.Solomon Page 6451</p> <p>1 MR. SOLOMON: Thank you.</p> <p>2 If we could turn to the fourth page of the</p> <p>3 document.</p> <p>4 Q. The very top, first sentence. The conceptual</p> <p>5 framework is intended to set forth fundamental concepts that</p> <p>6 will be the basis for development of financial accounting</p> <p>7 and reporting standards. "Will be" future tense, correct?</p> <p>8 "Yes" or "no," sir?</p> <p>9 A. This is not a "yes" or "no," question. I will</p> <p>10 tell you why not. Because --</p> <p>11 Q. Sir, is the word will --</p> <p>12 A. Listen, you are going to mislead the Judge. This</p> <p>13 document --</p> <p>14 Q. I am not --</p> <p>15 A. Let me explain. This document is not relevant to</p> <p>16 this case. I'm sorry. This document is not relevant to</p> <p>17 this case. And the reason is, look at the top of the</p> <p>18 document what it says. Go to the top -- please, go to the</p> <p>19 top of the document and see what it says.</p> <p>20 MR. SOLOMON: Your Honor, move to strike as</p> <p>21 non-responsive.</p> <p>22 THE COURT: Stricken as non-responsive.</p> <p>23 We have certain rules here. And the rule is,</p> <p>24 he asks the question, you answer the question. Not to</p> <p>25 make a speech. Your attorneys can ask you about that</p>	<p>A.Bartov - Defendant - Cross/Mr.Solomon Page 6453</p> <p>1 respect.</p> <p>2 MR. SOLOMON: I provided witness respect</p> <p>3 number one. Number two, every question was proper.</p> <p>4 There hasn't been a single objection from your table.</p> <p>5 So let's not characterize the record.</p> <p>6 THE COURT: How about, rather than a read</p> <p>7 back, can you just ask the question again.</p> <p>8 Q. Sir, the word "will" shows up in the first</p> <p>9 sentence there.</p> <p>10 Do you see that, yes or no?</p> <p>11 A. I do.</p> <p>12 Q. Is the word "will" future?</p> <p>13 A. Yes.</p> <p>14 Q. Thank you.</p> <p>15 MR. SOLOMON: Can we go to the paragraph</p> <p>16 beginning with concept statement. It's the next to</p> <p>17 last one on this page.</p> <p>18 Q. Quote, concept statements are not part of the FASB</p> <p>19 Accounting Standards Codification which is the source of</p> <p>20 authoritative GAAP recognized by the FASB to be applied by</p> <p>21 nongovernmental entities (topic 105 of generally accepted</p> <p>22 accounting principles).</p> <p>23 A. Yes.</p> <p>24 Q. Were you aware of that statement when you provided</p> <p>25 your opinions in this case and gave your testimony, on</p>

<p>A.Bartov - Defendant - Cross/Mr.Solomon Page 6454</p> <p>1 direct examination, in the courtroom?</p> <p>2 A. Okay. So I did not review the statement because</p> <p>3 this statement was issue on December 2021. So look on the</p> <p>4 date when it became effective.</p> <p>5 This issue, this statement, was effective after</p> <p>6 the period that I discussed in this. So this is hindsight</p> <p>7 using document that was not available to anyone that prepare</p> <p>8 the financial statement during this time.</p> <p>9 Q. Sir, my question wasn't whether this document --</p> <p>10 A. You are using document that was not available</p> <p>11 during the time. Can you do that?</p> <p>12 MR. SOLOMON: Your Honor, move to strike as</p> <p>13 I was in the middle of a question so, it could not have</p> <p>14 been responsive.</p> <p>15 THE COURT: Stricken. And I'll direct the</p> <p>16 witness just answer the questions. If the statement</p> <p>17 didn't exist, then I guess he didn't rely on it.</p> <p>18 MR. SOLOMON: Your Honor, that wasn't the</p> <p>19 testimony. I believe the statement existed in 2021.</p> <p>20 And if I'm correct -- and I'm not trying to testify for</p> <p>21 the witness -- the issue had to do with the SOFCs that</p> <p>22 the witness was addressing. My question was different.</p> <p>23 My question was, was the witness aware of and</p> <p>24 did he consider this statement, that existed in 2021,</p> <p>25 when you submitted your expert reports, in 2023, and</p>	<p>A.Bartov - Defendant - Cross/Mr.Solomon Page 6456</p> <p>1 and introduce those standards into the case as well and</p> <p>2 say that these standards is what apply. It is a</p> <p>3 rudderless ship, your Honor. This is totally improper</p> <p>4 cross examination.</p> <p>5 THE COURT: The question was, totally,</p> <p>6 proper. Objection overruled. Please stop the</p> <p>7 speeches. Please stop the ad hominem.</p> <p>8 A. Okay. Sure. So what's the question.</p> <p>9 Q. Did you consider the limitation or statement</p> <p>10 that's contained in the paragraph that we read, when you</p> <p>11 prepared your expert reports in this case, in 2023, and gave</p> <p>12 testimony in this courtroom in 2023?</p> <p>13 A. So, when I do --</p> <p>14 Q. It is a "yes" or "no," question.</p> <p>15 THE COURT: It is a yes or no question.</p> <p>16 A. No, I didn't rely on this statement. I didn't</p> <p>17 rely on this statement. I didn't rely on this statement at</p> <p>18 all.</p> <p>19 Q. Now, sir, you address that it was, as amended,</p> <p>20 December 2021. Correct?</p> <p>21 A. Yes.</p> <p>22 Q. When was it first adopted?</p> <p>23 A. I used the -- you know, I -- if it was amended in</p> <p>24 December 2021, it could not be effective before this date.</p> <p>25 Q. Was there a version of this that was similar, in</p>
<p>A.Bartov - Defendant - Cross/Mr.Solomon Page 6455</p> <p>1 testified here in court on December 7, 2023.</p> <p>2 That was my question.</p> <p>3 THE COURT: Okay. Sorry. I misinterpreted.</p> <p>4 MR. KISE: If that was the question, it is</p> <p>5 an improper question because, the scope of cross is</p> <p>6 limited to what he talked about on direct.</p> <p>7 So, it's not to pull in something now that</p> <p>8 wasn't -- just like the witness said, to pull in</p> <p>9 something that's available now -- these statements were</p> <p>10 prepared 2011 through 2021. So, if this wasn't</p> <p>11 available, it is an improper --</p> <p>12 THE COURT: But it was.</p> <p>13 MR. KISE: -- cross examination. He</p> <p>14 couldn't have relied on it. It is like asking him if</p> <p>15 he relied on the physics calculation on Mars.</p> <p>16 MR. SOLOMON: I'm asking if this witness</p> <p>17 relied on this in connection with his report not in</p> <p>18 connection with the Statements of Financial Condition.</p> <p>19 This witness didn't prepare the SOFCs as far as I am</p> <p>20 aware.</p> <p>21 MR. KISE: The report relates to the</p> <p>22 governing standards applicable at the time of the</p> <p>23 preparation of the Statements of Financial condition.</p> <p>24 Every time I think their position can't get</p> <p>25 more ridiculous it does. Why don't we wait until 2024</p>	<p>A.Bartov - Defendant - Cross/Mr.Solomon Page 6457</p> <p>1 form or sustenance, that was adopted in 2010 to your</p> <p>2 knowledge?</p> <p>3 A. Yes, there was.</p> <p>4 Q. And did it contain, in form or substance, the same</p> <p>5 limitation that concept statements are not part of the FASB</p> <p>6 Accounting Standards Codification. Yes or no?</p> <p>7 A. Yes.</p> <p>8 Q. That was in 2010, correct?</p> <p>9 A. Correct.</p> <p>10 Q. Okay. Thank you.</p> <p>11 Will you agree, sir, with me that there is no</p> <p>12 defined materiality test contained in the codification?</p> <p>13 A. Yes, I do.</p> <p>14 Q. In your testimony, yesterday, you made reference,</p> <p>15 I believe, to the SEC.</p> <p>16 Am I recalling that correctly?</p> <p>17 A. To what?</p> <p>18 Q. The SEC, the Securities and Exchange Commission?</p> <p>19 A. Remind me. What did I say?</p> <p>20 Q. Are you aware that the SEC publishes staff</p> <p>21 accounting bulletins?</p> <p>22 A. I do.</p> <p>23 Q. And do you rely on those in connection with your</p> <p>24 work?</p> <p>25 A. Absolutely.</p>

<p>A.Bartov - Defendant - Cross/Mr.Solomon Page 6458</p> <p>1 Q. And do you rely on those in connection with the</p> <p>2 various papers that you write?</p> <p>3 A. Absolutely.</p> <p>4 Q. And the articles that you write?</p> <p>5 A. Absolutely.</p> <p>6 Q. Do you believe them to be authoritative?</p> <p>7 A. I do.</p> <p>8 MR. SOLOMON: Could we please mark PX 3446?</p> <p>9 Q. Do you have a copy of the Exhibit?</p> <p>10 A. I do.</p> <p>11 Q. Have you had a moment to review it?</p> <p>12 (Whereupon, the following proceedings were</p> <p>13 stenographically recorded Shameeka Harris.)</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Professor Bartov - by Defendant - Cross (Mr. Solomon) Page 6460</p> <p>1 the one who prepares the compilation. So I want to understand.</p> <p>2 When you use the term preparer, you are talking about in this</p> <p>3 case Donald J. Trump; is that correct?</p> <p>4 A Yes.</p> <p>5 Q Thank you. Could you please turn to page five?</p> <p>6 A Okay.</p> <p>7 Q The title is Aggregating and Netting Misstatements.</p> <p>8 A Yes.</p> <p>9 Q The very first paragraph. "In determining whether</p> <p>10 multiple misstatements cause the financial statements to be</p> <p>11 materially misstated, registrants and the auditors of the</p> <p>12 financial statements should consider each misstatement</p> <p>13 separately and the aggregate effect of all misstatements."</p> <p>14 A Yes.</p> <p>15 Q Were you aware of that direction or interpretation from</p> <p>16 the SEC with respect to financial statements?</p> <p>17 A Yes.</p> <p>18 Q Go down a little bit to the paragraph beginning even.</p> <p>19 "Even though a misstatement of an individual amount may not</p> <p>20 cause the financial statements taken as a whole to be materially</p> <p>21 misstated, it may, nonetheless, when aggregated with other</p> <p>22 misstatements, render the financial statements taken as a whole</p> <p>23 to be materially misleading."</p> <p>24 Were you aware of that part of the interpretation</p> <p>25 before today?</p>
<p>Professor Bartov - by Defendant - Cross (Mr. Solomon) Page 6459</p> <p>1 MR. SOLOMON: Your Honor, Friday we go until one,</p> <p>2 correct?</p> <p>3 THE COURT: We go to 5 of 1. Is that all right</p> <p>4 with everyone?</p> <p>5 MR. SOLOMON: I know during the week we break at</p> <p>6 12:45. I just want to get through an area and not leave it</p> <p>7 over the weekend.</p> <p>8 THE COURT: Let's be simple. When would you like</p> <p>9 to break?</p> <p>10 MR. SOLOMON: If you said 5 to 1, we will. I will</p> <p>11 make that work.</p> <p>12 CONT'D CROSS-EXAMINATION</p> <p>13 BY MR. SOLOMON:</p> <p>14 A All right. I refreshed my memory about it, yes.</p> <p>15 Q Have you seen this -- first off, what is an SEC staff</p> <p>16 accounting bulletin?</p> <p>17 A This is opinion of the SEC about a question that</p> <p>18 preparer may have and they want to clarify. And they clarify</p> <p>19 for preparer interpretation of accounting practices.</p> <p>20 Q And when you say preparer, I think there was -- I had a</p> <p>21 little confusion yesterday. Who are you referring to as a</p> <p>22 preparer? Is that the issuer, the actual company whose</p> <p>23 financial statements are being published?</p> <p>24 A Yes.</p> <p>25 Q Because I think we also heard the term preparer is also</p>	<p>Professor Bartov - by Defendant - Cross (Mr. Solomon) Page 6461</p> <p>1 A I was.</p> <p>2 Q Did you consider that in connection with any of your</p> <p>3 opinions in this case?</p> <p>4 A Absolutely.</p> <p>5 Q And your opinions looked at aggregating any potential</p> <p>6 misstatement to determine materiality?</p> <p>7 A Absolutely.</p> <p>8 Q And you did a materiality test after you aggregated any</p> <p>9 individual misstatement?</p> <p>10 A Absolutely.</p> <p>11 Q We can turn to the second page. Excuse me, page six,</p> <p>12 the next page. Immaterial misstatements that are intentional.</p> <p>13 Now, here, it's a little bit different, Professor. It gives you</p> <p>14 facts, then a question, and an interpretive response; do you see</p> <p>15 that?</p> <p>16 A Yes, I do.</p> <p>17 Q Is that common in an SEC bulletin?</p> <p>18 A Yes.</p> <p>19 Q And could you explain what the purpose is of putting it</p> <p>20 in that format in an SEC bulletin?</p> <p>21 A They are trying to answer -- interpret the accounting</p> <p>22 rules by raising a question and give the facts and give the</p> <p>23 answer so preparer will know how to address a problem that is</p> <p>24 similar to the question that was asked given the fact pattern</p> <p>25 that is up here.</p>

Professor Bartov - by Defendant - Cross (Mr. Solomon) Page 6462

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1 Q And given the fact pattern the question presented to
2 the SEC which, again, you said is helpful guidance when doing
3 financial statements, correct?

4 A Absolutely.

5 Q In the staff, a registrant make intentional immaterial
6 misstatements in its financial statements, the first word no?

7 A Of course not.

8 Q Do you agree then that a registrant or someone
9 preparing their SOFC's, in this case, Mr. Trump, may not make
10 intentional immaterial misstatements in his financial
11 statements, correct?

12 A Correct.

13 Q Let's go back one page, please, to the paragraph
14 beginning if the misstatement.

15 "If the misstatement of an individual amount causes the
16 financial statements as a whole to be materially misstated, that
17 effect cannot be eliminated by other misstatements whose effect
18 may be to diminish the impact of the misstatement on other
19 financial statement items."

20 Did I read that correctly?

21 A Absolutely.

22 Q What does that mean?

23 A It means that you -- if you exaggerate value of one
24 asset and you underreported the value of another asset, this
25 does not mean or if you consider the overall, you consider the

1 Q Okay.

2 MR. SOLOMON: Your Honor, this would be a
3 convenient point to take a break. I'm sorry, for the day,
4 for the day. I said break.

5 THE COURT: Monday 10 a.m. We will pick up this
6 case. And, Professor Bartov, again, please do not discuss
7 the case or do not discuss the case or your testimony or
8 anything related thereto between now and Tuesday. I'm sure
9 you have better things to talk about.

10 THE WITNESS: Have a good weekend.

11 (Whereupon, the witness was excused from the
12 stand.)

13 (Whereupon, the trial is adjourned until Monday,
14 December 11, 2023, at 10 o'clock a.m.)

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1 overall, the error may cancel out. But when you -- but this is
2 not -- this is not -- this is not the reason to say that the
3 financial statement are not materially misstated.

4 Q So --

5 A By cancelling error does not reduce the consideration.

6 Q Okay. Thank you. Have you completed your answer, sir?

7 A What?

8 Q Have you completed your answer?

9 A Yes, I did.

10 Q I asked a question why so I wanted to give you an
11 opportunity to finish. Let me see if I can give you a real
12 world example. Let's assume, just for purposes of this case,
13 that I own a building in lower Manhattan, 60 Wall Street, and
14 the true value -- the true estimated current value is \$1 but I
15 put it down on my financial statement as \$100 million. If I
16 have another building in midtown that is worth \$100 million and
17 I put it down as \$1, in both instances, in that instance, my net
18 worth is still one hundred million and one dollar.
19 Notwithstanding that, that would still be a GAAP violation,
20 correct?

21 MR. KISE: Objection. Where is he getting these
22 values from? Where are they?

23 THE COURT: They are hypothetical, overruled.

24 MR. KISE: Okay.

25 A Hypothetical, yes, you're right.

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