In The Matter Of:

NYS Attorney General v.
Donald J. Trump

November 20, 2023

Ny Supreme Court- Civil

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Donald J. Trump**

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 1  SUPREME COURT OF THE STATE OF NEW YORK
    COUNTY OF NEW YORK: CIVIL TERM:  PART 37
 2  ------------------------------------------------X
    PEOPLE OF THE STATE OF NEW YORK, BY LETITIA
 3  JAMES, ATTORNEY GENERAL OF THE STATE OF NEW
    YORK,
 4
                    Plaintiff,
 5
              - against -          INDEX #
 6                                452564/2022
    DONALD J. TRUMP; DONALD TRUMP JR.; ERIC TRUMP;
 7  IVANKA TRUMP; ALLEN WEISSELBERG; JEFFREY
    McCONNEY; THE DONALD J. TRUMP REVOCABLE TRUST;
 8  THE TRUMP ORGANIZATION, INC.; TRUMP ORGANIZATION
    LLC; DJT HOLDINGS, LLC; DJT HOLDINGS MANAGING
 9  MEMBER; TRUMP ENDEAVOR 12, LLC; 401 NORTH WABASH
    VENTURE, LLC; TRUMP OLD POST OFFICE, LLC; 40 WALL
10  STREET, LLC; and SEVEN SPRINGS, LLC,
11              Defendants.
    ------------------------------------------------X
12  Bench Trial
13           November 20, 2023
             60 Centre Street
14           New York, New York 10007
15
    B E F O R E: THE HONORABLE ARTHUR S. ENGORON,
16              Justice of the Supreme Court
17
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19
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                  Senior Court Reporters
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Proceedings

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 1       COURT OFFICER: All rise.  Part 37 is now in
 2  session.  The Honorable Judge Arthur Engoron presiding.
 3       Make sure all cell phones are on silent.
 4  Laptops and cell phones will be permitted, but only to
 5  members of the press.  There is absolutely no recording or
 6  photography of any kind allowed in the courtroom.
 7       Now be seated and come to order.
 8       THE COURT: Trying to figure out which of the
 9  attorneys is going to sit in which seat is like the
10  Kremlinologist who was standing there on the mausoleum.
11       Defendants, would you like to call your next
12  witness?
13       MR. FIELDS: Yes, Your Honor.  We called David
14  Miller.
15       And good morning.
16       THE COURT: Good morning, Mr. Fields.
17       (Whereupon, the witness took the stand.)
18       COURT OFFICER: Please remain standing.  Raise
19  your right hand.
20       D A V I D  B R I A N  M I L L E R, after
21  having first been duly sworn was examined and
22  testified as follows:
23       COURT OFFICER: Please have a seat.
24       THE WITNESS: Thank you.
25       COURT OFFICER: Please state your name and
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 1  either home or business address for the record.
 2       THE WITNESS: David Brian Miller, 119 East
 3  Muriel Street, Orlando, Florida.
 4       THE COURT: David Brian Miller, I ask you to
 5  speak very close to the microphone, they are very
 6  sensitive, right into it.  Loudly.
 7       And Mr. Fields, please begin.
 8       MR. FIELDS: Thank you.
 9  DIRECT EXAMINATION
10  BY MR. FIELDS:
11     Q   Good morning.
12     A   Good morning.
13     Q   Where did you attend college, Mr. Miller?
14     A   I attended the Edinboro University for my Bachelor of
15  Arts; Youngstown State University for Master's in psychology;
16  and Ashland University for a Master's in business
17  administration.
18     Q   After your Master's degree, were you gainfully
19  employed with an insurance company?
20     A   Yes, I was.
21     Q   What insurance company was that?
22     A   Eerie Insurance Group.
23     Q   Do you recall approximately what year you started
24  with them?
25     A   Approximately 1975.
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1   Q   What were your jobs with Eerie Insurance Group when
2   you got started?
3   A   I started out as a claims adjustor.
4   Q   What does that mean?
5   A   Well, I investigated and handled claims for autos;
6   homes; professional liability; bonding; all lines of business
7   at the company that the company wrote at that time. I was an
8   all lines claims adjustor.
9   Q   So as a claims adjustor, are you one of the first
10   individuals at the company to investigate whether the claim
11   should be properly or should be paid or not?
12   A   Yes, I was responsible for investigating the claim,
13   understanding the policy language, and determining if there was
14   coverage that was applicable.
15   Q   And I think you mentioned professional liability, did
16   you work on those types of matters as a claims adjustor?
17   A   Yes, I did.
18   Q   What do you mean by professional liability?
19   A   Things like Directors & Officers malpractice, Errors
20   and Omissions.
21   Q   After your time as a claims adjustor, did you get
22   promoted or put into a new role?
23   A   Yes, I did.
24   Q   What role is that?
25   A   I got put into subrogation recovery manager. And in

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1   that role I reviewed claims adjustors' work; and worked with
2   legal firms to collect money back that the company had paid
3   that we were due to recover through a process called
4   subrogation.
5   Q   So as a recovery subrogation manager are you, in
6   effect, one step above the claims adjustor?
7   A   Yes.
8   Q   How about after your time as a recovery subrogation
9   manager, what was your next role like at Eerie?
10   A   I was a district sales manager. I was recruited to
11   develop the northwest section of Ohio where I recruited and
12   trained all of the agents, independent agents, to represent
13   Eerie Insurance Group. And I was responsible for all lines of
14   business that was produced by those agents.
15   Q   And at this point were you an Associate Vice
16   President?
17   A   I was Associate Vice President, yes.
18   Q   Okay. After that, did you have any role?
19   A   Yes. I was promoted to Eerie Branch Manager where I
20   was in charge of all of the agency force agent licensing and
21   marketing for the company. And in that I was responsible for
22   the claims operations and the sales and marketing operation.
23   The claims operation reported to me and I reviewed the -- with
24   the claims manager, difficult claims in the claims operations.
25   And then I was also responsible for the sales and

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1   marketing and profitability of all of the agents in that
2   territory.
3   Q   When you say, "sales and marketing," what does that
4   mean for an insurance company?
5   A   That means the agents writing lines of business that
6   the company wanted to, whether it was home, auto, professional
7   liability, bonds, I was responsible for getting them to write
8   what the company was looking for.
9   Q   And at this juncture as the branch manager, were you
10   a vice president at Eerie Insurance?
11   A   Yes, I was.
12   Q   All right. And then lastly, did you have a final
13   role at Eerie during this period in time that you were employed
14   there?
15   A   Yes. After I was the branch manager I was promoted
16   to Vice President of Marketing and Branch Operations. And at
17   that I was responsible for all of the marketing materials, all
18   of the lines of business and how they were presented to the
19   public. I was also responsible for all of the branch
20   operations and the branch managers -- the claims operation and
21   the sales operations reported up through me.
22   Q   So in total, were you there at Eerie for
23   approximately 15 or 16 years?
24   A   Yes.
25   Q   That culminated with you being the Vice President for

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1   Marketing and Branch Operations?
2   A   Yes, that's correct.
3   Q   And where did you go when you left Eerie at this
4   time?
5   A   I left and started my own independent insurance
6   agency in Gaithersburg, Maryland.
7   Q   What were some of your responsibilities when you
8   started your own business?
9   A   Well, in starting my own business I was responsible
10   for doing what I had told people to do. I had to go out and
11   sell insurance to meet different guidelines, to find insurance
12   the company was looking for.
13   Because of my past experience with the company, I was
14   given underwriting authority of up to a million dollars. So I
15   had the ability to write business and bind the business and
16   make decisions about what was acceptable to the company because
17   of my past relationship with them. So, I was able to write
18   bonds, D&O, autos, home, commercial lines, garage, commercial
19   auto; all of the lines that Eerie wrote. And in those lines I
20   had a million dollars of binding authority before I had to get
21   approval from any underwriter to accept the business.
22   Q   So, if I understood your testimony, because you
23   worked at Eerie, Eerie allowed you up to a million dollars in
24   underwriting authority to underwrite business for them yourself
25   as a broker?

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1　A　Yes. I had discretion to bind the business and
2　underwrite the business at that agency level.
3　　　THE COURT: He asked you as a broker. Isn't it
4　as an agent?
5　　　THE WITNESS: I had both licenses. I had both
6　licenses, and in that relationship I did have an agency
7　contract with them.
8　　　THE COURT: I seem to remember, tell me if I am
9　right or wrong, the agent represents the insurance
10　company; the broker represents the insured.
11　　　THE WITNESS: Right. That's the distinction.
12　　　THE COURT: So you were an agent, not a broker.
13　　　THE WITNESS: I had both roles. In the capacity
14　I was writing it was in an agent capacity. You are right,
15　Your Honor.
16　Q　What type of insurance did you place with David B.
17　Miller insurance?
18　A　All lines that Eerie offered. I had blanket
19　authority to write all of the lines.
20　Q　Did that include excess surplus lines policies?
21　A　Eerie Insurance did have an excess surplus lines
22　division, and I could write through them. But I was also
23　licensed with other excess surplus lines carriers; typically
24　called "wholesalers" in the industry. And I had licenses with
25　those various organizations.

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1　Q　Could you help us understand what excess surplus
2　lines means?
3　A　Yes. Excess surplus lines means it is not regulated
4　by the state you are doing business in. Basically it allows
5　that company to tailormake a policy to have more discretion in
6　pricing, they don't have to follow their prices; they don't
7　have to follow their forms. So it gives them more latitude in
8　being able to customize a policy. It gives them more latitude
9　to use additions or exclusions in their policy that don't have
10　to be filed. And it allows them to price the policy according
11　to their judgment of what their risk may be.
12　Q　All right. Where did you go to next after David B.
13　Miller insurance?
14　A　I went back to Eerie Insurance Group.
15　Q　And in what position or capacity did you return to
16　Eerie?
17　A　I had several capacities. My title was Senior Vice
18　President and Division Officer; Corporate Risk Manager; Chief
19　Senior Underwriting Officer and President of Eerie Surplus
20　Agency.
21　Q　Did you have several divisions that you were
22　responsible for?
23　A　Yes, I had about five divisions that I was
24　responsible for.
25　Q　What were they?

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1　A　Commercial underwriting, which included property
2　casualty; Bonding; Errors and Omissions; Directors & Officers,
3　that all came under the property casualty heading. Then I had
4　commercial auto and commercial trucking; garage liability; and
5　garage dealerships; commercial processing; commercial quoting
6　and commercial risk management.
7　Q　As part of your roll overseeing the commercial
8　processing division, I believe it was that you said?
9　A　Yes.
10　Q　Did that involve policy language and altering policy
11　language based on the insurance company's preference and what
12　they wanted?
13　A　Yes. Part of my -- part of the property casualty and
14　part of the -- as the Chief Underwriting Officer, I was
15　involved. When I first -- particularly when I first went back,
16　I changed the policies that we were doing business with. The
17　policies were a little bit antiquated, so we rewrote the policy
18　and I was in charge of making sure the policies were rewritten
19　correctly. We prepared many new endorsements which targeted
20　markets, and by targeting the markets, it put us in a better
21　competitive position. And I made sure that those endorsements
22　to the policies were done correctly. So we completely
23　modernized the policies being offered by the commercial
24　division. And I was in charge of that operation and project.
25　Q　How about Chief Underwriting Officer, what were your

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1　responsibilities as the Chief Underwriting Officer?
2　A　Well, my -- my chief duty is to make sure we weren't
3　making a huge mistake. But --
4　　　THE COURT: Mine too, by the way.
5　A　I saw the difficult cases, so when it came to me --
6　the average, everyday business was done by the standard
7　underwriters or maybe their manager or supervisor. And then
8　when it came to more difficult cases, I actually did the
9　physical underwriting with them, reviewed their files, looked
10　at the materials, and made a decision whether the company had
11　the capacity and willingness to take on that risk. So, it was
12　my final say-so what backed up the company's money and their
13　exposure. And so, you know, if it was a large bond or a large
14　D&O or a large commercial account, very often I had the final
15　say-so. I had the ultimate say-so. In fact, I had more
16　authority in that area than the CEO, because I was the Chief
17　Underwriting Officer. And with that comes, you get praised
18　when you make money and you take the hit if you lose money.
19　Thank heavens I always made money, so I didn't have
20　to take the other side of the coin.
21　Q　Probably a good point to talk about the hierarchy at
22　Eerie Insurance and just insurers generally. But are
23　underwriters generally given what is called levels of
24　authority?
25　A　Yes.

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1 Q Could you just explain a little bit how that works?
2 A Yes. Well, in particular I can explain how Eerie
3 worked. We had underwriters one, two, and three. And that was
4 based on their experience and time at the job.
5   So, as an example, somebody that just came in that
6 was learning how to underwrite, we would give level one where
7 they would have a minimum amount of authority or maybe no
8 authority. They had to have everything checked by somebody
9 above them in order to put the monies of the company at risk.
10   Then an underwriter two would have a little more
11 authority, say maybe to a half a million dollars. And they
12 would be allowed to underwrite risk falling below that
13 category; and if they had more exposure they had to get
14 approval.
15   An underwriter three would have a million dollars, in
16 some cases $2 million, where they would be allowed to accept
17 that type of risk on behalf of the company. Because by the
18 time they got to underwriter three they generally had ten or
19 more years experience, and so they pretty much knew what they
20 were doing.
21   And above that it went to the manager and then to me.
22 Q You also said that you were Eerie's Corporate Risk
23 Manager?
24 A Yes.
25 Q What does that mean?

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1 A Well, we did self insurance, so the risk management,
2 the inspection of the physical buildings, making sure that the
3 things like the fire extinguishers, you know, the boilers, and
4 everything got processed, permitted correctly. All of that
5 stuff was done by my assistants and then passed up through me.
6   Also, I looked at the Worker's Compensation program
7 and managed the risk of that program; worked out the pricing
8 terms and conditions for that program; monitored the accidents
9 associated with employees automobiles driver safety programs,
10 carpal tunnel programs, educational programs for the betterment
11 of employees, to keep them safe from having occupational
12 hazards or accidents.
13   So that was the responsibility. And we tracked all
14 of that stuff and managed it, because most of the things,
15 accept the Worker's Compensation, we self insured. So
16 everything we saved was money to the bottom line.
17 Q So, approximately how long did you work at Eerie in
18 total?
19 A Approximately 22 years.
20 Q And did you leave Eerie in approximately 2001 the
21 last time?
22 A Yes.
23 Q Where did you go next?
24 A I founded Inner Harbor Insurance Group. I bought a
25 small seed company in Bethesda, Maryland and grew that

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1 independent agency into about the 15th largest independent
2 agency in the Tristate area: Maryland, Virginia, DC. I was
3 licensed in 42 states. We had the largest beauty school,
4 professional liability program in the company in 42 states. We
5 also did commercial business all throughout the country. We
6 did about 12,000 policies and personal lines, auto, home,
7 personal umbrella.
8   But the bulk of the business was done in the
9 commercial lines: Commercial property, commercial casualty,
10 bonding, Directors Officers, all of those lines of business.
11 And personally I did pretty much all commercial business and
12 that's what I specialized in.
13 Q And do you recall approximately when you left Inner
14 Harbor?
15 A Yes. I left Inner Harbor in about 2007.
16 Q And where did you go next?
17 A I went to Harbor Companies, started my own consulting
18 company. When you get to a certain size in the independent
19 agency business, sometimes companies want to come in because
20 you are a desirable candidate to get purchased. And that's
21 what happened. Somebody wanted to purchase the company. So I
22 had a non-compete, except for consulting and doing expert
23 witness work. And so I started that company and developed
24 Harbor Companies, who I presently work for.
25 Q You mentioned consulting and expert witness work, is

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1 that what you are primarily doing now with Harbor Companies?
2 A Yes, that's correct.
3 Q What type of insurance consulting are you doing now?
4 A I do mostly expert witness work. But I have also
5 done consulting work for educational programs, training
6 programs for employees, guest lecturing for training programs
7 for employees. I worked for companies like USAA, AIG, Mutual
8 companies.
9   Eerie had me back several times to teach agents how I
10 grew an agency, because by industry standards I grew the agency
11 very quickly. So they all wanted to know what is your secret,
12 how did you do it. Like I had a magic thing. It is hard work.
13 But they wanted to know what I did. So, those are the type of
14 programs that I put on to educate and teach.
15 Q And do you have a sense for approximately how many
16 cases you have served as an expert witness?
17 A Over 100.
18 Q And have you testified at trial previously?
19 A Yes.
20 Q Do you get a sense for how many times you have had
21 your deposition taken as an expert witness?
22 A I believe at last count it was 40 plus.
23 Q What are some of the topics you have provided expert
24 testimony in?
25 A Well, I have done bonding cases as an expert witness

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1 before. I have done some high profile D&O cases. I have done
2 injury cases, bad faith cases, errors and omissions cases,
3 medical malpractice cases. That's probably the bulk of what I
4 did. I did a couple lawyer malpractice. Not that that ever
5 happens. But I did a couple of lawyer malpractice cases. And
6 that's primarily what I do.
7   Q   Have your engagements included representation of both
8 carriers and policyholders?
9   A   Yes.
10   Q   Have you been retained by carriers to do educational
11 consulting?
12   A   Yes, I have.
13   Q   What is educational consulting?
14   A   Well, I have done things from helping -- because I
15 had experience in developing policy language, I was asked by
16 one carrier to come in and look at their policies and offer
17 solutions or endorsements, things to make it more competitive.
18   I have been asked to talk to independent agents about
19 how to properly market the product, how to get more business,
20 how to develop your business quicker.
21   You know, what do companies really look for, how do I
22 know that. I would teach them, say, look at the top ten
23 classes of business that a company is writing. And if you
24 concentrate on writing those top ten classes of business you
25 are more likely to be successful than trying to get outlying

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1 business that they don't want to write. So when you look at a
2 company and determine what does that company -- particular
3 company like to write, then you are far more likely to be
4 successful in writing businesses.
5   Q   Outside of educational consulting, have you taught
6 courses related to insurance?
7   A   Yes. I was adjunct professor at Gannon University.
8 As a matter of fact, I was the first professor in that program.
9 I taught risk management and insurance development. One of the
10 things that I tried to do with my students at that level was to
11 teach them how to be a good consumer. I taught them how do you
12 buy car insurance. How do you buy homeowner's insurance. How
13 do you start a business. What does a business plan look like.
14 How do you develop something that makes you look good to an
15 insurance company. How do you manage your personal assets and
16 how do you manage your personal self to make yourself
17 attractive from an insurance standpoint.
18   My goal was to make them a better consumer and
19 educated person that could go out and make a decent decision
20 once they left my classroom.
21   Q   Did you do any -- let me withdraw that for a second.
22   You said Gannon University; is that G-A-N-N-O-N?
23   A   That's correct.
24   Q   And did you do any guest lecturing while you were at
25 Eerie?

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1   A   Yes. Eerie had asked me to come in. They would have
2 conferences where they would bring all of their agents in. And
3 several times I taught marketing seminars to all of the agency
4 force regarding all of the steps I used to market. And quite
5 often they would say: Why are you willing to do that?
6   And I would say: Well, they are going to listen and
7 we will see who actually implements it. So my goal was to try
8 to get some people to go implement what I was -- what I was
9 trying to sell to them, so that they could write more business
10 and overall enhance the business that they were giving to the
11 company.
12   Q   All right. I would like to shift gears now and talk
13 a little bit about your professional certifications or
14 designations. Do you hold any professional certifications or
15 designations?
16   A   I do.
17   Q   Okay. Do you hold any from what is called the
18 Institutes?
19   A   Yes, I do.
20   Q   And what do you hold from the Institutes?
21   A   The most prestigious certification in the property
22 casualty industry is called the chartered property casualty
23 underwriting CPCU. And I obtained that designation through ten
24 examinations at the time and completed that work. And also the
25 associate and risk management. It is a risk management course

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1 also offered by the Institutes, five exams, and passed those
2 exams for risk management.
3   Q   And have you held those designations for over
4 approximately 25 years or so?
5   A   Yes.
6   Q   Are you familiar with the National Alliance?
7   A   I am.
8   Q   And do you hold any designations from them?
9   A   Yes. They offer a program called the Certificated
10 Insurance Counselor. And that's a series of five exams. And I
11 have held that designation for over 30 years.
12   And I have also taught a couple of classes for the
13 society in -- for general liability classes. I have taught a
14 couple of institutes for them.
15   Q   How about the Professional Insurance Agents
16 Association?
17   A   Yes. They offer a program called the Certified
18 Professional Insurance Agents. And I also hold that
19 designation. And I also served on the National Board of
20 Directors for the Certified Professional Insurance Agents.
21   Q   And lastly, the National Association of Insurance and
22 Financial Advisors; do you hold any designations from them?
23   A   Yes. I hold the Life Underwriting Training Counsel
24 Fellow designation, which is a series of financial and life
25 insurance classes.

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1 Q So approximately how many years have you been working
2 in the insurance industry, Mr. Miller?
3 A Forty plus.
4 MR. FIELDS: Your Honor, I tender Mr. Miller as
5 an expert in commercial insurance and surety underwriting.
6 MR. AMER: No objection, Your Honor.
7 THE COURT: I am not sure. I don't remember the
8 exact language, but I believe that one is only to deem
9 someone an expert in areas that a normal juror or normal
10 fact finder or normal Judge doesn't understand. I
11 understood absolutely every phrase you used. There might
12 have been one point where I couldn't connect two words, I
13 am not sure I heard them correctly.
14 And Mr. Miller, I don't want you to take any
15 offense at any of this, but I don't see why I need an
16 expert in what was just said. What could you explain that
17 I wouldn't understand just from hearing witnesses testify
18 and looking at documents?
19 But, if the plaintiff wants me to, I'll
20 reconsider. You said you had no objection. You didn't
21 say, yes, Judge, go ahead and do it.
22 MR. AMER: There are two different questions.
23 One is whether the witness has qualifications in the
24 field; the other is whether the Court requires his
25 assistance as the finder of fact. We don't have a

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1 position on the second point because I don't know what
2 Your Honor requires assistance in.
3 THE COURT: Nothing that I am aware of. I mean,
4 I have many times said in my career: It is amazing how
5 much litigation involves insurance. Just, insurance comes
6 at me left and right.
7 MR. AMER: I think your point goes more to a
8 relevance question. And we did object to this witness on
9 relevance grounds, you may recall. That was part of our
10 motion in limine.
11 THE COURT: I don't see relevance either. But
12 the particular question is -- I am only looking at the
13 second prong, you know, do I need or would any fact finder
14 need his expertise.
15 Mr. Robert?
16 MR. ROBERT: I believe you do, Your Honor. PJI
17 1:90 that talks about when a Judge or jury requires expert
18 testimony. The government has accused the defendants of
19 having committed insurance fraud. One of the elements of
20 that has to do with the underwriting and what, if
21 anything, the insurance companies relied on as far as what
22 was submitted by the defendants in terms of, A, whether it
23 was material; and two, whether they relied on it. And it
24 goes to the intent of the defendants as to when things
25 were submitted to the insurance companies. This witness

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1 clearly has a background at being able to explain what it
2 is that insurance companies rely on; what it is they don't
3 rely on; what is material; what is not material; and how
4 that goes into their analysis. I respectfully submit that
5 is something outside of the ken of a normal juror or even,
6 respectfully, the Court.
7 THE COURT: I think that was well argued,
8 Mr. Robert, for what that is worth. What they rely on.
9 Why wouldn't a fact witness tell me what they relied on
10 when the Zurich witness did or didn't rely on things? Why
11 do I need an expert to tell me what insurance -- to me it
12 is not a question of what insurance companies rely on so
13 much as what this or these insurance companies relied on.
14 MR. ROBERT: When it comes to the issue of what
15 the defendants did and what their intent was and what they
16 submitted, that you need to understand from an expert how
17 an insurance company looks at things. You have already
18 heard the testimony -- and I always get the young woman's
19 name wrong, the one on the video.
20 MR. AMER: Mouradian.
21 MR. ROBERT: Mouradian, as to her view of
22 things. And this expert is clearly able to lay a more
23 detailed foundation as to generally what insurance
24 companies rely on themselves.
25 In the prosecution's case they did not put

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1 anybody specifically from an insurance company beyond that
2 one witness who was putting in place any of the elements
3 required for insurance fraud.
4 That's why one of the reasons we moved for
5 directed verdict on the count of insurance fraud is we
6 don't believe there has been any evidence to support that.
7 Because Your Honor currently is reserving on the decision,
8 I guess because there has been no decision yet, we
9 obviously have an obligation to put forth testimony to be
10 able to defend ourselves.
11 And the testimony is not going to be long, Your
12 Honor. Not that that necessarily matters, but I figured I
13 would just say it. I know timing is an issue here. And
14 as things stand, I think we are actually going to be a
15 week or so ahead of schedule at the end of the day.
16 THE COURT: Great, Mr. Amer.
17 MR. AMER: One comment which I heard Mr. Robert
18 say, intent. It is clear under New York Law that experts
19 aren't permitted to opine on the intent to commit a penal
20 act. And so I think the only cases we found where
21 actually intent was permitted, is where there is a
22 psychiatrist opining.
23 THE COURT: We may need a psychiatrist after all
24 of this.
25 MR. AMER: Which is clearly not relevant here,

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1   Your Honor.
2   So I think there is an additional problem if
3   this is supposed to go to Ms. Mouradian's intent or
4   Mr. Holl's intent, who is the D&O underwriter, because
5   that's just not the province of an expert witness.
6   (Whereupon, the following proceedings were
7   stenographically recorded by Senior Court Reporter Michael
8   Ranita.)
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1   on.
2   So you are an expert.
3   MR. FIELDS: Thank you, your Honor.
4   Q   Mr. Miller, from your review -- withdrawn.
5   Did you review documents from Zurich Insurance Company
6   about events -- a surety relationship between Zurich and The
7   Trump Organization?
8   A   Yes, I did.
9   Q   And the documents that you reviewed generally, would
10 those have been -- what were they?
11 A   I reviewed some depositions. I reviewed their
12 worksheets, the Zurich worksheets that they had underwriting
13 worksheets, and information that they had gathered, I looked at.
14 Q   When you say "worksheets", would those generally be
15 underwriting memorandums?
16 A   That's correct.
17 Q   All right.
18   From your review, were you able to ascertain whether
19 there was an indemnity relationship as it related to the bond
20 program?
21 A   Yes. They had a general indemnification agreement in
22 place.
23 Q   And who were the parties to that indemnification
24 agreement?
25 A   The Trump Organization and Donald J. Trump.

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1   THE COURT: Well, weighing, again, the dangers of a
2   possible reversal, is it plaintiff's -- does plaintiff want
3   me to deem him an expert and let him testify, or not? I
4   haven't made up my mind totally, but I would want to get
5   your input.
6   MR. AMER: Recognizing the importance of not
7   qualifying somebody who makes a living as an expert in his
8   field, I would say we don't object to qualifying him as an
9   expert. But we would reserve and make objections on
10 relevance grounds as those questions come up, your Honor.
11   THE COURT: Last words, if any? No. Okay.
12   By the way, I don't think you asked, were you ever
13 not qualified as an expert when someone attempted to qualify
14 you as an expert?
15   THE WITNESS: The answer is, to my knowledge, I've
16 never been disqualified, sir.
17   THE COURT: Then I will not be the first. I hereby
18 deem you expert in insurance and the business.
19   Mr. Fields, would you like to give me -- give us a
20 few words exactly what he is being deemed an expert in?
21   MR. FIELDS: Commercial insurance and surety
22 underwriting.
23   THE COURT: Okay. But as Mr. Amer said, or asked,
24 I will reserve the right to decide whether any questions are
25 relevant, or whether it fits into something I need expertise

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1   Q   When you say "The Trump Organization", do you mean
2   Zurich Insurance company?
3   A   Yes, yes, yes, yes.
4   Q   And Donald J. Trump?
5   A   Yes.
6   Q   What is the purpose of an indemnity agreement?
7   A   An "indemnity agreement" is an important aspect because
8   when you write surety bonds, generally a company looks at a zero
9   loss ratio position. So since they want a zero loss ratio, they
10 want to be able to, if they make a payment on a claim, their
11 goal is to be able to get the money back from the person that
12 they insured.
13 Q   How does the enforcement of that indemnification
14 agreement occur, in practice?
15 A   Well, how it actually works, once a claim is paid, they
16 go back to the indemnification agreement and put the person on
17 notice that payment has been made, and they intend to collect
18 from cash, or cash equivalents. Sometimes there's also
19 collateral or a line of credit that they would look forward to
20 get reimbursement from.
21   THE COURT: It would be pretty funny if I said I
22 don't know what the heck he's talking about.
23   Mr. Robert, you didn't find that funny.
24   MR. ROBERT: That's why you need expert testimony.
25   THE COURT: Understood. I don't think you got the

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1   joke, really, but.
2   MR. FIELDS: I did, your Honor.
3   MR. AMER: New York sarcasm, I guess.
4   Q   You mentioned cash or cash equivalents, are there
5   certain metrics that underwriters find important for surety bond
6   underwriting?
7   A   Could you clarify.
8   Q   Sure.
9   What is are some of the important things that a surety
10   bond underwriter is looking for when deciding whether to
11   underwrite a surety bond?
12   A   Well, basically they are looking at what we call the
13   three Cs; character, capacity, and capitalization liquidity.
14   Q   What is character?
15   A   "Character" is the overall reputation of the person
16   that you are looking at. Do they seem to have a good position,
17   or are they well-known in their industry? What type of person
18   or what type of organization, is the overall perspective look
19   good them as an underwriter.
20   Q   And capacity?
21   A   "Capacity" means how much money are they willing to put
22   up on behalf of the company. And in this case, they basically
23   had put out $6 million for any one surety bond, with a maximum
24   of 20 million for the program.
25   Q   So when you say "20 million", would that have been the

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1   maximum possible exposure so Zurich?
2   A   Yes, that's correct.
3   Q   And the last C was capital assets?
4   A   Capital assets. Basically, in the surety business,
5   that means liquid funds, cash equivalents in order to get
6   repaid.
7   Q   Why is the liquid fund so important?
8   A   As I stated, a surety underwriter is looking at a zero
9   loss ratio. So while they put out money temporarily, they
10   expect to collect it back.
11   Q   From your review of the documents, did you get the
12   sense that Zurich was ever concerned with The Trump
13   Organization's character?
14   A   No.
15   Q   How about the Trump Organization's capital assets?
16   A   No.
17   Q   In practice, when considering liquidity, is the surety
18   more concerned with the aggregate bond limit or the individual
19   bond limit?
20   A   Well, they take into consideration both, but the most
21   important aspect would be any one single bond, because they want
22   to make sure -- in my 40 years I've never seen an entire bonding
23   program get called all at one time. So while you have different
24   -- you may have a court bond. You may have a license permit
25   bond. You may have, you know, different types of surety bonds.

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1   And the likelihood of the whole program getting called at once
2   is pretty minimal. So their real exposure is what is the
3   largest single bond that they would put out there. And in this
4   case, I think the largest bond that I saw issued was about
5   5.7 million under the 6 million per bond aggregate that they
6   were willing to -- or per bond that they were willing to put out
7   there. And on average, their bonding program, over the years,
8   pretty much stayed under 10 million for most of the bonding
9   period, from 2007 to 2021.
10   Q   Are brokers often involved in this surety relationship
11   between the principal and the surety?
12   A   Yes.
13   Q   And how do the brokers affect that line of business?
14   A   Well, quite often surety is not the lead business. You
15   know, surety is something you do as an accommodation. So at the
16   time, Aon, who is a large multinational broker, um, has a lot of
17   influence in the marketplace because of their ability to do
18   business and the size of their organization. So at that time
19   they had other business and a track record with the Trump
20   Organization, and they came to Zurich and said, could you do us
21   a favor, basically, and write the surety bonds.
22   MR. AMER: I'm going to object as to what Aon said
23   to Zurich. It's hearsay, and there's no foundation for
24   that.
25   THE COURT: Sustained, unless I've given some

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1   exception.
2   Q   Well, Mr. Miller, from your review of the documents,
3   did you get the sense that Aon had a big influence on Zurich's
4   decision to underwrite these bonds?
5   MR. AMER: Same objection, your Honor.
6   THE COURT: I get the sense -- I don't know that's
7   a standard of proof that we could use, "get the sense."
8   MR. FIELDS: Was it his understanding.
9   THE COURT: I think you would have to lay a
10   foundation.
11   A   I can speak to what the underwriter --
12   MR. AMER: Your Honor, we have an objection that's
13   pending.
14   THE COURT: Sustained. I'm assuming he's asking a
15   different question now.
16   Q   I think you testified that you reviewed Zurich's
17   underwriter memorandums in this case?
18   A   Yes.
19   Q   Did Zurich's underwriter memorandums reference Aon?
20   A   Yes.
21   Q   And from those references in the underwriter
22   memorandums, did you gather an understanding as to what the
23   relationship was like between Aon and Zurich?
24   A   Yes.
25   Q   What was that understanding?

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1   A   In the testimony that I read from the underwriter,
2 Ms. Caulfield, she stated that the relationship in keeping a
3 broker, Aon, happy was very important to her. So when they
4 presented the writing the surety business, she stated in her
5 testimony that the reason for writing it was keeping a broker
6 happy and keeping existing business on the books.
7   MR. AMER: So I'll object on relevance since
8 Ms. Caulfield's underwriting of the program predates 2018
9 and anything that is at issue in this case on the fraud
10 claim. It relates to an earlier period of the relationship,
11 your Honor. We were involved with Ms. Mouradian's
12 underwriting of the program from 2017 forward. And it's
13 also hearsay.
14   MR. FIELDS: To the hearsay, he's an expert, first
15 of all.
16   Second of all, as to Ms. Caulfield, she was the
17 longest serving underwriter on this account, and a lot of
18 the underwriting that occurred happened on her watch. And
19 it's important for the Court to understand what was going on
20 in the years that preceded what the government has alleged
21 is the alleged insurance fraud. So that's the purpose of
22 all of this.
23   THE COURT: I'm just going to let it in. You know,
24 it's funny to object on hearsay, and it's also irrelevant --
25 well, if it's irrelevant, so what.

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1   I remember the testimony and some of the documents.
2 It, um -- it makes a certain sense, so I'll leave it at
3 that. It's in.
4   That's the most famous objection, "Yeah, I just
5 want to hear it", so.
6   Q   I don't know if this has been answered, but if it has
7 I'm shower I'll hear an "asked and answered objection."
8   How can a broker the size of Aon affect, in this case,
9 Zurich's underwriting determinations?
10   A   Well, my experience in being a chief underwriting
11 officer is very similar to having an Aon and a Zurich, and that
12 is my largest producers, come in and they'll try to influence
13 you and say, I have a lot of business with you. I would like
14 you to do me a favor. And they kind of put pressure on you to
15 do something, whether you want to or not. So you make an
16 exception, or you say, "Okay, I'll write this line of business
17 for you", um, because you don't want to lose all their business,
18 and you want to keep good favor with that broker.
19   Q   How, if at all, would an insurance company the size of
20 Zurich's be affected by losing business from Aon?
21   A   Well, Aon is one of the largest brokers in the world,
22 so it could be a substantial hit to their bottom line to lose
23 all their business. If Aon decided they didn't want to do
24 business with Zurich and decided to move all their business to
25 another carrier, it could be a substantial loss.

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1   Q   Did you form an opinion regarding -- I should have
2 asked you this earlier, Mr. Miller, but any opinion that you
3 give today, please give to a reasonable degree of professional
4 certainty based on your experience in the industry; is that
5 fair?
6   A   Yes.
7   Q   All right.
8   Did you form an opinion regarding Zurich's underwriting
9 of The Trump Organization Surety Bond Program?
10   A   Yes.
11   Q   What is that opinion?
12   A   Well.
13   MR. AMER: Can we get a time frame?
14   MR. FIELDS: The whole program. From inception to
15 end.
16   THE COURT: I'll allow it.
17   A   Yes. My perception was there was not a lot of
18 technical underwriting that took place, um, because it was done
19 as what I would perceive -- what I would call a business
20 decision. They wanted to write the business to keep the
21 relationship between Aon and Zurich in place. They wanted to
22 keep other business that they had with the organization in
23 place. So I would call what they did as basically a business
24 decision as to the capacity and the risk they were willing to
25 take in the surety program, particularly since they had an

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1 indemnification agreement in place.
2   Q   Why would the indemnification agreement affect the
3 underwriting decisions?
4   A   Because if they had to pay a claim, they would get
5 repaid.
6   Q   You mentioned that there was "not a lot of technical
7 underwriting." Was that the phrase that you used?
8   A   Yes.
9   Q   What do you mean by "technical underwriting"?
10   A   I would mean the nuts and bolts. Really, you know,
11 getting into the different aspects, you know, doing -- ordering
12 clue reports, past claim reports, um, analyzing different
13 reports that are available in the industry. None of that was
14 really done in this case.
15   Q   In your experience, do sureties approve bonds where the
16 surety has doubt about the indemnitor's ability to fulfill the
17 obligation under the indemnity agreement?
18   A   No. From my experience companies -- insurance
19 companies don't waste their dollars.
20   Q   And in your experience, do sureties write bonds for a
21 company if they feel that company has defrauded them?
22   A   No, if they felt that way, they would stop the -- the
23 program and not write bonds for them.
24   Q   You mentioned the term "accommodation." What is an
25 accommodation?

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1 A "Accommodation" basically, in simple terms, would be a

2 favor. You are doing it as a reason to keep other things in

3 place, whether it's the relationship, the business relationship,

4 or other business relations that you have in place.

5 So you are doing it as a business decision rather than

6 possibly a technical underwriting decision.

7 Q How common are accommodations in the industry?

8 A Probably too common. There's a lot of pressure in the

9 industry to -- that, um, you know, large brokers can assert in

10 order to get their way.

11 Q Are accommodations more common when you talk about

12 surety bonds, or less common?

13 A Because of the nature of surety bonds and the ability

14 to get repaid on surety bonds, they are done as an accommodation

15 because the exposure, the risk is potentially pretty minimal to

16 companies.

17 Q So is it your opinion that Zurich was writing the

18 surety bond program as an accommodation?

19 MR. AMER: Leading, your Honor.

20 THE COURT: Sustained. Leading.

21 Q Why was Zurich underwriting the surety bond program

22 with The Trump Organization, in your opinion?

23 A Well, I can only go by the testimony that I wrote --

24 that I read, and that was, um, the things that the underwriter

25 specifically said; the relationship with Aon was very important,

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1 and keeping business intact was very important. Those were two

2 things that were considered of high importance to the surety

3 underwriting.

4 THE COURT: So that opinion is based only on the

5 evidence, not on your expert opinion; is that correct?

6 THE WITNESS: Um, that's what I read. And if you

7 would like to rephrase that, I'm sorry.

8 MR. FIELDS: I think based on his years of

9 experience is what Mr. Miller is saying. His experience

10 working at insurance companies and understanding the reasons

11 that they do things or don't do things.

12 THE COURT: But he specifically said based solely

13 or based only on the correspondence or testimony he read.

14 So I'm saying, well, if it's based only on what you read,

15 then it's not based on your expertise.

16 THE WITNESS: Well, let me rephrase that, your

17 Honor. That's what I read. And from my personal experience

18 and my expertise in the surety business, very often surety

19 is written as an accommodation to other lines of business.

20 THE COURT: Okay.

21 MR. AMER: Your Honor --

22 THE WITNESS: As an underwriting officer of a

23 Fortune 500 company, that's my experience.

24 THE COURT: Okay. Thank you.

25 MR. AMER: Your Honor, his opinion is based on the

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1 testimony and, and one underwriter. I think we should know

2 who that underwriter is. And I think it's Ms. Caulfield and

3 not Ms. Mouradian, from my understanding of his prior

4 testimony. So if we could get that clarification, please.

5 THE COURT: Do you remember which witness you'rr

6 inferring to?

7 THE WITNESS: I believe that was Ms. Caulfield, but

8 in context, Ms. Mouradian was a continuation of the program

9 and the basis. It was set up by Ms. Caulfield, and she just

10 continued that program.

11 So the basis of the program was already in place

12 when Ms. Mouradian took over the account.

13 Q Would it refresh your recollection to look at your

14 report to see exactly what testimony you read in connection with

15 drafting your report?

16 A Sure.

17 MR. AMER: I think his recollection is spot on. It

18 was Ms. Caulfield. So I don't know why we need to look at

19 his report to refresh his recollection.

20 THE COURT: Well, he said it was based on Caulfield

21 and then Mouradian, quote, "continued the program." But I

22 have no problem with no objection to his looking at the

23 expert affidavit.

24 MR. AMER: But, your Honor, just to be clear, I

25 don't think he said he relied on Ms. Mouradian's testimony.

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1 I think he said Ms. Mouradian was successor underwriter to

2 Ms. Caulfield.

3 (The exhibit was handed to the witness.)

4 Q On the final page of your report, Mr. Miller.

5 (Whereupon, the exhibit was displayed on the

6 screen.)

7 Q Do you see at the bottom of page C-i?

8 A Yes.

9 Q Whose deposition transcript did you review?

10 A Joanne Caulfield's.

11 Q And then on the next page?

12 A And Regina, Michael Holl and Claudia Mouradian, and

13 Ms. Wu.

14 MR. AMER: The question is not whose testimony did

15 he review. The question is what testimony is he relying on

16 for his opinion?

17 THE COURT: Correct.

18 MR. FIELDS: Okay.

19 THE COURT: So we need to know which testimony he

20 is relying on, not just which ones he read.

21 Q What information or testimony did you rely on in

22 forming your opinion in this case?

23 A Um, both underwriting depositions --

24 Q Okay.

25 A -- from the underwriters. And that would be from

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1   Ms. Mouradian and Ms. Caulfield.
2   Q   Did you also have the opportunity to read
3   Ms. Mouradian's trial testimony?
4   A   Yes.
5   Q   And did that change your opinion in any way?
6   A   No.
7   (Whereupon, the exhibit displayed on the screen was
8   taken down.)
9   Q   How, if at all, does an accommodation affect the
10 underwriting process?
11 A   Well, an accommodation generally means that you've
12 already made the decision to write it, or you are going to write
13 it, because of the situation that you are being asked to do.
14   So, in general, it probably loosens or eliminates the
15 underwriting standards, because you already know you are going
16 to do it, so you just do it.
17 Q   Is there anything that requires the surety to make the
18 underwriting -- withdrawn.
19   Is there anything that requires the surety to make an
20 accommodation?
21 A   Pressure from the broker.
22 Q   Trying to develop more business?
23 A   Yes.
24   THE COURT: Leading.
25   MR. AMER: I was trying to get there quickly.

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1   THE COURT: We've heard this several times already,
2   so it doesn't really matter.
3   MR. FIELDS: Fair enough.
4   Q   How are surety bonds priced?
5   A   Surety bonds are priced by rates filed with the
6   Department of Insurance. They file a standard rate, and then
7   they file a debit and credit that they can apply to that
8   standard filed rate.
9   Q   From your review of the information in this case, do
10 you know what the standard rate was?
11 A   I believe the standard rate was $15 per thousand of
12 exposure.
13 Q   And do you recall what the rate was at the beginning of
14 the relationship?
15 A   Yes. At the beginning of the relationship it was --
16 the account was debited 33 percent, and they used a $20 rate per
17 thousand.
18 Q   And why would an underwriter debit an account like
19 that?
20 A   Possibly it's a new program and they want to get
21 experience with a person before they give them -- they have the
22 ability to charge more. They want to get experience, so they
23 charge more.
24 Q   And did there come a time that the account in this case
25 was credited?

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1   A   Yes. At one point, because the -- over the years the
2   business had been profitable. They reduced the rate to the
3   standard filed rate of $15, and then at one point, I believe
4   it's in 2015 or 2016, Arch Insurance company came in and they
5   saw that the surety business was profitable and is something
6   that they wanted to write, and they offered it at $10 per
7   thousand, I believe. And so at that point, because of
8   competitive reasons, Zurich lowered their rate to $10 in order
9   to maintain the business.
10   MR. FIELDS: May I have one moment, your Honor.
11   THE COURT: Sure.
12   (Whereupon, there is a brief pause in the
13   testimony.)
14 Q   All right, Mr. Miller, I would like to show you a
15 couple of documents that you reviewed in providing your opinion
16 or arriving at your opinions in this case.
17   MR. FIELDS: If we could pull up D-43, please.
18   (Whereupon, the exhibit was displayed on the
19   screen.)
20   (The exhibit was handed to the witness.)
21 Q   Do you recall reviewing this?
22 A   Yes.
23 Q   And does it appear to be the memorandum -- underwriting
24 memorandum from 2009?
25 A   Yes, it does.

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1   Q   Do you see under the subheading "Financial Review and
2   Summary" toward the top?
3   A   Yes.
4   Q   Does it appear to you that the it has been filled in
5   the way you would expect to see an underwriting memorandum?
6   MR. AMER: Your Honor, just note my objection to
7   the 2009 underwriting document. It's irrelevant.
8   THE COURT: What's the relevance of this?
9   MR. FIELDS: Again, to establish the relationship,
10 your Honor, and what it eventually evolved into.
11   MR. AMER: How does that --
12   THE COURT: Mr. Amer, what years would you consider
13 relevant, if any?
14   MR. AMER: 2019 and 2020 underwriting renewal
15 meetings that Ms. Mouradian attended on site at the Trump
16 office building. That's where the fraud occurred, and
17 that's the only relevance to our fraud claims.
18   MR. ROBERT: Your Honor, respectfully, we've sat
19 here for several weeks, as has the Court, and the government
20 has gone into documents going back over a decade. And it's
21 almost a joke every time we objected, you know, "statute of
22 limitations." We tried to do it in as least an intrusive
23 way possible, and the government kept saying, well, it's
24 still appropriate and it's something to deal with the
25 equitable relief they are seeking. I still don't understand

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1 they're method, but be that as it may, we're just trying to
2 show and establish what happened prior to the alleged fraud.
3   And, quite frankly, one thing I may agree with
4 Mr. Amer on is, I don't think there's any fraud here, so the
5 fact that he thinks it's only limited to -- what did he say?
6   THE COURT: 2019.
7   MR. ROBERT: 2019, I don't even think that's the
8 case. If he wants to agree and put on record there is no
9 claim for any misconduct prior to 2019, I'm certainly
10 willing to accept that on behalf of my clients, and I'm sure
11 my colleagues are as well.
12   MS. HABBA: I'm happy to.
13   THE COURT: But you -- but you would still want to
14 put this evidence in, even if they accepted your offer,
15 right?
16   MR. ROBERT: I will take a moment to think about
17 it. I haven't heard they accepted my offer, but I stand
18 here eagerly awaiting what Mr. Amer has to say.
19   THE COURT: Do you accept the offer if they say not
20 that there is no fraud, but they are not claiming any fraud,
21 right, prior to 2019?
22   MR. ROBERT: Again, your Honor, if they are trying
23 to use any conduct prior to 2019, as they have been arguing
24 before you for purposes of their equitable claim, then it's
25 most certainly appropriate that we are able to explain why

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1   MR. FIELDS: I don't know if I ever -- was there
2 an end to the question? I don't think so. Let me reask
3 it.
4 Q   The financial review and summary section, does it
5 appear to you that it has been completed the way you would
6 expect to see this in an underwriting memorandum?
7 A   No. It looks like no underwriting was done actually.
8 Q   How can you tell that?
9 A   There is nothing filled in.
10 Q   So what would you expect to see based on your
11 experience?
12 A   I would expect to see all of the ratios and
13 everything filled in and completed.
14   MR. FIELDS: If we could then go to page three?
15 Q   What did the single bond and aggregate bond limits
16 appear to be in 2009?
17 A   Single bond 1.1 million and the program 2.5 million.
18   MR. FIELDS: Okay. I'll move to admit D-43.
19   THE COURT: I'll admit it, with just the comment
20 it sounded like -- well, it is relevant to the
21 relationship, but they didn't make the relationship. They
22 didn't make a deal. Is that? Let me ask the witness.
23   Did this lead to any indemnity, insurance,
24 anything?
25   THE WITNESS: There was -- there was no claims

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1 that's not so.
2   THE COURT: I'll save a lot of time. It's in.
3   MR. ROBERT: Okay. Thank you, Judge.
4   THE COURT: But I -- I trust we'll move fast
5 through this, because it is ten years prior.
6   MR. FIELDS: Certainly.
7 (Continued on the next page.)
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1 on the bond on the surety program that I saw ever, Your
2 Honor. So there was no need to enforce an indemnity
3 agreement because there was no claims made.
4   THE COURT: But was there an indemnity agreement
5 in 2009?
6   THE WITNESS: I believe so, yes.
7   THE COURT: Okay. It is in.
8   Let's just move on.
9 (Whereupon, the document referred to was deemed
10 marked for evidence as Defendant's Exhibit 43 by the
11 Court.)
12   MR. FIELDS: If we could pull up D-44, please?
13 Q   This is now a 2010 memorandum, Mr. Miller?
14 A   Yes.
15 Q   And does it appear that there is a little bit more,
16 what I'll call, commentary or meat on the bones, so to speak?
17 A   Well, no.
18 Q   Well, do you see a little more writing in this
19 memorandum?
20 A   I see more memorandum, but the financial area -- the
21 financial review area is still blank.
22 Q   All right. On the second bullet point under Personal
23 Financial Analysis Section -- and again this is Ms. Caulfield,
24 right?
25 A   Yes.

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1 Q Do you see that she writes in this bullet point that:
2 Zurich lost the insurance program in May of 2011, I performed
3 an on site review of Trump's personal financial statements?
4 A Yes.
5 Q So did you understand that to be a relationship,
6 property and casualty relationship that predated the surety
7 bond program?
8 MR. AMER: Objection, leading.
9 A Yeah.
10 THE COURT: Sustained. Sorry.
11 THE WITNESS: Sorry.
12 Q What, if any, relationship in terms of insurance
13 existed prior to the surety bond program, to your
14 understanding?
15 A My understanding there was a property casualty
16 relationship.
17 Q How does that affect the ultimate decision for a
18 surety to write bonds if they have just lost a property and
19 casualty program?
20 A Well, because the surety program was already approved
21 prior to this, while they had the relationship and it had no
22 claims lost from an underwriting standpoint, my experience is
23 you don't throw out a profitable line of business because you
24 lost the other business. You try to keep it and hope to get
25 the other line of business back.

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1 MR. FIELDS: If we could go to page two, please?
2 Q Under the rates section, do you see that it says rate
3 charged is $20 per thousand?
4 A Yes. That's the -- that's the debited rate that I
5 referred to.
6 Q And when you say, "debited," do you mean because it
7 is higher than the standard rate?
8 A 33 percent higher than the filed rate, the standard
9 rate.
10 MR. FIELDS: If we could then move to -- I'll
11 move to admit D-44.
12 THE COURT: Granted. It is in.
13 (Whereupon, the document referred to was deemed
14 marked for evidence as Defendant's Exhibit 44 by the
15 Court.)
16 MR. FIELDS: If we can move to D-45, please?
17 (Handing)
18 Q This is now a 2012 memorandum, Mr. Miller?
19 A Yes.
20 Q The second bullet point under Personal Financial
21 Analysis section. Do you see where Ms. Caulfield writes:
22 "When Zurich lost the insurance program in May of 2011, I
23 performed an on site review of Trump's personal financial
24 statements. This option has not been presented as an option at
25 this time, although it has been requested many times"?

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1 A Yes.
2 Q And on the next bullet point, do you see the
3 underwriter writes something about Forbes and Donald Trump's
4 personal net worth estimated at 3.2 billion?
5 A Yes.
6 Q In your experience, have you ever seen underwriters
7 rely on media publications in making underwriting
8 determinations?
9 A Prior to this, no.
10 Q And the last bullet point at the bottom of the page.
11 Do you see that Ms. Caulfield writes: "Bonds already written
12 may continue to renew as an accommodation to AON, New York"?
13 A Yes.
14 Q Do you understand that to mean the same accommodation
15 that you have testified about here this morning?
16 A That's correct.
17 THE COURT: Leading.
18 MR. AMER: Leading.
19 THE COURT: I beat you to it that time.
20 Objection sustained. It was totally leading.
21 Q What do you understand the term "accommodation" to
22 mean in this context?
23 A That means they were writing the bonds, because they
24 initially wrote it as a favor to AON and they were still
25 writing it as a favor to AON as of this date.

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1 Q On the last page, the second bullet point at the top
2 beginning with, "no new bonds."
3 Do you see that the underwriter writes: "No new bonds
4 to be approved or issued unless financial disclosure is
5 provided"?
6 A Yes.
7 Q And below that, the line below it, what is the single
8 and aggregate bond limit as of this time?
9 A 500,000 for any single bond and a million-dollar
10 aggregate.
11 MR. FIELDS: Move to admit D-45.
12 THE COURT: I am sorry, what was that?
13 MR. FIELDS: Move to admit Defense 45.
14 THE COURT: Granted. It is in.
15 (Whereupon, the document referred to was deemed
16 marked for evidence as Defendant's Exhibit 45 by the
17 Court.)
18 MR. FIELDS: If we could pull up D-47, please?
19 (Handing)
20 THE WITNESS: Thank you.
21 Q All right. At the bottom of the page -- or
22 Mr. Miller, let me just ask you. What year does this appear to
23 be a memorandum for?
24 A 2013.
25 Q At the bottom of the page, do you see where

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1 Ms. Caulfield writes: The account was cut off from any new
2 bonds in January of 2012 due to failure to pay fronting fees
3 for a bond issued in Scotland?
4   A   Yes.
5   Q   And she continues: This bond has since been
6 released, also the account's failure to provide updated
7 underwriting information prohibits us from taking on any new
8 liability?
9   A   Yes.
10   Q   From your review of this, does it appear that the
11 underwriter is not inclined to take on additional risk?
12   MR. AMER: Objection.
13   A   That's what was written, but in reality --
14   THE COURT: Hold on.
15   Go ahead, Mr. Amer.
16   A   Thanks. That's what was written --
17   THE COURT: Hold on.
18   MR. AMER: It is leading. He is suggesting the
19   answer.
20   THE COURT: It is leading. Sustained.
21   MR. FIELDS: Okay.
22   Q   What does this sentence mean to you as a former or
23 current underwriter?
24   A   That means that they weren't -- they didn't want to
25 write anymore business at the time. But the reality from my

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1 recollection is when they were requested to write additional
2 bonds, they continued to write bonds because of the
3 relationship with AON.
4   THE COURT: I often tell my staff that "they" is
5   a bad word. Can you just be --
6   THE WITNESS: Zurich.
7   THE COURT: Okay.
8   MR. FIELDS: All right. And if we could go to
9   the fourth page, please.
10   Q   What does the single and aggregate bond limits appear
11 to be?
12   A   500,000 and a million.
13   MR. FIELDS: Move to admit Defense 47.
14   THE COURT: Sustained. It is in -- Sorry. It
15   is like duck, duck, goose, right?
16   Granted, it is in.
17   (Whereupon, the document referred to was deemed
18   marked for evidence as Defendant's Exhibit 47 by the
19   Court.)
20   MR. FIELDS: Defense 48, please.
21   (Handing)
22   THE WITNESS: Thank you.
23   Q   What year is this, Mr. Miller?
24   A   2014.
25   Q   At the third bullet point under -- beginning with "a

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1 press release." Does it appear that the underwriter is now
2 referring to a different media publication?
3   A   Yes.
4   Q   And what publication is that?
5   A   USA Today.
6   THE COURT: Five-minute warning.
7   MR. FIELDS: And on the next page, page two.
8   Q   Under the first heading or the first bullet point at
9 the top, do you see where the underwriter writes: "Bonds
10 already written may continue to renew as an accommodation to
11 AON, New York, no further material expansion to the program
12 until the financial review of DJT's personal statements has
13 been completed."
14   A   Yes.
15   MR. FIELDS: And if we could then go to page
16   four.
17   Q   Under the FYE Account Program Recommendation
18 subheading in the middle?
19   A   Yes.
20   Q   The -- I guess what would be technically the second
21 bullet point, "line to be increased." Do you see where the
22 underwriter writes: "Line to be increased to 2.2 million
23 single and 3 million aggregate. No material further expansion
24 to the program without the on site review of personal financial
25 statements?

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1   A   Yes.
2   Q   And if we could -- or the top paragraph here under
3 July 23, 2015; do you see where the underwriter writes:
4 "Financial statements are not provided and the previous
5 supporting insurance relationship with Zurich is no longer in
6 force. Given Mr. Trump's personal wealth versus the type and
7 size of program we are on, the recommendation is to renew the
8 line for billing purposes of the existing bond renewals."
9   Do you see that?
10   A   Yes.
11   Q   All right. Now at the bottom of the page under SDA
12 History. What are the single and aggregate bond limits?
13   MR. AMER: Your Honor, I am going to object.
14   Why are we having this witness just confirm what the
15   document says without asking him any questions about what
16   the document says? This is a waste of time.
17   THE COURT: I was surprised that there was no
18   question about that last statement.
19   MR. FIELDS: My next question I think is going
20   to be important, Your Honor.
21   THE COURT: Well, if it is important I'll let
22   you ask it. But I take Mr. Amer's points and I ask you to
23   take it into consideration. There is generally no point
24   in just: Do you see that statement?
25   Yes.

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1   Okay. There it is.
2   But anyway, let's hear the important question.
3   MR. FIELDS: I don't think he answered what the
4   single and aggregate bond limits were. If he could
5   answer, then I'll ask a question that I think is important
6   for the Court to understand in terms of how the program is
7   expanding.
8   A   2,200,00 and 3,000,000.
9   Q   Okay. And do you recall that in the last year the
10   single was 500,000 and the aggregate was 1 million?
11   A   That's correct.
12   Q   Does it appear to you as an underwriter that the
13   program has expanded without the underwriter reviewing any
14   updated financial information?
15   MR. AMER: Objection, leading.
16   THE COURT: Leading.
17   I let you go first that time. I knew right
18   away.
19   Leading sustained.
20   MR. FIELDS: Okay.
21   Q   So the single bond limit last -- the prior year we
22   looked at was 2012 -- I am sorry, 2013, was 500,000; do you
23   recall that?
24   A   Yes.
25   Q   And now how much is it?

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1   A   2.2.
2   Q   And from your review of the documents, did the
3   underwriter review financial information between when it was
4   500,000 to now being $2.2 million?
5   A   No.
6   Q   And I would ask you the same question for the
7   aggregate. Did it appear that there was any underwriting
8   information or financial review information done to make the
9   determination to take it from 1 million to 3 million?
10   A   There wasn't anything done.
11   MR. FIELDS: I move to admit Defense 48.
12   THE COURT: It is in.
13   (Whereupon, the document referred to was deemed
14   marked for evidence as Defendant's Exhibit 48 by the
15   Court.)
16   MR. FIELDS: Two minutes?
17   THE COURT: Two minutes warning.
18   MR. FIELDS: Okay. Defense 49, please.
19   (Handing)
20   THE WITNESS: Thank you.
21   THE COURT: One minute warning.
22   Q   Does this appear to be another 2014 memorandum?
23   A   Yes.
24   Q   I'll represent to you that the one we just looked at,
25   Defense 48, was current date at the top was July 23, 2015.

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1   What date at the top is reflected here on this document?
2   A   11/6/2015.
3   Q   So would that be approximately give or take four
4   months later?
5   A   Yes.
6   Q   Okay. And if you would flip to the second page. At
7   the top above operations/management review. Do you see where
8   there is a November 6, 2015 entry?
9   A   Yes.
10   Q   Does it appear that there was an additional bond in
11   the amount of $2 million added that brought the overall
12   capacity to 5.2 million?
13   A   Yes.
14   Q   From your review of the document, was there any
15   underwriting -- withdrawn.
16   From your review of the documents was there any
17   financial information looked at by the underwriter from July of
18   2015 to November of 2015?
19   A   No, there wasn't.
20   THE COURT: Okay. Ten minute break. See you
21   all in 15 minutes.
22   (Whereupon there was a pause in the proceeding.)
23   COURT OFFICER: All rise.
24   Part 37 is back in session. Please be seated
25   and come to order.

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1   THE COURT: When Tommy does that people in Foley
2   Square Park stand up. It is amazing.
3   (The witness resumed the stand.)
4   THE COURT: Please continue.
5   MR. FIELDS: All right. If we could pull up,
6   please, Defense 49 that we were just discussing a minute
7   ago, perhaps 15 minutes ago. And the second page, bottom
8   of the page, under the 11/6/2015. Joanne Caulfield all
9   the way at the bottom.
10   Q   Mr. Miller, do you see the term Arch used here?
11   A   Yes.
12   Q   And you testified a little bit about Arch earlier,
13   but what is Arch?
14   A   And is an insurance carrier.
15   Q   And what does it appear that the underwriter is doing
16   here as a result of Arch?
17   A   Decreasing the premium, they are crediting the
18   premium in order to stay competitive.
19   MR. FIELDS: All right. Moving Defense 49.
20   THE COURT: Granted, it is in.
21   (Whereupon, the document referred to was deemed
22   marked for evidence as Defendant's Exhibit 49 by the
23   Court.)
24   MR. FIELDS: I would like to move to 2019. So
25   this is Plaintiff's 1552 in evidence.

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1 Q All right. Let me just ask you, what year is this
2 underwriting memorandum from?
3 A 2019 -- 2020. I am sorry.
4 Q And at the top left here, can you see who the
5 underwriter is?
6 A Yes. Claudia Mar --
7 Q Markarian?
8 A Markarian.
9 Q I'll represent to you that Ms. Markarian was married
10 and changed her last name. And her last name is now Mouradian,
11 so I'll refer to her as Ms. Mouradian.
12 Under the financial review and summary section, does
13 it appear that Ms. Mouradian has filled out this section the
14 way you would expect to see it in an underwriting memorandum?
15 MR. AMER: Objection, leading.
16 THE COURT: Sustained as to leading.
17 Q What do you gather from the financial review and
18 summary section in front of you?
19 A Nothing changed from the prior years. It doesn't
20 look like little or no underwriting was done.
21 Q If we could then zoom out and go down a little
22 further under personal financial analysis. The first bullet
23 point that begins with "I reviewed."
24 Do you see where Ms. Mouradian writes that she
25 reviewed the personal financial statements of Donald J. Trump

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1 on November 20, 2018?
2 A Yes.
3 Q And once again -- withdrawn.
4 Under the third bullet point beginning with, "cash on
5 hand." How much cash on hand does Ms. Mouradian note in this
6 bullet point?
7 A 76.2 million.
8 Q And how much in escrow funds?
9 A 22.7 million.
10 Q On the next page, page two, under the surety program
11 heading, first paragraph. How many bonds as of November 27,
12 2018 was Zurich or did Zurich have in terms of outstanding
13 liability?
14 A They had about approximately 21 bonds and exposure of
15 10.9 million.
16 Q And on page three under the rates section. What is
17 the account rate at this time?
18 A $10 per thousand.
19 THE COURT: Is that per thousand or per million?
20 Q Could you explain, Mr. Miller, what the $10/m
21 generally means?
22 MR. AMER: We will stipulate that's per
23 thousand. Two m-s would be million.
24 THE COURT: That's what I sort of figured. I
25 always sort of use K, but.

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1 Q Then lastly, if we could go to page five, the second
2 bullet point under FYE account program recommendations that
3 begins with "although the indemnity package."
4 Do you see where Ms. Mouradian writes: "Although the
5 indemnity package and financial disclosure is not perfect, it
6 is highly unlikely the Trump Organization would allow any of
7 our bonds to end up in a claims situation. There is also
8 substantial liquidity within the company to cover any bond need
9 should there be an issue"?
10 A Yes.
11 Q And do you see where she continues: "The CFO and
12 Controller were highly professional, well-educated and
13 conscientious about the work that they do. I learned that many
14 employees have worked for the Trump Organization for extended
15 periods of time. There is a loyalty to the organization that
16 is widespread and the employees enjoy working for the Trump
17 family"?
18 A Yes.
19 Q Why is this important in making an underwriting
20 determination?
21 A It falls back to the three Cs. And the character of
22 the organization. So, from an underwriting standpoint she said
23 that the character seems to be a good fit for surety
24 operations.
25 And their capacity, the other C, is overall this is a

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1 very small program for a company like Zurich or even for an
2 organization as large as this. It is a relatively small
3 program by industry standards. Not a lot of exposure.
4 Really in this case, because of the liquidity
5 situation and the indemnity agreement, Zurich is looking at a
6 zero exposure, which is perfect for the surety business.
7 MR. FIELDS: And if we could zoom out and then
8 just look at the rate down at the bottom of the page. I
9 am sorry not the rate, the single and aggregate exposure.
10 Q What is the single and aggregate exposure at this
11 time?
12 A Actually the underwriter had raised from the prior, I
13 believe it was 2 million and about 3 million, increased the
14 overall program to 6 million to any one single bond and
15 $20 million aggregate exposure for all bonds.
16 Q What does the $20 million figure represent in terms
17 of the worst possible scenario for the surety?
18 A Worst possible scenario 20 million aggregate means if
19 all of the bonds defaulted at once, they would have a
20 $20 million exposure.
21 MR. FIELDS: I would like to shift gears and
22 talk to you about Directors & Officers insurance for a
23 moment.
24 Q How, generally, does Directors & Officers insurance
25 work?

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1 A Well, Directors & Officers is liability cover for the
2 directors and management of a company. And it avoids the
3 cost -- the cost of expensive litigation.
4 Q What steps do underwriters in the directors and
5 officers world take when deciding whether to underwrite a D&O
6 policy?
7 A Generally an underwriter will look at a series of
8 things. They are going to look at claims histories is very
9 prominent in the D&O world. They want to know have they had
10 prior claims; do they have a claims history; have they had a
11 lot of problems.
12 They also look at have they had HR problems, employee
13 problems. Do they have international worldwide exposures.
14 Where is their location. What industry are they in; some
15 industries are more prone to litigation than others. They are
16 going to look at diversity of business, and that means do they
17 specialize in one business or are they operating businesses
18 that are completely different. From a D&O perspective as an
19 underwriter, I prefer from experience having somebody that
20 specializes in one area because you are getting more expertise
21 and less likelihood of a D&O exposure.
22 And from a liquidity standpoint, as a D&O underwriter
23 you are looking at how big the retention is on the policy. In
24 this case it was approximately 2.5 million dollars. And you
25 want to make sure if there is a claim that they have the

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1 ability to pay the $2.5 million retention in order to make the
2 policy work correctly.
3 MR. FIELDS: And Your Honor, I apologize, I
4 think I forgot to move in Defense 49. So I move in
5 Defense 49?
6 THE COURT: Granted, it is in.
7 (Whereupon, the document referred to was deemed
8 marked for evidence as Defendant's Exhibit 49 by the
9 Court.)
10 Q How does underwriting D&O insurance differ between
11 private and public organizations?
12 A Well, generally in public there is a lot more
13 information available. They have certain requirements that are
14 required to do certain type of financial statements. They are
15 required to do certain SEC filings. They are required to do --
16 make more information publicly known.
17 Generally, private companies don't have that same
18 standard of reporting requirement.
19 And so from my experience I know writing a private
20 company there is going to be less information available,
21 less -- generally, you know, it is not quite as easy to rectify
22 it or check it because it is in a private nature compared to a
23 public filing. So you just understand when you are writing a
24 private company, you are not going to probably get as good
25 information as you are in a public company that has to, really,

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1 expose everything they do.
2 (The following proceedings were stenographically
3 recorded by Senior Court Reporter Michael Ranita.)

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1 Q Do D&O underwriters always review financials, or are
2 there instances in which they would not?
3 A In my experience, I have seen very large carriers, um,
4 not even look at financials in the private sector. They are
5 more interested in claims history and the type of business and
6 location, because they feel that's more indicative of future
7 performance. So if they have a lot of claims, their probably
8 gonna have a lot more claims. If they've not had claims, they
9 are probably not going to have claims. Statistically, it seems
10 to work that way. So they are going to look at those factors.
11 And they also understand that, you know, any financials
12 from a private company are a mere snapshot. So while it may be
13 true today, they could change tomorrow. So the relevance or how
14 much weight they put into those are not as extensive as the
15 other items they look at.
16 Q You mentioned "claims history." Do you recall, from
17 your review of the documents or testimony regarding the D&O
18 policy, whether The Trump Organization had a long claims history
19 for its D&O?
20 A I don't believe I saw any claims submitted under the
21 D&O policies I reviewed.
22 Q In your experience when -- well, let me withdraw that.
23 In your experience, do D&O carriers and insureds
24 disagree or litigate over policy coverage frequently?
25 A Yes. The nature of D&O, the agreements or the

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1 requirements under a director's and officer's liability policy
2 basically state that if you have any inclination that something
3 might arise or lead to a claim, you have to report it. So that
4 causes, you know, people to be cautious, report things that may
5 never come to fruition, may never cause a claim, um, may never
6 possibly be covered. And so that's up to the company to decide
7 once that is reported.
8   And in certain cases, there's, um, the policy limits
9 who has to report a potential claim. And in this case, it was
10 only the risk manager or the general counsel. If they had
11 knowledge of a potential claim, they had to report it.
12   So once that knowledge was done, they have to report to
13 the claim. And then, you know, the insurance company is going
14 to decide if they think it's covered, not covered. And then if
15 that's not decided, then litigation occurs and the Court
16 ultimately decides coverage, no coverage. So that's how it goes
17 down the road, usually.
18   Q   All right.
19   I would like to show you, just for a second, what's
20 been admitted as Plaintiff's 597.
21   (Whereupon, the exhibit was displayed on the
22   screen.)
23   (The exhibit was handed to the witness.)
24   THE WITNESS: Thank you.
25   Q   Do you recognize what's in front of you as Plaintiff's

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1 597?
2   A   Yes. This is the director's and officer's liability
3 policy.
4   Q   And who is the carrier?
5   A   Um, Tokio Marine, HCC -- HAC.
6   Q   Under item one, "Named Organization", what is the named
7 organization?
8   A   The Donald J. Trump Revocable Trust.
9   Q   What does that mean? What does the "Named
10 Organization" mean?
11 A   They are the first named insured. They are the first
12 named insured. The important person in the policy.
13 Q   And "Policy Period" here is from January of 2017 to
14 January of 2018?
15 A   That's correct.
16   MR. AMER: January 30th, your Honor.
17 A   January 30th.
18   THE COURT: Exactly.
19   MR. FIELDS: I still -- that's accurate, January
20   of '17 to January of '18.
21   MR. AMER: It's not January 1st.
22   MR. FIELDS: I didn't say January 1st. I said
23   January, but fair enough.
24 Q   All right. Then you see under the section, item four,
25 that says "Retention"?

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1   A   Yes.
2   Q   And what is the retention here?
3   A $2.5 million.
4   Q   And generally, how does a retention work?
5   A   That generally retention works -- means if there's a
6 claim, and it's a covered claim and there's defense costs, um,
7 or something paid out, the client, in this case, The Donald J.
8 Trump Revocable Trust, would be responsible for the first
9 $2.5 million of payment.
10 Q   And the premium here is how much?
11 A   Two hundred ninety-five thousand per year, for the
12 policy period.
13   MR. FIELDS: All right. If we could scroll down to
14   the bottom of the page where it says "Notice."
15   (Whereupon, the exhibit displayed on the screen was
16   scrolled through.)
17 Q   What is this?
18 A   That's the standard notice that's put on excess surplus
19 lines policy, which policies -- which is basically putting A
20 person on notice that they have -- they don't have the
21 protection of the, in this case, the New York Insurance
22 Department looking at it or approving the forms. It means that
23 they are going to use forms that aren't approved. They could
24 use rates that are their judgment. So it just means that, you
25 know, you have to pay attention because they aren't filed and

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1 regulated by the particular state.
2   Q   Okay.
3   Did you have an opportunity to review some of this
4 policy?
5   A   Yes.
6   Q   And does the policy provide for who the named insureds
7 are?
8   A   Yes, there is different endorsements where over -- they
9 added different named insureds and expanded the insureds on the
10 policy.
11 Q   And is there also a provision that discusses who has
12 the requirement to report a claim if they have knowledge of a
13 potential claim?
14 A   Yes. That is the endorsement that I referred to.
15 That's what we call a limiting endorsement. And they say that
16 it doesn't matter who else knows about a potential incident.
17   In this case, they are only required to report it for
18 coverage under the policy if the risk manager or the general
19 counsel, whoever holds those two position, they are the required
20 reporters of potential claims.
21   MR. AMER: Your Honor, I'm going to object and move
22   to strike that answer after the word, "Yes." And his
23   opinion on this notice provision is improper because it's
24   not an opinion that was in his report, and disclosed.
25   It was not anything we had an opportunity to

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1   question him about during his deposition. And I might add,
2   is not relevant because late notice is not anything to do
3   with this case.
4   MR. FIELDS: He can be cross examined on it, number
5   one. But number two, this policy is in evidence, and he is
6   just identifying that he reviewed it and that it provides
7   for provisions for who has to have notice of a potential
8   claim, so.
9   THE COURT: Well, I understand what you are asking,
10   but I don't see the relevance at all.
11   MR. FIELDS: Well, the relevance is the government
12   is alleging that this carrier, under this policy, was
13   defrauded by the defendants. And if the Court --
14   THE COURT: But it has nothing to do with notice;
15   right?
16   MR. FIELDS: It does, absolutely, because the
17   government is going -- has put in evidence already about
18   notice of claims. They did it on Friday. So it's an
19   important provision that the Court has to be aware of, and
20   it was just a highlighting that for the Court.
21   MR. AMER: So if we are going to discuss this, we
22   may want to excuse the witness, but there's the second
23   objection which Mr. Fields hasn't addressed, which is, the
24   witness did not include any opinions on notice in his
25   report.

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1   MR. FIELDS: He --
2   THE COURT: Does it matter? If so we'll excuse the
3   witness and fight about it.
4   MR. AMER: Well, that goes to relevance. I would
5   like the witness to be excused if we are going to talk about
6   relevance.
7   THE COURT: Okay. I'll ask the witness to be
8   excused.
9   (Whereupon, the witness stepped down from the
10   witness stand and exited the courtroom.)
11   THE COURT: Mr. Amer.
12   MR. AMER: Our insurance fraud claim involves
13   disclosure during the underwriting negotiations, before the
14   policy was in effect. It has nothing to do with notice of
15   claim during the policy period. It's completely irrelevant.
16   THE COURT: Mr. Field, so far my understanding is,
17   well, it's part of the policy, so it's relevant, but I don't
18   see the relevance. But I don't see the point in objecting,
19   either. So I'm caught between a rock and a hard place.
20   MR. AMER: Well, it would have been nice to have
21   gotten this opinion at a point in time where I could have
22   asked him questions about it during his deposition. So now
23   I'm going ask him questions about it, and I hope I think I
24   know what he's going to say in response, but I don't have it
25   locked down in a deposition the way I would. And my line of

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1   questioning is going to be all about the fact that this
2   notice provision has absolutely nothing to do with the
3   obligation of an applicant to disclose information about
4   pending or threatened litigation during the underwriting
5   negotiations. And I would guess, if I asked him at his
6   deposition, he would agree. But now it's a little bit of a
7   question.
8   THE COURT: So Mr. Fields, what about the objection
9   that this was not included in his expert disclosure?
10   MR. FIELDS: Well, I think he's not really
11   providing an opinion. He's interpreting a document that's
12   in evidence based on his experience. He's not really
13   saying, "I opine that this is what it says, or it's not."
14   It's just what it says.
15   So I think the Court can look at it, determine what
16   it says, and he could be cross examined over it. But that's
17   really to the extent of what the questioning was going to
18   be.
19   MR. AMER: That's actually a third reason not to
20   admit this, your Honor. He's just asking him for his view
21   of a contract language in an insurance policy. New York is
22   clear, insurance policies are contracts, and they can be
23   interpreted by the Court without the assistance of any
24   expert witness. So why do we need to hear what this witness
25   thinks about this notice provision, even if it were relevant

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1   and even if it were a disclosed opinion.
2   MR. ROBERT: So can we just agree that it says what
3   it says as to who is required to give notice, and we could
4   shut this down.
5   THE COURT: Well, it says what it says.
6   MR. ROBERT: Is Mr. Amer is willing to agree?
7   MR. AMER: Then strike the answer and withdraw the
8   question and we'll agree it says what it says.
9   MR. ROBERT: That's fine. Then there's no cross
10   examination on that issue then either; that's fine.
11   THE COURT: The question is withdrawn. The answer
12   is stricken.
13   MR. ROBERT: Good.
14   THE COURT: It says what it says, then let's move
15   on.
16   MR. ROBERT: Thank you, Judge.
17   MR. FIELDS: No further questions.
18   THE COURT: Thank you for cutting through that.
19   Who was it that cut through the Gordian Knot. Remember that
20   mythology?
21   MR. ROBERT: I didn't hear that.
22   THE COURT: In Greek mythology, one of the heroes
23   cuts through the Gordian Knot. No one else could untangle
24   it; just cut right through it. Let's get the witness back.
25   By the way, does anybody know which novel that

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1 Caulfield had written?

2   MS. FAHERTY: Holden Caulfield.

3   THE COURT: The Catcher in the Rye.

4   MR. GABER: Wasn't it Alexander, the Great who cut

5 the Gordian Knot?

6   MR. ROBERT: I thought it was me.

7   THE COURT: I didn't realize it was Alexander.

8 Zeus or Odysseus or one of those people.

9   My cultural source says Alexander. Okay.

10   Mr. Amer, would you like to cross examine the

11 witness.

12   MR. AMER: I would.

13   THE COURT: Please proceed.

14 CROSS EXAMINATION

15 BY MER. AMER:

16   Q   Good morning, Mr. Miller.

17   A   Good morning.

18   Q   Pleasure to see you again.

19   I want to clarify one thing. This is more for the

20 court reporter. When you said you attended Edinboro University,

21 that was he had Edinboro University in Edinboro, Pennsylvania,

22 spelled E-D-I-N-B-O-R-O, not the university in Scotland; right?

23   A   That's correct.

24   THE COURT: You might have to get closer to the

25 microphone. Much better.

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1   Q   You testified about this opinion you have about Zurich

2 having underwritten a surety program as an accommodation to Aon.

3   Do you recall that opinion?

4   A   Yes.

5   Q   You mentioned that Aon was one of the largest insurance

6 brokers; correct?

7   A   That's correct.

8   Q   And that Zurich would have accommodated Aon's wishes to

9 write this program so that Zurich wouldn't get shut out of

10 business that Aon places in the market; is that fair?

11   A   Well, to help maintain the relationship, I think is

12 what I said, yes.

13   Q   Okay.

14   You would agree that Zurich is one of the largest

15 property and casualty insurance companies in this country;

16 right?

17   A   Correct.

18   Q   And Aon makes commissions off the business that it

19 places with Zurich; right?

20   A   Yes. I would assume they do, yes.

21   Q   Well, they are not doing it for free; right?

22   A   Correct.

23   Q   So it's a mutually beneficial business relationship

24 that Aon and Zurich share; correct?

25   A   Yes.

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1   Q   You are not suggesting, are you, that if Zurich decided

2 not to write this small surety program, that all of a sudden

3 Zurich, one of the largest property casualty insurers in this

4 country would be cut off from Aon's business; are you?

5   A   Well --

6   Q   Just yes or no.

7   A   No.

8   THE COURT: Mr. Amer, speak up a little bit.

9   MR. AMER: Sure.

10   Q   We looked at an underwriting review document by

11 Ms. Caulfield that indicated that she was relying on an article

12 in Forbes.

13   Do you remember that?

14   A   Yes.

15   Q   And I believe your testimony, when you were shown that,

16 was that that was the first time you had ever seen an

17 underwriter relying on an article such as a Forbes article; is

18 that right?

19   A   That's correct.

20   Q   And we saw another underwriting review where they

21 relied on an article in USA Today.

22   Do you remember that?

23   A   Yes.

24   Q   I take it you have the same point to make, which is

25 that it's the first time you've ever seen a surety anywhere

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1 relying on something -- an article like that; right?

2   A   Correct.

3   Q   Can we just look at your report.

4   MR. AMER: Let's put it up on the screen, and just

5 so the Court has the reference, it's NYSCEF 1434.

6   (Whereupon, the exhibit was displayed on the

7 screen.)

8   Q   I think you were shown it already before, so we'll show

9 it to you again.

10   (Whereupon, there is a brief pause in the

11 testimony.)

12   MR. AMER: We could look at it on the screen if

13 that's easy enough for you, but let's go to page nine.

14   (The document was handed to the witness.)

15   Q   I would like to focus you on the sentence that starts

16 on the second line of page nine, and I'll read it to you. And

17 this is part of your opinion; correct?

18   A   Yes.

19   Q   You write, "In some cases, because there is no legal

20 requirement to have financial statements to write surety bonds,

21 some underwriters do not require financials and instead use

22 their experience and other means (such as Forbes and USA Today)

23 to satisfy their underwriting needs."

24   Do you see that?

25   A   Yes.

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1 Q So, in fact, it wasn't the first time you had seen
2 surety underwriters relying on articles such as those in Forbes
3 and USA Today, because as you say here in your opinion, some
4 underwriters do exactly that; right?
5 A And I was referring to the Zurich underwriters in
6 particular, in this case.
7 Q So your testimony was it was the first time you had
8 seen Zurich underwriters do it?
9 A It was -- I was referring to the fact that that's what
10 the Zurich underwriters did, yes.
11 Q No, but you specifically testified, under oath, sir,
12 that that was the first time you had ever seen that; right?
13 A Yes.
14 Q Okay.
15   Are you prepared to withdraw that testimony, because as
16 it indicates in your report, you acknowledged that some
17 underwriters do, in fact, rely on other means, such as Forbes
18 and USA Today, to satisfy their underwriting needs?
19   MR. FIELDS: Objection. This is not comparing
20 prior existing statements. Those are just examples that he
21 put up in his report, your Honor.
22   THE COURT: I don't see anything objectionable, but
23 I'll ask for a read back of that objection.
24   (Whereupon, the requested testimony was read back
25 by the court reporter.)

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1   THE COURT: Seems completely inconsistent. What am
2 I missing?
3   MR. FIELDS: It's not, because these are just
4 examples. It's not -- it doesn't suggest that he did, "has
5 seen Forbes and USA Today used." He just put examples how
6 it came up in this case.
7   MS. HABBA: I can say very clearly the question
8 originally was, "What have you seen? He answered that
9 question.
10   This is about what happened or that he knows
11 happens. But the question is, "What has he seen?" He said
12 he hadn't seen it before. It's not inconsistent.
13   THE COURT: That's not how I interpret the
14 testimony.
15   Objection overruled.
16   Do we need a read back.
17   MR. AMER: I would like a read back.
18   THE COURT: Read back of the question, please.
19   (Whereupon, the requested testimony was read back
20 by the court reporter.)
21 Q Yes or no?
22 A No.
23 Q When you testified under oath earlier this morning that
24 it was the first time you had ever seen a surety underwriter
25 rely on such information as an article in Forbes, that was

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1 incorrect, wasn't it?
2 A No.
3 Q And here, in your report, you are saying that in your
4 experience, some underwriters do, in fact rely on other means
5 other than financials such as Forbes and USA Today. That's what
6 you are saying here; right?
7 A Well --
8 Q Yes or no?
9 A I'm specifically referring to this case, that they used
10 Forbes and USA Today.
11 Q Let's just look at what you wrote on the top of page
12 nine of your expert report. You say -- let's back up. Because
13 the lead in to this.
14   MR. AMER: If we could go to the sentence before.
15   (Whereupon, the exhibit was displayed on the
16 screen.)
17 Q So we have it in context. You say "Whereas a public
18 company may supply, audit the financial statements, privately
19 held companies are far more likely to provide financial
20 compilations, like The Trump Organization did here." See that?
21 A Yes.
22 Q Then you go on to say, "In some cases, because there is
23 no legal requirement to have financial statements to write
24 surety bonds, some underwriters..." -- let me stop there.
25 That's some underwriters, not just Zurich underwriters, but some

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1 underwriters in your expert experience; right?
2 A In that some underwriters do not require financials,
3 that statement is correct.
4 Q Okay.
5   "And some underwriters" is not specific to some Zurich
6 underwriters. You are talking, generally, some underwriters do
7 not require financials; right?
8 A That's correct.
9 Q Okay.
10   And you go onto say "...and instead use their
11 experience and other means, such as Forbes and USA Today, to
12 satisfy their underwriting needs"; right?
13 A That's correct.
14 Q And here you are talking about, in general,
15 underwriters, not specifically Zurich underwriters?
16 A No, that's not correct. The parens are referring, in
17 this case, the Zurich underwriter used Forbes and USA Today.
18   Have I seen underwriters use internet searches or
19 different things that they do, or, you know, when I say they use
20 different experience or different means, um, or different --
21 different things to satisfy their underwriting needs, but this
22 was the first time that I say it specifically the use of Forbes
23 and USA Today as specifically named, those two specific media
24 publications, this was the first time that I saw those two
25 specific, Forbes and USA Today, used as an underwriting tool in

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1 this case. That's not inconsistent. That's what Zurich did.
2 Q   But you have seen, in general, some underwriters using
3 their experience and other means such as Forbes and USA Today to
4 satisfy their underwriting needs; correct?
5 A   Yes, that's what it says.
6 Q   I know what it says. I'm asking you.
7   THE COURT: You did ask him what does it say, so
8 that was the correct answer.
9 Q   What you wrote here is based upon your experience;
10 right?
11 A   Correct.
12 Q   You also mentioned, Mr. Miller, that in forming your
13 opinions, you relied on not only the testimony of Ms. Caulfield
14 who underwrote -- was the underwriter through 2017, but I think
15 you also mentioned you relied on the testimony of Ms. Mouradian,
16 who underwrote the program after Ms. Caulfield left.
17   Do you recall that?
18 A   Yes.
19 Q   If you could just look at your report and -- you'll
20 see, starting at the top of page six --
21   (Whereupon, the exhibit was displayed on the
22 screen.)
23 Q   -- there's a citation to Ms. Caulfield's deposition at
24 the top. Do you see that?
25 A   I do.

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1 Q   And I'm going to ask you all these questions with a
2 view toward my ultimate question, which is, is there any
3 reference at all in any of these paragraphs that I'm going to go
4 through with you to Ms. Mouradian/Markarian, or are all the
5 references, in fact, to Ms. Caulfield.
6   So this one is to Ms. Caulfield's deposition; correct?
7 A   Correct.
8 Q   And then in paragraph 20, in the middle of the
9 paragraph you reference, again, Ms. Caulfield's deposition
10 testimony. Do you see that?
11 A   Yes.
12 Q   And then in paragraph 22, the second line, you
13 reference Ms. Caulfield. Do you see that?
14 A   Yes.
15 Q   Twenty-three, you reference Ms. Caulfield in the first
16 line. Do you see that?
17 A   Yes.
18 Q   Paragraph 24, the first line you reference
19 Ms. Caulfield's deposition transcript. Do you see that?
20 A   Yes.
21 Q   Paragraph 25, the first line you reference two pages in
22 Ms. Caulfield's deposition transcript. Do you see that?
23 A   Yes.
24 Q   Paragraph 26, you reference, again, Ms. Caulfield in
25 the first line?

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1 A   Yes.
2 Q   And on paragraph 27, you reference Ms. Caulfield in the
3 first line. Do you see that?
4 A   Yes.
5 Q   Paragraph 28, you reference Ms. Caulfield's deposition.
6 Do you see that?
7 A   Yes.
8 Q   Paragraph 29, you reference Ms. Caulfield in three
9 different places; the first line, and then you cite to her
10 deposition at a couple of places in the middle. Do you see
11 that?
12 A   Yes.
13 Q   Paragraph 30, you reference Ms. Caulfield in the second
14 line. Do you see that?
15 A   Yes.
16 Q   And am I correct that at no point in any of your
17 opinions one and two, do you have any citation to Ms. Markarian
18 or Mouradian's testimony; right?
19 A   Correct.
20 Q   And you don't mention her by name at all, do you?
21 A   No.
22   THE COURT: That was a negative question, you
23 realize.
24 Q   I'm correct, am I? Aren't I?
25 A   Correct.

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1   MR. AMER: Okay. You could put that down for now.
2   (Whereupon, the exhibit displayed on the screen was
3   taken down.)
4 Q   Just to get this on the record, your hourly rate for
5 this engagement is $350 an hour; correct?
6 A   That's correct.
7 Q   And prior to your deposition, you had spent with 45 to
8 50 hours on this engagement; right?
9 A   Yeah, I believe that's correct, approximately.
10 Q   And do you know how much additional time you spent
11 since your deposition?
12 A   I haven't added it all up yet.
13 Q   I would like to ask you a couple of questions about --
14 well, do you have any estimate, just to see if we could put
15 something on the record?
16 A   Probably something the equivalent number of hours.
17 Q   So an additional 45 to 50 hours?
18 A   Approximately.
19   THE COURT: I'm always surprised when attorneys
20 don't say, "Well, can you estimate?" But you did pick it
21 up, eventually.
22 Q   Let me ask you a few questions about your time at Erie
23 Insurance Group. I think you said you worked there for a total
24 of 22 years; is that right?
25 A   Correct.

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1   Q   And your last position there was senior vice president,
2 division officer; is that right?
3   A   Senior vice president, division officer, chief
4 underwriting officer, and corporate risk manager.
5   Q   And at some point during your time at Erie, you were
6 responsible for the company's underwriting of all commercial
7 lines of insurance; correct?
8   A   That's correct.
9   Q   And one of those lines of insurance, commercial lines
10 of insurance was surety; correct?
11   A   Correct.
12   Q   So, can we agree that there is no doubt, based on your
13 many years of experience as an underwriter, that surety is, in
14 fact, a form of commercial insurance?
15   A   It's part of the -- it was part of my commercial
16 division, yes.
17   Q   Different question. I just want to clarify that
18 there's no doubt, based on your experience as an underwriter,
19 that surety is, in fact, a form of commercial insurance?
20   MR. FIELDS: Objection. Calls for a legal
21   conclusion.
22   THE COURT: No. No, it calls for an expert
23   opinion.
24   MR. FIELDS: Then I would ask that the question be
25   referred to what state he's referring to, because insurance

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1   is regulated by the state.
2   THE COURT: Okay. Let's give a state context.
3   Q   Every state in the country.
4   A   I -- I don't know the regulation of every state in the
5 country, but in general, I would say the answer is, yes.
6   Q   And specifically in New York, is the answer yes?
7   A   I would I believe it can be considered commercial
8 business, yes.
9   Q   Commercial insurance business, yes?
10   A   Yes.
11   (Continued on the next page.)
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1   Q   You would agree that a surety underwriter should look
2 at reasonable risk factors when considering whether to
3 underwrite a surety bond program for a particular applicant for
4 insurance, right?
5   A   The answer to that is that that doesn't always happen
6 because of business considerations.
7   Q   I didn't ask what typically happens. I asked you
8 "should."
9   Let me rephrase the question and just answer my
10 question, if you could.
11   You would agree that a surety underwriter should look
12 at reasonable risk factors when considering whether to
13 underwrite a surety bond program for a particular applicant,
14 yes?
15   A   I think it depends on the situation.
16   Q   Well, you determined that Zurich had normal
17 underwriting guidelines that included sufficient liquidity as a
18 reasonable risk factor, right?
19   A   I believe that surety in general they would look at,
20 you know, that's part of the 3Cs I discussed earlier.
21   Q   That wasn't my question because it is specific to
22 Zurich. You determined that Zurich had normal underwriting
23 guidelines that included sufficient liquidity as a reasonable
24 risk factor; isn't that correct?
25   A   I don't believe I stated that they had normal

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1 guidelines that -- that -- that included liquidity, I don't
2 believe. In the testimony this morning I said that --
3   Q   Well, let's look at your deposition testimony, which
4 you gave prior to today. And let's look at page 31.
5   A   Okay.
6   Q   And you recall you gave testimony under oath at a
7 deposition, right?
8   A   That's correct.
9   Q   Looking at line 19: "And so my question to you is,
10 did you make an assessment that Zurich had normal underwriting
11 guidelines that included sufficient liquidity as a reasonable
12 risk factor?
13   "ANSWER: Yes, I made that from my experience
14   and knowledge of the business."
15   That was your sworn testimony at your
16   deposition, correct?
17   A   Yes, but I --
18   Q   Are you --
19   A   I believe your question was different than what you
20 just asked. Yes, I agree with what I said there.
21   Q   I actually, sir, think that my question was exactly
22 the question that is up on the screen. But, you are not
23 disavowing your deposition testimony are you?
24   A   No.
25   Q   And you agree that liquidity is an important risk

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1 factor that should be part of the underwriting guidelines for a
2 company issuing surety insurance, correct?
3   A   I believe liquidity is what they look at to make sure
4 they are going to get repaid in case there is a claim, yes.
5   Q   But my question was different, sir. You agree that
6 liquidity is an important risk factor that should be part of
7 the underwriting guidelines for a company issuing surety
8 insurance, yes?
9   A   Yes, I believe they look for liquidity.
10   Q   And it is an important risk factor, yes?
11   A   Well, to make sure they can repay the claim. That's
12 the purpose of the indemnification.
13   Q   Yes or no; is it an important risk factor?
14   A   Liquidity?
15   Q   Yes.
16   A   Yes.
17   MR. AMER: Let's look at the 2019 underwriter's
18 review, which is Plaintiff's Exhibit 1552 in evidence.
19   Q   This is a document you reviewed and relied upon in
20 forming your opinions in this case, yes?
21   A   Yes.
22   Q   And I believe you testified that nothing changed
23 between this review and the prior underwriting review which
24 would have been by Ms. Caulfield; is that your testimony?
25   A   My testimony was referring to the financial review

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1 summary section, and it being filled in or not being filled in.
2 And in the case I said it wasn't filled in, like the other ones
3 weren't filled in. I believe that's what I said.
4   Q   So when you said, nothing changed, you were only
5 referring to this first financial review and summary section,
6 correct?
7   A   That section not being completed, that's correct.
8   Q   You weren't intending to suggest that nothing had
9 changed in terms of the underwriting that had been done, right?
10   A   The -- of what -- no, the question that was asked was
11 specifically, my recollection, was specifically about that
12 section.
13   Q   I wasn't asking about the question that was asked. I
14 was asking a new question.
15   You are not suggesting, are you, sir --
16   THE COURT: Speak up.
17   Q   You are not suggesting, are you, sir, that nothing
18 had changed from the prior underwriting year from an
19 underwriting standpoint?
20   A   I would have to compare what was done.
21   Q   Okay. Well let's look at what was done.
22   And if we go down to the personal financial analysis
23 section, you understood from your review of this document that
24 Ms. Markarian, now Mouradian, conducted an on-site review in
25 the latter part of November 2018 for the 2019 renewal of the

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1 surety program, right?
2   A   Correct.
3   Q   So, that is a new underwriting change, isn't it?
4   A   Her review of the financials?
5   Q   Yes.
6   A   Yes.
7   Q   And the third bullet -- well, and what she reviewed
8 at that in-person review was the 6/30/2018 personal financial
9 statement of Donald J. Trump, correct?
10   A   Correct.
11   Q   And that was something that was new that
12 Ms. Caulfield hadn't done, right?
13   A   I believe that's correct.
14   MR. FIELDS: Objection. That was misleading.
15   Is he referring specifically to the June 30, 2018
16   Statement of Financial Condition or any Statement of
17   Financial Condition prior to then?
18   MR. AMER: My question was that that was new
19 because Ms. Caulfield hadn't reviewed that 2018 financial
20   statement.
21   Q   Right?
22   A   Correct. She was no longer with the company.
23   Q   And in the third bullet Ms. Mouradian states that
24 there was cash on hand of 76.2 million as reflected on
25 Mr. Trump's 2018 statement, right?

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1   A   Correct.
2   Q   And as an underwriter, you understand that figure is
3 a measure of Mr. Trump's liquidity, correct?
4   A   Correct.
5   Q   And you would agree that Ms. Mouradian in this annual
6 review determined, based on the cash on hand amount disclosed
7 in the 2018 statement, that Mr. Trump had sufficient liquidity
8 to cover her risk of acceptance on behalf of Zurich, yes?
9   A   Yes.
10   MR. AMER: And let's look at Plaintiff's Exhibit
11   1561 in evidence, which is the next year's underwriting
12   review.
13   Q   And if you go further down. Under party name, you
14 will see it indicates that this is an in-person review of the
15 2019 Statement of Financial Condition. Right?
16   A   Yes.
17   Q   And the second bullet indicates that Ms. Mouradian
18 reviewed this 2019 statement on January 15, 2020, correct?
19   A   Correct.
20   Q   And that was not anything that Ms. Caulfield had done
21 in her prior underwriting of the risk, correct?
22   A   She didn't look at the 6/19 personal statements, no.
23   Q   And I am correct that you did not review or consider
24 this document in forming your opinions in this case, correct?
25   A   I believe it didn't change my opinions, so there was

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1 no reason to note it.
2   Q   Different question.
3   THE COURT: That wasn't the question.
4   Q   My question is, you did not review or consider this
5 document in forming your opinions in this case, correct?
6   A   Is it -- I don't know the answer to that without
7 looking at my -- can I look and see if the number of that
8 document is listed that I reviewed it?
9   Q   Sure.
10   A   Okay. And what -- the 2019 annual review Zurich --
11 008507? Is that the document, sir?
12   Q   Go down to the Bates number.
13   A   I don't see that one listed.
14   Q   Would it refresh your recollection if I tell you that
15 you saw this document for the first time at your deposition?
16   A   Okay.
17   Q   Does that refresh your recollection?
18   A   Yes. I thought I saw it but I didn't see it on my
19 list here.
20   Q   So we can agree that in forming your opinions you did
21 not consider any of the information Ms. Mouradian recounts in
22 this document about her in-person review of the 2019 statement,
23 correct?
24   A   Correct.
25   Q   And you see in the fourth bullet Ms. Mouradian notes

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1 from her review of the Statement of Financial Condition that
2 cash on hand was $87 million, yes?
3   A   Yes.
4   Q   And again, you understand that that's a measure of
5 Mr. Trump's liquidity, correct?
6   A   Yes.
7   Q   And you would agree that Ms. Mouradian in this annual
8 review determined based on the cash on hand amount disclosed in
9 the 2019 statement that Mr. Trump had sufficient liquidity to
10 cover her risk of acceptance on behalf of Zurich, yes?
11   A   Yes.
12   Q   And can we agree based on the two annual reviews we
13 just looked at relating to Ms. Mouradian's on-site reviews of
14 the 2018 and 2019 statements, that she considered the
15 reasonable risk factor of sufficient liquidity when
16 underwriting this risk?
17   A   Yes.
18   Q   In your experience, is it the case that surety
19 underwriters are permitted and encouraged to use their
20 discretion considering, among other things, the character of
21 the insured?
22   A   Yes.
23   Q   That's what you referred to as one of the three Cs
24 right?
25   A   Correct.

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1   Q   And that would also include for this particular
2 program the character of the indemnitor guaranteeing payment if
3 there is a loss, Mr. Trump, right?
4   A   Correct.
5   Q   Would you agree that it would negatively impact your
6 assessment as an underwriter of an indemnitor's character if
7 you learned during the underwriting negotiations that the
8 indemnitor had fraudulently inflated the amount of cash on hand
9 listed on his personal financial statement by 25 percent or
10 more?
11   A   I would have no way of knowing that as the
12 underwriter.
13   Q   That wasn't my question.
14   THE COURT: That wasn't the question.
15   A   Okay. Well --
16   MR. AMER: Can I get a readback, Your Honor?
17   THE COURT: Please.
18   (Whereupon, the record was read back by the
19   court reporter.)
20   Q   That's a yes or no question.
21   A   I don't think it is quite that simple, but yes.
22   Q   During the period that Ms. Caulfield was the
23 underwriter on the account, she did look at Mr. Trump's
24 personal financial statement, correct?
25   A   I believe so.

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1   Q   And she did assess that there was sufficient
2 liquidity based on the cash on hand, correct?
3   A   I believe so, correct.
4   Q   In forming your opinions, you did review
5 Ms. Mouradian's sworn testimony from her interview with my
6 office that took place in December of 2021, right?
7   A   Correct.
8   Q   And nothing about her testimony indicated to you that
9 she had deviated from Zurich's normal guidelines about the need
10 for Mr. Trump, as the indemnitor on the program, to have
11 sufficient liquidity, correct?
12   A   Correct.
13   Q   Let's look again at Plaintiff's Exhibit 1552 in
14 evidence, which is the annual review where Ms. Mouradian looked
15 at the 2018 statement. And I want to direct your attention to
16 the fourth bullet. And the second sentence of that bullet that
17 starts, "the fair value."
18   Are you with me?
19   A   Yes.
20   Q   She writes: "The fair value of the properties is
21 determined by professional firms (such as Cushman & Wakefield)
22 using cap rates and net operating income as factors."
23   Do you see that?
24   A   Yes.
25   MR. AMER: I would like to put up on the screen

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1   some of Ms. Mouradian's trial testimony about this
2   language. And let's pull up -- it is from the exhibit
3   that we put into evidence of her report.
4   It is Plaintiff's Exhibit 3324. And let's go to
5   page 48, line 21. We will blow it up for you so you can
6   see it.
7   Actually, it is 49. Sorry. Can we start at 49?
8   We are going too far, sorry. Back down.
9   49:10.
10   "QUESTION: And then you write after noting the
11   6 billion connected to his real estate and Golf Club
12   resorts, quote, 'The fair value of the properties is
13   determined by professional firms (such as Cushman &
14   Wakefield) using cap rates and net operating income as
15   factors.' Where did you get that information from?
16   "ANSWER: I got that from Allen Weisselberg.
17   "QUESTION: And what do you remember
18   Mr. Weisselberg telling you about the fair value of the
19   properties?
20   "He was telling me that they use professional
21   appraisal firms to get the values that they then -- that I
22   would then see on the personal financial statements I was
23   reviewing."
24   MR. AMER: And then skip down to -- keep going.
25   Keep going. You went too far. 51:17.

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1   "Did this information about Cushman & Wakefield
2   determining the valuations, have any bearing on your
3   assessment of the 2018 statement?
4   "ANSWER: Yes, it had bearing.
5   "QUESTION: And how so?
6   "ANSWER: Well, it was important to note because
7   they were using a third-party appraisal firm to get the
8   values. And I thought that was a good thing. And I noted
9   that."
10   Mr. Miller, as an expert witness you are not offering
11   any opinion on the credibility of Ms. Mouradian's testimony
12   that we just read, are you?
13   A   No.
14   Q   You are prepared to accept her testimony as true,
15   correct?
16   A   Yes.
17   Q   And you understand that the Trump Organization is a
18   privately held company, right?
19   A   Yes.
20   Q   And you would agree that for a privately held
21   company, typically an underwriter would have no independent
22   means to verify information provided by the insured during the
23   underwriting process, yes?
24   A   Correct.
25   Q   And therefore it is more difficult for the

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1   underwriter to get independent verification of financial
2   information for a private company as compared to a public
3   company, yes?
4   A   Correct.
5   Q   And you don't have any opinion as to what information
6   would have been available to Ms. Mouradian to allow her to
7   verify the figures in the 2018 statement, right?
8   A   Correct.
9   Q   And you would agree that Zurich's decision to renew
10   the surety program in 2019 and 2020 was a competent business
11   decision, correct?
12   A   It was a business decision, yes, I agree with that.
13   Q   That wasn't my question though.
14   A   You said competent.
15   Q   I said "competent." And you would agree that it was
16   a competent business decision, wouldn't you?
17   A   They were making money on the program, so I would
18   consider that a solid underwriting decision.
19   Q   Was it a competent business decision, sir; yes or no?
20   A   Yes.
21   THE COURT: Mr. Miller, please get a little
22   closer to the mic, you are a mile away -- or at least a
23   yard away.
24   Q   And you are not offering an opinion one way or the
25   other about whether Trump Organization representatives made

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1   misrepresentations to Ms. Mouradian during her on site reviews,
2   correct?
3   A   Correct.
4   Q   And similarly, you are not offering an opinion one
5   way or the other about whether Trump Organization
6   representatives made misrepresentations to HCC or Tokio during
7   the renewal of the D&O coverage, correct?
8   A   Correct.
9   Q   And I do want to shift now to the D&O coverage. You
10   are familiar with the so-called warranty question that a D&O
11   underwriter appropriately and typically asks an applicant who
12   is seeking to purchase new coverage, correct?
13   A   Correct.
14   Q   And generally speaking, the warranty question is a
15   question that asks the applicant if they are aware of any
16   facts, situation or circumstance that might reasonably be
17   expected to give rise to a claim, right?
18   A   Correct.
19   Q   And you would agree that the warranty question should
20   prompt the applicant to disclose if there are any pending or
21   threatening government investigations that the applicant
22   reasonably expects to give rise to a claim, correct?
23   A   Well, the question is whether -- the question of the
24   warranty statement is if their perception is that it is going
25   to give rise to it. And I don't know what their perception of

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1 that situation is. So, I can't determine whether it was
2 appropriate that they reported it or not reported it. And
3 because it says they have to believe it is going to give rise
4 to a claim. I can't read their mind whether they believed it
5 would or wouldn't. So, I really can't offer an opinion as to
6 what they were thinking at the time.
7   Q   So my question is not specific to any particular
8 applicant or underwriter, it is a very general question. And
9 I'll restate it.
10   You would agree that the warranty question that you
11 have just testified to should prompt the applicant, any
12 applicant, to disclose if there are any pending or threatened
13 government investigations that the applicant reasonably expects
14 to give rise to a claim, correct?
15   A   In that case you are saying that a positive
16 affirmation that he believes it is going to take place, and in
17 this case, yes.
18   MR. AMER: Let's put up Plaintiff's Exhibit 2985
19 in evidence.
20   Q   Mr. Miller, this is an e-mail from Mr. Holl who was
21 the HCC underwriter on the D&O cover to his boss, Andrew Stone,
22 dated January 10, 2017. And Mr. Holl has testified about this
23 document at trial. And he indicated he sent this to his boss
24 the same day as the underwriting meeting that took place on
25 January 10, 2017.

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1   I am correct, you did not review or consider this
2 document in forming your opinions in the case about D&O
3 coverage, right?
4   A   Correct.
5   Q   You saw this document for the first time in your
6 deposition after you had already submitted your expert report,
7 correct?
8   A   Correct.
9   Q   Let me draw your attention to the fourth paragraph up
10 from the bottom, the one that begins: There is a best
11 practices manual. Do you see that?
12   A   Yes.
13   Q   And I want to ask you about the last sentence in that
14 paragraph, where Mr. Holl writes: "No material litigation or
15 communications from anyone." Do you see that?
16   A   Yes.
17   Q   And I want to show you Mr. Holl's trial testimony
18 about that sentence and then ask you a question about it. This
19 is from the trial testimony page 2500, line 20:
20   "QUESTION: Directing your attention to the next
21 paragraph, you say in the last sentence of this paragraph,
22 'no material litigation or communications from anyone.'
23 What did you intend to reflect in that comment?
24   "ANSWER: Its standard practice in meetings with
25 management to ask them if they are aware of something

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1 that's not public; that is, litigation or notices or
2 communications that could lead to litigation that would
3 implicate the D&O policy."
4   Do you see that?
5   A   Yes.
6   Q   Do you agree with Mr. Holl that it is standard
7 practice to ask the insured this type of question?
8   A   They could ask the question but the -- the warranty
9 statement as you talked about is industry standard, is that it
10 is only permissible to ask that at the first time you write the
11 policy. So upon writing a policy they ask the warranty
12 statement. And at renewal time it is not appropriate to ask
13 for a warranty statement. It is a representation, which is
14 different, as you know. So, they can ask about that but it
15 wouldn't be considered a warranty statement for the policy
16 purposes.
17   Q   You understand that at the January 10, 2017
18 underwriting meeting the Trump Organization was seeking to add
19 coverage up to $50 million beyond the $5 million that they
20 already had in place. Correct?
21   A   Correct.
22   Q   And so that was all new coverage, wasn't it?
23   A   But I -- I don't believe that was ever put in place.
24   Q   Was it new coverage or not, that they were seeking?
25   A   They were looking for new coverage, yes, but I don't

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1 believe it was put in place.
2   Q   And Mr. Holl testified at trial that he didn't
3 believe that the stub policy in December that he had quoted was
4 actually ever bound; were you aware of that?
5   A   Yes.
6   Q   And so this in January 10, 2017 this was new coverage
7 for HCC, wasn't it?
8   A   Well --
9   Q   Yes or no?
10   A   It would have been a new layer for them, yes. But
11 it --
12   Q   Well, if they hadn't bound the stub policy it would
13 have been a new risk for them entirely because they weren't
14 already on the risk, right?
15   A   Yeah, but he said he didn't believe that it was
16 bound. I don't know whether it was bound or not from what I
17 read. I can't tell. I guess the only people that know that is
18 maybe AON, the broker, if they bound it or not, because I
19 wasn't clear whether it was ever bound or not. So they either
20 had to follow the fortunes of the lead company and they put in
21 a layer, of which then they wanted to become the primary to
22 have more control over the policy.
23   Q   I think you agreed not too long ago that as an expert
24 witness you don't -- you are not here to give opinions about
25 the credibility of witness testimony, right?

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1   A   Correct.

2   Q   So when Mr. Holl says he doesn't believe that the

3   stub policy was ever bound, you are prepared to accept that,

4   aren't you, as an expert witness?

5   A   I am willing to accept that that's his belief, yes.

6   Q   And let's just put up your deposition testimony on

7   page 138, line 18: Where the question begins:

8   "Mr. Holl says, 'It is pretty standard fare to ask if

9   there is any litigation or inquiry that could potentially lead

10   to a claim.'

11   Do you agree with that?

12   "ANSWER: When they are discussing the warranty

13   statement I believe that would be, you know, a question

14   that they were asked just verifying the warranty

15   statement.

16   "QUESTION: Standard fare to do that, correct?

17   "ANSWER: Pretty much, yes.

18   Q   That was your sworn testimony at your deposition,

19   right?

20   A   And I agree with that.

21   Q   You discussed claims history on the D&O cover,

22   correct, in your direct testimony?

23   A   Yes.

24   MR. AMER: Let's go ahead and mark Plaintiff's

25   Exhibit 3394. We don't have copies of it. We will just

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1   put it up on the screen.

2   Q   This is a letter --

3   MR. AMER: We do have copies of it.

4   (Handing)

5   MR. AMER: You are the best to the right of me.

6   Q   This is a letter from AON dated February 8, 2019 to

7   HCC, correct?

8   A   Yes.

9   Q   And this is a letter providing notice of claims on

10   behalf of the Trump Revocable Trust, correct? Do you see that

11   in the first sentence?

12   A   Yes.

13   Q   And there are a list of claims in bullet points on

14   this first page. Do you see it references receipt of various

15   inquiries from Congress, and other items in the other bullets;

16   do you see that?

17   A   Yes.

18   Q   And this was a -- this was tinder of notice of claims

19   by the trusts broker of record, AON, correct?

20   A   Yes, that's where it appears it came from.

21   MR. AMER: Your Honor, I move that this be

22   admitted into evidence for all purposes.

23   MR. FIELDS: Objection, hearsay.

24   THE COURT: It is not being introduced to prove

25   the truth of its contents, it is notice.

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1   MR. FIELDS: He just said for all purposes, Your

2   Honor.

3   MR. AMER: It is not hearsay. This is a letter

4   from an agent of the Trust acting in their capacity as

5   agent; and it comes in as an exception to hearsay.

6   THE COURT: It comes in for various reasons. It

7   is not a statement -- is it a statement of some

8   independent facts?

9   (The following proceedings were stenographically

10   recorded by Senior Court Reporter Michael Ranita.)

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1   MR. AMER: It's a statement of claim notice.

2   THE COURT: Well, what do you want to introduce it

3   for?

4   MR. AMER: That the Trust gave notice as indicated

5   by this letter, because they received these various

6   inquiries --

7   THE COURT: It's in, clearly.

8   MR. FIELDS: For the truth of the matter, sir, or

9   just for notice?

10   MR. AMER: For everything.

11   MR. FIELDS: I'm asking the Court.

12   MR. AMER: Sorry.

13   THE COURT: For the truth of the matter asserted.

14   Statements against interest, who is going to say we are

15   being investigated when they are not being investigated.

16   MR. FIELDS: Certainly the -- not this witness.

17   THE COURT: Common sense, too.

18   MR. FIELDS: This witness cannot say he's not an

19   expert. I don't think the foundation has been laid for

20   that.

21   THE COURT: The foundation is the document itself.

22   Mr. Amer, you want it in for all purposes?

23   MR. AMER: Correct.

24   THE COURT: It's in for all purposes.

25   MR. AMER: Thank you. You could put that down,

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1 because I have no questions to ask you beyond what I've
2 already asked you about that document.
3 THE COURT: Five-minute warning.
4 MR. AMER: Okay.
5 (Whereupon, the exhibit displayed on the screen was
6 taken down.)
7 MR. AMER: Can you give me just a minute, your
8 Honor.
9 (Whereupon, there is a brief pause in the
10 testimony.)
11 Q Just a couple of quick questions, and then I'm done, so
12 we could actually be done with the witness before lunch, unless
13 there's redirect.
14 In a surety program, often surety bonds, once issued
15 cannot be cancelled; is that right?
16 A Yeah, it depends on the wording. That's correct.
17 Q Can you confirm from your review of the documents in
18 this case that some of the bonds issued by Zurich for The Trump
19 Organization are non-cancellable; correct?
20 A Yes. We reviewed that.
21 Q So even if a surety insurer were to cancel or non-renew
22 a surety program, if there are non-cancellable bonds that have
23 been issued, those would remain in place and the surety insurer
24 would remain on the hook; correct?
25 A Correct.

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1 MR. AMER: That's all I have, your Honor.
2 THE COURT: Any redirect?
3 MR. FIELDS: Briefly, your Honor.
4 THE COURT: Great. Redirect.
5 REDIRECT EXAMINATION
6 BY MR. FIELDS:
7 Q Mr. Miller, you were asked by Counsel about a 2019
8 annual review that you saw for the first time at your
9 deposition. Do you recall that?
10 A Yes.
11 Q After reviewing that, did you change your opinion?
12 A No, I did not.
13 Q Same thing for Ms. Mouradian's trial testimony, did
14 anything that Ms. Mouradian said in her trial testimony change
15 any opinion you had?
16 A Not at all.
17 Q You were also asked by Counsel about Ms. Mouradian's
18 inability to verify figures in the Statement of Financial
19 Condition from 2018. Do you recall that?
20 A Yes.
21 Q Could Ms. Mouradian have asked to see bank accounts?
22 A Yes.
23 Q From your review of the records, did she do that?
24 A I don't believe so, no.
25 Q Could Ms. Mouradian ask to have seen the appraisals

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1 that she alleged were discussed with her?
2 A Yes.
3 MR. AMER: Objection. That's -- that
4 mischaracterizes the testimony. I don't think she talked
5 about appraisals. She talked about valuations.
6 MR. FIELDS: The word "appraisal" comes up on
7 the --
8 THE COURT: Overruled.
9 Q Did she, based on your review of the documents, did she
10 ask to see the appraisals?
11 A No.
12 Q And then you were also asked by Counsel about
13 character, specifically with regard to if an underwriter becomes
14 aware that property values have been inflated and how that would
15 affect the character of the company.
16 Do you recall that?
17 A Yes.
18 MR. AMER: Objection. I didn't say properties. I
19 said, "Cash on hand."
20 MR. FIELDS: I think you said "asset values", but
21 be that as it may.
22 MR. AMER: I said, "Cash on hand was inflated."
23 THE COURT: I think it was cash on hand.
24 MR. FIELDS: Fair enough.
25 Q Mr. Miller, you were asked about cash on hand and

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1 whether the cash on hand had been inflated and how that would
2 affect the underwriter's decision; right?
3 A Yes.
4 Q And I think Mr. Amer asked you if that would negatively
5 impact the underwriter's decision; do you recall that?
6 A Yes.
7 Q In your experience, when a government entity has
8 alleged that a company has committed fraud, does the insurer
9 continue to do business and write bonds for that company?
10 MR. AMER: Objection. It's irrelevant to what I
11 asked the witness.
12 THE COURT: Let's just hear the answer. Overruled.
13 A If the company would become aware that there were
14 fraudulent statements, um, the likelihood that they would
15 continue doing business is not very high.
16 Q Have you ever, in your experience, seen carriers agree
17 to continue doing business with somebody that a government
18 entity has alleged has defrauded them?
19 A In my 40 years, no.
20 MR. FIELDS: Thank you.
21 THE COURT: Any recross?
22 MR. AMER: No.
23 THE COURT: Okay. Right on time. See you all at
24 2:15. And the witness is excused.
25 (Whereupon, the witness stepped down from the

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1 witness stand.)

2 (The case on trial was adjourned until 2:15 p.m.

3 for the luncheon recess.)

4 * * * * * * * *

5 A F T E R N O O N   S E S S I O N

6 * * * * * * *

7 THE COURT OFFICER: All rise. Part 37 is back in

8 session. The Honorable Judge Arthur Engoron presiding.

9 Please be seated and come to order.

10 THE COURT: That time the people in Battery Park

11 stood up. You want to talk scheduling for a few moments?

12 Okay, I'll turn the microphone over to the person

13 sitting alongside of me.

14 MS. GREENFIELD: Okay. So who do we now have for

15 the 27th?

16 MR. ROBERT: For the 27th is going to be

17 Mr. Hawthorn.

18 MS. GREENFIELD: Is that going to be a whole day?

19 MR. ROBERT: It might very well be. We may call

20 Mr. Birney on the 27th, although more likely than not

21 Mr. Birney on the 30th.

22 MS. GREENFIELD: Assuming we have Hawthorn and

23 Birney on the 27th. What about the 28th?

24 MR. ROBERT: The 28th and 29th combined, we don't

25 know where the spillover will be. It will the Deutsche Bank

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1 questions and answers shown. We've marked as an exhibit,

2 PX-3393, that portion of prior testimony that was displayed.

3 I've shown it to defense Counsel. I don't think they have

4 any objection to this.

5 MR. ROBERT: Based on Ms. Faherty's representation,

6 we have no objection.

7 MS. FAHERTY: So I move to admit PX-3393, your

8 Honor.

9 THE COURT: Granted. It's in.

10 MS. FAHERTY: Thank you.

11 THE COURT: Would defendants like to call their

12 next witness.

13 MR. SUAREZ: Your Honor, good afternoon. The

14 defense calls Jeff McConney.

15 (Whereupon, the witness stepped into the witness

16 stand.)

17 THE COURT OFFICER: Please raise your right hand.

18 (The witness complied.)

19 THE COURT OFFICER: Do you solemnly swear or affirm

20 that any testimony you give will be the truth, the whole

21 truth and nothing but the truth?

22 THE WITNESS: Yes, sir.

23 J E F F R E Y   S.   M c C O N N E Y, called by and on behalf

24 of the Defendant, having been first duly sworn, was examined and

25 testified as follows:

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1 witnesses, Mr. Williams, Mr. Sullivan, Ms. Pereless and

2 Ms. Vrablic.

3 MS. GREENFIELD: And we think they will take two

4 days?

5 MR. ROBERT: Yes. Thursday, like I said, might be

6 Birney, and probably Mr. Unell on Thursday as well, but

7 we'll keep you posted.

8 MS. GREENFIELD: Assuming we get through Hawthorn

9 and Birney on Monday, who will Thursday be?

10 MR. ROBERT: Unell.

11 MS. GREENFIELD: And --

12 MR. ROBERT: Unell will take the better part of

13 day, maybe even more.

14 MS. GREENFIELD: How much direct do you have?

15 MR. ROBERT: I'm not doing the direct. I don't

16 know, but I know it will probably be the most part of the

17 day.

18 MS. GREENFIELD: Okay. And Friday?

19 MR. ROBERT: I don't know yet.

20 THE COURT: And some housekeeping by the

21 plaintiff's side.

22 MS. FAHERTY: Yes, your Honor. During the

23 examination of Dr. Laposa, we projected on the screen prior

24 testimony. It has been our common practice that once we put

25 prior testimony on screen, we generate a report with the

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1 THE COURT OFFICER: Please have a seat.

2 (The witness complied.)

3 THE COURT OFFICER: Please state your name and

4 either home or business address for the record.

5 THE WITNESS: Jeffrey S. McConney, 390 First Avenue

6 in New York City.

7 THE COURT: Okay. Mr. Suarez, please proceed.

8 DIRECT EXAMINATION

9 BY MR. SUAREZ:

10 Q   Mr. McConney, good afternoon.

11 A   Good afternoon.

12 Q   Please describe your educational background after high

13 school?

14 A   I went to Baruch College, graduated in 1978, 1978.

15 Q   What did you study at Baruch College?

16 A   Accounting.

17 Q   What courses in accounting did you take?

18 A   Whatever was prescribed by the requirements. I

19 remember cost accounting, tax, federal taxes, other than that, I

20 don't remember the specific courses.

21 Q   Do you have any other post-college education?

22 A   No, sir.

23 Q   Are you a CPA?

24 A   No, sir.

25 Q   Have you ever been a CPA?

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1   A   No, sir.

2   Q   Where were you employed after college?

3   A   Um, I started working for a small CPA firm. I worked

4 for a real estate person. He owned some real estate, and the

5 accountant there knew people in the CPA firm, so he got me an

6 introduction to the CPA firm, Spahr Lacher Berk & Naimer. I

7 worked there for about nine years, and then I was hired by The

8 Trump Organization in April of 1987.

9   Q   At the Spahr Lacher firm, what were your

10 responsibilities?

11   A   Over time they changed. Jerry Rosenblum was one of the

12 partners. He guided me -- basically, I was becoming an

13 accountant, even though I had the educational background. So he

14 guided me how to become an accountant, how to produce work

15 papers, how to go through information that the client had.

16   Um, he had a number of different clients. He --

17 not-for-profit clients, one of which was Cabin Creek Films for

18 work and environmental studies. The lady who owned the place

19 and managed the place was Barbara Koppel. She won an Academy

20 Award for Best Director. So I was overseeing that account for

21 Jerry. He had interior decorators, doctors. I was writing up

22 the books and records for these accounts. He would write up the

23 cash receipts, cash disbursements, post them to a general

24 ledger, and then hand them off to Jerry, and Jerry would do the

25 tax returns or whatever it was. Some of the clients had payroll

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1 taxes involved.

2   But in those days, pre-computers, it was all basically

3 manual work. As time went on, I did more accounting work. I

4 worked on President Trump's father -- Fred Trump had a real

5 estate business in Brooklyn, and I worked on that account for a

6 number of years. And I worked my way up the ladder, kind of

7 managed the account for the CPA firm.

8   Q   Was that the account for President Trump's father, Fred

9 Trump?

10   A   Yes.

11   Q   And as the CPA firm, what work, if any, did you do for

12 President Trump?

13   A   President Trump was still, back in 1986, was still

14 working out of his father's office in Brooklyn. Um, the

15 accounting office was located in -- basically, Fred Trump's

16 office was in an apartment building, the first floor of an

17 apartment building. So he just gutted a bunch apartments, so

18 you had to walk your way through a maze; Fred Trump and

19 President Trump in the back. We called it the "executive

20 office", something like that. Outside of that was the

21 accounting office, so that's where I would deal with the

22 accountants.

23   At a certain point in time, I think it was somewhere in

24 the end of 1986, President Trump moved to New York City and

25 started his business in New York City.

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1   He had a few properties that I dealt with. One was

2 Penn Yards, which was on the West Side. It's now called Hudson

3 Waterfront, I believe. Um, he had USFL Generals, which was just

4 winding down. I think he was mainly in casinos at that point.

5 He had a partnership with the Pritzker family for the Hyatt

6 Hotel by Grand Central Station or above Grand Central Station.

7 Um, I think he had finished construction of the co-op on Third

8 Avenue on East 61st Street called Trump Plaza. I believe Trump

9 Tower was finished -- well, I know Trump Tower was finished when

10 I started working there. So he had the condominium there, um,

11 and the commercial space. And the Trump Corporation, um,

12 basically is about the entities that I could think of right now.

13   Q   What work did Spahr Lacher, the Spahr Lacher firm, do

14 for President Trump while you were there?

15   A   They -- I know they prepared the tax returns for the

16 entities that Mr. Trump had, like Penn Yards associates. Um,

17 they prepared, when I later became involved in the President's

18 Statement of Financial Condition, um, one of the last items I

19 dealt with before I started working for The Trump Organization

20 is Jerry Rosenblum provided me with the financial statement that

21 he prepared for the company, the company being The Trump

22 Organization. And he asked me, he said, "Go through it. This

23 is the items you'll be dealing with over time."

24   I've come to learn that Jerry basically did all the

25 valuations, wrote the footnotes. He was a great writer. Jerry

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1 was my mentor. I'm sorry, and Jerry wrote the footnotes.

2   Q   How did you come to work at The Trump Organization?

3   A   Allen Weisselberg worked for Fred Trump in the

4 accounting department. The controller for that accounting

5 department for Fred Trump's properties left. A new controller

6 came in and he said to Allen, "I need a desk to hire another

7 accountant to do Fred's work. Why don't you go up, speak to the

8 president, who was Mr. Trump at the time, and see if he can put

9 you in an office up there."

10   Allen went to work for President Trump in Manhattan in

11 October of '86. The Generals, like I said, were winding down,

12 so at that point in time the controller for the Generals, his

13 name is Ray Shetzel (phonetic), came to work with Allen as the

14 assistant controller. Ray was a sports guy. He ended up

15 working for the Nets. And then Allen hired me in April of '87.

16   Q   What were your responsibilities at The Trump

17 Organization when you were first hired?

18   A   Um, in those days it was a lot smaller. The staff was

19 smaller, the number of properties we owned, managed, developed

20 was smaller. Um, I was manually posting general ledgers where,

21 um, you have a cash receipts book where you -- it's all done by

22 hand. You would write up the deposits. You have a cash

23 disbursements book, you write up all the checks and debits to

24 the account. You extend them to certain general ledger

25 accounts. They were summarized. And I would do the posting to

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1 these general ledgers by hand, kind of tidy up the football
2 Generals, their kind of business. Basically, I was cleaning out
3 the office with a couple of other people.
4   Um, they dealt with the property manager down in
5 Mar-a-Lago. At that point in time it was a private residence,
6 so I would give this gentleman a budget, kind of monitor his
7 budget over time. Um, and I remember I was given directions,
8 tell the gentleman that the GM -- I forget his name, that he has
9 a million dollars to spend for Mar-a-Lago. I call him up, I
10 said, "Dude, a million dollars, what are you spending all the
11 money on?" He comes up with a list. At some point in time I go
12 down there and I looked around; 117 rooms, 17 acres, you've got
13 grass you have to mow, you have a building to maintain. I said,
14 "How do you run this on a million bucks?" So I didn't really
15 understand the size of the asset until I actually went to see
16 it.
17   Mr. Trump had casino licenses, so I was in charge of,
18 at the beginning, helping to fill out the renewal forms. These
19 were mainly in Atlantic City at the time. Later on as Mr. --
20 President Trump went to look at various other locations, Nevada,
21 California, I was in charge of putting together the applications
22 and then dealing with the investigators as they came in to
23 explain all the information we provided to them.
24   Um, over time it just grew. As we, um, obtained new
25 properties, we developed new properties, my job just grew, and I

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1 would take whatever work I could get.
2   Q   And during this time did you continue to work with the
3 Spahr Lacher Naimer firm?
4   A   All the time. We had such a small staff that we
5 usually kept our books on what's called a cash basis, which just
6 means money in the bank; money out of the bank from January 1st
7 to December 31st. Even though we only had a few entities, we
8 didn't have the bandwidth to actually take those cash basis
9 general ledgers and make them accrual basis general ledgers, or
10 work papers to prepare tax returns.
11   Um, what I mean from "cash" to "accrual" is, say, if
12 you have an insurance policy that covers from July 1st to
13 June 30th, you can't take that full expense in one year. You've
14 got to spread it over two years. So Mazars, Spahr Lacher would
15 make journal entries to set up the right prepaid expenses. If
16 it was a rental property or a condominium, just set up the
17 accounts receivable, the accounts payable, and then they would
18 prepare the tax returns for us. So they kind of an extension of
19 what we would do.
20   Q   Did Spahr Lacher eventually become Mazars?
21   A   Over time, yes. There were a number of mergers or
22 acquisitions. I don't know who acquired who, but they came what
23 they are today, Mazars.
24   Q   When did you first begin working with Donald Bender on
25 matters relating to The Trump Organization?

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1   A   Donald Bender was hired, I think, two or three years
2 after I was working at Spahr Lacher. Donald would work on his
3 thing, I would do my clients -- he would have his clients; I
4 would have my clients. At some point in time, Jerry Rosenblum
5 retired and Donald Bender took over the Trump account, and it
6 was around that time I would start dealing with Donald daily,
7 weekly, monthly, whatever we needed.
8   Q   And?
9   MR. AMER: Excuse me. Can I ask, since we have
10   multiple Donalds in the case --
11   THE WITNESS: Can I call him Bender, if I remember,
12   and President Trump, and Don, Jr.?
13   MR. SUAREZ: Mr. Amer, we finally found a point of
14   agreement. I was about to make the same point.
15   MR. AMER: It had to happen eventually.
16   MR. SUAREZ: Eventually.
17   Q   What work did Mr. -- withdrawn.
18   What work would Mr. Bender do for The Trump
19 Organization when you first joined?
20   A   It's a long time ago. Again, he would take our cash
21 basis general ledgers, produce work papers from that, like
22 booking all these journal entries. He would prepare the tax
23 returns. And know I know his baby -- he used to call it his
24 baby. It was Trump Tower. The commercial space, the stores and
25 the office space. And he would take -- originally we had a

---

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1 managing agent that did most of those receipts and
2 disbursements. Later on we brought it in-house, and he would
3 take that information, make all his journal entries, and he
4 would tell me, "I did 70 entries this year. I did 60 entries
5 this year to bring it to an accrual basis statement and prepare
6 the financial statements and the tax returns."
7   Um --
8   Q   In what year did you first start working with
9 Mr. Bender on Trump Organization matters?
10   A   It was probably from day one when I started there. He
11 was -- what I remember, he was involved in everything.
12   Q   What involvement, if any, did Mr. Bender have in
13 maintaining the books and ledgers of entities under the Trump
14 Organization umbrella?
15   A   He basically was, I would say, an extension of our
16 accounting department, because our staff was so small, and he
17 would take our cash basis statements and go through them. He
18 would look at the expenses to see if we miss posted an expense
19 from, say, elevator maintenance that should be have been HVAC,
20 or whatever. So he went through our receipts to make sure if
21 there was a rental property, all the rents were collected. The
22 accounts receivable entry was booked, so if we knew tenants owed
23 us money, we book a an accounts receivable entry. If they
24 prepaid December 31st, they paid for January, he would set up
25 the prepaid expenses.

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1 He would book the depreciation. He would go through
2 all our capital costs, set up a depreciation schedule to review
3 for tax on the financial statements. He would work on the
4 footnotes and give any details that needed to be disclosed
5 according to the guidelines he had to live with.
6 Q What level of access did Mr. Bender have to the Trump
7 Organization's books and records?
8 A At times he, during the audit season, early in the year
9 when he would come in to work on the audits, one of the jobs
10 they had, when I first started, was computerizing these books
11 from manual books to a computerized system. That was in 1990 or
12 1991. So at that point in time he would -- we would give him
13 reports, we would print out the general ledgers for him, cash
14 receipts books, cash disbursements, whatever he wanted to use.
15 We didn't want to waste paper. We didn't want to kill a lot of
16 trees, so we wouldn't -- there's no need for us to print out the
17 cash receipts book the cash receipts for the month to put in a
18 drawer for someone to look at, not look at. So whatever he
19 asked for, we gave him. If he wanted to look invoices, we pull
20 out the invoices or have one of his -- somebody from the
21 accounting staff go with our accounts payable person. Her name
22 is Deb. Deb would show the accounts payable person or the
23 accountant where the accounts payable were for that entity, and
24 the person would -- Bender's office would go through, pull
25 whatever invoice he had.

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1 Once we became computerized, after a number of years,
2 we started scanning all the invoices. So we set up laptops in
3 our conference room. We had a Bender come in with a number of
4 his people and they could look at our general ledger cash
5 receipts. They had access to all our books and records that
6 most people in the accounting department had access to.
7 Q How long did this arrangement with Mr. Bender stay in
8 effect?
9 A Up until -- I mean, I retired in February of this year.
10 I think up until 2022 when we ended up getting a new accounting
11 firm.
12 Q What was your first title when you joined The Trump
13 Organization?
14 A I was the assistant controller.
15 Q And were you promoted from that position?
16 A At some point I became the controller, vice
17 president/controller, or vice versa.
18 Q When you became controller, what were your
19 responsibilities at The Trump Organization?
20 A Basically the same. It was just -- Allen Weisselberg
21 was -- is controller. He moved up to the CFO position. I took
22 over Allen's position. The work really didn't change.
23 Q Who did you report to as controller?
24 A I always reported to Allen Weisselberg. My ultimate
25 boss would be President Trump, but on a day-to-day basis, Allen

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1 Weisselberg was my boss.
2 Q Were you responsible for overseeing the accounting
3 department at The Trump Organization?
4 A Allen basically oversaw it, but he was busy doing his
5 thing. So anybody that had a question, you come to me and ask
6 me a question. They could go to Allen, but they knew it would
7 be easier to get a hold of me and get an answer.
8 Q In the last ten years, how many accountants worked at
9 The Trump Organization?
10 A Accountants or people in the accounting department?
11 Q People in the accounting department.
12 A In the accounting department, 12, 13, somewhere around
13 there.
14 Q And what books and records were maintained by the
15 accounting department at The Trump Organization?
16 A I'm trying to figure out how to say this. We started
17 acquiring golf courses at a certain point in time. The
18 Mar-a-Lago Club is not a golf course. The Mar-a-Lago Club, I
19 think, was the first entity that we set up, um, where it had its
20 own accounting staff.
21 We came to learn that these entities would have so much
22 volume of work, small chit items. We go to a restaurant, you
23 have a hamburger and you have a beer, um, you have tee times.
24 So we were used to selling apartments for a few million dollars,
25 and this was a lot of -- that was one transaction. This would

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1 be a lot of smaller transactions. So we hired an accounting
2 department to take care of the Mar-a-Lago property.
3 So as we bought or developed more golf courses, we had
4 an accounting department in each one of those locations. They
5 just took care of the one property. So a lot of the other
6 entities, you had Trump Park Condominium, you had Trump Towers
7 Condominium, Trump Tower Condominium. The development we had on
8 the West Side where we managed those properties, um, they were
9 maintained in the New York office. I don't have a list, so I
10 don't have an actual number, um, of entities.
11 Q Were there -- what was the relationship like between
12 the accounting departments on the properties and the accounting
13 department that you worked with at Trump Tower?
14 A Um, they were basically separate -- they would send
15 reports up to Trump Tower. Um, I don't think we really got that
16 down, except for the last couple of years. Now we have two
17 people dedicated just to the golf courses, because we have a
18 number of them, but they would talk to Allen and/or they would
19 take talk to me. They would produce maybe monthly reports or
20 quarterly reports, but I never really looked at them. Allen
21 Weisselberg may have looked at them.
22 Q What involvement did Mr. Bender have with the
23 accounting department at Trump Tower?
24 A When it came time to produce tax returns, the property
25 -- the golf courses were able, because they were just one entity

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1 and they had a decent size staff they could produce their own
2 accrual basis statements. They would send that information to
3 Donald Bender. Bender, if he had any questions, ask them, you
4 know, "Show me this invoice. Why is this one prepaid? Member
5 deposits are X amount." He had a schedule for it. So he would
6 interact with the golf courses to get any information he needed.
7 Q Would Mr. Bender go through you to obtain information?
8 A He could. He didn't have to. The way it was set up,
9 Bender could come in and talk to anybody he wanted to. It's not
10 a structured company, "it" being The Trump Organization, not a
11 structured company that like IBM. I never worked for a large
12 company like that where you had direct reports and you could
13 only talk to this person. Anybody in the accounting department
14 could talk to anybody, whether it was Allen Weisselberg, myself,
15 or the accounts payable person next to him.
16 Bender was so familiar with us, and, I mean, I've known
17 Bender for 40 years when I was working at Spahr Lacher. I mean,
18 we used to go to lunch every day. We used to go to -- put
19 together a group of people and go down to Atlantic City. I was
20 at his wedding. He was at my kid's bris. It was just like a
21 family. So Bender had access to anything he wanted to. He's
22 done the work for so long, he knew everything in the accounting
23 department, so he could ask Deborah Tarasoff what drawer do I
24 look at for these bills, or he could just go there.
25 If he had any question on the rents or leases, he would

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1 just speak to the people in the accounts receivable department.
2 So we gave him access to anything he wanted to.
3 (Continued on the next page.)

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1 Q Did you ever hide any information from Donald Bender?
2 A No.
3 Q How, if at all, would you rely on Donald Bender to
4 help you do your job as comptroller?
5 A I am sorry, can you -- I didn't hear the first word.
6 Q Sure. How, if at all, would you rely on Donald
7 Bender to help you do your job as comptroller?
8 A I relied on him for a lot of stuff. I think it got
9 to the point where we set up a new entity. We were doing
10 licensing deals, we needed an identification number, I think he
11 would fill out the form for us. If he didn't fill out the form
12 and somebody in my office was filling it out, we would ask
13 Bender if it was a cash-basis taxpayer or an accrual-basis
14 taxpayer. He would make all of these tax decisions.
15 He would do President Trump's tax planning. I am not
16 a tax guy.
17 So he would, in his Bender brain, come up with what
18 he knew how he wanted to structure something, and then we would
19 work around what he told us to do.
20 THE COURT: I hear the reporters may have a
21 little trouble keeping up, so slow down a little bit.
22 THE WITNESS: Sorry.
23 Q What, if any, other members of Mr. Bender's team did
24 you work with, Mr. McConney?
25 A Bender was like us, he had a loyal staff that stayed

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1 with him for years. A few of the names I remember was Jennifer
2 Safron, who I think is now a partner; Ellen Fegen; Maryann
3 Richter; Chris Schreiber. And there were a number of other
4 people over the course of the time I was working with him.
5 Q Can you describe, generally, how the in-house
6 accounting team at the Trump Organization would work with
7 Mr. Bender's team at Mazars?
8 A They asked the question, we gave them an answer.
9 They asked for backup, we gave them backup. It was just as if
10 Bender was asking the question. So we gave them unfettered
11 access to any information we had or he wanted.
12 Q Was there any -- excuse me. Was there ever any
13 concern as to whether Mr. Bender was independent of the Trump
14 Organization?
15 A I am not an independence person, I don't know what
16 effect that has on him as a CPA. He may have raised the issue.
17 I had never really thought about it.
18 Q Did he raise the issue with you?
19 A I think he may have, but I really don't remember.
20 Q What was your involvement in preparing the Statements
21 of Financial Condition for President Trump?
22 A Like I was talking about before with Jerry Rosenblum,
23 when I started getting involved -- and I don't remember exactly
24 what year it was, I started 35 years ago, at some point I was
25 working with Jerry Rosenblum before he retired. Jerry would

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1 just ask us questions; provide me with the information about X,
2 can you give me the backup for Y. And Jerry produced a
3 financial statement. He produced valuations, the numbers in
4 the footnotes, and he would put everything together.
5   Over time, I mean, I would see some of his notes, but
6 I was really not organized. When Jerry retired and Bender took
7 over the account as partner, he said this is a lot of papers,
8 can we kind of make it a little more organized. At some point
9 in time I came up with the Jeff Supporting Data schedule
10 listing off of the assets year after year, how we would value
11 them, and I would provide that to Bender. Bender would ask for
12 backup to whatever number we saw or ship them all to backup
13 that we used to prepare my spreadsheet.
14   Bender would go through those numbers and our backup,
15 put the information on the Statement of Financial Condition,
16 put the actual dollar amounts. Modify the footnotes; or I
17 would give him footnotes with some adjustments to them. Like
18 if there was a mortgage and the interest rate changed or the
19 due date changed or the principal amount changed or we had a
20 new property, we would give him some information about the new
21 property and he would put everything together. He had it in
22 Word, or I think it was Word. Put together documents, send us
23 a draft, we review it going back and forth, me and Allen
24 Weisselberg; and Allen Weisselberg would say go and tell them
25 to print it, we are done.

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1   Q   Can you describe the annual process for preparing the
2 Statement of Financial Condition?
3   A   As the years went on it took us longer and longer to
4 produce it. There were more and more assets. At the end when
5 I was there I think we had over 500 entities now -- tax
6 returns, sorry, entities and tax returns we had to prepare.
7 So, there was a lot more information we had to gather.
8   Now, not every single one of those entities would be
9 separately valued on the financial statement, but it gives you
10 an idea of how much we have grown over time.
11   So I am sorry. I forgot your question.
12   Q   If you could, walk me through the annual process.
13   A   The process, sorry.
14   So we would start -- I would start, originally, and
15 we passed this out, parceled it out over the years, I would go
16 through and see what information I would need from whomever I
17 needed it from. Cash and Marketable Securities, a lot of those
18 entities we maintained in a New York office.
19   But again, the golf courses had their own accounting
20 staffs, so we would ask them for bank reconciliations and bank
21 statements. The same thing with escrow deposits, ask them if
22 they had any real estate tax escrows. We would know who had a
23 mortgage and who didn't, we knew who had escrow deposits.
24   I would ask the real estate department, the Trump
25 International Reality for selling prices or values for unsold

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1 units. So, it was just a matter of, I would go out, send out
2 e-mails to a lot of people, gather the information and start
3 putting it into my spreadsheet.
4   Q   Was it necessary for you to reach out to a lot of
5 people to gather the information that you put on your
6 spreadsheets?
7   A   Yes. I mean, the cash alone we would have to really
8 reach out to every single entity that had a bank account.
9 Those were all of the properties over the years that have
10 grown, but every property that had their own accounting staff.
11   Same thing, we would value accounts payable on the
12 statements to get an accounts payable schedule or get the
13 balance sheet that they prepared in-house. We used Cushman &
14 Wakefield or received reports from Cushman & Wakefield with cap
15 rates on it, so I would have to reach out to Doug Larson or
16 whoever else was in his department at the time. And I know he
17 had a gentleman in California we would deal with for one of the
18 Vornado properties.
19   This literally took months. We would start in July
20 and finish usually sometimes in October, except for a couple of
21 years we were late.
22   Q   Who was your principal point of contact at Mazars in
23 connection with the Statement of Financial Condition?
24   A   Donald Bender was the partner, so whether it was a
25 Statement of Financial Condition or whether it was an audited

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1 financial statement for one of the properties that he was
2 preparing for the loan -- because it had a loan on it, anything
3 that we needed accounting help for we would go through Donald
4 Bender.
5   Q   And in the period of -- the period in which you
6 prepared the Statements of Financial Condition from 2011
7 forward, during that period of time, what other engagements was
8 Mazars involved with for the Trump Organization?
9   A   Besides preparing all of the tax returns for every
10 entity except for one, there was a period of time -- there was
11 a period of time he lost the golf courses. He didn't lose the
12 golf courses, he said he had too much work, he wanted us to
13 give the golf courses to another accounting firm, so we did
14 that. But basically he got all of the golf courses back. That
15 was basically many years ago.
16   So he prepared the tax returns. Last year it was
17 around 500 entities. He did all but one of the entity's tax
18 returns.
19   He prepared the personal tax returns for Donald J.
20 Trump Jr. and his wife, when he was married. Eric Trump and
21 his wife, when he was married. Ivanka Trump up until she got
22 married, and then she went to use Jared Kushner's accountant.
23   He worked on the financial statements, the audited
24 financial statements that were required; or in one case there
25 was a review that was required.

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1 We would give him, if we were negotiating a loan, we
2 would give him the loan documents to make sure he could adhere
3 to or reduce the required financial information at a certain
4 point in time. A lot of the loans have financial statements
5 due by April 30, and that's -- when you have that done, and
6 then right before that you have personal tax extensions done,
7 we just want to make sure he had enough bandwidth to get all of
8 this done.
9 I am sure I am missing something, but that's all I
10 can remember.
11 Q Would it have been possible for the accounting
12 department of the Trump Organization to operate without the
13 assistance of Mazars?
14 A No way.
15 Q From the period of 2011 forward, what audit
16 engagements was Mr. Bender and Mazars involved with in the
17 Trump Organization?
18 A Trump Tower commercial, which is Trump Tower, the
19 commercial piece.
20 There is a property called TIHT Commercial, which is
21 a small commercial property, I think a couple of stores.
22 Trump Plaza LLC.
23 There was a review for 40 Wall Street.
24 Prior to that we had before the loan was paid off we
25 had Chicago, we had a -- at some point we had financial

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1 statement requirements for Trump International Hotel Chicago.
2 Las Vegas Trump International Hotel, Las Vegas, we had
3 financial statements that were due.
4 I think that's about it.
5 Q Was all of Mr. Bender's team at Mazars afforded the
6 same level of access that he was to the Trump Organization's
7 books and records?
8 A Yes. If they had a question we would give them an
9 answer.
10 Q In the period of 2011 forward, how often would you
11 speak with Mr. Bender concerning your work at the Trump
12 Organization?
13 A It depended a lot on what time of the year it was.
14 If it was a quiet time, and there is very rarely a quiet time,
15 I would maybe go a week or two without talking to him. If we
16 were preparing President Trump's tax return or one of the
17 larger tax returns, he would call, talk, every ten, 15 minutes.
18 So it really depended what he was -- what was going
19 on and what he was trying to finish at the time.
20 Q Going back to the Statements of Financial Condition,
21 when did you begin the process to prepare the information for
22 each year?
23 A Sometime -- because it took so long, sometime in
24 July. And the easiest thing to get would be the bank
25 reconciliations and bank statements. Statements were dated

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1 June 30. So, the banks usually issued bank statements
2 before -- they were available online by maybe the 15th or
3 20th. Once they were available online, you could get them by
4 the first of the month. So that was a large number -- a large
5 number of entities and that would be the first step.
6 We would send out e-mails and some comptrollers would
7 send the information right away. Some you would have to go
8 after a little bit. And -- I am sorry.
9 Q No, no, please.
10 A And some comptrollers would just, you would wait a
11 week or two so it was a matter of gathering the information and
12 putting it together and putting it on my spreadsheet.
13 Q Why did you have to reach out to all of the
14 comptrollers of the properties to gather information?
15 A The way we value the assets, we kind of broke it down
16 in components. We had cash and Marketable Securities. So we
17 needed their cash balance. We had escrow deposits. If we knew
18 there were escrow deposits, that's a separate line item. The
19 biggest number is the asset valuation. That's just the asset,
20 not cash or payables.
21 We needed the accounts payable from the property,
22 because they would have that on site. And I know the loan
23 balances, if any, because we kind of oversaw the loan payments.
24 Q When did the process of reaching out to all of the
25 individual properties, when did that begin?

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1 A It depended on who was doing it. If I was in the
2 middle of a project I would try to squeeze in getting some of
3 those e-mails out. If it was somebody else, I would just say,
4 pass them in the hall, Haroula, we have to get the cash done,
5 start working on it because it is a big deal.
6 So it kind of varied. There were one or two years we
7 were really busy and didn't start until real late. There was
8 no date on my calendar that says, send out e-mail today. It
9 was whenever we did it.
10 Q Throughout the course of the year, what -- how much
11 of your time was occupied by preparing the Statements of
12 Financial Condition as opposed to other duties you had at the
13 company?
14 A I -- basically my time was spent between July and
15 October. Not 100 percent of my time, just a portion of my
16 time. And that's why we would spread it out, gather the
17 information and put the spreadsheet together. Other than that,
18 really very little time outside of that timeframe.
19 Q You had other responsibilities as the comptroller of
20 the Trump Organization other than preparing the Statements of
21 Financial Condition?
22 A Yes, sir.
23 Q What were those other responsibilities?
24 A We had a 401K plan. There is something called a
25 non-discrimination test which is mandated by the Department of

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1 Labor that you have to provide a ton of information about all
2 of your employees, the salaries, 401K deferrals and a whole
3 bunch of other information. We sent that to our 401K provider.
4 It has been Fidelity for a number of. That would take a while.
5   We have had payroll tax returns, we have had W-2s,
6 1099s. We would have to start the engagements on the audits
7 sometimes maybe in February to start that information,
8 gathering, Mazars would come in and start working on that.
9   We would have started in January. We would try to
10 feed Mazars as many entities, we call them baby entities, one
11 or two or three transactions, usually licensing deals. I would
12 get a fee once a year or no fees because the deal was at a
13 certain point in time where it wouldn't get fees.
14   Send Bender -- sorry, Mazars, Bender, a lot of these
15 baby entities so that they could start preparing the baby tax
16 returns before they got busy.
17   Middle of March we would have to finish up the larger
18 entities and get extensions out. Middle of April we had the
19 personal tax returns, including the President's and his
20 children. Finish up the audits in April. When he was
21 President, before he became President, we had the annual
22 filing, his annual -- The President's annual disclosure form.
23 We had to spend a lot of time on that. Later in the year we
24 had to finalize all of the corporate tax returns, all of the
25 personal tax returns. Daily basis, every day, we would have

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1 wire transfers that I had to review and release. I did the
2 corporate payroll every other week. Answer questions. Answer
3 e-mails. It kept me busy.
4   Q   At what point in the year did you send Mazars,
5 generally, the supporting data spreadsheet for the Statements
6 of Financial Condition?
7   A   Probably somewhere in September, late September and
8 October. It depends how busy we were. If I could get a large
9 chunk of it done and have a few open questions I would try to
10 get him started and send him the spreadsheet and backup so he
11 could start reviewing it or somebody in his accounting
12 department could review it, instead of just dumping it on his
13 lap. Because he had to still prepare all of these tax returns,
14 he and his department. The big one being the President's
15 return, which is the roll-up of all of these 500 entities. We
16 didn't want to inundate him too late. We wanted to give him
17 time to digest everything.
18   Q   He being Mr. Bender?
19   A   He being Donald Bender.
20   Q   In general terms, what would happen after you sent
21 him your supporting data?
22   A   He would sit and go through it. He had questions.
23 Told me I made a mistake, I had to change something. We would
24 have conversations.
25   Q   "He," again, being Mr. Bender?

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1   A   Sorry, yes he being Donald Bender.
2   Q   Would Mr. Bender request information from you?
3   A   Yes. If he -- if I did not provide enough backup to
4 him or we had a question on something or wanted more
5 information about whatever he was asking about, we provided him
6 whatever he needed. "He" being Donald Bender.
7   Q   What other documentation did you send him along with
8 the supporting spreadsheet each year?
9   A   Anything I used to back up my numbers. If there was
10 a line item I would say 32 apartments for sale $200 million. I
11 would send him a spreadsheet listing the apartment number and
12 value of those numbers.
13   If we had a third party like Cushman & Wakefield
14 provide us with information about comparable sales, we would
15 send him that piece of the document, along with the cap rates
16 and whatever I had on the statement.
17   For Vornado we would send him, I think, the P&Ls from
18 the June Vornado statements: 555 California Street and 1290
19 Avenue of the Americas.
20   The rent management department would print out
21 rent-rolls. So we valued some properties based on rent-rolls.
22 So the small shopping centers with two or three stores we would
23 send him the rent rolls.
24   We would send him -- I am not sure if we sent him all
25 of the accounts payable, all of the invoices. A schedule of

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1 accounts payable, all of the loans that we had listed as
2 liabilities we would send him a copy of the June 30 loan
3 statement or whatever showed the balance as of June 30.
4   Basically any backup that I used to -- that was
5 reflected on the spreadsheet I was putting together.
6   Q   Would you send Bender -- Mr. Bender any information
7 that you didn't use in preparing your Statements of Financial
8 Condition?
9   A   No. I only sent him the information that I relied on
10 to prepare the spreadsheet.
11   Q   Once you sent the information to Mazars, what steps
12 did Mazars take to compile the information that you sent?
13   A   They would review it because -- I know they would
14 review it because he made some changes to some values or had
15 some comments about some of the assets. They would -- well,
16 once it was finalized and I sent them my finalized spreadsheet,
17 they would put together the document, the actual Statement of
18 Financial Condition and the footnotes.
19   MR. SUAREZ: Let's pull up the 2015 Statement of
20 Financial Condition, please. Plaintiff's Exhibit 729.
21   Q   Do you recognize this document, Mr. McConney?
22   A   Yes.
23   Q   So once you sent your supporting data over to Mazars,
24 what additional steps did Mazars take before they issued the
25 compilation report that appears at the second page?

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1 A They looked through our numbers, compared them to the
2 backup, because they would -- when I would get some information
3 back sometimes from them, I would see their tick marks. And, I
4 guess, just get a comfort level with what the information was I
5 provided to them.
6 Q Did you have conversations with Mr. Bender about the
7 information?
8 A If he had a question, yes. If there was something I
9 needed to explain to him, yes.
10 Q What did these conversations generally entail?
11 A If he had a question about the information I provided
12 him. One year I know for the valuation for Trump Park Avenue I
13 provided a list of apartments and values for them. And he said
14 to me, Jeff, Ivanka rents one of those apartments.
15 I said, okay.
16 Well, she has an agreement with her dad in the lease
17 that she can buy the apartment for X. So you can't use Y. You
18 have to substitute it -- substitute the number in the lease.
19 I didn't know she had a lease. I knew she lived
20 there, I didn't know she had a lease. I didn't know the value
21 of the purchase price of the apartment, so I changed the value.
22 So it would be items like that. He had a question
23 once on Trump Tower. We were valuing the vacant space. Trump
24 Organization has three floors, there is also at times other
25 vacant space in the building. When I sat down with Allen

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1 Weisselberg we used X amount of dollars per square foot.
2 He said, Jeff, on the cert just prepared or prepared
3 a couple of months ago, you used Y amount, so you have to
4 change it. So we changed it.
5 So if we had items that we needed to reflect on a
6 statement, to change it, we made the changes.
7 Q "He," again, being Mr. Bender?
8 A Sorry. He being Donald Bender.
9 Q Was there ever a time that Mr. Bender requested you
10 make a change to the Statement of Financial Condition and you
11 didn't follow his request?
12 A Not that I can remember, no.
13 Q Did you ever ignore a request from Mr. Bender for
14 information?
15 A No.
16 MR. SUAREZ: We can turn to the third page of
17 the document, the fourth page of the exhibit.
18 Q Mr. McConney, how are the asset -- withdrawn.
19 Mr. McConney, how did you decide which assets would
20 be listed on the statement of assets?
21 A This is, I think, basically the layout that Jerry
22 Rosenblum put together back in 1987. We no longer owned the
23 casinos, so they came off the list. And as we acquired
24 properties or developed properties, we would add them into the
25 categories, real and operating properties in the partnerships,

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1 so it was kind of dictated originally from the original Jerry
2 Rosenblum Statement of Financial Condition.
3 Q And how, for example, did you decide whether to list
4 a specific real estate asset on the list of real estate
5 operating properties as opposed to categorizing it as another
6 asset?
7 MR. AMER: Objection to the use of "you." I
8 think there is no foundation that this witness made those
9 decisions.
10 MR. SUAREZ: Okay. Withdrawn.
11 THE COURT: All right.
12 Q Who decided which assets to specifically list as a
13 real or operating entity and which to list as other assets?
14 A Probably Allen Weisselberg.
15 Q And are you aware if those decisions were made in
16 consultation with Donald Bender?
17 A I don't know.
18 Q How was it decided which assets would, for example,
19 be listed out as a separate entity and which would be included
20 in club facilities and related real estate?
21 MR. AMER: Objection. Lack of foundation. The
22 witness said he didn't make the decision.
23 MR. SUAREZ: He didn't make the decision, that
24 doesn't mean he doesn't know how it was done.
25 MR. AMER: I think you have to establish that.

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1 THE COURT: This is that old conundrum, do you
2 have to ask do you know and then ask the question. But,
3 yeah, that's a -- I think that is the rule. So, you have
4 to ask him does he know.
5 MR. SUAREZ: I'll withdraw that, and I'll keep
6 going.
7 Q Let's turn over to the notes.
8 Mr. McConney, who wrote the notes here to the
9 Statement of Financial Condition?
10 A They have been modified over time. But a lot of
11 these notes still, for assets that were around when Jerry
12 Rosenblum was around, a lot of this was Jerry Rosenblum's
13 writing.
14 Q How did the words, "such valuation methods include
15 but are not limited to the use of appraisals, capitalization of
16 anticipated earnings, recent sales and offers and estimates of
17 current values as determined by Mr. Trump in conjunction with
18 his associates, and in some instances, outside professionals."
19 Do you see those words on the page?
20 A Yes, sir.
21 Q How did those words end up on that page?
22 A Again, the basic premise of the valuation, valuation
23 methods was a Jerry, I am pretty sure it was a Jerry starting
24 point. Depending on how I valued the assets that year,
25 sometimes it would change, sometimes I would use a cap rate,

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1 sometimes I would use a comp. That is how these -- the part
2 where it says appraisals, capitalization of anticipated
3 earnings, recent sales and offers and estimates of current
4 values, those may change from year to year. That was basically
5 Donald Bender.
6   THE COURT: I don't think that answered the
7 question at all. Wasn't the question where did the
8 language come from? Not what particular items are on
9 there? It is your question.
10   MR. SUAREZ: No that's -- that's correct. It is
11 where did the language come from. And he gave me the
12 answer as to where that language came from.
13   THE COURT: I don't think he did that at all.
14   MR. SUAREZ: It started with Jerry Rosenblum and
15 morphed in, and depending on the year, Bender would give
16 him the words to put on that page. It was perfectly
17 responsive answer to the question.
18   THE COURT: It is your question. Okay.
19 Withdrawn.
20   MR. AMER: I'll note the testimony is what the
21 witness said, not what Mr. Suarez just repeated, so the
22 record is what it is.
23   THE COURT: I didn't think it did.
24   MR. SUAREZ: The witness is testifying.
25   THE COURT: But he didn't say what you said he

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1 said. Is that Mr. Amer's point?
2   MR. AMER: Exactly, Your Honor.
3   MR. SUAREZ: We could argue what the record is.
4 I am certain the court reporter is doing a wonderful job
5 of getting it down.
6 Q The following words on that page: "Considerable
7 judgment is necessary to interpret market data and develop the
8 related estimates of current value." Whose words are those,
9 Mr. McConney?
10   A That came from Mazars, Jerry or Bender.
11   Q And the following statement: "Accordingly the
12 estimates presented herein are not necessarily indicative of
13 the amounts that could be realized upon the disposition of the
14 assets or payment of the related liabilities." Whose words are
15 those, Mr. McConney?
16   A Again, Mazars, either Jerry Rosenblum or Donald
17 Bender.
18   Q And the final sentence on this page: "The use of
19 different market assumptions and/or estimation methodologies
20 may have a material effect on the estimates current value
21 amounts." Whose words are those?
22   A Mazars, either Jerry Rosenblum or Donald Bender.
23   Q What role did you have in deciding what information
24 to include in the footnotes?
25   A Basically what I was concerned with were the

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1 footnotes that dealt with mortgages, financings, refinancings.
2 So I concentrated on mortgage balance, interest rates, due
3 dates, if there was a refinancing or a loan extension that was
4 considered, for me, that was the nuts and bolts of the numbers.
5   Q Was the information that you placed on the notes to
6 the Statements of Financial Condition reviewed by Mr. Bender?
7   A Yes, I would -- the normal -- what I would normally
8 do is take the prior statement, go through the footnotes, mark
9 them up. And then send that marked up financial statement to
10 Donald Bender.
11   Then when it came back I would just review it to make
12 sure what I wrote for those pieces was -- he interpreted or
13 typed it. I had it typed the way it was supposed to be.
14 Occasionally I would modify footnotes if I would get
15 information from somebody dealing with the property.
16 Bedminister was putting in some men's locker rooms. Miller
17 property may have been putting in a gym or finishing a gym. So
18 I would try to get those -- that information from the property
19 and then update the footnotes a little bit.
20   (The following proceedings were stenographically
21 recorded by Senior Court Reporter Michael Ranita.)
22
23
24
25

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1   Q To the best of your understanding, what does the term
2 "outside professionals" in this paragraph mean?
3   A It was individuals other than Trump employees.
4   MR. SUAREZ: If we could zoom out.
5   (Whereupon, the exhibit displayed on the screen was
6 zoomed out.)
7   MR. SUAREZ: Come down to the paragraph that says
8 "Pursuant to GAAP."
9   (Whereupon, the exhibit displayed on the screen was
10 scrolled through.)
11   Q This paragraph, Mr. McConney, the first sentence, the
12 words "Pursuant to GAAP, this financial statement does not
13 reflect the value of Donald J. Trump's worldwide reputation;
14 however, the brand value has afforded Mr. Trump the opportunity
15 to participate in licensing deals around the globe as reflected
16 on the balance sheet herein."
17   Whose words were those?
18   A Mazars's.
19   Q The following sentence, "Mr. Trump's name conveys a
20 high degree of quality and profitability. This prestige
21 significantly enhances the value of the properties reflected in
22 this financial statement, as well as that of his future
23 projects."
24   Whose words were those, Mr. McConney?
25   A Mazars'.

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1   Q   And the rest of the paragraph which says, "The brand,
2   along with the level of quality of Mr. Trump's residential
3   developments, has allowed the selling price per square foot in
4   Trump properties to be amongst the highest among prominent real
5   estate developers. The goodwill attached to the Trump name has
6   significant financial value that has not been reflected in the
7   preparation of this financial statement."
8   Whose words are those, Mr. McConney?
9   A   Mazars'.
10   MR. SUAREZ: If we could turn over to the Trump
11   Tower note.
12   (Whereupon, the exhibit was displayed on the
13   screen.)
14   Q   Do you know how this note ended up on this page,
15   Mr. McConney?
16   A   Again, I think that the -- the basic description of
17   Trump Tower probably went back to Jerry Rosenblum. I would talk
18   to Allen Weisselberg or the management person, who sent out the
19   monthly rent bills for Trump Tower to see who the current
20   tenants were; that would basically have brand or name
21   recognition to somebody reading it.
22   So the bulk of it came from Jerry and Mazars. The
23   tenants listed at the end of the paragraph, either Allen or I
24   would update.
25   MR. SUAREZ: If we could turn or put up Plaintiff's

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1   Exhibit 731.
2   (Whereupon, the exhibit was displayed on the
3   screen.)
4   Q   Do you recognize this document?
5   A   Yes.
6   MR. SUAREZ: If we scroll down to Trump Tower.
7   (Whereupon, the exhibit displayed on the screen was
8   scrolled through.)
9   Q   Can you briefly describe this property?
10   A   Trump Tower?
11   Q   Yes.
12   A   Um, the parts still owned by Mr. Trump is the atrium,
13   when you walk in, the retail stores, which I think is first
14   number of floors. After that it's the office space above it.
15   Down below there's space where there's a restaurant and
16   buffet and an ice cream parlor. That's what is owned by Trump
17   Tower Commercial, LLC.
18   Q   And with respect to this specific asset, how would you
19   -- how did you reach a value for this asset in the year 2015?
20   A   There is a building across the street, literally if you
21   walk out the front of Trump Tower across Fifth Avenue, there's a
22   building called the Crown Building. It was sold, I guess,
23   sometime in 2015, and we received information about the selling
24   price, the breakdown between the retail and the office space,
25   um, and we came up with a value per square foot, multiplied by

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1   what we had at that time for the comparable retail and office
2   space for Trump Tower, and then added those numbers together to
3   come up with the value.
4   Q   How did you identify 730 Fifth Avenue as a comparable
5   sale for that building?
6   A   Um, we probably reached out to Doug Larson, asked him
7   for his report that he would always send us for Midtown class A
8   buildings, and, um, the building across the street was listed
9   there. So that's how we probably found that building.
10   Q   How did you know to reach out to Doug Larson?
11   A   We were reaching out to Doug for years. I don't know
12   how far back it went, but for years we reached out to Doug. I
13   don't know how it first started.
14   Q   What kind of information would you have gathered from
15   Doug Larson each year when you were preparing the supporting
16   data to the Statements of Financial Condition?
17   A   The report he would send us would be on buildings sold
18   or up for sale. He had different reports, one for downtown; one
19   for Midtown. I don't know how many other reports he had. I
20   just received those two.
21   It would have various properties, about where the
22   properties located, the selling price, um, cap rates, um, and we
23   would just go through those properties and see what was near us.
24   In Manhattan, a one or two block difference can make a big
25   difference in the selling price.

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1   And then we would use the information in that report to
2   come up with these values -- I would use the information on this
3   report to come up with these values.
4   Q   And in 2014, do you see the method that you used to
5   come up with a value in 2014?
6   A   Yes.
7   Q   How did that method -- withdrawn.
8   How did you come up with a value in 2014 for Trump
9   Tower?
10   A   It was based on the income divided by a cap rate, net
11   income after expenses.
12   Q   If we go to the cell where you have the income in 2014
13   for Trump Tower, how did you learn what number to put there on
14   the supporting data?
15   A   Somebody in the accounting department, in my guess it
16   would be Donna Kidder, who was familiar with the property, ran a
17   report which provided the actual information through August of
18   that year, and is a budget that was prepared for Trump Tower at
19   the beginning of the year, um, and we added the numbers together
20   to come up to the $32 million number.
21   Q   Can you describe the adjustments that you made for
22   rental income for space used by T Corp., not billed?
23   A   T Corp. is a Trump Corporation, occupies three floors
24   in Trump Tower, which if we weren't in this space, we could rent
25   out to a third party, receive rental income, and it would

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1 increase our NOI or net operating income, so we took the square
2 footage of the floors, multiplied by what we thought we could
3 receive in rents, and then added that amount to the value, or
4 the income, sorry.
5   Q   And were those adjustments disclosed to Mazars?
6   A   Yes. It's right there on the spreadsheet.
7   Q   And how did you, in 2014, how did you derive an NOI to
8 apply to that value?
9   A   Well, we added the income, the actual, and the budget,
10 added the rental space. We own a restaurant that's in the lower
11 level, like I told you before, which has a buffet and restaurant
12 and ice cream parlor, and there is also a bar on the first
13 floor. They have a percentage rent deal, so we added the rent
14 that the restaurant would have to pay, which looks like 2013
15 rent. The total of that is the $36.6 million.
16   We looked at the -- probably the December 31st, 2013
17 audited financial statements, but provided or prepared by
18 Mazars, adjusted for some noncash expenses like depreciation,
19 amortization, they are not part of NOI, net operating expenses,
20 usually noncash expenses, except for the interest. The net
21 number was divided by the cap rate of 3.13 to come up with the
22 value.
23   Q   How did you settle on the cap rate of 3.13?
24   A   When we were preparing the June of 2014 Statement of
25 Financial Condition, I probably reached out to Doug Larson, who

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1 provided me his report, um, the comps in the neighborhood, and
2 based on that we selected some buildings and used -- came up
3 with that comp. rate, cap rate.
4   MR. AMER: Your Honor, I'm going to object to the
5 "probably." I don't think the witness should be testifying
6 about things that he's not -- he can't say actually
7 happened.
8   THE WITNESS: Can I clarify "probably"?
9   THE COURT: Yes. Go ahead.
10   THE WITNESS: Okay. Doug had associates, one was
11 named Michael -- he had a long last name that began with P.
12 I'm not sure if I reached out to Doug, to Michael, somebody
13 from Cushman & Wakefield.
14   Is that a proper answer? I would reach out to
15 Cushman & Wakefield. Or if it's -- at this point in time he
16 was working for Newmark, I would reach out to where I
17 thought Doug was working, and ask for information.
18   THE COURT: Okay.
19   Q   Why did you change the method of valuing Trump Tower in
20 2015 from 2014?
21   A   Well, again, one or two blocks in Manhattan can make a
22 big difference in a value of a building. For me there was no
23 better value than some building across the street. Um, so we
24 decided to use -- I decided, or selected that building.
25   Q   And in 2015, when you selected that building, how did

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1 you take the comparable and use it to reach the asset value for
2 Trump Tower?
3   A   Well, I believe Kurt, who worked with Doug, provided us
4 information where we could split the selling price between the
5 retail space and the office space, divided that by the square
6 footage of each -- from the retail and office space, came up
7 with a value per square foot, multiplied that by the retail
8 space for Trump Tower, the office space for Trump Tower, and
9 came up with the value and added those two numbers together.
10 You could see Bender's tick marks there checking the numbers.
11   Q   What role, if any, did Mazars have in confirming that
12 the information in your supporting data and the information on
13 the notes was consistent?
14   A   They would go through the footnotes. They looked at
15 the spreadsheet. They would make the changes. I said, now
16 paragraph the -- the paragraph we were looking at before,
17 sometimes the valuation methodology would change. So he would
18 just make sure that whatever methodology we used, we were
19 relying on him to put that in the footnotes. So that was the
20 first footnote number one or two.
21   And then later on on the valuation when we listed the
22 asset by itself, because the Trump Tower is listed here with a
23 -- it's own footnote, to make sure that description or the
24 method I used was in the description of the footnote.
25   THE COURT: Five-minute warning.

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1   Q   And when you placed, here on the spreadsheet, a
2 statement that per 10/26/15 e-mail from Kurt Clauss of Cushman &
3 Wakefield, which reflects information on the sale of the "Crown
4 Building" what did you mean by that?
5   A   Kurt would've sent me an e-mail with an attachment with
6 the information on it for the Crown Building. There could have
7 been other properties there, too. Um, so I was just telling
8 Bender where the information was coming from in which I would
9 attach, as part of the backup, when I sent him the spreadsheet
10 and the various backup we use -- I used for this spreadsheet.
11   Q   What would you -- withdrawn.
12   Do I understand correctly that you would send Bender
13 the same e-mail that you had relied on in preparing this
14 valuation together with your supporting data?
15   MR. AMER: Objection. Leading.
16   THE COURT: Sustained.
17   Q   What would you provide to Bender, specifically with
18 respect to the selection of the Crown Building as a comparable?
19   A   In this instance, whatever -- in every instance,
20 whatever information or documents I used and put together, I
21 would send to Bender.
22   In this case I would send him the e-mail, whatever, um,
23 Kurt Clauss sent me that was relevant for the Crown Building,
24 and I would just send him that -- send him those documents.
25   MR. SUAREZ: Your Honor, I'm at a good stopping

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1 point on my outline, for now, for the break.
2   THE COURT: All right. So we'll break, but you are
3 going to continue after the break?
4   MR. SUAREZ: Yes.
5   THE COURT: Okay. Ten-minute break. See you all
6 in 15 minutes.
7   (Whereupon, a 15-minute break was agreed upon and
8 taken by all parties.)
9   THE COURT OFFICER: All rise. Part 37 is back in
10 session. Please be seated and come to order.
11   THE COURT: Mr. Suarez, any idea how much longer on
12 the direct?
13   MR. SUAREZ: On direct? Through tomorrow morning.
14   THE COURT: The rest of the day?
15   MR. SUAREZ: The rest of the day today, yes.
16   THE COURT: And you think --
17   MR. SUAREZ: And into tomorrow morning, yes.
18   THE COURT: Okay.
19   Any idea how long the cross examination will be?
20   MR. AMER: Not yet.
21   THE COURT: All right. Let's continue.
22   MR. SUAREZ: If we could move onto row 167.
23   Q   Mr. McConney, can you briefly describe the Trump Park
24 Avenue.
25   A   Trump Park Avenue was the old -- it was the Delmonico

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1 Hotel on Park Avenue, and it's 59th Street. Mr. Trump bought
2 that in conjunction with GE. They gutted what they could of the
3 building, built new residential apartments. There are some
4 units in the hotel that --
5   THE COURT: Hold on.
6   MS. GREENFIELD: The realtime is not working.
7   (Whereupon, the realtime feeds were adjusted and
8 began working again.)
9   Q   Mr. McConney, can you briefly describe the Trump Park
10 Avenue?
11   A   Trump Park Avenue was a joint venture between GE and
12 President Trump, or the entity that Mr. Trump owns. It was the
13 old Delmonico Hotel, which was shutdown. The apartments were
14 renovated for sale as a residential condominium building. There
15 are a few units in there that are hotel units, and the rest were
16 free market units. And there is a commercial space on the
17 bottom. There -- in the basement there are storage units for
18 unit owners to store stuff if they don't have enough room in
19 their apartment, like seasonal stuff, like Christmas --
20 Christmas trees and ornaments, decorations, stuff like that.
21   Q   What does it mean for something to be a hotel unit?
22   A   The way we interpreted "a hotel unit" was it was --
23 there were tenants in there that had certain rights similar to
24 rent stabilized units or rent controlled units -- I'm not a
25 lawyer -- and they were like hotel stabilized units. There are

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1 certain rights they had. It's not like when we bought the hotel
2 we could say, your apartment is gone.
3   So those tenants stayed in these units. Some of them
4 we made deals with, we bought out their leases. Some of them
5 passed away. A couple of them passed away, and then they became
6 free market units, or units that we could just sell. We could
7 sell all the units at any time, but they just became, um --
8 there was no tenant in the unit.
9   Q   What prior experience, if any, did you have with
10 repositioning a hotel asset on behalf of Trump Organization?
11   A   When I was still working for Spahr Lacher, an entity
12 called Park South Associates, which was owned by President
13 Trump, bought the old Barbizon Hotel on Sixth Avenue and Central
14 Park South. It consisted of the hotel, the main entity was a
15 hotel, which became Trump Park Avenue Condo -- I'm sorry, Trump
16 Park Condo, and there was a small residential building of 60
17 some-odd units which became Trump Park East Condominium. A lot
18 or most of the units in the Trump Park East building were rent
19 stabilized apartments.
20   Q   And what happened to the rent stabilized apartments at
21 the Trump Park East building?
22   A   We negotiated by -- when I -- I found, between working
23 for the accounting firm and then working for The Trump
24 Organization, there was some buyouts of tenants, some tenants
25 passed away. There are still a number of tenants, handful of

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1 tenants that still lived there from when the property was
2 purchased, I think it was 1981. When the condominium unit, or,
3 sorry, a stabilized unit becomes vacant, we fix it up, and then
4 we put it on the market for sale. Again, it's for sale now, but
5 it's got a stabilized tenant in it, so.
6   Q   Where would you have gotten -- withdrawn.
7   Can you describe the method that you used to value the
8 Trump Park Avenue in the year 2014?
9   A   I reached out to our sales entity. TIR is Trump
10 International Realty. I reached out to the head of the TIR
11 sales office and asked them to provide me with the apartment
12 number of unsold units, and an amount that each unit would sell
13 for, or we could sell for. So that's the first line, where it
14 says "unsold units." Those are residential units.
15   There's the -- I think there are two remaining
16 commercial space units where we rent out to -- one time it was a
17 Capital One Bank, and I think it was a gym; that would get the
18 rent roll from our leasing department -- I'm sorry, our rent
19 management department, which reflected the monthly rent for the
20 two units, multiplied by 12 to come up with an annual rent,
21 multiply that by ten. I know "cap rate" is probably not the
22 right term, but that's what I used, to come up with the value
23 for the commercial space. And there are a number of unsold
24 storage rooms, cages, I think they were, in the basement that we
25 valued at the 819,000. The total of those three amounts is the

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1 $251 million number reflected on the spreadsheet for June of
2 2015.
3   Q   Up at the top where it says "Valuation is based on the
4 anticipated selling price of unsold residential units and the
5 selling price or the rental income stream to be derived from the
6 commercial space." Do you see that?
7   A   Yes.
8   Q   What did you mean by that?
9   A   Well, the residential units, there are a number of
10 unsold residential units which the TIR division valued. Um, so
11 that was the first part. The unsold residential units and the
12 selling price. The rental income stream would be the commercial
13 space where we took the monthly rent, annualized it and
14 multiplied it by ten.
15   The storage rooms, I think came from the operations
16 department, because they would deal with the storage room sales.
17 They would provide me a list, or a comp, and then we just
18 multiplied that by the number of units there are, something like
19 that.
20   MR. SUAREZ: Can we pull up Plaintiff's
21   Exhibit 736.
22   (Whereupon, the exhibit was displayed on the
23   screen.)
24   (The exhibit was handed to the witness.)
25   Q   Mr. McConney, do you recognize this document?

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1   MR. SUAREZ: This is already in evidence.
2   A   Yes.
3   Q   What is this document?
4   A   This would be the listing I received from the TIR sales
5 office reflecting the unit numbers, price, it had the number of
6 square feet, dollars per square feet, which they provided to me
7 per my request.
8   Q   Why did you provide the sponsor unit inventory
9 valuation -- actually, withdrawn.
10   Did you provide this document to Mazars?
11   A   Yes. Mazars wouldn't have taken the $200 million
12 valuation without some backup.
13   Q   Okay. Why did you provide this document to Mazars?
14   A   This is what I relied on to come up with the
15 $233 million, which I'm pretty sure was on the prior sheet.
16   MR. SUAREZ: If we could please pull up Plaintiff's
17   Exhibit 0173, native, side by side.
18   (Whereupon, there is a brief pause in the
19   testimony.)
20   MR. SUAREZ: Plaintiff's 01073. Actually, I'm
21   corrected. 736 is not in evidence. I move to have that
22   admitted into evidence.
23   MR. AMER: No objection.
24   THE COURT: Granted. It's in.
25   (Exhibit 736 was admitted in evidence.)

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1   Q   Do you recognize the spreadsheet at Plaintiff's
2 Exhibit 1076?
3   A   Where would I find number ten --
4   Q   The spreadsheet on the right in the native cell format.
5   A   Okay, yes.
6   Q   What is the spreadsheet in the native cell format which
7 appears as Plaintiff's Exhibit 1073, native?
8   A   The spreadsheet on the right also would have been
9 prepared by the -- let me see. It would have been prepared by
10 the TIR sales office.
11   Q   And what's the difference between the two spreadsheets?
12   A   The dollar value -- the dollar amount for the offer
13 plan -- per the offering plan price was different. It looks
14 like two different years. The spreadsheet on the right has an
15 offering plan price, current market value. The one on the left
16 has square feet, dollars per square feet, which is not on the
17 other spreadsheet.
18   Q   Did you provide the current market value or the
19 offering plan price to Mazars?
20   A   For based on which spreadsheet? The one on the left or
21 the one on the right?
22   Q   Well, did you ever provide the current market value to
23 Mazars?
24   A   I don't remember.
25   Q   What's the difference on the spreadsheet on the right,

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1 at Plaintiff's Exhibit 1073, between the offering plan price and
2 the current market value?
3   A   You are talking about the math difference or? I
4 mean --
5   Q   What's the difference in -- your understanding of the
6 difference between current market value and offering plan price?
7   A   Well, current market value may have been what the TIR
8 thought they could sell the unit for, sell a unit for. Offering
9 plan price would be the most we could sell the unit for.
10   Q   Would the offering plan price -- withdrawn.
11   Was the offering plan price a measure of what Trump
12 Organization would be willing to sell a unit for?
13   MR. AMER: Objection. Leading.
14   THE COURT: Hold on. Sustained. Leading.
15   Q   In your mind, was there a difference between offering
16 plan price and current market value?
17   MR. AMER: I think it's been asked and answered,
18   your Honor.
19   THE COURT: Well, let's hear it again.
20   A   The current market value is what they thought the
21 current value would be -- could sell it for, and the offering
22 plan price is what we filed with the offering plan.
23   Q   Would the current market value include rent stabilized
24 units?
25   MR. AMER: Objection. Leading.

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1 MR. SUAREZ: I'm not suggesting an answer.

2 THE COURT: Sustained. You could ask it in a more

3 general way.

4 Q Does the current market value include rent stabilized

5 units?

6 A Yes.

7 MR. AMER: Same objection, your Honor. It's

8 leading. Why doesn't he ask, "What does it include?"

9 THE COURT: Sustained.

10 Q What does the current market value include?

11 A That would be the list of all the units available to be

12 purchased at Trump Park Avenue, whether it was regulated or not.

13 Q What information did The Trump Organization provide to

14 Mazars concerning the existence of rent stabilized units?

15 A I'm pretty sure Mazars knew that there were stabilized

16 units and non-stabilized units, or regulated units. Um, there

17 are certiorari reports that are produced or filed every year on

18 behalf of various buildings that we own or manage. And I

19 believe you have to separate the regulated amounts from the fair

20 market amounts, or, um --

21 MR. AMER: Hold on, your Honor, I'm going to move

22 to strike that answer. I don't think there's any foundation

23 for this witness to know whether Mazars knew or didn't know

24 about the rent stabilized units. And his answer was, "I'm

25 pretty sure", but there is no indication as to how he would

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1 know that.

2 THE COURT: Sustained.

3 (Continued on the next page.)

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1 THE COURT: Sustained.

2 MR. SUAREZ: Let's pull up Defendant's Exhibit

3 1023.

4 Q Do you recognize this document?

5 A Well, the bottom part looks like an e-mail from

6 Stephanie Lennig who works in the accounting department, to me,

7 based on a question I asked her. And I then forwarded it to

8 Donald Bender.

9 Q Who is Stephanie Lennig?

10 A Stephanie Lennig deals with some accounting items.

11 Besides the medical plan, she oversees the certioraris that

12 need to be filed; deals with real estate taxes to make sure

13 real estate taxes are paid. We received a real estate tax

14 bill, so she has some accounting functions in the accounting

15 department.

16 Q If you looked at the Trump Park Avenue, where it says

17 Trump Park Avenue, January 2020, in your e-mail?

18 A Yes.

19 Q Do you see where it says: "Unregulated total was

20 $179,219.33 on my filing and 17,752.23 for the regulated"?

21 A Yes.

22 Q What does that mean?

23 A Well, Stephanie is talking about her filing. She is

24 probably talking about the certiorari filing which she would --

25 she is more familiar with it than I am. And she would probably

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1 separate the -- or would separate the regulated rents, which

2 are stabilized units or hotel stabilized units, from the free

3 market apartments or unregulated units.

4 MR. AMER: I would object to the "she would

5 probably" do something. I don't know how he knows what

6 she would probably do.

7 MR. SUAREZ: Your Honor, this is the stuff of

8 cross examination. If they want to cross examine on his

9 answers they are free to do so. But there is nothing

10 wrong with his testimony. It is perfectly responsive to

11 my questions.

12 MR. AMER: It goes to foundation as to whether

13 the witness has the knowledge to opine on what other

14 people did or didn't do.

15 MR. SUAREZ: I get that it is an inconvenient

16 fact for them that Mazars knew that these units were

17 regulated, but the documents bare it out. He is the

18 comptroller. He has the foundation. He knows who

19 Ms. Lennig is. He knows why she keeps this information.

20 I think he is being careful to avoid -- he is being

21 careful to appropriately respond when he says "probably,"

22 but that doesn't mean his answers lack foundation.

23 THE COURT: You know, that brings up the whole

24 issue of is "probably" -- okay. Well, if we have, you

25 know, a standard of proof that is just probably, yes. In

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1　any event, overruled. But subject to cross examination,
2　preponderance of the evidence.
3　Q　Why would you be providing this information to Donald
4　Bender?
5　A　He was asking for it.
6　Q　What would Mazars do with the information that you
7　provided with -- from Ms. Lennig?
8　A　Mazars was -- assisted Stephanie in filing the certs.
9　The one -- one of the few things I know about the certs, they
10　usually ask for the rents as of January of either that year or
11　the prior year. They usually filed early in the year. Based
12　on a March 12 date, which I think is around the due date, and
13　based on the rents being as of January of 2020, Bender was
14　probably -- was assembling the information to put -- whatever
15　information Bender would provide to Stephanie was working on,
16　and then would put it together and provide it to Stephanie so
17　she could file the certs.
18　Q　What is a cert?
19　A　It is a proceeding where you protest your real estate
20　taxes for real estate tax reductions.
21　Q　And why would the information on the rent generated
22　from a regulated or unregulated unit be relevant to a cert
23　petition?
24　A　I really don't know.
25　　　MR. SUAREZ: Your Honor, I move Plaintiff's

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1　Exhibit D-1023 into evidence. (sic.)
2　　　THE COURT: Granted it is in.
3　　　(Whereupon, the document referred to was deemed
4　　　marked for evidence as Defendant's Exhibit 1023 by
5　　　the Court.)
6　　　MR. SUAREZ: If we could please pull up
7　Defendant's Exhibit 1027.
8　Q　Mr. Bender, who is Irene Caprino?
9　A　Irene Caprino, she works in the rent management
10　department and oversees certain buildings.
11　Q　What is the rent management department?
12　A　It is -- we call it the rent management department.
13　They, on rental -- a building that has rental rents, 100
14　Central Park South or Trump Park East, they would enter the
15　leases into our computer system. They would enter lease start
16　dates, lease end dates, tenant names, whatever contact
17　information, whatever information you needed to get ahold of
18　the tenants.
19　　　On condominiums they would have unit owners move in
20　and out with any contact information for the unit owner.
21　　　They would send out the rent bills. They would
22　answer questions from the tenants or unit owners.
23　　　They would, if it is a commercial property, they
24　would sent out real estate tax escalation bills or operating
25　expense escalation bills, anything to collect the rent on

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1　behalf of the condominium or the Trump-owned entity.
2　Q　Do you see where it says the "to" field; is that your
3　name there?
4　A　The one from Irene to --
5　Q　Yes.
6　A　March 28? Yes. That's Jeff McConney. That's me.
7　Q　Who is Patrick Oberlies?
8　A　Patrick is part of Bender's accounting team.
9　Q　Who is Ellen Pagan?
10　A　Ellen Pagan is part of Bender's accounting team.
11　Q　And obviously the next e-mail there is Donald Bender.
12　A　He is the accounting team.
13　Q　Why would this information be provided by the lease
14　administrator to Donald Bender's accounting team?
15　　　MR. AMER: I object on relevance. This document
16　relates to Central Park South. It has nothing to do with
17　Trump Park Avenue. I don't know why it is relevant to
18　this case.
19　　　MR. SUAREZ: I am -- the document shows that
20　Mazars was perfectly aware that units in the converted
21　hotels have rent regulations, that we were dealing with
22　rent regulations on a regular basis. I am not going to
23　belabor the point, but we are going to keep going through
24　another series of e-mails where Mazars has knowledge of
25　rent-regulated apartments in these buildings.

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1　　　THE COURT: I'll allow it in. Overruled.
2　　　But I do want to question your pronunciation.
3　You said Pagan (Pay-gan); wouldn't it be Pagan (Pa-gon)?
4　　　MR. SUAREZ: I have heard it both ways. I don't
5　know.
6　　　THE COURT: You would know better than I would.
7　So overruled.
8　　　MR. SUAREZ: Why would I know better?
9　　　THE COURT: Why would you know better?
10　　　MR. SUAREZ: Yeah. The pronunciation, I mean, I
11　live in the world where I think it is a triplex(try-plex).
12　Your Honor, respectfully said it is a triplex (trip-lex)
13　but I understand.
14　　　THE COURT: Well, I guess you don't know where I
15　come from, so. I am not sure where you come from either.
16　But Florida, right?
17　　　MR. SUAREZ: Florida.
18　　　THE COURT: Well, I would think that's a
19　common -- is that a common name in Florida, P-A-G-A-N?
20　　　MR. SUAREZ: I am unfamiliar with it.
21　　　THE COURT: What is that?
22　　　MR. SUAREZ: I am not familiar with it.
23　　　THE COURT: Then I was wrong.
24　Q　Why would Ms.-- why would the Trump Organization be
25　sending this information over to Bender?

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1   A   They were asking for it. Anything they asked for we
2 provided to them.
3   Q   And do you see where it says: "For 14-G, only the
4 notice that tenant is attached as this was rent regulated --
5 excuse me, a rent regulated unit without a lease (and this
6 tenant has vacated in 2017)"?
7   A   I see that, yes.
8   Q   How were rent-regulated units managed by the Trump
9 Organization?
10   A   In 100 Central Park South or Trump CPS LLC you are
11 dealing with the address and the legal name. From the day
12 we -- the building was purchased, we have always had -- the
13 Trump Organization has always had a managing agent manage these
14 stabilized units. The reason being is the accounting staff was
15 not familiar with the rent stabilized laws and the rules and
16 regulations and increases in any -- there are a lot of
17 restrictions on a stabilized -- rent-stabilized apartment,
18 rent-controlled apartment. We weren't set up for that.
19   So we hired a managing agent. At this point in time
20 it was probably Gumley Haft. There were other managing agents
21 going back through the ownership. They would manage the
22 leases. They would send out the leases. They would send out
23 the rent bills. Collect the rents from the tenants. And once
24 a month send Trump's CPS LLC a check for the net cash flow.
25   MR. SUAREZ: If we could pull up Defendant's

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1   Exhibit 1024?
2   Q   Do you see where it says: "Ellen, for your request
3 to Jeffrey McConney"?
4   A   Yes.
5   Q   Why would -- withdrawn.
6   What request would Ellen Pagan make of you that would
7 cause this e-mail to be sent?
8   A   Stephanie was our contact or had a contact at Gumley
9 Haft. Gumley Haft is a managing agent. G-U-M-L-E-Y I think
10 there's a hyphen H-A-F-T. They were the managing agent.
11   Stephanie knew somebody there and would ask for the
12 monthly reports at times. Gumley Haft didn't always send them
13 to us like they probably should have. So Stephanie would just
14 reach out to her contact and get a report.
15   This is a year-end report which Mazars needed in
16 order to book the rental income, prepaid rents, arrears, for
17 the stabilized units. Because all we booked on the general
18 ledger of Trump's CPS LLC the entity that owned the stabilized
19 units and the free market units, was just a cash. Mazars would
20 reconcile that number back to the management report to see if
21 the cash received equaled the cash sent. And then reflect the
22 rental income on the tax return.
23   Q   Is that your e-mail address there at the cc, Jeff
24 McConney?
25   A   I don't see an e-mail. I just see, cc Jeff McConney.

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1 On the top? Yeah.
2   Q   Do you see the document as an e-mail forwarding an
3 attachment?
4   A   Yes. Jeff McConney is me.
5   Q   If we turn to the next page, do you recognize the
6 attachment?
7   A   Yes, that's the first page of the -- I think it is
8 the first page of the management report that Gumley Haft sent
9 to us.
10   THE WITNESS: There is no hyphen, sorry. My
11 mistake.
12   Q   And what does -- turning to the page ending Mazars
13 NGJS 00168341, on the exhibit; what does this information
14 disclose?
15   A   It looks like a partial list -- it is a list of
16 tenants. I am not sure if it is all of the tenants. That
17 would list the apartment number, the tenant name, in essence if
18 he was stabilized or controlled, base charge, any other
19 charges, arrears, prepayments, collections. This is the rent
20 billing and the associated information for the month.
21   Q   And if you take, for example, a unit rented at 11-F
22 to Miguel Rivera, do you see where it has Miguel Rivera 11-F
23 three quarters of the way down the page?
24   A   Yes, sir.
25   Q   If we could walk through this one as an example. You

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1 have Miguel Rivera. You have the letter S. Do you know what
2 that S stands for?
3   A   I am pretty sure it stands for stabilized.
4   Q   And 989 is?
5   A   The monthly rent for an apartment on Sixth Avenue in
6 Central Park South.
7   MR. SUAREZ: Now, Your Honor, I know I am not
8 from around here, I ask the Court to take judicial notice
9 that $989 for an apartment on Central Park South, any New
10 Yorker would understand that that's a rent-stabilized
11 apartment.
12   MR. AMER: I don't think that's an appropriate
13 fact for the Court to take judicial notice of, Your Honor.
14   MR. SUAREZ: I can withdraw that.
15   We move Defendant's 1024 into evidence.
16   MR. AMER: We object on relevance grounds, Your
17 Honor. This is about Central Park South. It has nothing
18 to do with Trump Park Avenue.
19   MR. SUAREZ: My next question to the witness is
20 going to be whether they went through a similar process
21 for Trump Park Avenue.
22   THE COURT: Well, why didn't we just do it for
23 Trump Park Avenue?
24   MR. SUAREZ: I am sorry?
25   THE COURT: Why didn't we just do it for Trump

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1 Park Avenue?
2   MR. SUAREZ: Because we will get there.
3   THE COURT: Okay.
4   MR. AMER: I haven't seen this type of report
5 for Trump Park Avenue. I haven't seen this type of
6 document for Trump Park Avenue. So I think they are
7 trying to put this in, instead of something that relates
8 to Trump Park Avenue.
9   MR. SUAREZ: The same valuation method for Trump
10 Central -- Trump TPC -- Trump CPS, Trump Central Park
11 South, reflects the same information, the same data, the
12 same -- the same facts on the supporting data, as it does
13 for Trump Park Avenue.
14   THE COURT: Mr. Amer, what do you suggest at
15 this point?
16   MR. AMER: I suggest we don't admit a document
17 that is irrelevant to the case. And if he has a document
18 that relates to Trump Park Avenue, then he can try and get
19 that in.
20   MR. ROBERT: Respectfully, it is not irrelevant.
21 We are showing that the same valuation for this building
22 is the same valuation process used for a building that the
23 government is complaining we valued improperly. So I see
24 absolutely nothing wrong. I understand you don't like it,
25 but that doesn't mean it is not admissible and it doesn't

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1   mean it is not relevant.
2   MR. AMER: I neither like it or don't like it.
3 It is irrelevant to the case.
4   MR. ROBERT: How is that when your whole case is
5 based on the way in which we value properties. And we
6 already provided testimony that we were compliant with the
7 appropriate GAAP rules and GAAP exceptions, and now
8 Mr. McConney is explaining the actual methodology used.
9 And clearly Mazars is aware of all of this methodology and
10 signed off on it. Nothing inappropriate. It is totally
11 admissible and totally relevant.
12   MR. AMER: I don't know how knowledge about
13 rent-stabilized apartments at Central Park South has
14 anything to do with Trump Park Avenue.
15   MR. ROBERT: Are you not claiming that the
16 valuation for Trump Park Avenue is wrong because the rent
17 stabilization was not part of the analysis for coming to
18 the value? Maybe I am not understanding your claim.
19   MS. HABBA: More importantly is, part of your
20 claim is you believe, which we have now disproven, is that
21 we gave Mazars those documents. I am a little lost on
22 that as well. This is proof further that we gave Mazars
23 everything, including information of what was and wasn't
24 rent stabilized. Part of your case, not mine.
25   MR. AMER: I am not going to argue with them,

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1 Your Honor. I think I made my objection. If we are going
2 to have more argument we should excuse the witness,
3 because it is not appropriate for him to be listening.
4   THE COURT: Let's excuse the witness and argue.
5   (Whereupon the witness stepped down from the
6 stand and exited the courtroom.)
7   THE COURT: All right. I am going to start at a
8 very simple level. These are two different buildings,
9 correct, Mr. Robert?
10   MR. ROBERT: Yes, Your Honor.
11   THE COURT: So what does what somebody knew or
12 didn't know about one building have to do with the
13 building that the Attorney General is focusing on?
14   MR. ROBERT: Several issues, several reasons.
15 The first is that it now shows that Mazars knows that we
16 have assets with there are rent-stabilized apartments in
17 it. They knew this was a conversion. They knew that
18 Trump Park Avenue was a conversion.
19   Point two. They're questioning the way in which
20 we valued Trump Park Avenue. What Mr. Suarez is showing
21 is that the same methodology that was used here, that
22 Mazars signed off on, is the same methodology we used for
23 Trump Park Avenue that they signed off on. So the
24 underlying mechanics are the same. Therefore, this is
25 relevant.

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1   THE COURT: You didn't convince me.
2   Did he convince you, Mr. Amer?
3   MR. AMER: No, he didn't.
4   THE COURT: Do you want to say why?
5   MR. AMER: Because they are two different
6 buildings.
7   THE COURT: They are two different buildings.
8   MR. ROBERT: Maybe the government can clear it
9 up for me then.
10   Are you not claiming that we misvalued Trump
11 Park Avenue because we didn't take into account the
12 stabilized apartments?
13   THE COURT: Yes, they are. I can answer that.
14   MR. AMER: And the Court has already ruled that
15 the value of Trump Park Avenue was fraudulently inflated
16 because it didn't properly account for the rent-stabilized
17 status of apartments. There has been no argument in this
18 case about Central Park South. Period. Full stop.
19   MR. ROBERT: I understand. But when you are
20 looking at whether the defendants intended to do anything
21 wrong or intended to do something with the valuation, here
22 is an example of the way we valued it exactly the same
23 way. And it is another example where Mazars had no
24 problem with the way that we did it.
25   THE COURT: What --

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1   MR. ROBERT: I am sorry, I didn't mean to
2 interrupt.
3   THE COURT: What is the evidence that they
4 valued it the exact same way.
5   MR. ROBERT: Mr. Suarez will get to that. When
6 Mr. McConney explains on his spreadsheet how he came to a
7 value for Trump Park Avenue and how he came to a value for
8 Central Park South.
9   Mr. Suarez, am I misstating it?
10   MR. AMER: I still don't see how it is relevant.
11   THE COURT: I don't see the relevance either.
12 You can have two buildings and evaluate one correctly and
13 evaluate one fraudulently, which I have already found.
14   MR. SUAREZ: Justice Engoron, Exhibit D-1023,
15 which we moved in, has TPA and TPE. And you have got the
16 Park East, which provides unregulated and regulated. You
17 have got Trump Park Avenue, unregulated and regulated.
18 They were -- there were numerous e-mails every year for
19 the cert petitions that went to -- that went to Mazars
20 concerning the regulated and unregulated nature of these
21 units.
22   MR. AMER: I actually don't recall them moving
23 it in. But even if it is in evidence, it is a March 12,
24 2021 e-mail. So, I don't know how it has to do with
25 knowledge that predates that. I still don't see how it is

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1 relevant.
2   THE COURT: Well, I'll let them try to make
3 their case. So it is in and you can ask him what you
4 want.
5   Let's get the witness back.
6   (Whereupon the witness resumed the stand.)
7   Q   To be clear, Mr. McConney, what roles did Gumley Haft
8 have in properties owned by Trump Organization entities?
9   A   The only job they had was to deal -- send out leases
10 for the rent-stabilized apartments in 100 Central Park South.
11 Send out the leases, collect the rents, go after the tenants if
12 they were in arrears. Notify us if a tenant was leaving so
13 then we can -- we being my office, could then start taking over
14 the billing for the free market apartment.
15 Q   How was the role -- withdrawn.
16   Did Gumley Haft have that same role with respect to
17 the Trump Park Avenue?
18 A   No. That was done by our operations department.
19 There is an attorney there, Sonja Talesnek who dealt with the
20 hotel units and the attorneys for matters relating to those
21 hotel units.
22 Q   How was the rent collected on the regulated
23 apartments at the Trump Park Avenue?
24 A   That was done through my office at 725 Fifth Avenue.
25 Q   And how was that information provided to Mr. Bender

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1 for the regulated units?
2   MR. AMER: Objection, leading.
3   THE COURT: How was it provided?
4   MR. AMER: It kind of assumes that it does.
5   THE COURT: It is lack of foundation maybe?
6   MR. AMER: Well, it is both.
7   Q   Was the information provided to Mazars concerning the
8 rents generated from the regulated units?
9   A   Yes. There was a rent-roll every month the person --
10 Irene Caprino for arguments sake, would -- could print out a
11 rent-roll listing of all of the tenants in the regulated units
12 or unregulated units in the commercial space with the billing
13 amounts, collections, arrears, prepaid rents.
14   MR. SUAREZ: If we could pull up Plaintiff's
15 Exhibit 736 and put it side by side with Plaintiff's
16 Exhibit 731?
17 Q   Do you see in the Trump Park Avenue where it says
18 that the valuation is based on the anticipated selling price of
19 unsold residential units and the selling price or the rental
20 income stream from the commercial space?
21 A   Yes.
22   MR. SUAREZ: Can we pull up the supporting data
23 for the Trump Park East?
24 Q   Do you see there where it says the valuation is based
25 on the anticipated selling price of unsold units?

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1   A   Yes.
2   Q   And where it says for unsold units per e-mail from
3 sales office?
4   A   Yes.
5   Q   Did you use the same method for valuing units at the
6 Trump Central Park South as you did for the Trump Park Avenue?
7   A   Yes, it was a little different where we reduced it by
8 some construction costs, because those units really haven't
9 been worked on in years.
10 Q   And why would it be appropriate to reduce those units
11 by the construction costs?
12 A   That would properly reflect the amount we expected to
13 receive net of -- from the sale of the unit.
14 Q   If you pull up Plaintiff's Exhibit 736, is it clear
15 in that document, Mr. McConney, that the numbers used were
16 offering plan prices and not market prices?
17   MR. AMER: Objection, leading.
18   THE COURT: Sustained.
19 Q   Mr. McConney, why was the information provided to
20 Mazars provided for the offering plan prices and not the market
21 prices?
22 A   That's what we felt properly reflected the value of
23 the asset.
24 Q   And why was that?
25 A   I am trying to figure, I don't know how to put it

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1 into words, it is just what we thought the right value was for
2 these units.
3   Q   Okay. And turning briefly to Ms. Trump's apartment.
4 Was there a correction made with respect to the price of
5 Ms. Trump's apartment?
6   A   Yes. I believe on the original spreadsheet I had the
7 amount that was provided by the sales office. Donald Bender
8 called me up and said Ivanka Trump had a lease. There was a
9 buy-out provision in the lease which I didn't know about. And
10 he said to put the amount there. So we did. The amount of
11 $14 million for Penthouse 20.
12   THE COURT: Five-minute warning.
13   MR. SUAREZ: I am ready to turn to another
14   subject. Should I start with the other subject?
15   THE COURT: We have six minutes. Go ahead.
16   MR. SUAREZ: Okay. If we can turn to 40 Wall
17   Street.
18   Q   Can you briefly describe this property?
19   A   Forty Wall Street is a commercial office building in
20 the downtown area of Manhattan.
21   Q   How did you value this property?
22   A   In both years it was based on a net operating income
23 divided by a cap rate.
24   Q   And how did you arrive at the cap rate?
25   A   We reached out to Doug Larson. It looks like he was

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1 that land to the owner of the land. And basically Doug said
2 there is a -- since it is a longterm ground lease, the cap rate
3 is a minimal effect or charge to the cap rate. So we
4 increased -- increased the cap rate on 100 Wall Street from
5 3.04 to 3.29 percent.
6   Q   And were you aware in 2015 that there were appraisals
7 done on the 40 Wall Street property?
8   A   Yes.
9   Q   Why didn't you use the appraisal values?
10   A   I didn't think it reflected the value of the --
11 properly reflected the value of the property.
12   MR. SUAREZ: Let's move to the notes under cap
13   rate and focus on 2014 first.
14   Q   Did you speak to Mr. Larson on the phone?
15   A   I believe I did, and usually I put a date down, but
16 that's the only way I would get this information about the
17 difference between class A and class B buildings.
18   Q   And in 2015, do you see the note there?
19   A   Yes.
20   (The following proceedings were stenographically
21 recorded by Senior Court Reporter Michael Ranita.)
22
23
24
25

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1 still at Cushman & Wakefield this year. Asked him for, in both
2 years, asked him for his report he has been sending us in prior
3 years for downtown class A properties. And we went through the
4 various properties to see what was as comparable as we could
5 get to 40 Wall Street; and then went from there.
6   Q   And how did you determine the appropriate cap rate to
7 use in June of 2014?
8   A   Well, in that year they were based on the information
9 that Doug provided. There was only one class A building with a
10 cap rate of 4.97 percent. So there was a class B building
11 which is below a class A building. It is not as -- it is just
12 not as good as a class A building. That's -- if that's a term.
13 Which had a rate of 4.46. I asked -- I called Doug and asked
14 him, what the spread or the changing cap rate would be from a
15 class A to a class B building. Doug said it is between 50 and
16 100 basis points. We were conservative, instead of using 100
17 basis points, we split the middle and used 75 basis points.
18   So we reduced the 4.46 percent to 3.71 percent and
19 then took the average of the two; the two being 4.97 and 3.71.
20   Q   And how did that change between 2014 and 2015?
21   A   In 2015 we found a 100 Wall Street, and I get lost
22 downtown, but I know 100 Wall Street is close to 40 Wall
23 Street. So we had -- there was a cap rate of a building at 100
24 Wall Street at 3.04 percent. Forty Wall Street has a ground
25 lease, which means you don't own the land, you pay rent for

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1   Q   Did you have another conversation that year with
2 Mr. Larson?
3   A   Yes. This time I did state it was a telephone
4 conversation, and the date of the conversation with Doug, Doug
5 Larson.
6   MR. SUAREZ: If we could pull up Plaintiff's
7   Exhibit 3004.
8   (Whereupon, the exhibit was displayed on the
9   screen.)
10   MR. SUAREZ: And put it next to Plaintiff's
11   Exhibit 731.
12   (Whereupon, the exhibit was displayed on the
13   screen.)
14   Q   And turn to native one on Plaintiff's 3004?
15   (Whereupon, the exhibit was displayed on the
16   screen.)
17   MR. SUAREZ: Move to the section on 40 Wall Street
18   -- actually, let's start at the top and show Mr. McConney
19   the top.
20   Q   Do you recognize this document?
21   A   That's my spreadsheet, at some point in time.
22   Q   Is this a draft of the spreadsheet that was ultimately,
23 on the right, used for the 2015 Statement of Financial
24 Condition?
25   A   I'm sorry, can you ask that again. I was trying to

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1 read something.
2   Q   Yeah. Is the spreadsheet on the left, plaintiff's
3 0304, native one, an earlier version of the spreadsheet that
4 appears at 731?
5   MR. AMER: Just so the record is clear it's 3004,
6   3004.
7   MR. SUAREZ: We could pull up June 2015.
8   THE COURT OFFICER: The plaintiff's number?
9   MR. SUAREZ: We just had it up a second ago. The
10   2015, can we pull that up, Statement of Financial Condition.
11   A   The one on the right, can we just scroll up to the top.
12   (Whereupon, the exhibit displayed on the screen was
13   scrolled through.)
14   Q   Let's look at the one on the right. Let's look at the
15 value for 40 Wall. Plaintiff's 729 is the Statement of
16 Financial Condition.
17   MR. SUAREZ: We could turn to the page with the
18   statement of assets.
19   (The exhibit was handed to the witness.)
20   (Whereupon, the exhibit was displayed on the
21   screen.)
22   Q   Do you see here the value for 40 Wall?
23   A   Yes, $735,400,000.
24   MR. SUAREZ: Can we pull up Plaintiff's Exhibit
25   3004, native one, side by side.

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1   (Whereupon, the exhibit was displayed on the
2   screen.)
3   MR. SUAREZ: And scroll down to 40 Wall.
4   (Whereupon, the exhibit displayed on the screen was
5   scrolled through.)
6   MR. SUAREZ: Where it says "value", show the value
7   for 2015.
8   (Whereupon, the exhibit was displayed on the
9   screen.)
10   Q   Do you see where it says 660 million on cell G, 133?
11   A   Yes.
12   Q   Would you agree with me that that number does not
13 correlate to 735?
14   A   Yes.
15   Q   Does not correlate to the figure used in plaintiff's --
16 in the Statement of Financial Condition for 2015?
17   A   Correct. So this -- this statement, the spreadsheet on
18 the right, was a draft, but not the finalized spreadsheet.
19   Q   Do you see where it says, "Income vacant retail space,
20 Dean & DeLuca"?
21   A   Yes.
22   Q   Do you recall adding that into your computation on the
23 draft spreadsheet that appears at Plaintiff's Exhibit 3004?
24   A   Yes.
25   Q   And if you pull up Plaintiff's Exhibit 731?

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1   (Whereupon, the exhibit was displayed on the
2   screen.)
3   MR. SUAREZ: At row 117.
4   (Whereupon, the exhibit was displayed on the
5   screen.)
6   Q   Was the Dean & DeLuca income on the final spreadsheet?
7   A   Can you shrink it so I could see the numbers in column
8 G.
9   (Whereupon, the exhibit displayed on the screen was
10   zoomed out.)
11   A   Okay. I'm sorry, what was the question?
12   Q   Is the Dean & DeLuca lease in the final spreadsheet
13 that appears at Plaintiff's Exhibit 731?
14   A   No.
15   Q   Do you know why the Dean & DeLuca lease doesn't appear
16 in the final spreadsheet?
17   A   I don't know.
18   THE COURT: Um --
19   MR. SUAREZ: I think for today I'm at a good
20   stopping point on my outline.
21   THE COURT: Okay.
22   I'll direct the witness not to discuss the case or
23 his testimony, or anything related about it, until tomorrow,
24 until you are no longer a witness, and we'll resume at 10:00
25   tomorrow; right?

                                                     Page 4980

1   MR. ROBERT: Thank you, your Honor.
2   THE COURT: Okay. Thanks.
3   (The case on trial was adjourned to Tuesday,
4   November 21, 2023 at 10:00 a.m.)
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November 21, 2023

Michael Ranita - Senior Court Reporter

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1    SUPREME COURT OF THE STATE OF NEW YORK

2    COUNTY OF NEW YORK  :  CIVIL TERM  :  Part 37
     --------------------------------------------x
3
     PEOPLE OF THE STATE OF NEW YORK, BY LETITIA
4    JAMES, ATTORNEY GENERAL OF THE STATE OF NEW
     YORK,
5                                 Index:  452564/2022
                                      Plaintiff,
6
          -against-
7
     DONALD J. TRUMP; DONALD TRUMP, JR.; ERIC TRUMP;
8    IVANKA TRUMP; ALLEN WEISSELBERG; JEFFREY
     McCONNEY; THE DONALD J. TRUMP REVOCABLE TRUST;
9    THE TRUMP ORGANIZATION, INC; TRUMP ORGANIZATION,
     LLC; DJT HOLDINGS, LLC; DJT HOLDINGS MANAGING
10   MEMBER; TRUMP ENDEAVOR 12, LLC; 401 NORTH WAGASH
     VENTURE, LLC; TRUMP OLD POST OFFICE, LLC; 40 WALL
11   STREET, LLC; AND SEVEN SPRINGS, LLC,

12                                  Defendants.

13   --------------------------------------------x
                   60 Centre Street
14                 New York, New York 10007
                   November 21, 2023
15
     B E F O R E: HONORABLE ARTHUR F. ENGORON, Supreme Court Justice
16
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25             Senior Court Reporters
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1        THE COURT OFFICER: All rise.  Part 37 is now in
2    session.  The Honorable Judge Arthur Engoron presiding.
3    Make sure all cell phones are on silent.  Laptops and cell
4    phones will be permitted, but only to members of the press.
5    There's absolutely no recording or photography of any kind
6    allowed in the courtroom.  Now be seated and come to order.
7        THE COURT: Okay.  Let's ask the witness to come
8    back to the witness stand and continue with the direct
9    examination of Mr. McConney.
10       (Whereupon, the witness stepped into the witness
11   stand.)
12       THE COURT: I'll remind the witness, like I always
13   do, that he is still under oath.
14       And Mr. Suarez --
15       MR. SUAREZ: Good morning, your Honor.
16   Q   Good morning, Mr. McConney.
17   A   Good morning.  How are you.
18   Q   I'm doing great.  Thank you.
19       MR. SUAREZ: If we could please pull up page 4970
20   of yesterday's transcript.
21       (Whereupon, the exhibit was displayed on the
22   screen.)
23   Q   Mr. McConney, do you remember yesterday when I asked
24   you about how information about rent regulated apartments was
25   provided to Mazars or Mr. Bender?
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1    A   Yes.
2        MR. SUAREZ: If we could turn over to the next
3    page.
4    Q   I would just like to show you yesterday's transcript.
5    You described rent roll that would be sent to Mazars?
6    A   Yes.
7        MR. SUAREZ: Please pull up Defendant's
8    Exhibit 1042 that we pre-marked for identification.
9        (Whereupon, the exhibit was displayed on the
10   screen.)
11   Q   Mr. McConney, do you see on the first page your name?
12   A   Yes, sir.
13   Q   And the date, October 3, 2012?
14   A   Yes, sir.
15   Q   Is this the type of rent roll that you were describing
16   yesterday?
17   A   Yes.
18       MR. SUAREZ: Can we please turn to the second page
19   of the exhibit.
20       (Whereupon, the exhibit was displayed on the
21   screen.)
22   Q   And focus in on Apartment 6B?
23       (Whereupon, the exhibit was displayed on the
24   screen.)
25   Q   Here in the notes it says that it's a -- do you see
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1 what it says here in Apartment 6B?

2 A   Yes.

3 Q   Can you read what it says into?

4 A   "Rent stabilized, preferential rent, lease expires

5 5/21/11.

6 Q   And do you see Apartment 70 right beneath?

7 A   Yes, sir.

8 Q   What does that say?

9 A   In the notes column?

10 Q   Yes.

11 A   "Rent stabilized, preferential rent, lease expires

12 3/31/11" -- sorry.

13 Q   If you could turn to page four of that document D1042,

14 Mr. McConney, which you have in front of you?

15 A   I'm sorry. Okay.

16 Q   If it's easier for you to see on the screen we could

17 also show you on the screen?

18 A   Yes, some of this is a little faded.

19   (Whereupon, the exhibit was displayed on the

20   screen.)

21 Q   Do you see what it says in unit number 7E?

22 A   "Free market rent."

23 Q   What does "free market rent mean"?

24 A   There are no regulations on the unit. If the rent is

25 $100 at the expiration of one lease year, you could charge a

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1 million dollars the next. I.

2 Q   And do you see Apartment 8H?

3 A   Yes.

4 Q   Do you see what that says in the notes?

5 A   Yes.

6 Q   What does that say in the notes?

7 A   "Hotel stabilized, no increase permitted."

8 Q   And what is the difference between hotel stabilized and

9 premarket?

10 A   There are rules and regulations guidelines that you

11 have to follow for rent increases or -- there are rules and

12 regulations.

13   MR. SUAREZ: Could we turn to Apartment 40 -- 400.

14   I'm sorry, on page 1042-6.

15   (Whereupon, the exhibit was displayed on the

16   screen.)

17 Q   Do you see where it says in the notes, what it says

18 there?

19 A   Unit 400, "hotel stabilized, no increase permitted."

20   MR. SUAREZ: And if we could turn back to the first

21   page.

22   (Whereupon, the exhibit was displayed on the

23   screen.)

24 Q   Why would you have copied Donald Bender on this e-mail?

25 A   Donald Bender was the partner in charge. Mark Farkas

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1 was one of Donald Bender's teammates, team -- was part of his

2 team. So Bender knew. He responded to Mark Farkas, and

3 basically we copied Bender on everything.

4   MR. SUAREZ: Your Honor, I move Defendant's

5   Exhibit 1042 into evidence.

6   MR. AMER: No objection.

7   THE COURT: Granted it's in.

8   (Defendant's Exhibit 1042 was admitted in

9   evidence.)

10   MR. SUAREZ: If we could pull up Defendant's

11   Exhibit 1045 marked for identification.

12 Q   Do you see where it says from mdsreport@trumporg.com?

13 A   Yes.

14 Q   What is mdsreport@trumporg.com?

15 A   MDS is our general ledger package program. It's

16 multi-data systems, multi-data services, I'm not sure. We used

17 to called it MDS. You could put run reports in MDS, which

18 automatically you get produced to an e-mail, so you could just

19 send it out. So this is an e-mail that was generated from our

20 general ledger package.

21 Q   And whose Patrick Oberlies?

22 A   Patrick Oberlies was one of Donald Bender's team. He

23 worked for Mazars.

24 Q   What is the date of this e-mail?

25 A   February 3rd, 2016.

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1 Q   What did the e-mail attach?

2 A   It's a December 2015 rent roll for Trump Park Avenue.

3 Similar to what we just saw for a different month and year.

4   MR. SUAREZ: If we could please turn to the second

5   page of Defendant's Exhibit 1045-2.

6 Q   Do you see Apartment 6B?

7 A   B, as in boy, yes.

8 Q   And what does it say in the notes?

9 A   "Rent stabilized, preferential rent, lease expires

10 8/31/16."

11 Q   For apartment 7D, what does it say in the notes?

12 A   "Rent stabilized, preferential rent, lease expires

13 10/31/16."

14 Q   And unit 8H on page three?

15   (Whereupon, the exhibit was displayed on the

16   screen.)

17 Q   Do you see in the middle of the notes, in the second

18 paragraph, what does that say?

19 A   "Hotel stabilized, no increase permitted."

20 Q   And then the fourth page of this document?

21   (Whereupon, the exhibit was displayed on the

22   screen.)

23 Q   Unit 15AB, the second paragraph from the bottom in the

24 notes, what does that say?

25 A   "Rent stabilized, preferential rent."

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1 Q Unit 10E on page five.

2 (Whereupon, the exhibit was displayed on the

3 screen.)

4 Q What does that say in the notes?

5 A "Rent stabilized, no one charged SD when they signed

6 the two-year lease, $72.53."

7 Q In page six, Unit 12E, do you recognize the note there?

8 (Whereupon, the exhibit was displayed on the

9 screen.)

10 A Yes. Should I read it?

11 Q Sure.

12 A "7/7/15, per Sonja." Sonja is Toleznik. She works in

13 the operations department. She is one of the lawyers that would

14 deal with these leases. "7/7/15, per Sonja, life estate, 12E is

15 free market, but occupied by Luisa Flynn who has a lifetime

16 tenancy", in parenthesis, "and is to be treated as a stabilized

17 tenant with rent adjustments based on "monthly common charges

18 and real estate taxes." Apartment is not being registered with

19 DHCR.

20 Q And if we could turn to 1045, page nine, Penthouse 20.

21 Who is the tenant in Penthouse 20?

22 A Ivanka Trump.

23 Q What does the note say there?

24 A "Exclusive right during term of lease to purchase units

25 for $14,264,000, notwithstanding the filing of any amendment to

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1 offering plan that may increase price of unit."

2 Q Was this information disclosed to Mazars?

3 A It was sent to Mazars. It's right on the rent roll --

4 I'm sorry, the answer is yes.

5 MR. SUAREZ: Your Honor, I move Defendant's

6 Exhibit 1045 into evidence.

7 MR. AMER: No objection.

8 THE COURT: Granted. It's in.

9 (Defendant's Exhibit 1045 was admitted in

10 evidence.)

11 MR. SUAREZ: If we could please pull up pre-marked

12 Defendant's Exhibit 1043.

13 (Whereupon, the exhibit was displayed on the

14 screen.)

15 Q Mr. McConney, do you recognize this document?

16 A Yes. This is a similar rent roll for Trump Park

17 Avenue, LLC, for the month of December, 2014.

18 Q Do you know what PBC on the top left-hand corner means?

19 A The accounting firm would put that on documents. It

20 means prepared by client.

21 Q The accounting firm was Mazars?

22 A I'm sorry, yes, Mazars.

23 Q Mr. McConney, why would this document have been

24 provided to Mazars?

25 A It's a rent roll. They would check to make sure -- I'm

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1 sorry, let me go back. Trump Park Avenue is an accrual basis

2 taxpayer. You would need to have to know if there are any

3 arrears for tenants and any prepaid rents. What the rents were

4 for the year took --

5 THE COURT REPORTER: I'm sorry, what the rents were

6 for the --

7 A Year reflected properly on the tax return. So this

8 would give Mazars the information as of the end of the year,

9 what tenants were in there, what the rents -- their rents were,

10 and any notes that were associated with that unit.

11 Q Can you read the note for unit 6B?

12 A "Rent stabilized, preferential rent, lease expires

13 8/31/15.

14 Q And does that same note appear for Unit 7C with a

15 modification to the end date of the lease?

16 A I don't see 7C. 7D?

17 Q Seven D, I'm sorry.

18 A Yes. 7D, "rent stabilized, preferential rent, lease

19 expires 10/31/15.

20 Q If we could turn to Unit 8H, which appears at page

21 seven of this document.

22 (Whereupon, the exhibit was displayed on the

23 screen.)

24 Q What is the first note here at page seven of this

25 document?

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1 A For 8H, "hotel stabilized, no increase permitted."

2 Q How about the note at Unit 15AB at page eight?

3 A 15AB, first paragraph says, "rent stabilized,

4 preferential rent, will not accept rent unless Meghan Kane

5 approves, per Meghan, okay. TYO, accept if current." Below

6 that, 10/28/14, "October payment bounced. Meghan forwarded to

7 BBWG."

8 Meghan Kane works in the operations department. She

9 was like, not a building manager, but her responsibility was

10 just to oversee certain buildings, and I believe this is one of

11 the buildings she oversaw.

12 MR. SUAREZ: Your Honor, I move Defendant's

13 Exhibit 1043 into evidence.

14 MR. AMER: No objection.

15 THE COURT: Granted. It's in.

16 (Defendant's Exhibit 1043 was admitted in

17 evidence.)

18 Q Mr. McConney, did you ever attempt to withhold from

19 Mazars that there were rent stabilized units at the Trump Park

20 Avenue?

21 A Absolutely not.

22 MR. SUAREZ: If we could go back to Plaintiff's

23 Exhibit 731.

24 (Whereupon, the exhibit was displayed on the

25 screen.)

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1   MR. SUAREZ: At row 71.

2   Q   Do you see there Niketown?

3   A   Yes.

4   Q   Can you briefly describe this property?

5   A   Um, Niketown is -- was Nike's premiere retail or

6 flagship store. It was opened a number of years ago. It's on

7 57th Street right off of Fifth Avenue. I think it was 50,000

8 square feet.

9   There was a building on that site prior to Nike signing

10 this lease, and I think they actually had a bond offering, um,

11 to pay for the improvements, or pay for something. They raised

12 that building and put in this huge retail place where they sold

13 Nike equipment.

14   Q   How did you value this property in the year 2014?

15   A   In 2014, well, there are two ground leases under the

16 property. We were receiving rental payments from Nike, so

17 that's the first line, the rental income. There was an annual

18 charge for an operating charge of half million dollars, so

19 that's the total income we received from Nike, a little over 11

20 million bucks.

21   The two ground lease payments are the payments we have

22 because we didn't own the land. We made ground lease payments

23 to, um, I don't know if it's the -- the person's name was

24 Minskoff an another one called Kandell. The total of those

25 payments were $1.9 million. We had an NOI of a little under

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1 $9.2 million. We used a cap rate of 2.6 percent to come up with

2 the value of $348.8 million.

3   Q   How did you learn the specifics of the ground lease

4 mechanism?

5   A   There were two leases from prior to Nike having the

6 space. I said there was another building there. We had the

7 ground leases were in place. So we knew that we had to make

8 grand lease payments on a monthly basis, or maybe there was an

9 annual charge, also, to the two ground lease owners.

10   When Nike did the bond offering, I believe all the

11 rental income and these ground lease payments were paid within

12 the Nike bond deal. Once the bond was paid off, then we were

13 responsible for billing Nike, collecting that money and paying

14 the ground lease payments. And there were two ground leases

15 that were negotiated a long time ago that had set monthly

16 payments on.

17   Q   How did you learn that specific information?

18   A   I know when the bond deal was around. I remember David

19 Malitzky and Allen Weisselberg were negotiating the Nike deal

20 with whoever they were negotiating with. And I know they were

21 negotiating, either extending or fixing the terms of the ground

22 lease. So we -- there were conversations that I was part of. I

23 don't remember what the conversations were, but, um, that's how

24 I learned about the ground leases.

25   Q   How would you have compiled the specific property

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1 information that appears here in your spreadsheet?

2   A   The rental income we billed out. "We" being The Trump

3 Organization rent department would send out a monthly rent bill

4 to whomever the person at Nike was. Um, we paid the ground

5 lease payments from the same bank account. We maintained a bank

6 account in the office where I worked.

7   Q   And how would you collect that information to put it on

8 this page?

9   A   I would run reports or look at information within

10 multi-data systems. Multi-data was our general ledger package.

11 So I would see whatever income came in. I probably ran a report

12 of some sort, and I probably used the leases, looked at the

13 leases to see what the multi payments were. Probably also

14 looked at -- I'm sorry. I also looked at the general ledger to

15 see if all the payments were made.

16   Q   How did you come up with the cap rate?

17   A   Doug Larson, we mentioned yesterday, would send us

18 these reports when we needed them, or asked for them. Which we

19 used for -- we used those cap rates in the Statement of

20 Financial Condition. I'm sure if you scroll down a little bit

21 there's probably a footnote. We received some information from

22 Doug or Cushman.

23   MR. SUAREZ: Sure. Let's scroll down a little bit.

24   (Whereupon, the exhibit displayed on the screen was

25   scrolled through.)

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1   Q   If you could please take a look at the notes. We could

2 start first with 2014.

3   A   Okay.

4   Q   In 2014, did you speak with Mr. Larson concerning the

5 determination of a cap rate for this property?

6   A   For a determination, yes.

7   Q   What, if anything, did you recall with your

8 conversation with Mr. Larson?

9   A   I don't really remember the conversation, but my notes

10 laid everything out. That's why we have the notes, so we could

11 know from year to year or remember year to year how we valued

12 properties.

13   I don't think based on this there were or any retail

14 spaces on Doug's reports, so we were trying to take a cap rate

15 for commercial property and adjust it so somehow. So I asked

16 Doug how can we compare apples and oranges, and he basically

17 told us about the 60 point difference, basis difference between

18 commercial property and retail property.

19   We were almost all the time conservative when we did

20 these adjustments. So we did reduce the cap rate by 50 basis

21 points instead of 60. If we used 60, we would have come up with

22 a higher valuation.

23   Q   How about in 2015, can you describe the note for 2015?

24   A   The Crown Building. I think we were discussing this

25 yesterday. The Crown Building is literally across the street,

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1 across Fifth Avenue from Trump Tower. You walk through the
2 doors of Trump Tower, the commercial space, you walk across
3 Fifth Avenue and The Crown Building was there. Kurt works for
4 Cushman & Wakefield where Doug works, provided us information
5 about the cap rate when the Crown Building was sold.
6   Q Why didn't you use a retail comp?
7   A The Crown Building is a lot like Trump Tower in that it
8 has retail space and office space. So, um, it's not just a pure
9 retail space. So we needed a mixed-use building, I think it's
10 called.
11   Q Would you, at times, discuss the selection of cap rates
12 with Donald Bender?
13   MR. AMER: Objection. Leading.
14   Q What did you discuss --
15   THE COURT: Sustained.
16   Q -- if anything, about cap rates with Donald Bender?
17   THE COURT: Lack of foundation.
18   MR. AMER: It's leading. "Who did you discuss cap
19   rates with?"
20   THE COURT: And what did you discuss.
21   MR. SUAREZ: I can't ask him if he discussed the
22   cap rates with the accountants that were compiling the
23   financial reports? It's not a leading question.
24   THE COURT: Yes, it is. The answer involves yes or
25   no, which is the simple definition of a leading question.

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1   Q Who did you discuss the selection of cap rates with?
2   A Definitely discussed it with Donald Bender. I remember
3 one time when he -- I just remember one time when he actually
4 was questioning it and we had to provide more documentation for
5 him. Um, not too sure what year it was, but I think we were
6 using a four percent cap rate. And I don't remember what his
7 question was, but we had to reach out and provide more
8 information to him. I believe we left the cap rate at four
9 percent.
10   MR. SUAREZ: Can we please play Plaintiff's
11   Exhibit 3297 marked for identification.
12   (Audio played in open court.)
13   Q Mr. McConney, is that your voice on the recording?
14   A Yes.
15   MR. SUAREZ: Your Honor, to the extent it's not
16   already in evidence, I move Defendant's Exhibit 3297 into
17   evidence.
18   MR. AMER: It's in.
19   Q Mr. McConney, does that voicemail refresh your
20 recollection as to specific conversations with Mr. Bender
21 concerning the selection of cap rates?
22   A The conversation with Ray Flores, our finance person,
23 was the result of the conversation with Donald Bender.
24   Q Why would Mr. Bender be giving you a hard time about
25 the cap rates that you used to value your property?

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1   A It was like a lot of the other valuations, if not all
2 the valuations. We went through it and he had questions.
3   Q When Mr. Bender had questions, how did you respond?
4   A Either a lot of times we had telephone conversations,
5 sometimes they were e-mails. If he needed more than my
6 telephone conversation, somebody would provide backup to him.
7 E-mail, I guess we would e-mail the backup nowadays. In the old
8 days we got it to him somehow. Fed-Ex or some other means.
9 Whatever he asked for, we gave him.
10   Q Was the information always within your knowledge?
11   A No.
12   Q When it wasn't within your knowledge, how would you get
13 the information to Mr. Bender?
14   A I would either speak to the person, the person who had
15 knowledge, or have that person directly call Donald Bender, or
16 e-mail Donald Bender.
17   MR. SUAREZ: If we could turn to row 699.
18   (Whereupon, the exhibit was displayed on the
19   screen.)
20   Q Can you briefly describe the Seven Springs property
21 that appears at row 699 of the spreadsheet?
22   A Seven Springs is the old Rockefeller estate. It's,
23 it's -- I don't remember how many acres, but it's a large piece
24 of property. I think it's a couple of hundred acres, and it's
25 in three towns, New Castle, North Castle, and the third one I

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1 forget. It was a property purchased by Mr. Trump years ago, and
2 over the course of time there were various visions for the
3 property; golf course, high-end golf course, luxury homes, so
4 depending on what year it was, the vision changed.
5   Q Can I direct your attention to the note for June 30,
6 2015?
7   A Okay.
8   Q Can you read that into the record, please.
9   A June 30, 2015, "Conservation easement property moved to
10 other assets."
11   Q Why did the -- let me rephrase that, did the method of
12 valuing the Seven Springs property change in 2015?
13   A Yes.
14   Q Why?
15   A It was no longer for development. I was told that they
16 were going to donate, and from what I've learned from my prior
17 testimony, donate, I guess, investment rights. I'm not sure
18 that's correct, but that's what I've been told, they were
19 donating the development rights and they were going to get a
20 charitable contribution for the donation of, I think, part of
21 the land.
22   Q What do you know about conservation easements?
23   A Very little.
24   Q How would you have come up with a value for the
25 conservation easement that you placed on your spreadsheet?

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1   A   It was an appraisal done specifically for the

2   conservation easement that had a before donation and after

3   donation valuation.

4   MR. SUAREZ: Can we move to row 895.

5   (Whereupon, the exhibit was displayed on the

6   screen.)

7   Q   Do you see that number?

8   A   Yes. Can you scroll up so I could see. I think that's

9   June of 15 column. I want to see the year it's for. Scroll up

10   a little more.

11   (Whereupon, the exhibit displayed on the screen was

12   scrolled through.)

13   A   Okay. Yes.

14   Q   And is that the value that you used in 2015 for Seven

15   Springs?

16   A   Yes.

17   Q   Moving onto the triplex apartment?

18   (Whereupon, the exhibit was displayed on the

19   screen.)

20   Q   Do you see there where you have a value for the triplex

21   apartment?

22   A   Yes.

23   Q   And do you see -- can you explain to me the basis for

24   valuing the triplex apartment?

25   A   For the June of 2015 statement?

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1   Q   Why was the value of 30,000 square feet input into

2   the spreadsheet?

3   A   It was a mechanism so I knew from year to year what

4   the value was based on. Sometimes I would just look at the

5   spreadsheet and this way I didn't have to go to all of the

6   voluminous backup we had. It reminded me how we valued the

7   property at that point in time.

8   Q   Where would you have come up with the number 30,000

9   square feet?

10   A   The person running TIR at the time, Kevin Sneddon,

11   sent me an e-mail that the triplex was 30,000 square feet.

12   Q   Was the 30,000 square feet figure used to inflate the

13   price of the triplex?

14   A   It was used based on the information I received from

15   somebody who knows. He is a broker. I would rely on him

16   because I figured he knew the property a lot better than I did.

17   Q   Have you, Mr. McConney, ever personally walked

18   through the entirety of the triplex?

19   A   The entirety, no.

20   Q   Have you ever measured how many square feet the

21   triplex is?

22   A   No.

23   MR. SUAREZ: If we can move on to Vornado. And

24   we can pull up the Statement of Financial Condition and

25   put it side by side with the supporting data.

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1   Q   Yes.

2   A   We reached out to our sales office, Trump International

3   Realty, and asked them to provide us with an amount per square

4   foot so we could -- which we used to value the, um, triplex. I

5   believe the e-mail said -- the triplex is 30,000 square feet.

6   It was something about $10,900 per square foot. Multiply the

7   two and came up with the $327 million.

8   (Continued on the next page.)

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1   Q   Mr. McConney, what are the Vornado Partnership

2   interests?

3   A   President Trump owns 30 percent of two buildings, the

4   other 70 percent is owned by the Vornado -- I think it is the

5   Vornado Realty Trust. There is one building in California, the

6   555 California Street; one building in Manhattan, that is 1290

7   Sixth Avenue.

8   Q   How were the Vornado Partnership interests acquired

9   by the Trump Organization?

10   A   It goes back a long way. Mr. Trump originally was

11   developing the west side to an entity called Penn Yard

12   Associates, back in the late '80s early '90s, with Abe

13   Hirschfeld. Mr. Trump ran into some financial difficulties in

14   the '90s. I think the bank took -- the banks took back the

15   properties and they sold them to a Hong Kong group. I don't

16   remember the name of the entity.

17   They changed their name, I believe, to Hudson

18   Waterfront Associates and gave Mr. Trump a 30 percent limited

19   interest in this property for his name, for his brand, for his

20   business acumen in developing the properties, and to help

21   promote the properties.

22   The Hong Kong group built a couple of buildings, I

23   don't know what kind of zoning or whatever they had for the

24   properties. One building, which was Hudson -- they also

25   developed there was one big property, I think 70 or 80 acres on

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1　the west side, split it up into five separate partnerships.
2　　　Hudson Waterfront Associates II, they developed a
3　condominium on that site and sold the condominium units.
4　　　I don't really remember the transaction of what
5　happened, but they sold to, I think it was Sam Zell and
6　somebody else, Hudson Waterfront I and III, IV and V.
7　　　I believe the Hong Kong group purchased these two
8　buildings, and then at some point sold the buildings to
9　Vornado -- or Vornado purchased the buildings, I don't know how
10　you want to look at it. And Mr. Trump was just -- Mr. Trump
11　still owned 30 percent of the partnership, so he just went from
12　the ownership of vacant land or semi-developed land to these
13　two office buildings.
14　　　MR. SUAREZ: Please pull up Plaintiff's Exhibit
15　　2587.
16　Q　Do you recognize this document, Mr. McConney?
17　A　Yes.
18　Q　And can you please take a look at row 11?
19　　　What does row 11 represent?
20　A　This spreadsheet is -- was used to compile the
21　information for the cash and marketable securities line on the
22　President's Statement of Financial Condition.
23　　　This is a lot of columns. We try to lay it out the
24　best we could to identify the banks where the money was. Line
25　11 is the cash that is reflected on the balance sheet as of

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1　June 30, 2016 for 1290 Avenue of the Americas. We got a
2　footnote there that we only own 30 percent of the property. So
3　we multiplied that cash balance by 30 percent, and reflected
4　the $7 million number on the -- in the amount column.
5　Q　If you can look at row 16? Can you please identify
6　for me the cash that is reflected on row 16?
7　A　Hudson Waterfront, HWA Waterfront Associates LP I
8　owned 555 California Street. And again, we took the balance
9　sheet from that entity, took 30 percent of the cash and
10　reflected it on this cash schedule.
11　Q　Why did you place there in parentheses (30 percent of
12　cash on balance sheet)?
13　A　Full disclosure, just so somebody wouldn't think it
14　was 100 percent of the cash.
15　Q　And moving to row 17, what does that cash represent?
16　A　HWA Waterfront Associates LP III is one of three
17　partners in 1290 Avenue of the Americas. It was kind of a
18　tiered entity. I think it is called a tenancy-in-common. I am
19　not sure what that means on the legal side, but there was
20　another balance sheet for that entity. That entity had cash.
21　We multiplied that cash on the balance sheet times 30 percent
22　and reflected the $4 million in the amount column.
23　Q　And why did you list there in the row, 30 percent of
24　cash on balance sheet?
25　A　Again, so nobody would think we took 100 percent of

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1　the cash balance.
2　Q　And in row 18? Can you explain row 18 to me?
3　A　18, HWA Waterfront Associates LP V, or five, is also
4　one of the three partners in 1290 Avenue of the Americas. We
5　took 30 percent of the cash on the balance sheet as of June 30,
6　2016, and that's the $1 million reflected in the amount column.
7　Q　And again, why did you place the 30 percent of cash
8　on the balance sheet there on that row?
9　A　So anybody looking at it would know we only took
10　30 percent of the cash.
11　Q　And what is the cash at row 19?
12　A　19, HWA Waterfront Associates LP IV, or four, is the
13　third partner in 1290 Avenue of the Americas. We took
14　30 percent of the cash on that balance sheet and reflected the
15　$21,000 in the amount column.
16　Q　Why does it say 30 percent of the cash there on the
17　balance sheet?
18　A　So we could disclose to everybody that we didn't take
19　100 percent of the cash.
20　Q　Was this disclosed to Mazars?
21　A　Yes, it was.
22　Q　What involvement did Mazars have with respect to the
23　Trump Organization's interest in HWA Waterfront Associates, if
24　any?
25　A　Every year Donald Bender would e-mail me or call me,

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1　remind me to get -- the information was provided to the Trump
2　Organization and Mazars via K-1. When you have a partnership
3　your income, your ownership percentage, any other various items
4　that need to be reflected on the owner's tax returns, is
5　reflected on a K-1. Bender would remind me to call the tax
6　department for Vornado and ask for the K-1 or get an estimated
7　K-1, so we could do the extensions in April; the final K-1 so
8　we could finish the President's tax return in October. So I
9　would send to Bender -- e-mail to Bender these K-1s every year
10　or a couple of times a year.
11　Q　Do you see at the top there in blue letters --
12　　　MR. SUAREZ: We can scroll over.
13　Q　It says in blue: Per discussion with J. McConney on
14　2/27/17 cash balances are from bank reconciliations and not
15　from individual balance sheets.
16　A　Yes.
17　Q　What does that mean?
18　A　At a certain point in time we started valuing our
19　golf courses based on their assets. So we would use -- we
20　would get a monthly financial statement or June financial
21　monthly statement, showing other assets and liabilities. I
22　think at some point we were using the cash amounts on those
23　balance sheets. This is reflected that we had actually had
24　bank reconciliations, copies of bank statements.
25　　　A bank reconciliation is when you reconcile your book

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1   balance to the bank balance. If you have any outstanding
2   checks, any deposit in transit, you adjust your book balance to
3   agree to the bank statement. This is just stating that we used
4   the bank statements to come up with all of these numbers, all
5   of these amounts.
6   Q   And what, if any, was the outside accounting firm,
7   Mazars', role in this process?
8   A   They would review this document. And this document
9   is a number of columns. We try to keep the larger numbers on
10   the spreadsheet. There were some other sub-spreadsheets which
11   would contain smaller bank accounts. This was given to Mazars
12   or Bender so he had the backup for the valuation of cash or the
13   amount of cash that should be reflected on the Statement of
14   Financial Condition.
15   MR. SUAREZ: And if we could pull back up the
16   Plaintiff's Exhibit, I believe it is 731, and place that
17   side by side.
18   Q   Mr. McConney, the Vornado interests that we described
19   earlier as being owned by the corporate entities on the
20   spreadsheet that appears on the right, Plaintiff's Exhibit
21   2587, are those the same partnerships as the entities that own
22   the 1290 Sixth Avenue and 555 California Street?
23   A   Yes. H -- where is it? HWA Waterfront Associates LP
24   I is 555 California Street. 1290 Avenue of the Americas and
25   the HWA Waterfront Associates LP III, IV and V are owned 1290

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1   Avenue of the Americas, yes.
2   Q   Why did you value the Vornado partnership interests
3   separately from the Vornado cash?
4   A   That's the way we valued all of the assets. We had
5   different components. You had cash, marketable securities.
6   This is the only place to put cash and marketable securities.
7   We had escrow deposits. We had the asset value on the asset
8   side and we did this for Trump Tower, we did it for 40 Wall
9   Street. You can see the entities listed here.
10   On the right side we had the accounts payable. And
11   the loans -- the liability for the loans, if there were any,
12   for whatever entity it was. So we kind of separated it.
13   That's the way we presented it on our statement.
14   Q   Was that separation disclosed to Mazars?
15   A   Yes. You can see it right here.
16   MR. SUAREZ: If we could please pull up
17   Plaintiff's Exhibit 2575?
18   Q   Do you recognize this document, Mr. McConney?
19   A   Yes. This is -- this is the June of 2015 spreadsheet
20   where we put together -- which was used to put together the
21   information for the cash accounts and securities -- marketable
22   securities as of June of 2015.
23   Q   Do the Vornado cash balances appear on this sheet?
24   A   Yes.
25   Q   Was this sheet provided to Mazars?

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1   A   Yes.
2   Q   Is the 30 percent of cash on the balance sheet
3   disclosed on this sheet as well?
4   A   Yes.
5   MR. SUAREZ: Your Honor, I move Plaintiff's
6   Exhibit 2575 into evidence.
7   MR. AMER: No objection.
8   THE COURT: Granted, it is in.
9   (Whereupon, the document referred to was deemed
10   marked for evidence as Plaintiff's Exhibit 2575 by
11   the Court.)
12   MR. SUAREZ: If we could please put up
13   Plaintiff's Exhibit 2564?
14   Q   Do you recognize this document?
15   A   Yes.
16   MR. SUAREZ: If we could scroll down?
17   Q   Do you see there the HWA Waterfront Associates cash?
18   A   Yes.
19   Q   And if I asked you the same questions about this
20   sheet that I did about the other, would the answers be the
21   same?
22   A   Yes.
23   MR. SUAREZ: Your Honor, I move 2564 into
24   evidence.
25   MR. AMER: No objection.

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1   THE COURT: Granted, it is in.
2   (Whereupon, the document referred to was deemed
3   marked for evidence as Plaintiff's Exhibit 2564 by
4   the Court.)
5   MR. SUAREZ: 2552, Plaintiff's Exhibit.
6   Q   Do you recognize this document, Mr. McConney?
7   A   Yes.
8   MR. SUAREZ: And you can scroll down to the HWA
9   Waterfront Associates.
10   Q   Do you see here the entities are slightly different?
11   A   Yes.
12   Q   Why is that?
13   A   This was prior to we found out about the second tier
14   of partnership entities. So these were HWA Owners LLC is the
15   legal entity, I believe, that owns 555 California Street. And
16   1290 Avenue of the Americas is the owner of 1290 Avenue of the
17   Americas or Sixth Avenue.
18   Q   What do you mean before you found out about the
19   different level of --
20   A   In subsequent years we found more -- I don't know
21   exactly how we found out, but we found out that there was
22   another level in the 1290 Avenue of the Americas partnership
23   where the HWA partnerships were. They had their own balance
24   sheets, and we found those balance sheets. When we found out
25   that information, we started adding that cash in subsequent

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1 years.
2   This year, we probably just knew about -- but we just
3 knew about the -- We received the two financial statements,
4 quarterly financial statements from Vornado and took the cash
5 right off those main partnership financial statements.
6   Q   And was that disclosed to Mazars?
7   A   Yes.
8   MR. SUAREZ: Your Honor, we move Plaintiff's
9 Exhibit 2552 into evidence.
10   MR. AMER: No objection.
11   THE COURT: Granted, it is in evidence.
12   (Whereupon, the document referred to was deemed
13   marked for evidence as Plaintiff's Exhibit 2552 by
14   the Court.)
15   MR. SUAREZ: If we could pull up Plaintiff's
16 Exhibit 2622? If you could scroll down?
17   Q   Do you recognize this exhibit?
18   A   Yes.
19   Q   Does this exhibit contain the Waterfront Associates
20 or Vornado Partnership interests?
21   A   This tab represents the cash -- these are the
22 entities and cash balances we have that were below $50,000. If
23 you go to the first tab, the 06.30.12, I think they should be
24 in this schedule.
25   Can we go back to the prior report? Prior?

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1   Can we scroll down a little bit, please?
2   THE COURT: I'll ask the witness to remember to
3 speak right into the mic.
4   THE WITNESS: Sorry.
5   THE COURT: I know it is tough when you are
6 looking at the screen and the other screen.
7   THE WITNESS: I don't see them.
8   MR. SUAREZ: Okay. Can we check Marketable
9 Securities?
10   Q   Not there either?
11   A   No, sir.
12   Q   Do you recall why in 2013 those assets were included?
13   A   Probably realized we were undervaluing our cash
14 assets, because we never included those numbers, and they are
15 substantial numbers.
16   Q   Was the decision to include those assets discussed
17 with Mazars?
18   A   I don't know if we discussed them when we added them.
19 But knowing Bender, he asked us questions about them, why we
20 added them, where the information came from, and we provided
21 him any information he needed.
22   Q   Was Mr. Bender --
23   MR. AMER: Excuse me. I am sorry. Excuse me.
24   I am going to move to strike the last answer
25 because he said, "I don't know if we discussed them." And

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1 then whatever came after that was just his speculation.
2   MR. SUAREZ: It is not a speculation. He had a
3 40 -- 30-something year relationship with Bender and
4 worked together on the Statements of Financial Condition.
5   THE COURT: Please read back the question and
6 the answer.
7   (Whereupon, the record was read back by the
8 court reporter.)
9   THE COURT: Well, I don't want to strike it.
10 That's his understanding of what would have happened.
11   So, overruled.
12   MR. SUAREZ: If we could go back to the cash --
13 I am sorry, to the supporting data, Plaintiff's Exhibit
14 731. And go back to the Vornado Partnerships.
15   Q   How did you value in 2014 the interest in 555
16 California Street?
17   A   We used the financial statement provided to us from
18 Vornado. We used the NOI, net operating income, off the P&L
19 statement of income. I don't know what the correct term was
20 that year. We took the -- we divided the NOI by the cap rate.
21 Came up with a value based on that cap rate and P&L. Reduced
22 it by the existing mortgage on the property, and came up with a
23 net property value.
24   Q   And what did you do with the net property value?
25   A   Ultimately we multiplied the net property value by

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1 30 percent to determine the value to President Trump.
2   Q   And why did you multiply the -- I am sorry, the net
3 property value by 30 percent?
4   A   The same reason we multiplied the cash by 30 percent,
5 that was President Trump's partnership interest in the
6 partnership.
7   Q   Was that disclosed to Mazars?
8   A   Yes, they had the K-1s. They could see right off the
9 K-1s that there was a 30 percent partnership interest.
10   Q   And how did you select the cap rate in 2014?
11   MR. AMER: Can we just be specific as to which
12 cap rate?
13   MR. SUAREZ: Sure.
14   Q   How did you select the cap rate for 555 California
15 Street in 2014?
16   A   Doug Larson, who works for Cushman -- used to work
17 for Cushman & Wakefield, put us in touch with Robert Farwell,
18 who worked in California, or San Francisco. He provided us
19 with some information. It wasn't the same as what Doug
20 provided us, but he provided us some comp information. And
21 based on that information we came up with this -- with the cap
22 rate.
23   Q   And how about for 1290 Sixth Avenue?
24   A   Can you scroll, I don't know, up or down, but --
25   There we go. Thanks.

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1 It was based on Doug's -- like we spoke about before,
2 we contacted Doug Larson. He provided us with his reports for
3 midtown for class A buildings. And based on that information
4 we selected the cap rates used.
5 Q In 2015, how did you select a cap rate for 555 -- for
6 the 555 California Street building?
7 A This time we were in contact with John Walsh from
8 Cushman & Wakefield in San Francisco, who provided us with
9 information about class A office buildings in San Francisco.
10 And based on those comps, we selected the two -- the two cap
11 rates and came up with an average cap rate.
12 Q When you say, "we selected" who selected the cap
13 rate?
14 A I selected the cap rate. Sorry.
15 Q Was your selection of the cap rate based on your
16 discussions with the gentleman from Cushman & Wakefield?
17 MR. AMER: Objection, leading.
18 THE COURT: Sustained.
19 Q What was your selection of the cap rates based on?
20 A It would be based on the e-mail in 2015, the e-mail
21 that came from John. I don't have here a note about a phone
22 call, so I don't remember if I actually spoke to him or not.
23 Q Did you intend for your notes to be accurate,
24 Mr. McConney?
25 A This is the best I could, yes.

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1 Q What was the purpose of writing these notes on the
2 supporting data?
3 A To let the reader of these spreadsheets know where
4 the numbers were coming from.
5 Q And in 2015, how did you select the cap rate for 1290
6 Avenue of the Americas?
7 A Doug Larson, we reached out to Doug, Doug provided us
8 his report for comps, midtown class A buildings, and there were
9 four properties. There were four properties we used as comps
10 to come up with the average cap rate, the 3.11 percent.
11 Q Moving onto Mar-a-Lago at row 191.
12 Do you see for Mar-a-Lago where it says: Value if
13 sold to an individual?
14 A Yes.
15 Q Why does that note appear on your spreadsheet?
16 A Because we didn't value it as an operating club. We
17 valued it as if the house, the mansion, all of the additions to
18 the mansion, the cabanas, private beach, were sold to an
19 individual.
20 Q And why was it not valued as a private club?
21 A I don't remember off the top of my head.
22 Q What did you do in 2014 to reach a value for
23 Mar-a-Lago?
24 A Whenever we valued Mar-a-Lago we tried to find comps
25 in the area. There is nothing like Mar-a-Lago. It is

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1 17 acres. It goes from the ocean to the intercoastal. The
2 properties we found were always smaller properties. They may
3 have been on the intercoastal, may have been on the ocean, may
4 have been landlocked. But there was nothing as huge as this
5 estate. We tried to comp it, come up with a comp the best we
6 could to come up with a value.
7 In 2014 there was, I think it was one big deal where
8 530 and 540 South Ocean Boulevard -- so you know, Mar-a-Lago is
9 on 1100 South Ocean Boulevard. So it is not close, but not far
10 away. And 61 Middle Road, which I believe is all connected to
11 the 530 and 540 South Ocean Boulevard property. Took the
12 selling price, divided by the number of acres, came up with an
13 average price breaker, multiplied it by the 18 acres which is
14 the size of the Mar-a-Lago property, came up with $309 million.
15 To that we added some of the structures that we --
16 that the Trump Organization put on the property, the grand
17 ballroom didn't exist. The beach cabanas was basically just a
18 beach originally when it was a private residence. When
19 Mr. Trump owned it, President Trump owned it as a private
20 mansion. And then we had a tennis pavilion and tea house that
21 we improved. So those amounts were added to the value.
22 Q What, if any, discussions did you have with Mazars
23 concerning the method of valuing the Mar-a-Lago club?
24 A I don't remember having a specific conversation with
25 Mazars on this.

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1 Q How did you value the 2015 -- how did you value
2 Mar-a-Lago in 2015? Excuse me.
3 A It was basically the same process. We tried to find
4 a property that had a selling price in this year. In the
5 neighborhood of Palm Beach we found this one for $71 million.
6 Came up with the same value -- came up with a value per acre.
7 Multiplied it by the number of acres for Mar-a-Lago. Came up
8 with the valuation of 261 million. And then we added the value
9 of the grand ballroom and beach cabanas.
10 Q Why did the value of Mar-a-Lago change by more than
11 $57 million? Why was it reduced by $57 million from 2014 to
12 2015?
13 A The value per acre dropped from 13 million --
14 13.8 million to 16.4 million. It is the best comp we came up
15 with.
16 (The following proceedings were stenographically
17 recorded by Senior Court Reporter Michael Ranita.)

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1 Q Were you trying to be accurate when you reduced the
2 value in Mar-a-Lago from 405 million to 347 million from 2014 to
3 2015?
4   MR. AMER: Objection. Leading.
5   THE COURT: Were you trying to --
6   MR. SUAREZ: Be accurate.
7   THE COURT: -- be accurate?
8 A I always try to be --
9   THE COURT: Hold on, hold on.
10   MR. AMER: It is a yes, no question, your Honor.
11   THE COURT: It's leading. Granted -- I mean,
12 overruled.
13   MS. FAHERTY: Sustained.
14   THE COURT: Sustained. I knew I would get it
15 sooner or later.
16   You could ask him why he did it.
17 Q What, if any, was your intention in reducing the value
18 from $405 million to $347 million of Mar-a-Lago from 2014 to
19 2015?
20 A Our intention was always to reflect the best we could
21 the value of these properties.
22 Q Do you see where it says the Mar-a-Lago Club value, if
23 sold to an individual?
24 A Yes.
25 Q Why is the Mar-a-Lago Club listed under club

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1 facilities?
2 A Mar-a-Lago is a social club, um. When -- at some point
3 in time it was added under club facilities, and we just included
4 it there, just like the golf courses. I don't remember any or
5 reason.
6 Q How was it determined to put all of the -- withdrawn.
7   MR. SUAREZ: Can we scroll down to the first golf
8 course.
9   (Whereupon, the exhibit displayed on the screen was
10 scrolled through.)
11 Q Trump International Golf Club in Florida.
12 Mr. McConney, how did you come up with the valuation method for
13 the Trump International Golf Club in Florida?
14 A We were trying to figure out a way to best value the
15 property. We thought at this point in time that if we took the
16 purchase price and the improvements to the property, we would
17 have an idea of what it cost to fix up or to get the property to
18 the luxurious level, five-star level that President Trump
19 wanted.
20   This was the case that we developed it from scratch,
21 the vacant land was literally a garbage dump that the town or
22 county had. Mr. Trump had a vision to develop it into a world
23 class golf course. And this is what it cost to clean up the
24 property and develop, or grow -- to put the golf course in
25 place. I don't know what the right word is.

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1 Q How did you get the information for the purchase price?
2 A This case I don't know if we had a purchase price
3 because it was, I think, a lease. So it's a leasehold. We
4 didn't purchase the land. So there's a long term lease. It was
5 just the amount of money we put into the asset over time. Each
6 property -- the conversation we had yesterday, each one of the
7 golf courses has it's own accounting staff. The accounting
8 staff that oversees Trump International Golf Club in Florida
9 also oversees Mar-a-Lago. They maintained the books and
10 records, general ledger, cash receipts, cash disbursements,
11 member billings, invoices. That's similar for all the other
12 golf courses. Each one has their own accounting staff,
13 controller, accounts receivable person, accounts payable person,
14 maybe a payroll person.
15   We asked, probably, the director of finance or the
16 controller to provide us with a balance sheet as of June 30th of
17 whatever year it was. And we picked the information off that
18 balance sheet.
19   MR. SUAREZ: If we could scroll down to the Trump
20 National Golf Club at Bedminster.
21 Q How did you come up with a valuation method for the
22 Trump National Golf Club in Bedminster?
23 A It would be similar. There was a group that was trying
24 to build the golf courses. This is the old Delorean estate,
25 made famous from the -- the Delorean was the Back to the Future

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1 Delorean. They were having difficulties, I guess, finishing the
2 golf course.
3   Mr. Trump went in, bought out the partners, so we had a
4 purchase price there and then developed the golf course. This
5 came off the balance sheet from the accounting department at the
6 Bedminster golf course.
7 Q And how about Colts Neck? How did you come up with the
8 value for the asset for Colts Neck?
9 A Colts Neck, I know, had a housing component around it.
10 We didn't purchase the housing component. We just purchased the
11 golf course.
12   Again, it was, I think -- it was either an existing
13 golf course or it was almost finished. I think it was an
14 existing golf course that was operational. We purchased it.
15 I'm not sure if the developer was in bankruptcy or close to
16 bankruptcy. He was having financial problems. So we purchased
17 the golf course, which is included in fixed assets, or part of
18 the purchase was included in fixed assets, and any improvements
19 we made to the property.
20 Q Why was there a premium for a fully operational branded
21 facility added to the Colts Neck property?
22 A There are golf courses which we, you can say, built
23 from scratch, which would be Briarcliff, Trump International in
24 Florida, Bedminster. And there were properties that were
25 already in existence. Mr. Trump spent funds in order to bring

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1 those properties, and there are a number of them, from their
2 whatever status they were to the luxurious status, the five-star
3 status that he wants his properties to have. So that was the
4 premium that was added.
5   Q   Was the addition of that premium disclosed to Mazars?
6   A   Yes.
7   Q   What, if any, response did Mazars give to the addition
8 of that premium?
9   A   I don't remember them saying anything or fighting back
10 or arguing with us.
11   Q   If we could go through the Trump National Golf Club in
12 Washington, D.C. How was the valuation methodology for this if
13 golf club determined?
14   A   This was similar to Colts Neck. The developer -- I
15 think it was an existing golf course already. The developer was
16 -- we bought it from a developer at a discounted price, and we
17 made improvements to the property. And, again, since we didn't
18 develop it from scratch, we had the operational premium to it.
19   Q   How about the Trump National Golf Club in Philadelphia.
20 Was how was valuation methodology achieved?
21   A   We purchased Philadelphia, Pine Hill and Hudson Valley
22 in one transaction. I believe the purchase price was
23 $7 million. It was a bankruptcy, so that's why the price was so
24 low. Mr. Trump spent money bringing it up to his standard. So
25 the value on the fixed assets would be the purchase price and

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1 the improvements, and then we added the operational premium.
2   Q   And that was also true of Hudson Valley?
3   A   Yes. That was one transaction. Two separate closing
4 statements, but it was one transaction. So we bought them both
5 at the same time. I believe it was the same developer.
6   MR. SUAREZ: If we could keep scrolling down.
7   (Whereupon, the exhibit displayed on the screen was
8   scrolled through.)
9   Q   How about the Trump National Golf Club in LA? How did
10 you come up with that valuation method?
11   A   Basically the same concept. There was a golf course
12 that was originally an 18-hole golf course in LA. There was
13 some sort of earthquake or something that I think one or two
14 holes were, I wouldn't say lost in the ocean, but separated from
15 the property.
16   Mr. Trump purchased that asset, spent a lot of money
17 fixing it up, bringing the missing holes -- I think it was a
18 15-hole golf course for a number of years, and then it became
19 the 18-hole golf course. So we just added that, whatever the
20 asset value was. The asset value was on the balance sheet.
21   Q   How did that valuation change between 2014 and 2015?
22   A   There was a conservation easement made for part of the
23 property. I think -- well, it was part of the property where
24 some of the lots -- the property was divided into a number of
25 lots. A number of the lots were donated and for a conservation

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1 easement.
2   Q   And what effect did that have on the value of the
3 property from 2014 to 2015?
4   A   It reduced it about $18 million.
5   Q   What does this 72,979,000 figure at J-404 reflect?
6   A   I tried to keep track. That was like a little proof I
7 had to keep track, or total, um the change for the net worth for
8 the year in certain assets. That's the reduction in the golf
9 course value from June of 2014 to June of 2015.
10   Q   And that's for the Trump National Golf Club in LA?
11   A   Just for the LA property, yes.
12   MR. SUAREZ: If we could keep scrolling down.
13   (Whereupon, the exhibit displayed was scrolled
14   through on the screen.)
15   Q   How did you value the Charlotte club, Mr. McConney?
16   A   Charlotte was an existing course we purchased, I think,
17 from the club. I don't know the reason why the club wanted to
18 sell it, but they wanted Mr. Trump to take it over.
19   So that would have been the purchase price and any
20 funds we expended -- the company expended to fix up the golf
21 course, and then we added the operational premium.
22   Q   How did we -- withdrawn.
23
24   MR. SUAREZ: Scroll down to Jupiter, Mr. McConney.
25   (Whereupon, the exhibit displayed on the screen was

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1   scrolled through.)
2   A   Okay.
3   Q   How did you come up with a valuation methodology for
4 the Jupiter club?
5   A   Jupiter, I know we had a small cash purchase price for
6 it. We assumed -- I'm pretty sure on the DC golf course and
7 Charlotte golf course, we assumed liabilities, plus whatever
8 amount we expended to bring the property up to the five-star
9 Trump level.
10   Q   Can we pull up Defendant's Exhibit 1021 marked for
11 identification and put it side by side?
12   (Whereupon, there is a brief pause in the
13   testimony.)
14   MR. SUAREZ: I think the computers are also ready
15   for Thanksgiving.
16   (Whereupon, the exhibit was displayed on the
17   screen.)
18   Q   Do you recognize this document, Mr. McConney?
19   A   Yes, sir.
20   Q   What does this document describe?
21   A   This was an allocation into -- I believe it was
22 prepared by an accounting firm to allocate the purchase price,
23 which was the cash and the liabilities for member deposits that
24 we assumed, plus some closing costs, allocate that to purchase
25 price to the tax return. It wasn't done for the tax return, so

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1 we could allocate the purchase price between various assets or
2 expenses; building, building improvements, land, furniture
3 fixtures, which was needed in order to give us a basis to
4 depreciate those assets if possible. Land you don't depreciate.
5 Land improvements, I believe you can. So for the tax return, we
6 needed to allocate it.
7   Q   How -- I'm sorry go ahead.
8   A   There's also a form that needs to be attached to the
9 tax return showing the allocation of the purchase price and, I
10 think, its broad categories. The tax return was prepared by
11 Mazars, so they had all of this.
12   Q   Was the allocation of the purchase price disclosed to
13 Mazars?
14   A   Yes.
15   Q   And how was -- withdrawn, why is the membership deposit
16 liability assumed part of the purchase price?
17   A   This -- the seller of the property has two
18 alternatives. You could pay off your membership deposits and
19 then you could up your price, or you could just say, take the
20 membership deposits and pay them off. So it's like a loan. You
21 have an obligation to pay off these deposits or settle these
22 deposits at some point. So that's according to what I've been
23 told by the accountants that's part of your purchase price.
24   MR. SUAREZ: All right. We could go back to
25   Plaintiff's Exhibit 731.

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1   (Whereupon, the exhibit was displayed on the
2   screen.)
3   Q   How did you come up with the valuation method, turning
4 your attention to the Trump golf links, Ferry Point?
5   A   It was kind of hard to value Ferry Point. Ferry, at
6 this point, Ferry Point was a licensed deal with the City of New
7 York. When we came up with this, let's just value it at
8 whatever The Trump Organization had invested or spent on the
9 golf course, or acquiring the golf course. So that's the
10 amounts that are reflected here.
11   Q   And what is the Ferry Point property?
12   A   It's a golf course in the Bronx that the City was
13 trying to develop for years, like Wollman Rink, they couldn't
14 finish the project. President Trump took over, finished it,
15 made it a great golf course. It's a links golf course.
16   Q   How did you come up with the value for Doral?
17   A   In 2015?
18   Q   In 2015, yes.
19   A   In 2015 there was an appraisal done. We used the
20 amount on that appraisal.
21   Q   Why did you use the amount in the appraisal?
22   A   Um, Allen Weisselberg was usually involved in these
23 appraisals, told me, "Use the appraisal. Use this amount."
24 It's best reflects the value at that time of the property.
25   Q   Was that with respect to the Doral property

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1 specifically?
2   A   Yes. This was -- there are four golf courses, a spa,
3 hotel rooms, banquet facilities, for -- this is all of Doral.
4 It's a large piece of land in Miami.
5   Q   When you had an appraisal for the property, did you
6 always use it for the basis for valuation?
7   A   No.
8   Q   What instances would you not use it?
9   A   Most appraisals are done -- to my knowledge all
10 appraisals -- I shouldn't say that. What I know of appraisals,
11 they are done for a specific purpose. The -- this appraisal was
12 done to value the property. Other appraisals are not --
13 conservation easement is not done to value of the property.
14 It's done for valuation for a conservation easement. So
15 appraisals are done for different reasons. Just because it is
16 an appraisal done doesn't mean it's going to properly reflect
17 the value of that property.
18   MR. SUAREZ: Can we scroll back up to 40 Wall.
19   (Whereupon, the exhibit displayed on the screen was
20   scrolled through.)
21   Q   In 2015, what was the basis used for valuing 40 Wall?
22   A   A budget for the property was prepared for 2016. We
23 used the operating income, the operating expenses to come up
24 with a net operating income. Donna Kidder and Allen
25 Weisselberg, who worked on this, adjusted the rent roll to bring

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1 it to a stabilized basis. There were leases being negotiated.
2 There was some vacant space. We came up with a $24 million NOI,
3 divided by a cap rate, and came up with the valuation of
4 $735 million.
5   Q   And what did you disclose to Mazars about the basis for
6 valuing 40 Wall in 2015?
7   A   We gave them the budget. We listed the vacant space or
8 gave them a schedule of the vacant space, a schedule of the
9 leases. Um, we gave them the backup we would have received from
10 Doug Larson from Cushman & Wakefield of where the cap rates came
11 from.
12   Q   Who would have selected the cap rate in 2015?
13   A   I would have.
14   Q   And what value did this valuation method yield for
15 2015?
16   A $735 million.
17   MR. SUAREZ: Can we pull up Plaintiff's
18   Exhibit 868.
19   (Whereupon, the exhibit was displayed on the
20   screen.)
21   Q   Mr. McConney, do you see your name at the top, from?
22   A   Yes.
23   Q   What is the date of this e-mail?
24   A   December 29th, 2015.
25   Q   Who did you send this e-mail to?

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1   A   Donald Bender.
2   Q   If you could please take a look at Plaintiff's
3 Exhibit 868.
4   THE COURT OFFICER: Do you have it in evidence?
5   MR. SUAREZ: I believe it is.
6   (The exhibit was handed to the witness.)
7   MR. SUAREZ: Thank you.
8   Q   Do you recognize this e-mail?
9   A   Yes.
10   Q   What is it?
11   A   Um, it's an e-mail to Donald Bender with an appraisal
12 done in 2015 by Ladder Capital. Ladder Capital was an
13 investment bank. We were looking to pay off the existing loan
14 with Capital One, and Ladder Capital came in to do -- provide us
15 with a loan.
16   MR. SUAREZ: Can we turn to the second page of the
17 appraisal.
18   (Whereupon, the exhibit was displayed on the
19 screen.)
20   Q   What is the date of this appraisal?
21   A   June 25th, 2015.
22   Q   Do you see the market value as-is in the third page of
23 this exhibit?
24   A   Yes.
25   Q   Do you see the value is -- I'm sorry, what do you see

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1 as the value conclusion?
2   A   The value conclusion for market value as-is as of
3 June 1st, 2015, for a leasehold estate was $540 million.
4   Q   Is that less than the number that appeared in your
5 supporting data?
6   A   Yes.
7   Q   Why did you use a different value than that which was
8 in this appraisal?
9   A   Well, we didn't think this valuation properly reflected
10 what we thought the building was worth.
11   Q   Did you send the entire appraisal to Mr. Bender?
12   A   I'm not sure if I did. If he needed it, we would have
13 sent it to him. I don't remember if we actually did or not.
14   Q   If there are less pages here than the entire -- than
15 contained in the entire appraisal?
16   A   Yes, there are.
17   Q   Why would you have sent Mr. Bender only a limited
18 number of pages from the appraisal?
19   A   At the time we were -- we were working on a draft.
20 This -- these were the documents I would have relied on to value
21 40 Wall Street when I submitted that draft to Bender. Um, no
22 use sending a ton of documents. I mean, if you want them, he
23 could've had them, but this is what I relied on at that point in
24 time for the valuation.
25   MR. SUAREZ: If we could go back to the plaintiff's

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1 supporting data at Plaintiff's 731.
2   (Whereupon, the exhibit was displayed on the
3 screen.)
4   MR. SUAREZ: And go to Briarcliff -- I'm sorry,
5 Aberdeen?
6   MR. AMER: Just to be clear, it's not "the
7 plaintiff's supporting data", it's defendant's supporting
8 data.
9   MR. SUAREZ: Plaintiff's Exhibit, Mr. Amer. I
10 misspoke. Please excuse me.
11   MR. AMER: I'm just correcting it for the record.
12   MR. SUAREZ: And I appreciate it.
13   Q   How did you come up with the valuation for the Aberdeen
14 club, which I know it appears on your schedule as Trump
15 International Golf Club Scotland?
16   A   For June of 2015?
17   Q   Well, how about we start with 2014?
18   A   In 2014, we started with, from inception to date, the
19 capital contributions made by The Trump Organization to acquire
20 the various lots. Um, there wasn't one large parcel of land we
21 purchased. There were a number of lots. I don't know how many.
22 There were a number of lots we purchased and assembled in order
23 to build the golf course in whatever future vision President
24 Trump had. That's the $62 million.
25   There's an adjustment for the land that we were going

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1 to use for the hotel and residential structures, and we came up
2 with the balance, added a premium for assembling all these land
3 parcels together, and came up with a value of $74 million for
4 that land.
5   Q   Was the premium for the assembly of the land parcels
6 disclosed to Mazars?
7   A   Yes, it was.
8   Q   What, if any, reaction did Mazars have to the inclusion
9 of that premium?
10   A   They accepted it, because they didn't say anything that
11 I remember.
12   Q   How did the -- I'm sorry, how did you value the
13 property in 2015?
14   A   In 2015 we used the TIGCS, which stands for Trump
15 International Golf Club, Scotland. They -- I presume at that
16 point in time they had an accounting staff in place who provided
17 us with a year-end, or December 31st, 2014, financial statement.
18 We used the fixed assets on that statement.
19   It provided us with any fixed asset additions for the
20 first six months of 2015, um, came up with the total. Their
21 financial statements in pounds, we converted it to US dollars,
22 subtracted the value of the land that was going to be used for
23 the hotel and residential space, added the 30 percent premium,
24 and came up with a $60 million value.
25   THE COURT: Four-minute warning.

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1   MR. SUAREZ: Can we scroll down.
2   (Whereupon, the exhibit displayed on the screen was
3   scrolled through.)
4   MR. SUAREZ: Too far. Further up. No, no, go
5   back.
6   (Whereupon, the exhibit displayed on the screen was
7   scrolled through.)
8   MR. SUAREZ: Back to Scotland.
9   (Whereupon, the exhibit was displayed on the
10   screen.)
11   Q   Do you see here where it says "Value of residential
12 parcel based on purchase of land by Persimmons, Hopecroft,
13   Bucksburn, value of land per home"?
14   A   Yes.
15   Q   And it has then a number of homes to build?
16   A   Yes.
17   Q   How did you arrive at the number of homes to build of
18   2,500?
19   A   George Sorial, who worked out of The Trump Organization
20   office where I worked, was the person overseeing this project in
21   -- and the person in charge of getting various approvals to do
22   -- the President wanted to do at the location. It was either
23   verbal information, or a verbal phone call, or an e-mail that
24   George would have sent me. If it didn't come from George, Sarah
25   Malone was the general manager for the property, was intimately

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1   involved in the day-to-day operations to the property, she would
2   have provided me the number.
3   Q   What personal knowledge did you have concerning
4   construction plans for Aberdeen?
5   A   Other than what they told me, none.
6   MR. SUAREZ: Your Honor, I'm at a good breaking
7   point for the morning, for the morning break.
8   THE COURT: I understand. I have a quick question
9   for the witness.
10   You were asked many times by Mr. Suarez, "Did you
11   disclose X, Y and Z to Mazars?"
12   And you would say, "Yes." Was that by these
13   supporting documents or was that some independent
14   communication that you would inform them?
15   THE WITNESS: What I can -- what I can prove is
16   what's here on the spreadsheets. Bender was intimately
17   involved in our day-to-day operations. I keep saying he
18   knew more about the company than I did, and I sat there in
19   the building. Um, I can't prove conversations I had with
20   him, but he knew what we were doing with various properties.
21   He was the person in charge of, um, formulating Mr. Trump's,
22   President Trump's tax strategy. We would ask him how he
23   would structure purchases, um, what information would you
24   use in a loan document. So other than knowing Bender for
25   40 years and talking to him all the time about all the

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1   assets we had, I can't prove it other than I've typed it
2   here on the spreadsheet.
3   THE COURT: All right. So can I summarize that
4   long answer as information was on the spreadsheet and/or we
5   might have separately communicated it, and he knew
6   everything anyway?
7   THE WITNESS: Yes.
8   THE COURT: I'm good at condensing. Perfect
9   timing. See you all in 15 minutes.
10   (Continued on the next page.)

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1   COURT OFFICER: All rise. Part 37 is back in
2   session.
3   Please be seated and come to order.
4   (The witness resumed the stand.)
5   THE COURT: Okay. Let's continue.
6   MR. SUAREZ: Your Honor, before I forget,
7   Defendant's Exhibit 1027, if we could pull that up?
8   I would like to move this into evidence. This
9   concerned a discussion that we had yesterday about the
10 Trump Central Park South, the Trump Park East and the
11 method of valuing that and the consistency in the
12 procedures with Mazars.
13   MR. AMER: I objected before. I'll continue to
14 object on relevance. I understand Your Honor's ruling.
15   THE COURT: Granted. It is in evidence.
16   (Whereupon, the document referred to was deemed
17   marked for evidence as Defendant's Exhibit 1027 by
18   the Court.)
19   MR. SUAREZ: And Defendant's Exhibit 1021, which
20 we just reviewed with the witness, can you pull that up?
21 Defendant's 1021, which is the allocation of the Jupiter
22 purchase price, I would like to move that into evidence.
23   MR. AMER: No objection.
24   THE COURT: Granted. It is in evidence.
25   (Whereupon, the document referred to was deemed

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1   marked for evidence as Defendant's Exhibit 1021 by
2   the Court.)
3   MR. SUAREZ: Thank you.
4   If we could go back to Plaintiff's Exhibit 731.
5   I believe we were on Aberdeen.
6   Q   Mr. McConney, I would like to draw your attention to
7   row C 538.
8   Do you see that?
9   A   Yes.
10   Q   What does that cell represent?
11   A   The -- somebody at the property in Scotland, or it
12   could have been George Sorial, told us there was an economic --
13   economic issues in Scotland. It was a downturn in the economic
14   conditions. So, we just felt it fair to reduce the value that
15   we came up with by 20 percent to reflect this downturn in the
16   area.
17   Q   Why would you reduce the value of a property on the
18   President's Statement of Financial Condition, Mr. McConney?
19   A   The same way we -- why we increased it, it properly
20   reflected the value we thought the property was worth at the
21   time.
22   Q   How do you feel about the work you did on the
23   President's Statement of Financial Condition?
24   A   I feel great. I have no problems with the work I did
25   on this.

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1   Q   Did you ever intend to mislead anyone?
2   A   No.
3   Q   Did you ever intend to be inaccurate?
4   A   Not purposely, no.
5   Q   Why don't you work at the Trump Organization anymore?
6   A   Excuse me.
7   MS. HABBA: Judge, I am just going to get him a
8   tissue.
9   (Handing)
10   A   I am an accountant. I am a numbers person. When I
11   work for a CPA firm I put together worksheets. I went to work
12   for the Trump Organization, it was a lot more fun accounting
13   because I got to deal with more vibrant assets, The Apprentice
14   for one of them. I got to do a lot of things that the normal
15   accountant wouldn't be able to do.
16   I am very proud of the work I did for 35 years. But
17   I have been subpoenaed by the Southern District of New York.
18   Two hours before I was supposed to testify I was told, don't
19   bother showing up.
20   I have testified or been deposed for three days by
21   the Attorney General of New York.
22   I have appeared seven or nine times in front of Grand
23   Juries.
24   I just couldn't deal with it anymore. I just wanted
25   to relax and stop being accused of misrepresenting assets for

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1   the company that I love working for.
2   Sorry.
3   When I worked for Bender, for Mazars, it was like
4   working for a family. We went to each other's weddings. We
5   went to Atlantic City. We went to lunch every day. We went
6   out Friday nights. Trump Organization was the same family
7   setting. It was owned by a family. A little different, we
8   didn't go out to lunch together, but you knew people. You see
9   them get married, raise a family. And to have it destroyed
10   over -- I am not going to use the word, but -- I feel proud of
11   what I did. I think everything was justified.
12   Numbers don't represent fully what these assets are
13   worth. I am going back years. President Trump was going for a
14   casino license in Atlantic City -- I am sorry, in Las Vegas.
15   The gaming commission sent out investigators who asked
16   questions based on the forms I filled out, and they wanted to
17   see some assets. They had the Statement of Financial
18   Condition. They had the breakdown. And the investigator who
19   was sitting outside President Trump's office said, I would like
20   to see his triplex. I don't know what it was valued for at
21   that time, it was prior to all of this. I said, go ahead, the
22   President is right there. Go talk to him. He went to talk to
23   him. President took him for a tour.
24   He said, Jeff, you made a mistake.
25   I am like, oh, sugar.

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1   He said, you could have doubled the value.
2   It just shows we were conservative.
3   They flew, being two investigators, flew down to
4   Florida and I showed them Mar-a-Lago and Trump International,
5   both fully operational at the time. And they had no qualms
6   with what we valued the property as.
7   Based on that, those interactions and everything
8   else, we felt comfortable, we being the Trump Organization,
9   myself, Allen Weisselberg, we felt comfortable with these
10   valuations. And to be hit over the head every time with a
11   negative comment over something is just really frustrating, and
12   I gave up.
13   Q   Mr. McConney, thank you.
14   MR. AMER: Excuse me.
15   MR. SUAREZ: I have no further questions.
16   MR. AMER: Excuse me, Your Honor. With respect
17   to what the two investigators said, I move to strike that
18   as hearsay.
19   MR. SUAREZ: Really?
20   MR. AMER: Yeah. He testified two investigators
21   said.
22   THE COURT: As I understand it, it is not
23   introduced to prove the truth of the contents. The
24   question was, why are you no longer working there. He is
25   explaining why he is upset.

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1   MR. AMER: As long as it is clear, it is not
2   coming in for the truth of the matter asserted.
3   THE COURT: Right, only coming in for its affect
4   on the witness. Understood, everybody?
5   MR. ROBERT: That's what it was intended for.
6   MR. SUAREZ: I have no further questions on
7   direct.
8   Thank you, Mr. McConney.
9   THE WITNESS: Thank you.
10   THE COURT: Will there be any cross examination?
11   MR. AMER: There will.
12   THE COURT: Mr. McConney, are you okay or you
13   need a couple of minutes?
14   MS. HABBA: I was going to say, do you want a
15   minute.
16   THE WITNESS: No, I am okay.
17   THE COURT: Okay. Let's do it.
18   THE WITNESS: Thank you.
19   Thank you, sir.
20   MR. AMER: Can you just make sure that mic is
21   off?
22   MR. SUAREZ: It is off.
23   MR. AMER: Okay.
24   THE COURT: Please proceed.
25   MR. AMER: Thank you, Your Honor.

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1   CROSS-EXAMINATION
2   BY MR. AMER:
3   Q   Mr. McConney, are you okay to proceed?
4   A   Yes, sir. Thank you.
5   Q   Okay. So, I want to begin by talking about a
6   discussion that you had yesterday in response to questions from
7   Mr. Suarez about who wrote particular portions of the 2015
8   Statement of Financial Condition. Do you recall that exchange?
9   A   Yes.
10   MR. AMER: Why don't we put up Plaintiff's
11   Exhibit 729 in evidence.
12   Q   And do you recall that there was language that
13   Mr. Suarez asked you about that you stated came from Mazars,
14   either Jerry Rosenblum or Donald Bender; do you recall that?
15   A   Yes, that was in the footnotes, yes.
16   Q   Now, it is the case that ultimately the language in
17   the 2015 statement was reviewed and approved by the Trump
18   Organization, yes?
19   A   Yes.
20   Q   And you testified yesterday that you would review the
21   draft statement with Mr. Weisselberg, and then Mr. Weisselberg
22   would say, go and tell Mazars to print it. Do you recall that
23   testimony?
24   A   Yeah, I don't know that those were the exact words,
25   but he was fine with the statement to be finished.

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1   Q   And I am just talking about your testimony yesterday
2   about it.
3   A   I apologize. Yes, I believe that's the words I used.
4   Q   Okay. But there was a step in-between that involved
5   Donald Trump prior to 2017, wasn't there?
6   A   I don't know -- I don't know what Allen -- what the
7   next step was. I finished my conversations or my presentation,
8   my documentation with Allen. I don't know what he did or did
9   not do with the President.
10   Q   It was your understanding, however, that before
11   Mr. Weisselberg would give the okay to print, Donald Trump was
12   to get final review of the Statement of Financial Condition for
13   the years where you were primarily responsible for preparing
14   the statement, correct?
15   A   That was my understanding, yes.
16   Q   So between the time that you and Mr. Weisselberg
17   reviewed the draft statement and Mr. Weisselberg gave the okay
18   to have Mazars print it, it was your understanding that
19   Mr. Weisselberg would share the draft statement with Donald
20   Trump for his final review; at least for the years where you
21   were the primary drafter of the statement, correct?
22   A   That was my understanding, yes.
23   Q   In terms of Donald Trump's role in having the final
24   review, am I correct that he ceased having that role in 2017
25   when he became President?

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1   A   Yes.
2   Q   And do you recall that there was an internal
3   restructuring of the Trump Organization as a result of
4   Mr. Trump becoming President to remove him from his executive
5   positions to avoid a conflict of interest?
6   A   Yes.
7   MR. AMER: If we could put up what we have
8   marked as Plaintiff's Exhibit 1329?
9   (Handing)
10   Q   Mr. McConney, do you recognize this as the internal
11   restructuring document that was used to implement what we just
12   discussed about Mr. Trump being removed from executive
13   positions as a result of his inauguration?
14   A   I don't remember seeing it -- I never saw it in this
15   formal presentation: Trump Organization internal restructuring
16   and the closing dates. I do remember seeing through page nine
17   of 34. Seeing these various assignments of membership or
18   partnership interests from various entities to, I believe, the
19   Trust or the holdings company. You want to ask the legal
20   department about who the current owner was of these entities.
21   I kind of lost track after a while.
22   Q   Let me show you the summary on page two. It says
23   Summary of Transaction. It says: "Through various assignments
24   dated as of December 31, 2016, January 1, 2017 and January 19,
25   2017, DJT transferred all of his direct interests in the Trump

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1 Organization and all entities affiliated therewith to the Trust
2 or subsidiaries thereof."
3   And then it lists a number of things that happened on
4 January 19, 2017. Do you see that?
5   A   Yes. Excuse me. Yes.
6   Q   Does this comport with your understanding and
7 recollection of the restructuring that occurred to remove
8 Mr. Trump from his various executive positions to avoid a
9 conflict of interest?
10   A   Yes.
11   Q   And one of the things that occurred on January 19,
12 2017 under this summary of transaction is (v), the Officers &
13 Directors (as applicable) were appointed to all entities.
14   Do you see that?
15   A   Yes.
16   Q   And did that include appointing Donald Trump Jr. and
17 Eric Trump to various executive positions within the
18 organization?
19   A   I can't specifically answer that question. I know
20 they had titles in entities, I don't remember seeing this
21 statement before.
22   MR. AMER: Your Honor, we move to admit exhibit
23   1329.
24   MR. SUAREZ: Your Honor, we object. He can't
25 identify the document. I believe he testified he hasn't

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1   seen it in its entirety.
2   MR. AMER: This is a document from their file.
3   THE COURT: You said -- it is going back to
4 Mr. Suarez, he testified he hasn't seen it in its
5   entirety.
6   MR. SUAREZ: I think his testimony was that he
7 had seen pieces of it, but he can't identify the document.
8 When I asked him if he recognized it, he said not in this
9   form, or something to that effect.
10   MR. AMER: I don't think we have any
11 authentication problem based on the initial agreement
12 between the parties. He has indicated this comports with
13 his recollection of what happened. And this is a document
14   from their own files.
15   MR. ROBERT: I don't know that it has ever been
16 determined that this was final or this was circulated. I
17 think this was questioned at one or more depositions as
18 well and I think that was the same answer given. Not sure
19 exactly what this document is. I am not necessarily
20 disagreeing with the contents of it, as this witness said,
21 but not knowing exactly what this is.
22   THE COURT: What, if anything, is your knowledge
23 of this document? Maybe looking at the title page would
24   be best.
25   THE WITNESS: If I just would have seen the

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1   title page I would have no idea what was inside of it.
2   I, at times, asked the legal department who the
3 owner of this entity was because of the change. And I
4 would -- they would send me some information about the
5 assignment of ownership interest and I would go through
6 and find the entity that I needed.
7   THE COURT: All right. So, plaintiff, would you
8 agree then that it can't be authenticated through this
9 witness? He said he wouldn't even have recognized it.
10   MR. AMER: I don't think we have to authenticate
11 it. That's agreed to. All documents produced are
12 authentic.
13   THE COURT: That's a different argument.
14   MR. ROBERT: Authentic. The fact this was
15 produced by Trump Organization is not in dispute. Is this
16 a draft? Is this something that was circulated?
17   THE COURT: We could -- we could look into that
18 and you could argue about that. But of course I am
19 letting it in.
20   MR. ROBERT: As to what?
21   THE COURT: You agreed that -- my understanding
22 is that you agreed if you turned it over it is admissible
23 in evidence.
24   MR. ROBERT: No, we agreed it is admissible as
25 to authentication. This is created by us. What it was

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1   created for, I can't speak to that right now. And I
2 believe at one or more depositions the government asked
3 the witnesses what this was, and they had answers similar
4 to Mr. McConney. Don't remember seeing this before but it
5 appears to be kind of a summary of what happened.
6   We don't know what this actually became. We
7 don't dispute that this was created by the Trump
8 Organization.
9   THE COURT: And do you dispute that there was an
10 agreement that if you turned something over, maybe with or
11 without more, that it was admissible?
12   MR. ROBERT: No. Then there wouldn't have been
13 an exchange of exhibit lists before the trial started.
14 The agreement was to authentication, unless there was some
15 extraordinary reason to object saying it was inauthentic.
16 That was the stipulation. Otherwise why would we have an
17 exhibit list and constantly update it every day if
18 everything that was exchanged was admissible.
19   THE COURT: What does authentication mean? What
20 is it worth?
21   MR. ROBERT: It is worth so you don't have to
22 have a certification under the CPLR or have a witness come
23 in to authenticate that the document is what it is. If
24 this is something that says the Trump Organization, it is
25 labeled internal structuring. It is 34 pages. We don't

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1 dispute that. We don't dispute we created it. But what
2 its import is, that was never stipulated to. As far as I
3 know, nobody so far has been able to testify as to what it
4 was used for, whether it was a final, and whether
5 everything contained in it is accurate or if there are
6 subsequent drafts. We just don't know.
7 THE COURT: Okay. We don't know. So --
8 MR. ROBERT: That's why I am objecting to its
9 admissibility. Ultimately the Court will decide what it
10 wants to do.
11 THE COURT: I mean, before I hear from Mr. Amer.
12 You have all of these questions about it. Okay. Am I
13 going to read it and take it as gospel? No. I mean --
14 but anyway, Mr. Amer, do you want to weigh in on this?
15 MR. AMER: Since authentication is off the
16 table, I don't understand what the objection is to the
17 admissibility of this document. It is not hearsay because
18 it is their own document and it is a statement against
19 interest, and it should come into evidence. If they want
20 to argue about what it means, that's for them to argue at
21 a later point in time. But there is no reason not to
22 admit it into evidence.
23 MR. ROBERT: If there is a document that a
24 witness doesn't identify and say, I know what it is,
25 that's textbook. It wouldn't come in for that.

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1 Secondarily, I don't know whether this is a
2 draft, whether this is a final, and you want it in for the
3 truth of the matter asserted. If you want us to stipulate
4 that we prepared this, this is what it says, and on that
5 basis it is in, I have no objection to that. But I can't
6 say, yes, all of the contents in here are accurate. I
7 don't know that.
8 MR. AMER: We do know from the metadata it was
9 drafted by Adam Rosen.
10 MR. ROBERT: I am not disputing someone in the
11 Trump Organization drafted it, Mr. Amer. I am saying, I
12 don't know if this is a final. I assume you are trying to
13 admit this with this witness to prove the truth of the
14 matter asserted in these 34 pages?
15 THE COURT: Well, it is in evidence and you can
16 object to the particular questions.
17 MR. AMER: I have no further questions on that
18 document. And I didn't before, by the way.
19 Q Going back to our discussion of the draft statements
20 prior to 2017, you and Mr. Weisselberg were free to make
21 changes to the drafts as a result of your review of the
22 document, correct?
23 A Yes.
24 Q And do you recall that Mr. Suarez asked you who wrote
25 certain portions of the notes to the 2015 statement yesterday?

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1 A Yes.
2 MR. AMER: Let's go ahead and put up the
3 question and your response that I want to ask you about.
4 It is page 4932, lines seven to 13.
5 Q You were asked: "Mr. McConney, who wrote the notes
6 here to the Statement of Financial Condition?
7 "ANSWER: They have been modified over time.
8 But a lot of these notes still for assets that were around
9 when Jerry Rosenblum was around. A lot of this was Jerry
10 Rosenblum's writing."
11 Do you recall that testimony?
12 A Yes.
13 Q And then Mr. Suarez directed you to some specific
14 language starting in the transcript at 4936.
15 MR. AMER: So what I would like to do is split
16 the screen so we can see the question and the language he
17 was asking you about, which was PX -- Plaintiff's Exhibit
18 729 in evidence, at page six of that document.
19 Q You will see beginning at line 11 of the transcript
20 the question -- Mr. Suarez directs you to the paragraph that
21 begins: "Pursuant to GAAP" And you will see that is the
22 bottom paragraph on page four.
23 MR. AMER: Is there a way to have them side by
24 side?
25 Q And you will see beginning at line 11 you are asked

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1 the following question and gave the following answer:
2 "QUESTION: This paragraph, Mr. McConney, the
3 first sentence the words 'pursuant to GAAP,' this
4 financial statement does not reflect the value of Donald
5 J. Trump's worldwide reputation, however the brand value
6 has afforded Mr. Trump the opportunity to participate in
7 licensing deals around the globe as reflected on the
8 balance sheet herein."
9 Whose words were those?
10 "ANSWER: Mazars'."
11 Do you recall giving that testimony?
12 A Yes, sir.
13 Q And are you sure about your answer?
14 A That's my recollection.
15 Q And then he asked you who wrote the two sentences
16 after that. And if we could look at that, starting on line 19.
17 The following sentence "Mr. Trump's name conveys a
18 high degree of quality and profitability. This prestige
19 significantly enhances the value of the properties reflected in
20 this financial statement, as well as that of his future
21 projects." Close quote.
22 Whose words were those, Mr. McConney?
23 "ANSWER: Mazars'."
24 Do you recall that testimony?
25 A Yes, sir.

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1 Q And are you certain of that answer?
2 A That's my recollection. And again, Mazars is Jerry
3 Rosenblum and Donald Bender.
4 Q And on the top of page 4937 of the transcript.
5 Mr. Suarez asked you about the remainder of the same paragraph.
6 "QUESTION: And the rest of the paragraph which
7 says "the brand along with the level of quality of
8 Mr. Trump's residential developments, has allowed the
9 selling price per square foot in Trump properties to be
10 amongst the highest among prominent real estate
11 developers. The good will attached to the Trump name has
12 significant financial value that has not been reflected in
13 the preparation of this financial statement." Close
14 quote.
15 Who words are those, Mr. McConney?
16 "ANSWER: Mazars'."
17 You recall that testimony, correct?
18 A Yes, sir.
19 Q And are you certain about that answer?
20 A That's my recollection, yes.
21 MR. AMER: Okay. Let's go ahead and keep
22 Plaintiff's Exhibit 729 on the screen and let's put up
23 next to it Plaintiff's 3054 in evidence.
24 I am just going to wait for you to get a copy.
25 (Handing)

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1 Q Now, Mr. McConney, I showed you Plaintiff's Exhibit
2 34, you may recall, when you testified last month. And you
3 confirmed that all of the handwriting on Plaintiff's 3054 is
4 yours. Do you recall that?
5 A If this is the same financial statement, yes. And I
6 am through a few pages and so far those are -- that's my
7 handwriting.
8 Q Do you recall on the second page I got you to confirm
9 your handwritten note: DJT to get final review. Do you
10 remember that?
11 A Yes.
12 Q Let's turn to the paragraph that begins: "Pursuant
13 to GAAP" in this exhibit, which you will find on the bottom of
14 page six of 27.
15 Are you there?
16 A Yes.
17 Q The paragraph has markups by you, correct?
18 A Yes.
19 Q You have crossed out three sentences and you have
20 added two riders, A and B. Correct?
21 A Yeah, there is a reference to A and B because it is a
22 rider.
23 Q If you look at the next page, those are the riders.
24 This is page seven of 27. Those are the riders in your
25 handwriting. Correct?

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1 A Yes.
2 Q Isn't it a fact, Mr. McConney, that you wrote the
3 majority of the language in this paragraph, not Mazars?
4 A I haven't counted the words, but I will agree that
5 that is my handwriting.
6 Q Well, you made substantial changes to the paragraph
7 that appear in the final version, right?
8 A I or somebody else at the Trump Organization, yes.
9 Q And it is your handwriting that was forwarded to
10 Mazars with changes that made their way into the final version
11 of this statement, correct?
12 A Correct.
13 Q So can we agree that when you gave sworn testimony
14 yesterday that Mazars wrote this paragraph, you were wrong?
15 A My memory was incorrect.
16 Q And isn't it fair to say that you actually don't
17 remember who wrote what portions of the notes in the 2015
18 statement?
19 A I wouldn't say that.
20 Q At least as to this paragraph you got it wrong?
21 A This paragraph I agree with you.
22 Q Do you have any reason to believe your recollection
23 is better with respect to other paragraphs in this document
24 than it is with this paragraph?
25 A Unless you can show me something that disproves it,

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1 the CPA firm Mazars are the GAAP experts. They would put
2 together the notes. If I made changes, I made changes. If you
3 can show me where I have a bad memory, I'll look at it.
4 Q My question was very simple. Do you have any reason
5 to believe that your recollection, your incorrect recollection
6 about who wrote this paragraph, the pursuant to GAAP paragraph,
7 is any better than your recollection with respect to other
8 portions of this document?
9 A I don't think -- I don't feel my recollections were
10 incorrect in other paragraphs. You can ask the question again.
11 Q Well, we have already agreed your recollection was
12 incorrect as to the pursuant to GAAP paragraph, right?
13 MR. SUAREZ: Objection argumentative. His
14 testimony was actually that the notes carried over from
15 year to year through the progression. He has only read a
16 certain portion of his testimony, not the parts where he
17 says it goes through from year to year and carried over;
18 and that the original structure of the notes belonged to
19 Mr. Rosenblum's initial drafts.
20 THE COURT: I think Mr. Amer read every sentence
21 in the GAAP paragraph. And the witness said Mazars
22 (May-zars) wrote it, or Mazars (Mah-zars). So I don't
23 think he is misinterpreting the testimony.
24 But anyway, what in particular are you looking
25 to do?

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1   MR. SUAREZ: It is argumentative. It is not
2 incorrect. He testified it is out of context, but it is
3 not incorrect.
4   THE COURT: He testified it was incorrect.
5 Isn't that word in the transcript?
6   MR. AMER: Yes, it is.
7   MR. SUAREZ: Well --
8   THE COURT: Today's transcript?
9   MR. SUAREZ: Mr. Amer asked --
10   THE COURT: I am sorry. All right. Withdrawn.
11 Continue.
12   MR. AMER: Can I also ask, Your Honor, if we are
13 going to get these kind of objections that we excuse the
14 witness first?
15   THE COURT: All right. I hope there won't be a
16 lot more of these objections, but yes, we will excuse the
17 witness. You know, remind me if you think I am not doing
18 it appropriately; or the defendant can remind me also.
19   Q   Isn't it the case, Mr. McConney, that you frequently
20 made changes to the language of the footnotes describing
21 valuation methods in the draft statements?
22   A   Yes.
23   Q   And if you look at page nine of 27 of this exhibit,
24 the changes you make to the paragraph just above 40 Wall
25 Street.

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1   MR. AMER: If we could blow that up?
2   Q   You see the paragraph that says "the current value
3 of," those are your handwritten changes and it relates to the
4 method of valuing the property, correct?
5   A   Yes.
6   Q   And if we go to -- actually, can you read for us your
7 handwriting at -- that you have added at the bottom?
8   A   Applying a capitalization rate to the cash flow to be
9 derived pursuant to the building's net rental stream.
10   Q   Okay. And you have stricken the portion of the
11 sentence that has the line through it, correct?
12   A   Yes.
13   Q   And if you go to page 11 of 27 under Trump Park
14 Avenue.
15   MR. AMER: We can blow that up.
16   Q   The top paragraph you have, again, added language
17 relating to the valuation method, correct?
18   A   Yes.
19   (The following proceedings were stenographically
20 recorded by Senior Court Reporter Michael Ranita.)
21
22
23
24
25

J. McConney - by Defense - Cross (Mr. Amer)	Page 5063

1   Q   And that says "applying a capitalization rate flow" --
2 well, why don't you read it so I don't get your handwriting
3 incorrect.
4   A   "Applying to a capitalization rate to the cash flow to
5 be derived from the commercial space."
6   MR. AMER: Let's go ahead and mark Plaintiff's
7 Exhibit 3401.
8   (Plaintiff's Exhibit 3401 was deemed marked for
9 identification.)
10   (Whereupon, the exhibit was displayed on the
11 screen.)
12   Q   The first page has an e-mail from you to Mr. Bender who
13 I think we established before you called by the nickname Doc; is
14 that right?
15   A   Yes, sir.
16   Q   And you are sending him your comments on the draft 2012
17 Statement of Financial Condition, or actually it's -- well, is
18 that what you are doing?
19   (Whereupon, there is a brief pause in the
20 testimony.)
21   A   Yes. Most of these are modifications or updates. Yes,
22 yes, these are my changes.
23   Q   So this is all your handwriting on this document;
24 correct?
25   A   Yes.

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1   MR. AMER: Your Honor, I move to admit 3401.
2   THE COURT: Granted. It's in.
3   (Plaintiff's Exhibit 3401 was admitted in
4 evidence.)
5   MR. AMER: And I want to just ask you about a
6 couple of comments that you have in here. First let's go to
7 page eight of 25.
8   (Whereupon, the exhibit was displayed on the
9 screen.)
10   Q   You make a change to the cash and marketable securities
11 paragraph where you insert the words "wholly owned" before
12 operating entities; is that right?
13   A   Yes.
14   Q   And in the second to the bottom paragraph you indicate
15 with this change "applying a cap rate to the cash flow to be
16 derived from the building's operations"; is that right?
17   A   Yes.
18   Q   And both of these comments relate to -- well, at least
19 -- sorry, withdrawn.
20   This last comment relates to method of valuation;
21 right?
22   A   Applying a cap rate, yada, yada, yada, yes.
23   Q   And on the next page, page nine of 25, are you
24 indicating you want the bottom paragraph to be -- that that's
25 okay?

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1   A   I'm sorry, what's the question?
2   Q   Are you indicating to Mr. Bender that you are okay with
3   that bottom paragraph?
4   A   Yes.
5   Q   And that relates to the method of valuing Niketown;
6   right?
7   A   Yes.
8   Q   Actually, that is -- let's go to page 20 of 25.
9   (Whereupon, the exhibit was displayed on the
10   screen.)
11   Q   You are adding a rider, A, attached, and you are asking
12   Mr. Bender to delete that entire paragraph; is that right?
13   A   Yes.
14   Q   And then if you go to page 24, that's the rider that
15   you are telling Mr. Bender to add; correct?
16   (Whereupon, the exhibit was displayed on the
17   screen.)
18   A   Yes.
19   MR. AMER: Let's go ahead and mark as the next
20   exhibit, Plaintiff's Exhibit 3405.
21   (Plaintiff's Exhibit 3405 was deemed marked for
22   identification.)
23   (Whereupon, the exhibit was displayed on the
24   screen.)
25   (The exhibit was handed to the witness.)

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1   THE WITNESS: Thank you.
2   Q   And this is an e-mail you sent to Mr. Bender on
3   September 25th, 2013. So this would be in connection with the
4   2013 statement; right?
5   A   Yes.
6   Q   And you are telling him to see the revised note for the
7   Westchester golf course in Briarcliff; is that right?
8   A   Yes.
9   Q   And if you turn to the second page of this exhibit.
10   (Whereupon, the exhibit was displayed on the
11   screen.)
12   Q   Your note adds a zone for 71 units. Do you see that?
13   A   Yes.
14   Q   And then you've also indicated certain language you
15   want deleted; correct?
16   A   Yes.
17   Q   And so this note goes to the method for valuing the
18   property; right?
19   A   Yes.
20   MR. AMER: Your Honor, I move to admit 3405.
21   THE COURT: Granted. It's in.
22   (Defendant's Exhibit 3405 was admitted in
23   evidence.)
24   MR. AMER: Let's mark Plaintiff's Exhibit 3412.
25   (Plaintiff's Exhibit 3412 was deemed marked for

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1   identification.)
2   (Whereupon, the exhibit was displayed on the
3   screen.)
4   (The exhibit was handed to the witness.)
5   Q   The first page of this exhibit is an e-mail from you to
6   Mr. Bender dated October 31st, 2014. So this relates to the
7   2014 statement?
8   A   Correct. It should.
9   Q   And the subject is "another change" do you see that?
10   A   Yes.
11   Q   And the second page is --
12   (Whereupon, the exhibit was displayed on the
13   screen.)
14   Q   -- the change that you are sending to Mr. Bender for
15   him to implement in the statement; correct?
16   A   Yes.
17   Q   And you've crossed out some language and you've added
18   at the bottom. The language that you want put in; correct?
19   A   Yes.
20   Q   And at the bottom of your handwritten comments -- why
21   don't you read for me the entire handwritten comment at the
22   bottom so we have your testimony about what you wrote in the
23   record?
24   A   "For these properties -- for these properties is shown
25   on a cost basis subject to any debt reflected under liabilities

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1   and is net of" -- that's not my handwriting, so it's hard to
2   read. "Net of", I think, "refundable" -- I don't know. I'm --
3   I'm guessing it's "membership deposits were applicable. In
4   those cases where a residential component exists, comparative
5   sales were utilized in arriving at their values."
6   Q   The original handwriting that's not yours, is that
7   Mr. Weisselberg's?
8   A   Yes, it is.
9   MR. AMER: I move to admit this exhibit, your
10   Honor.
11   THE COURT: Granted. It's in.
12   (Defendant's Exhibit 3412 was admitted in
13   evidence.)
14   Q   And that additional language that you and Mr. Bender --
15   I'm sorry, you and Mr. Weisselberg have drafted and sent to
16   Mr. Bender relates, in part, to valuing the property; correct?
17   A   The properties in this category, yes.
18   MR. AMER: Let's go ahead and mark this as
19   Plaintiff's Exhibit 806.
20   (Plaintiff's Exhibit 806 was deemed marked for
21   identification.)
22   (Whereupon, the exhibit was displayed on the
23   screen.)
24   Q   The first page is an e-mail from you to Mr. Bender, the
25   subject is "DJT SOFC", and it's dated December 29, 2015. So

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1 this relates to the draft 2015 statement; correct?
2   A   Yes.
3   Q   And you say in the last line of your e-mail, "This one
4 has the marked up 6/30/2014 SOFC before Allen's comments."
5 That's before Allen Weisselberg's comments; correct?
6   A   Correct.
7   Q   And you indicate you should be talking to him tomorrow
8 morning; right?
9   A   Yes.
10   MR. AMER: And if we go to page nine of 27.
11   (Whereupon, the exhibit was displayed on the
12   screen.)
13   Q   I want to focus you on the Trump Tower, the paragraph
14 that begins "The estimated current value."
15   You've crossed out "applying a capitalization rate to
16 the cash flow to be derived from the building operations", and
17 you've written in, "based on comparable sales"; is that right?
18   A   Yes.
19   Q   And that relates to the method of valuing this
20 property; right?
21   A   Yes.
22   Q   And if you turn to page 11.
23   (Whereupon, the exhibit was displayed on the
24   screen.)
25   Q   The top right-hand corner, you've put in a note to add

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1 Dean & DeLuca into the description of the major tenants;
2 correct?
3   A   Yes.
4   Q   And if you look at the bottom of page 21 of 27?
5   (Whereupon, the exhibit was displayed on the
6   screen.)
7   Q   And this relates to Trump Plaza. Can you just read
8 your handwriting at the bottom?
9   A   The very --
10   Q   I think it says "as well as applying", that line?
11   A   That relates to Trump International Hotel and Tower.
12   Q   Yes.
13   A   "As well as applying a capitalization rate to the cash
14 flow to be derived from the condominium elements."
15   Q   And that's a comment relating to the method of valuing
16 that property; correct?
17   A   That's correct.
18   Q   And then let's go to page 25 of 27.
19   (Whereupon, the exhibit was displayed on the
20   screen.)
21   Q   And I want to ask you about your comment in the middle
22 of the page. And this relates to licensing developments;
23 correct? I'm on page 25 of 27.
24   A   Yeah, I'm just trying to see -- there it is. Real
25 estate licensing developments, yes.

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1   Q   And you circled the following sentence "Mr. Trump and
2 his management considered only situations which have evolved to
3 the point where signed arrangements with other parties exist and
4 fees and other compensation which he will earn are reasonably
5 quantifiable."
6   And then you've linked that to a note. Why don't you
7 read your handwritten note that's in the margin.
8   A   "The computation also includes forecasted deals that
9 have not signed yet with a value of", I think, "$151 million.
10 Do you want to delete these deals?"
11   Q   So am I correct that you were concerned about including
12 those forecasted but not yet signed deals, because the note you
13 are linking it to says that you've only considered situations
14 which have evolved to the point where signed arrangements with
15 other parties exist?
16   A   Yes. I was asking Donald's opinion on what he thought
17 we should do.
18   Q   Because --
19   A   Donald Bender's opinion.
20   Q   Because you were concerned about the conflict between
21 including forecasted deals not yet signed and having a note that
22 says "it only includes situations where signed arrangements
23 exist"; correct?
24   A   That's probably part of it. We may have wanted to
25 modify the footnote.

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1   MR. AMER: Let's go ahead and put up, alongside
2 this, Plaintiff's Exhibit 729, which is the final version of
3 the 2015 statement. And let's just look at page 23 of 26,
4 which is that -- where that note appears.
5   (Whereupon, the exhibit was displayed on the
6   screen.)
7   Q   And you see in the top paragraph, the last sentence, in
8 the final version it didn't change. It still says "In preparing
9 that assessment Mr. Trump and his management considered only
10 situations which have evolved to the point where signed
11 arrangements with other parties exist and fees and other
12 compensation which he will earn are reasonably quantifiable."
13 So it didn't change?
14   A   Then I guess Donald Bender was fine with it.
15   Q   I'm just asking whether it changed or not.
16   A   I understand that, but I'm saying Mr. Bender was
17 probably fine not changing it.
18   Q   And you kept in "the deals that were forecasted but had
19 not been signed"; correct?
20   A   Can you show me the Jeff supporting spreadsheet with
21 the valuation on it.
22   Q   You don't remember one way or the other whether you
23 kept in the forecasted deals?
24   A   Off the top of my head without looking at the
25 spreadsheet, no.

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1   Q   I think we have it in your testimony from last month?
2   A   Okay. Then --
3   MR. AMER: And I ask that this document be admitted
4   into evidence, your Honor.
5   THE COURT: Granted. It's in.
6   (The Defendant's Exhibit was admitted in evidence.)
7   MR. AMER: Let's go ahead and mark Plaintiff's
8   Exhibit 3399.
9   (Plaintiff's Exhibit 3399 was deemed marked for
10   identification.)
11   (Whereupon, the exhibit was displayed on the
12   screen.)
13   Q   Mr. McConney, the first page is an e-mail from you to
14   Mr. Bender, and it relates to the SOFC. Do you see that?
15   A   Yes, sir.
16   Q   And this is dated February 24th, 2017. So at this
17   point in time, can we agree you are still involved in reviewing
18   the Statement of Financial Condition?
19   A   Yes.
20   Q   And you provided him with your marked up SOFC. And you
21   state "I've asked Eric if he wants to update the European golf
22   courses and I'm waiting for some puff stuff on OPO." Do you see
23   that?
24   A   Yes.
25   Q   And Eric is a reference to Eric Trump; correct?

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1   A   That's correct.
2   Q   And if you look at the second page of this exhibit up
3   at the top, that's your handwritten note that says "Open, ET
4   golf courses, and Amanda OPO"; correct?
5   A   Correct.
6   Q   That is a reference to the fact that there is an open
7   issue with Eric Trump giving you feedback on golf courses;
8   correct?
9   A   Correct.
10   Q   And if we go to page 15 of 25.
11   (Whereupon, the exhibit was displayed on the
12   screen.)
13   Q   Your note in the margin on the left says "ET to review
14   footnotes on European clubs"; correct?
15   A   Yes, sir.
16   Q   And again ET is a reference to Eric Trump?
17   A   Yes.
18   Q   And is it correct that it was not uncommon for you, in
19   this time frame, to ask Eric Trump to review portions of the
20   notes to the Statement of Financial Condition?
21   A   I know when we were developing properties and Eric was
22   part of the development team I would ask whoever it was that
23   would have knowledge of enhancing the information on these
24   footnotes, so whether it was Eric or Sarah Malone, or somebody
25   else, I would ask.

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1   Q   So it would be common for you to reach out to Eric
2   Trump to get information for purposes of valuing assets in the
3   Statement of Financial Condition where Eric Trump was involved
4   in the property; correct?
5   A   Well, footnotes, not so much, but for this one, yes.
6   MR. AMER: I move to admit Plaintiff's
7   Exhibit 3399, your Honor.
8   THE COURT: Granted. It's in.
9   (Plaintiff's Exhibit 3399 was admitted in
10   evidence.)
11   Q   I'm going to switch topics now, Mr. McConney. When you
12   gave testimony last month, you mentioned that you had received a
13   severance package of $500,000. And as of when you testified,
14   which was October 5th, you had been paid 375,000 of that amount,
15   with a final payment of 125,000 still to go. Is that final
16   payment still outstanding?
17   A   Yes, it is.
18   Q   And I want to put up on the screen Plaintiff's
19   Exhibit 1751 in evidence.
20   (Whereupon, the exhibit was displayed on the
21   screen.)
22   Q   This is Mr. Weisselberg's severance agreement. And I
23   want to show you a portion of his agreement and ask you if your
24   severance agreement contains the same or similar provision.
25   We'll put it up on the screen. It's page two of nine.

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1   (Whereupon, the exhibit was displayed on the
2   screen.)
3   Q   And if you look at page -- I'm sorry, two of eight.
4   And I just want to ask you about paragraph three, "Employee
5   promises", where it says "In exchange for the benefits provided
6   in paragraph two, employee promises." And then paragraph B
7   says, "Not to verbally, or in writing, disparage, criticize or
8   denigrate the company or any of its current or former entities,
9   officers, directors, managers, employees, owners or
10   representatives."
11   Does your severance agreement contain the same or
12   similar language, Mr. McConney?
13   A   I would have to go back and look. I've signed my
14   severance agreement maybe almost a year ago. So I don't want to
15   say yes or no.
16   Q   You had testified last month that you had very little
17   to do with the Statement of Financial Condition after the hand
18   off to Patrick Birney. Do you recall that?
19   A   Yes.
20   Q   Was it the case, Mr. McConney, that you participated in
21   a virtual meeting with Patrick Birney, Ray Flores, Eric Trump,
22   Donald Trump, Jr. and Allen Garten in October of 2021 concerning
23   the 2021 Statement of Financial Condition?
24   A   I don't remember having a virtual meeting. Are you
25   talking like a Zoom meeting or a telephone call?

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1 Q A Zoom meeting or an equivalent of a Zoom meeting.
2 A Yeah, that doesn't sound familiar. It's possible. I
3 just don't remember it.
4 Q I would like to show you some of Mr. Birney's trial
5 testimony to see if this refreshes your recollection. This is
6 the transcript at 1389, starting on line 21.
7   (Whereupon, the exhibit was displayed on the
8   screen.)
9   "QUESTION: Mr. Birney, we are going to switch
10   topics to did there come a point in 2021 when you
11   participated in a virtual meeting about the 2021 Statement
12   of Financial Condition?
13   "ANSWER: Yes.
14   "QUESTION: Did that meeting occur over a service
15   called Google Meet?
16   "ANSWER: Probably."
17   I'll skip the discussion of what Google Meet is and
18   go down.
19   (Whereupon, the exhibit displayed on the screen was
20   scrolled through.)
21 Q   Question, line 13:
22   "QUESTION: Sure. Specifically a meeting over
23   Google Meet about the 2021 Statement of Financial Condition?
24   "ANSWER: There were multiple meetings in 2021 as I
25   was remote.

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1   "QUESTION: Were there any meetings about the 2021
2   Statement of Financial Condition in which Donald Trump, Jr.
3   and Eric Trump participated?
4   "ANSWER: Yes.
5   "QUESTION: So about -- speaking about that
6   meeting, how many other participants were there other than
7   those two people?
8   "ANSWER: Myself, Alan Garten, Ray Flores, Jeff
9   McConney."
10   And then he asked, "Allen Weisselberg was not in
11   the meeting?
12   "ANSWER: I don't think Allen Weisselberg was in
13   that meeting."
14   Does that refresh your recollection that in the
15   fall of 2021 you participated with these other individuals
16   in a Google Meet virtual meeting to discuss the 2021
17   Statement of Financial Condition.
18 A It does not jog my memory.
19   MR. AMER: Let's go ahead and mark Plaintiff's
20   Exhibit 1361.
21   (Plaintiff's Exhibit 1361 was deemed marked for
22   identification.)
23   (Whereupon, the exhibit was displayed on the
24   screen.)
25   (The exhibit was handed to the witness.)

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1 Q Mr. McConney, you are certainly aware that as of 2021,
2 Mazars was no longer the accounting firm preparing the
3 compilation, but that had been moved over to Whitley Penn;
4 right?
5 A I know Mazars -- we switched from Mazars to Whitley
6 Penn. It didn't seem that long ago, but yes.
7 Q And the first page of Exhibit 1361 has an e-mail to you
8 from Steven McKinnell at Whitley Penn; correct?
9 A Yes, Patrick, myself, Camron Harris and Greg were
10 partners at Whitley Penn.
11   MR. AMER: Okay. Your Honor I move to admit this
12   into evidence.
13   THE COURT: Granted. It's in.
14   (Plaintiff's Exhibit 1361 was admitted in
15   evidence.)
16 Q All of the handwriting on this document is yours;
17 correct?
18 A Yes.
19 Q And if you turn to the third page of this document,
20 which is the first e-mail in the sequence.
21   (Whereupon, the exhibit was displayed on the
22   screen.)
23 Q This is an e-mail to you from Camron Harris at Whitley
24 Penn on October 22nd, 2021; correct?
25 A Correct.

J. McConney - by Defense - Cross (Mr. Amer) Page 5080

1 Q And it begins by saying, "Jeff, thank you for bringing
2 to our attention the current stock activity of DWACW, the SPAC
3 that is assumed to be raising money to purchase the Trump Media
4 and Trump Technology Group."
5   So he's referencing an issue that you brought to
6 Whitley Penn's attention; is that right?
7 A Yes.
8 Q And the question that was being raised was whether to
9 include this in the 2021 statement; right?
10 A I believe my question, the reason I rose it, was, yes,
11 does it have a value and does it need to be added to the SOFC.
12 Q And does this refresh your recollection that you were,
13 in fact, involved in the preparation of the 2021 Statement of
14 Financial Condition, notwithstanding the fact that this was
15 after the hand off to Mr. Birney?
16 A So your statement that my few comments were in
17 preparation of the statement, if you take a few comments and
18 noting an item that probably should've been, or could've been
19 added to the SOFC so it was properly -- the asset was properly
20 reflected? Yes. But to me participating would be a lot more
21 involved than just these little items.
22 Q Well, we also just looked at Mr. Birney's testimony
23 where he said you were in the meeting that took place in the
24 fall of 2021, with other people, to discuss the Statement of
25 Financial Condition; correct?

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1　A　Can you tell me what was discussed and how long the
2　meeting was?
3　Q　We are going to get to that.
4　A　Okay, good. Because I don't remember the phone call.
5　　　　THE COURT: It's a five-minute warning.
6　Q　And if you turn to the first page of the e-mail, this
7　is the e-mail to you and Patrick Birney, and cc'd to other
8　people at Whitley Penn, he writes addressing you and Mr. Birney,
9　"I have dropped our first round consolidated report comments or
10　Suralink for your review." Is that the system that? Whitley
11　Penn used to share comments with The Trump Organization?
12　A　Yeah. I think it's a document sharing program.
13　Q　And he indicates that he is setting forth a few points
14　for you to consider. And you see the footnote one point, which
15　is the first bullet. It says, footnote one, "Paragraph four
16　includes amounts to be received in the future from estimated
17　current values that are non-forfeitable, fixed and determinable,
18　and do not require any future services."
19　　　And asks what is this referring to. And you respond;
20　correct?
21　A　Yes.
22　Q　And you say it relates to the license deals; right?
23　A　That's correct.
24　Q　And you have all of these other handwritten notations
25　to his bullet points; correct?

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1　A　Yes.
2　Q　And then at the bottom you have a note that talks about
3　open items, and it lists Chicago. And you see it says that
4　message is "for Sheri"?
5　A　Yes.
6　Q　Is that Sheri Dillon?
7　A　Yes.
8　Q　So that's something that you are going to follow up on?
9　A　I don't know who was going to follow up, but it had to
10　be followed up on.
11　Q　You are tracking an open item that needs to be followed
12　up on for the 2021 statement; correct?
13　A　Yes.
14　　　(Continued on the next page.)
15
16
17
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1　Q　And then the second open item is Trump Media,
2　correct?
3　A　Correct.
4　Q　And if you turn to the second page, your handwritten
5　comments, I want to just focus you on the bottom comment. You
6　say: Eric should review SOFC. 10/26/21. Don and Eric phone
7　call.
8　　　Do you see that?
9　A　Yes.
10　Q　Eric there refers to Eric Trump, correct?
11　A　Correct.
12　Q　And Don, refers to Donald Trump Jr.?
13　A　That's correct.
14　Q　The comment that Eric should review SOFC, who is that
15　coming from?
16　A　I don't know who it is coming from, but that's my
17　handwriting.
18　Q　I understand. I am just asking you if you remember
19　where that comment emanates from?
20　A　Probably from me.
21　Q　So you thought Eric Trump should review the Statement
22　of Financial Condition, correct?
23　A　That was my thought, yes.
24　Q　Why was that?
25　A　Because I thought he should.

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1　Q　Because he was the senior most executive person at
2　the organization at this point in time?
3　A　He and his brother kind of shared responsibilities.
4　But I just thought he should read it.
5　Q　And you also indicate Don and Eric phone call on
6　10/26/21. Is that the phone call that Mr. Birney testified
7　about that he said you, Donald Trump Jr., Eric Trump and others
8　participated on?
9　A　It is a possibility. If you can show me the
10　testimony again, I don't know if that testimony had a date.
11　But it is possible.
12　Q　It didn't have a date. I am just asking.
13　A　It is possible.
14　Q　Is that -- do you have a recollection that you were
15　on a phone call in late October of 2021 with Donald Trump Jr.
16　and Eric Trump about reviewing the Statement of Financial
17　Condition?
18　A　I don't remember that call.
19　　　MR. AMER: I think I am at a good point?
20　　　THE COURT: Okay. I'll order the witness, as
21　usual, not to discuss the case or his testimony during the
22　lunch break.
23　　　Have a good one, everyone. See you at 2:15.
24　　　(Whereupon, a luncheon recess was taken at this
25　time.)

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1   *   *   *
2   A F T E R N O O N   S E S S I O N
3   *   *   *
4   COURT OFFICER: All rise.
5   Part 37 is back in session. The Honorable Judge
6 Arthur Engoron presiding.
7   Please be seated and come to order.
8   THE COURT: Starting four minutes early.
9   Okay. Let's get the witness back on the stand.
10   (Whereupon, the witness resumed the stand.)
11   THE COURT: And Mr. Amer, please continue.
12   MR. AMER: Thank you, Your Honor.
13   Q   Mr. McConney, I want to ask you a couple of quick
14 questions about some testimony you gave yesterday. I believe
15 you said that the Trump Organization was not a structured
16 company like an IBM. Do you recall that testimony?
17   A   I remember, yes.
18   Q   Is it fair to say that the Trump Organization, while
19 you were there, had an open-door policy?
20   A   Yes.
21   Q   And so if anybody wanted to see anybody else within
22 the organization, their door was always open and you didn't
23 have to go through whoever was your direct report, correct?
24   A   That's correct.
25   Q   And I take it that open-door policy applied to Mark

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1 Hawthorn's office, yes?
2   A   You would have to ask Mark.
3   Q   Well, you were somebody who mentioned that anybody
4 could go see anybody else. Did you understand that you could
5 go walk into Hawthorn's office to ask him a question if you
6 needed to?
7   A   Yes.
8   Q   And was the same true with Mr. Flores, did you feel
9 you could walk into Mr. Flores' office and ask him a question
10 if you needed to?
11   A   Yes.
12   Q   Did Eric Trump follow the open-door policy while you
13 were at the company?
14   A   I had an open-door policy with Eric. I don't know if
15 he limited it to anybody.
16   Q   What about Donald Trump Jr., did you have an open
17 door policy with him?
18   A   Yes, I did.
19   Q   And before Donald Trump left for DC in January of
20 2017, did you have -- enjoy an open-door policy with him?
21   A   Yes.
22   Q   And what has been the -- what was the situation after
23 January 2021 after Donald Trump was no longer President? Did
24 he come back to Trump Tower and occupy an office -- his office
25 there?

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1   A   Off and on, yes.
2   Q   And when he was there, post January 21, did he follow
3 an open-door policy as it related to you?
4   A   I don't remember going in there. I would assume so,
5 but I don't remember going to see him once he came back from
6 DC.
7   Q   But as far as you were concerned, at least your
8 understanding was, if you needed to see him about anything, you
9 could go to his office and talk to him, yes?
10   A   I believe so, yes.
11   Q   Now, you mentioned yesterday as well that the clubs
12 set up their own accounting departments that were separate from
13 corporate accounting where you worked at Trump Tower, correct?
14   A   Physically separate, yes.
15   Q   And they also had separate staff, right?
16   A   Separate staff, separate general ledgers, yes.
17   Q   And that included Mar-a-Lago, right? Mar-a-Lago had
18 its own accounting department down in Florida and its own
19 staff, correct?
20   A   Separate from the New York office, yes.
21   Q   They had their own director of finance, right?
22   A   Right.
23   Q   And can we agree that Mar-a-Lago needed its own
24 accounting department because it was being operated as a
25 commercial enterprise?

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1   A   I won't say it was because it was a commercial
2 enterprise. More so probably because of the volume of work
3 they had to take care of. The number of employees they had to
4 prepare payroll for and they also took care of the Trump
5 International Golf Club in Florida. So they had two large
6 entities that they oversaw.
7   Q   Well, with respect to Mar-a-Lago, you mentioned
8 payroll, they had payroll and a large staff because they were
9 being operated as a commercial business, right?
10   A   Right.
11   Q   Now, we did see that you had some involvement
12 reviewing the 2021 Statement of Financial Condition based on
13 the document we had reviewed just before the lunch break,
14 correct?
15   A   Right. That was when Whitley Penn took over the
16 assignment and I was the contact person with Whitley Penn.
17   Q   And so just to go back to my question, we can agree
18 that you did have some involvement in the preparation of the
19 2021 Statement of Financial Condition, correct?
20   A   Again, your definition of preparation, I had a
21 little -- a little input into it.
22   Q   You had the input that was reflected in the document
23 we were looking at that had all of your handwritten notes on
24 it, right?
25   A   That's correct.

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1   Q   Do you recall that there was a change in the
2   valuation method for the Golf Clubs from 2020 to 2021?
3   A   I am not that familiar with the spreadsheet that was
4   prepared for those years.
5   Q   I didn't ask if you were familiar with the
6   spreadsheet. I asked if you had a recollection that there was
7   a change in valuation method for the Golf Clubs from 2020 to
8   2021?
9   A   I don't remember that, no.
10   Q   Okay. Well, let's go ahead and look at Plaintiff's
11   Exhibit 1352, which is the 2021 supporting data spreadsheet, to
12   see if we can fresh your recollection. And let's go ahead and
13   look at row 306. And just to go back up to orient us, this is
14   on Briarcliff. Do you see that?
15   A   Yes.
16   Q   And in row 306 there is a note that says: 6/30/21.
17   "Upon advice and guidance of Marcus & Millichap, golf course
18   industry experts, a normal golf course with a negative EBITDA
19   trades at 2-3 times gross revenue. We took an average of 3
20   times gross revenue and net fixed assets."
21   Do you see that?
22   A   I see the note, yes.
23   Q   And if you look at the note for the prior year, which
24   is in 308, it says "Upon advice and guidance of Marcus &
25   Millichap, golf course industry experts, we left the golf

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1   course value unchanged from 2019."
2   Do you see that these notes indicate there is a
3   change in the method of valuation?
4   A   Yes.
5   Q   And does reading note 306 and the advice of Marcus &
6   Millichap about using a 2-3 times gross revenue multiplier,
7   refresh your recollection about being aware of this change in
8   the method for valuing the golf courses?
9   A   No.
10   Q   Were you familiar at this point in time with a method
11   for valuing an ongoing business that used a gross revenue
12   multiplier?
13   A   Can you ask that again?
14   MR. AMER: Can I have a readback, Your Honor?
15   THE COURT: Read back, please.
16   (Whereupon, the record was read back by the
17   court reporter.)
18   A   Yes.
19   Q   And was your understanding that you take the gross
20   revenue and you multiply it by an appropriate gross revenue
21   multiplier to generate a value for the asset that is the
22   business you are looking at?
23   A   Yes.
24   MR. AMER: If we could put up Plaintiff's
25   Exhibit 2265?

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1   We are marking it in evidence, so we need to --
2   (Handing).
3   Q   Mr. McConney, this document, the first page is an
4   e-mail where the subject is Mar-a-Lago, October 15 financials.
5   And it is from Ed Raymundo to Mr. Weisselberg and others at the
6   Trump Organization. And it is dated November 21, 2015.
7   Do you see that?
8   A   Yes.
9   Q   Now, Mr. Raymundo he was the director of finance in
10   this separate accounting department that was down in
11   Mar-a-Lago, correct?
12   A   Correct.
13   Q   And this attaches an income statement from Mar-a-Lago
14   for 2014 to 2015, correct?
15   A   Yes.
16   Q   And this income statement would be one of the typical
17   types of documents that these local accounting departments for
18   these Trump clubs would prepare, correct?
19   A   Yes.
20   Q   And these numbers would they roll up into the
21   corporate ledgers that you were responsible for?
22   A   No.
23   Q   You have seen these type of income statements before
24   though, correct?
25   A   Yes.

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1   MR. AMER: Your Honor, I move to admit
2   Plaintiff's Exhibit 2265.
3   THE COURT: Granted. It is in.
4   (Whereupon, the document referred to was deemed
5   marked for evidence as Plaintiff's Exhibit 2265 by
6   the Court.)
7   Q   If we look at the first page of the income statement,
8   you will see that there is, on the right, this has an annual
9   budget, correct?
10   A   Yes.
11   Q   And the annual budget for total income, would that be
12   gross income?
13   A   Each golf course at this point in time created
14   different P&Ls. Some had income items net of expenses. Some
15   listed income on the top and expenses on the bottom. I am
16   pretty sure this is gross income, but I am really not
17   100 percent sure.
18   Q   If we look at it, it does list income in that top
19   section and expenses blow that. So if you look at the total
20   income figure above the word, "expenses," that would be gross
21   income, right?
22   A   Again, some properties netted on the income side,
23   they netted, not all. Some departments had expenses there.
24   Based on these expenses that are -- the expense categories
25   listed, and the income categories listed, I am pretty sure

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1 that's gross income. But again, I am not 100 percent sure.
2   Q   So if you looked at the annual budget for total
3 income for this period, which by the way, this was a period in
4 time where you were actually preparing the Statement of
5 Financial Condition, right?
6   A   Yeah, around the June of '15 statement was probably
7 the last one I had the bulk of involvement in. But to answer
8 your question, yes.
9   Q   And the budgeted annual total income for Mar-a-Lago
10 is 16.8 million?
11   A   Yes.
12   Q   And did you ever consider valuing Mar-a-Lago as an
13 ongoing business based on using a gross revenue multiplier
14 times the gross revenue?
15   A   Not that I remember, no.
16   Q   You had the information about gross revenue if you
17 wanted to, correct?
18   A   Yes.
19   Q   And if we look at the expenses on this sheet, these
20 are the type of expenses you would expect to see for an ongoing
21 commercial enterprise that was an operating social club, right?
22   A   Yes.
23   Q   Now, you testified that when valuing Mar-a-Lago using
24 comps, you added to the value of the comps for the ballroom and
25 the cabanas. Do you recall that testimony?

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1   A   Yes.
2   Q   So you took the value that you got from the comps and
3 adjusted it to account for items that existed at Mar-a-Lago
4 that didn't exist with the comps, correct?
5   A   There were major items that were added to the
6 facility. I don't remember specifically if they were or were
7 not on the comps. My guess is they were not with the comps.
8   Q   Well, we can agree that the comps you used didn't
9 have a grand ballroom or cabanas, right?
10   A   The grand ballroom, definitely not. The cabanas
11 maybe, maybe not.
12   Q   Okay. At any rate you adjusted the value upward to
13 account for -- to equate the property you were valuing,
14 Mar-a-Lago, with the comps that you were using, correct?
15   A   We tried, yes.
16   Q   Now, you also testified about using a comp to value
17 Trump Tower in 2015. And you discussed using the sale of the
18 Crown Building. Do you recall that?
19   A   Yes.
20   Q   And am I correct that you did not do any upward or
21 downward adjustment to account for any differences between
22 Trump Tower and the Crown Building, right?
23   A   That's correct.
24   MR. AMER: Let's pull up Plaintiff's Exhibit 731
25 in native. And let's go to row 48.

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1   Q   And this is the section that you discussed on your
2 direct exam where you talked about using the Crown Building as
3 the comp, right?
4   A   Yes.
5   Q   And based on the information on this spreadsheet you
6 took the sale price, you divided it by the number of square
7 feet, and you calculated a value per square foot for the comp,
8 which is the Crown Building, right?
9   A   That's correct.
10   Q   And then you simply multiplied that value per square
11 foot by the number of square feet in Trump Tower, correct?
12   A   Correct.
13   Q   And that's how you came up with the value, correct?
14   A   Correct.
15   Q   So this assumes there are no differences at all
16 between the Crown Building and Trump Tower that would have
17 necessitated some type of adjustment up or down to level the
18 comp with Trump Tower, correct?
19   A   We didn't make any adjustments, up or down.
20   Q   Right. But my question is, then you are -- the way
21 you did it assumed that there was no difference between the two
22 buildings that would have warranted making an adjustment up or
23 down, correct?
24   A   There is always a difference between buildings, there
25 has to be size, location, whatever. But this was the way we

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1 valued it. It is what we thought was the best value that we
2 came up with.
3   Q   So -- Go ahead. Finish your answer.
4   A   We didn't make the adjustments that you are
5 suggesting.
6   Q   So knowing that there is always a difference between
7 buildings, you didn't take that into account, fair?
8   A   Fair.
9   MR. AMER: Let's go ahead and pull up -- or go
10 to row 590.
11   Q   And this is 100 Central Park South. Do you recall
12 you discussed this with Mr. Suarez yesterday, right?
13   A   Correct.
14   Q   And line 597 is where there is a value for 18 unsold
15 units. Do you see that?
16   A   Yes.
17   Q   And I want to understand your testimony correctly.
18 Was it your testimony that all 18 unsold units were rent
19 stabilized in this building?
20   A   I don't think so, because I know there are some
21 stabilized and some free market.
22   Q   So some of these 18 unsold units are stabilized and
23 some are free market; is that right?
24   A   That's correct.
25   Q   And they were all valued as though they could be sold

Min-U-Script®   **Michael Ranita - Senior Court Reporter**   **(29) Pages 5093 - 5096**

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1 without restriction, including those that were rent stabilized;
2 is that right?
3   A   Correct.
4   Q   Just to compare the value of this property with the
5 value of Trump Park Avenue, I'll just note for you that in row
6 602 the total value for this building is 24 million and change.
7 Correct?
8   A   Correct.
9   Q   And now if we go to row 187. The value of Trump Park
10 Avenue is $251 million and change, correct?
11   A   Which includes the commercial space and the storage
12 units and the unsold residential units, yes.
13   Q   So the value of Trump Park Avenue is roughly ten
14 times the value of Central Park South, correct?
15   A   Roughly, yes.
16   Q   And if you look at -- let's -- let's go ahead and
17 look at row 599. Going back to Central Park South. Am I
18 correct in this row you are including construction costs to fix
19 up the units when they are sold; is that right?
20   A   Yes.
21   Q   And that includes a cost to fix up the rent
22 stabilized units when and if they can be sold; is that right?
23   A   That's correct.
24   Q   And is that because you recognized that rent
25 stabilized apartments, when they come on the market, would need

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1 to be fixed up because they wouldn't have been renovated during
2 the period of the stabilized tenancy?
3   A   Right. These apartments haven't been renovated for
4 years.
5   Q   So it is deducting from the value of the sale of the
6 unit what Trump Organization would need to put into the unit to
7 fix it up before it could be sold once it becomes a free market
8 apartment, correct?
9   A   Yes.
10   Q   You didn't do that for any of the stabilized units at
11 Trump Park Avenue, did you?
12   A   No, I did not.
13   Q   So the effect of not deducting the cost of fixing up
14 the stabilized units when they became vacant for Trump Park
15 Avenue would be to inflate the value of those apartments with
16 respect to valuing them as free market apartments, correct?
17   A   Unless there was some work done. We purchased the
18 Delmonico, I think it is the Delmonico Hotel, more recently
19 than the Barbizon. The Barbizon Hotel was Trump Park East.
20 They may have done some construction work when they were
21 renovating the other apartments, I don't know if they did or
22 didn't. But nobody told me we had to expend money to fix these
23 stabilized apartments, hotel units, whatever.
24   Q   Did you ask somebody?
25   A   I am sure Allen Weisselberg would have said something

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1 at the time.
2   Q   At any rate, as you sit here today, you don't know
3 one way or the other what condition those rent-stabilized
4 apartments were in for Trump Park Avenue; is that correct?
5   A   That's correct.
6   Q   And you mentioned Trump Park Avenue -- Trump Central
7 Park South, I think you called it the Barbizon Hotel. When did
8 that get converted to residential condo?
9   A   I believe somewhere around 1985, 1986, I think.
10   Q   So almost 40 years ago, yes?
11   A   Yes.
12   Q   And so despite the fact that it has been almost 40
13 years, there are still rent-stabilized units in that building,
14 correct?
15   A   Yes.
16   Q   And is it fair to say that you were consistent in how
17 you valued rent-stabilized apartments across both of these
18 buildings, in that you purposely valued them as if the
19 stabilized units could be sold without regard to rent
20 stabilization restrictions, correct?
21   A   Right.
22   MR. AMER: Let's go ahead and put up Defendant's
23   1042 in evidence.
24   Q   Which is one of the rent-rolls you were shown. Do
25 you recall seeing this rent-roll that you were forwarding to

---

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1 Mark Farkas and Mr. Bender on your direct exam?
2   A   Can you just scroll to where the rent-roll begins,
3 please?
4   Q   Sure. And maybe we can get you a copy of it.
5   A   Yes, that looks familiar.
6   (Handing)
7   Q   Am I correct that the purpose in sending the -- this
8 rent-roll to Mazars, was to allow Mazars to prepare tax returns
9 for the building?
10   A   It was probably one of the purposes. I don't know of
11 the exact purpose why they would ask for it.
12   Q   Can we agree that it was not sent for any purpose
13 relating to the preparation of the Statement of Financial
14 Conditions?
15   A   I can't say that one way or the other. I don't
16 remember.
17   Q   You are the one who sent it, right?
18   A   Yeah, I sent it in 2012, and I have sent a few
19 e-mails since then.
20   What this -- it happens to be the same date as the
21 June of 2012 Statement of Financial Condition. I am not going
22 to tell you one way or the other why I sent this or why they
23 asked for it.
24   MR. AMER: Can we go back to the first page?
25   Q   Nothing in the subject line indicates that it has

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1 anything to do with the Statement of Financial Condition; would
2 you agree with me?
3   A   That's a correct statement.
4   Q   And if I asked you the same questions about the
5 rent-rolls you reviewed with Mr. Suarez on your direct
6 concerning the purpose for which they were sent to Mazars,
7 would your answers be the same?
8   A   Probably, yes.
9   Q   I want to ask you about some of your testimony
10 relating to Niketown. Do you recall that in responding to
11 questions about how you came up with the cap rate for Niketown
12 you mentioned that Doug Larson would send you his reports? Do
13 you recall that?
14   A   Yes.
15   Q   And I just want to confirm that when you speak about
16 Mr. Larson sending you his reports, the reports we are talking
17 about are the generic market reports that Cushman & Wakefield
18 sent to all of its clients, yes?
19   A   I don't know what Cushman & Wakefield did with those
20 reports, but they were generic reports.
21   Q   They were not any reports that the Trump Organization
22 specifically retained Doug Larson or anybody else at Cushman to
23 prepare for the Trump Organization, correct?
24   A   That's correct.
25   Q   And that would be true of all of the instances where

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1 you relied upon a Cushman report for coming up with a cap rate,
2 right?
3   A   Correct.
4   Q   Do you recall that you were played a voicemail
5 message that you left for Ray Flores on Christmas Eve of 2020?
6   A   I don't remember the year, but I remember the
7 voicemail.
8   Q   Okay. I'll represent to you that we have had
9 testimony that it was Christmas Eve of 2020.
10   MR. AMER: And I would just like to put up the
11   transcript of that voicemail message, which we put into
12   evidence as 329 7(a). And then I would like to split the
13   screen and also show you the draft 2020 supporting
14   spreadsheet, which is Plaintiff's Exhibit 3293.
15   So, if we could, in the transcript, look at
16   where we have the voicemail message on the left. Okay.
17   And now on the right with the draft 2020
18   spreadsheet, let's go to row 123.
19   Q   So, just looking at the spreadsheet, line 124 has a
20 note about the valuation for 2020. And it says -- and this is
21 your -- well, this spreadsheet says: Given the prime location
22 in the Plaza District, the proximity to Trump Tower, and the
23 high profile tenant, we used the same 4 percent cap rate as
24 Trump Tower.
25   Do you see that?

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1   A   Yes.
2   (The following proceedings were stenographically
3 recorded by Senior Court Reporter Michael Ranita.)

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1   Q   Then if you look at your message for Mr. Flores, line
2 seven, you'll see in your message to Mr. Flores, you say, "I
3 know Patrick gave me the reasoning behind the prime location in
4 the Trump Plaza District. We have a high-profile tenant and its
5 proximity to Trump Tower." Do you see that?
6   A   Yes.
7   Q   So does to look at those in your message to Mr. Flores,
8 you are repeating what Mr. Birney had put down in this note in
9 the draft spreadsheet in row 124 to 126?
10   A   Yes.
11   Q   And so you are looking for Mr. Flores to help you
12 convince Mr. Bender to accept this four percent cap rate;
13 correct?
14   A   I'm sorry, can you say that again.
15   Q   Sure.
16   You are looking for Mr. Flores to help you convince
17 Mr. Bender to accept the four percent cap rate?
18   A   Correct.
19   Q   And you say, in your message so Mr. Flores, starting on
20 line 16, "Can you work on coming up with some more reasoning as
21 to why we can use the four percent cap rate on Niketown."
22   Do you see that?
23   A   Yes.
24   Q   Was it your testimony that Mr. Flores managed to
25 convince Mr. Bender to accept the four percent cap rate?

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1 A If you show me the finalized spreadsheet, I could
2 probably answer it better. Um --
3 Q Let's start with your recollection.
4 A My recollection was that if we didn't convince Donald
5 Bender that the four percent was right, it would have been
6 changed to what Donald Bender suggested.
7 Q What was Donald Bender suggesting, if you remember?
8 A That I don't remember. Again, that's why I would like
9 to see the spreadsheet, the final spreadsheet.
10 Q And to the extent you're leaving a voicemail message
11 for Mr. Flores to help convince Mr. Bender to accept the four
12 percent cap rate, you are involving yourself in the preparation
13 of the 2021 Statement of Financial Condition; correct?
14 A If your definition of involving myself, a phone call, I
15 wouldn't consider that involving myself. It's having a
16 conversation with Ray.
17 Q You intervened to leave a message for Mr. Flores to
18 assist in getting Mr. Bender to accept the four percent cap
19 rate; fair?
20 A Intervened? I asked Ray for backup to come up with the
21 backup for -- to justify the four percent cap rate we used.
22 Q Mr. Birney could have left a voicemail message, but he
23 didn't. You did; right?
24 A I don't know what Patrick Birney was doing at the time.
25 He may have been busy, he may have been out of country, so I

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1 A Yes.
2 Q And there's an entirely different method used for 2020
3 that doesn't use a cap rate. It just says, in row 106, "Value
4 per 20-year discounted cash flow from Ray Flores." Do you see
5 that?
6 A Yes.
7 Q And the value drops to 252 million and change; right?
8 A Yes.
9 Q So, does it appear from this that Mr. Bender did not
10 accept the four percent cap rate and instead Mr. Flores had to
11 come up with a 20-year discounted cash flow in order to justify
12 the value that would be used for 2020?
13 A I will state that the value was reduced. I don't know
14 the sequence of events, whether Ray, on his own, came up with
15 the 20-year cash flow, because he thought he couldn't justify
16 the four percent. Or Bender was saying no way in heck I'm going
17 to it take it, come up with a different method.
18 I wasn't part of that conversation, that I remember,
19 but I will state that there is a reduction in the value to $252
20 million and change.
21 Q But there's also a change in the methodology; right?
22 There is no longer the NOI divided by cap rate. There's,
23 instead, a discounted cash flow that's being used as the basis;
24 correct?
25 A So. There are many methods to value a property.

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1 don't know.
2 Q I may have misspoken, by the way. This relates to the
3 2020 Statement of Financial Condition, right, not the 2021. I
4 think I misspoke.
5 A Yes, it relates to the 2020 statement.
6 Q Regardless of whether you knew what Mr. Birney was
7 doing or not, you are the one who left the message for Ray, not
8 him; correct?
9 A That's correct.
10 MR. AMER: Let's go ahead and put up Plaintiff's
11 Exhibit 857, native.
12 (Whereupon, the exhibit was displayed on the
13 screen.)
14 MR. AMER: Let's go to row 86. I think you have to
15 go to the left.
16 Q So this is Niketown. This is the 2020 final supporting
17 spreadsheet, because it has "PBC" on the upper left; correct?
18 A Yes.
19 Q And this has both the 2019 and the 2020 values;
20 correct?
21 A Correct.
22 Q And you'll see for 2019 it's -- the method is NOI
23 divided by cap rate to get the value; correct?
24 A For 2019, yes.
25 Q And that value is $445 million; right?

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1 Q That wasn't my question.
2 A Okay. I'm sorry. Can you ask it.
3 MR. AMER: If I could get a read back, your Honor.
4 THE COURT: Read back, please.
5 (Whereupon, the requested question was read back by
6 the court reporter.)
7 A Correct.
8 Q So at the end of the day, based on the method that was
9 used in 2020, it appears that Mr. Bender did not accept the four
10 percent cap rate; right?
11 A Correct. Like everything else, he did look at these
12 with a fine-tooth comb.
13 Q I'm go going to ask you about Plaintiff's Exhibit 2587,
14 the native.
15 MR. AMER: If we could put that up.
16 (Whereupon, the exhibit was displayed on the
17 screen.)
18 Q Do you recall testifying about this document during
19 your direct examination, as it relates to the 30 percent on --
20 of cash on balance sheet for the Vornado Partnerships?
21 A Yes.
22 Q And I think when you testified last month we referred
23 to that as "Vornado cash." Do you remember that?
24 A Sounds right.
25 Q And I believe your testimony was that in the

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1 parenthetical you disclosed to people that you took 30 percent
2 and not 100 percent of the balance sheet amount; is that right?
3   A   Yes.
4   Q   Am I also correct, though, that there's nowhere on this
5 document where you disclose that the bank account where the
6 Vornado cash sits was not under Mr. Trump's control?
7   A   Correct.
8   Q   And if I asked you the same question about the other
9 cash and short-term investment spreadsheets that you looked at
10 on your direct, would you have the same answer?
11   A   Relating to the Hudson Waterfront cash?
12   Q   Yes, and the fact that it does not disclose anywhere
13 that the bank account where the money sits was not under
14 Mr. Trump's control.
15   Would your answer be the same with respect to those
16 documents?
17   A   It was not disclosed on this schedule, no.
18   MR. AMER: Let's go ahead and pull up Defendant's
19   Exhibit 1021 in evidence.
20   (Whereupon, the exhibit was displayed on the
21   screen.)
22   MR. AMER: Yes. That's it.
23   Q   Do you recall reviewing this document on your direct
24 relating to the allocation of the purchase price for Jupiter?
25   A   Yes.

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1   Q   And am I correct that the purchase price includes the
2 membership deposit liabilities?
3   A   That we assumed, yes.
4   Q   Okay. And if you look down at the bottom -- I'm sorry,
5 the very bottom where the tabs are, do you see there's a second
6 tab that says alloc, okay by Bob Salmore. Do you see that?
7   A   Yes.
8   Q   Am I correct that Mr. Salmore is an accountant with the
9 McGladrey firm down in Florida?
10   A   He was a partner. He has since retired, or retired as
11 of now.
12   Q   But with a firm that was named McGladrey; correct?
13   A   RSM McGladrey, McGladrey Pullen. It's like Spahr
14 Lacher, they had mergers over time.
15   Q   Just to be clear, this spreadsheet that we are looking
16 at was prepared by his accounting firm not Mazars; right?
17   A   I thought I said that, but yes.
18   MR. AMER: Let's go ahead and pull up Plaintiff's
19   Exhibit 731, in native, which is the 2015 Jeff's Supporting
20   Data spreadsheet.
21   (Whereupon, the exhibit was displayed on the
22   screen.)
23   MR. AMER: Let's go to row 280 -- I'm sorry, row
24   297, which is Colts Neck.
25   Q   Do you recall testifying about this section on your

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1 direct?
2   A   Yes.
3   Q   And am I correct that the fixed assets value shown on
4 row 299 includes the purchase price plus the costs of
5 improvements to the club?
6   A   Correct.
7   Q   And then I believe you said that the brand premium
8 reflects the fact that Donald Trump spent funds to bring the
9 club up to five-star status; is that right?
10   A   It's -- it's not the same type of brand as discussed in
11 the footnote where Donald Trump has a brand, a Trump brand.
12 This is an operational branded adjustment for the money spent to
13 bring the property up to the five-star rating that Mr. Trump
14 likes.
15   Q   I think you got there eventually, but let me just
16 confirm it.
17   The brand premium that's added in rows 300 and 301 is
18 to account for the money that Donald Trump spent to bring the
19 club up to five-star status; is that correct?
20   A   Yes.
21   Q   And those same funds are also included in the value of
22 fixed assets, based on the testimony you gave us a minute ago;
23 correct?
24   A   Not necessarily all of them. It could be repairs --
25 um, not every penny that was spent would have been capitalized.

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1 So if we did a repair to a building, we replaced the carpeting
2 or something, they may or may not be in there. So I didn't
3 trace every single penny we spent.
4   Q   There's some overlap in terms of including money to fix
5 up the club that's included in the value fixed assets and the
6 money spent to bring it up to five-star status; correct?
7   A   There was some overlap, yes.
8   Q   And with respect to the money that's in this overlap
9 bucket, you are counting it twice; aren't you?
10   A   We didn't think of it that way.
11   Q   Well, but you are; aren't you?
12   A   Um, it -- no. We felt that this -- these improvements
13 would just bring it up to the five-star status.
14   Q   Right. And you are including it as a justification for
15 adding a premium, and you are also including it in the value in
16 row 299; yes?
17   A   Can I get a read back, or can you say that again,
18 please.
19   MR. AMER: We could have a read back, your Honor.
20   THE COURT: Read back, please.
21   A   I still don't agree with your theory. But I'm trying
22 to find a way to explain it better.
23   Q   It's not a theory. It's a yes or no question.
24   A   No.
25   MR. AMER: Okay. I have nothing further, your

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1   Honor.

2   THE COURT: Nothing further. Okay.

3   Will there be any redirect.

4   MR. SUAREZ: We have no further questions, your

5   Honor.

6   THE COURT: Okay. Then we are through with this

7   witness.

8   Thank you, Mr. McConney. You are free to go.

9   We would like to do a little scheduling discussion,

10   including I know -- wondering what's going to happen a week

11   from this Friday. So next Friday. I'll turn the microphone

12   over to Allison.

13   MR. ROBERT: As things stand now, that will

14   probably the spillover for Unell, but we'll have a better

15   sense of that on Monday once we get through the witnesses

16   Monday, Tuesday and Wednesday.

17   You want to start with Monday? You said next

18   Friday.

19   THE COURT: That's what I'm asking you about.

20   MR. ROBERT: Next Friday, I think, is still going

21   to be the spillover from Unell. Based on how quickly we are

22   getting through Monday, Tuesday and Wednesday, I'll then

23   know if we have somebody else on Friday, depending on when

24   Unell is going to start.

25   Right now, as things stand, we have booked for

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1   Monday, Tuesday Wednesday and Thursday.

2   THE COURT: Can you have a backup ready in case

3   there is no spillover?

4   MR. ROBERT: We will by the time -- we are talking

5   to witnesses about moving things along, but I don't know

6   yet, based on how things are going to go Monday, Tuesday and

7   Wednesday. I could report back Monday morning at that point

8   as to where we are going to be by Friday.

9   THE COURT: Okay.

10   MR. ROBERT: It's easy.

11   MR. WALLACE: Do you have a sense of how long

12   direct for Hawthorn is expected to take?

13   MR. ROBERT: I don't. I would expect it to be

14   several hours. Hopefully I could get it done by the lunch

15   break. I just don't know.

16   Do you have any sense of the cross of him?

17   MR. WALLACE: Depends on what we hear, but I

18   imagine it would be shorter than that. If that means three

19   hours, I don't imagine it would be longer than an hour.

20   MR. ROBERT: Just so we are clear, depending on

21   what happens on Monday, we may have to break in terms of

22   stopping a witness in the middle, because Tuesday we have

23   the Deutsche Bank people coming in pursuant to our

24   subpoenas, so with the Court's permission, since

25   Mr. Hawthorn and Mr. Birney are employees of ours, we'll

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1   then accommodate the people coming in from out of town.

2   THE COURT: It's okay with me.

3   MR. WALLACE: They accommodated that for us to do

4   it with Mr. Haigh, so I don't see -- it's actually an

5   appropriate time for the goose-gander rule, I think.

6   MR. ROBERT: In the Thanksgiving spirit, we accept

7   that.

8   THE COURT: Well, everybody, that's is it. Have a

9   great --

10   MR. ROBERT: Thank you, your Honor.

11   THE COURT: -- couple of days off. Eat well, drink

12   well, be merry. So long. 10:00 Monday.

13   MR. ROBERT: Yes, sir.

14   (Whereupon, the case on trial was adjourned to

15   Monday, November 27, 2023, at 10:00 a.m.)

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**Attorney General of the State of New York v.
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