

In The Matter Of:
NYS Attorney General v.
Donald Trump

November 27, 2023

Ny Supreme Court- Civil

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<p>1 SUPREME COURT OF THE STATE OF NEW YORK 2 COUNTY OF NEW YORK: CIVIL TERM: PART 37 3 -----X 4 PEOPLE OF THE STATE OF NEW YORK, BY LETITIA 5 JAMES, ATTORNEY GENERAL OF THE STATE OF NEW 6 YORK, 7 Plaintiff, 8 - against - 9 INDEX # 10 452564/2022 11 DONALD J. TRUMP; DONALD TRUMP JR.; ERIC TRUMP; 12 IVANKA TRUMP; ALLEN WEISSELBERG; JEFFREY 13 McCONNEY; THE DONALD J. TRUMP REVOCABLE TRUST; 14 THE TRUMP ORGANIZATION, INC.; TRUMP ORGANIZATION 15 LLC; DJT HOLDINGS, LLC; DJT HOLDINGS MANAGING 16 MEMBER; TRUMP ENDEAVOR 12, LLC; 401 NORTH WABASH 17 VENTURE, LLC; TRUMP OLD POST OFFICE, LLC; 40 WALL 18 STREET, LLC; and SEVEN SPRINGS, LLC, 19 Defendants. 20 -----X 21 Bench Trial 22 November 27, 2023 23 60 Centre Street 24 New York, New York 10007 25 B E F O R E: THE HONORABLE ARTHUR S. ENGORON, Justice of the Supreme Court A P P E A R A N C E S: OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF NEW YORK - LETITIA JAMES Attorneys for the Plaintiff 28 Liberty Street New York, NY 10005 By: KEVIN WALLACE, ESQ. COLLEEN K. FAHERTY, ESQ. ANDREW AMER, ESQ. ERIC HAREN, ESQ. LOUIS SOLOMON, ESQ.</p>	<p>1 COURT OFFICER: All rise. 2 Part 37 is now in session. 3 The Honorable Judge Arthur Engoron presiding. 4 Make sure all cell phones are on silent. Laptops and cell 5 phones will be permitted, but only to members of the 6 press. There is absolutely no recording or photography of 7 any kind allowed in the courtroom. 8 Now be seated and come to order. 9 THE COURT: Defendants would you like to call 10 your next witness? 11 MR. ROBERT: Yes, Your Honor. The defendants 12 call Mark Hawthorn. 13 (Whereupon, the witness took the stand.) 14 COURT OFFICER: Please raise your right hand. 15 M A R K H A W T H O R N, after having 16 first been duly sworn was examined and testified as 17 follows: 18 COURT OFFICER: Please have a seat. 19 State your full name and home or business 20 address for the record. 21 THE WITNESS: My name is Mark Hawthorn, and my 22 business address is 725 Fifth Avenue, New York. 23 THE COURT: Zip code? 24 THE WITNESS: 10022. 25 THE COURT: We probably heard that before.</p>
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<p>1 A P P E A R A N C E S: (Cont'd) 2 3 CONTINENTAL PLLC 4 Attorneys for Defendants 5 101 North Monroe Street, Suite 750 6 Tallahassee, FL 32302 7 By: CHRISTOPHER KISE, ESQ. 8 LAZARO FIELDS, ESQ. 9 JESUS SUAREZ, ESQ. 10 11 ROBERT & ROBERT, PLLC 12 Attorneys for Defendants 13 526 RXR Plaza 14 Uniondale, NY 11556 15 By: CLIFFORD ROBERT, ESQ. 16 17 HABBA MADAIO & ASSOCIATES, LLP 18 Attorneys for Defendants 19 1430 US Highway 296, Suite 240 20 Bedminster, NJ 07921 21 By: MICHAEL MADAIO, ESQ. 22 23 MORIAN LAW, PLLC 24 Attorneys for Defendants 25 60 East 42nd Street, Suite 4600 New York, NY 10165 By: ARMEN MORIAN, ESQ. THE TRUMP ORGANIZATION Attorneys for the Defendant 725 Fifth Avenue New York, NY 10022 By: ALAN GARTEN, ESQ. MICHELE PANTELOUKAS MICHAEL RANITA Senior Court Reporters</p>	<p>1 Hawthorn - by Defendant - Direct (Robert) 2 3 Mr. Robert, would you like to proceed? 4 MR. ROBERT: Thank you. Good morning, Your 5 Honor. 6 DIRECT EXAMINATION 7 BY MR. ROBERT: 8 Q Good morning, Mr. Hawthorn. 9 A Good morning. 10 Q I know you testified a few weeks ago. But I, just to 11 put things context, I want to go briefly through your 12 educational background and professional history. Okay, sir? 13 A Okay. 14 Q Please tell us about your educational background from 15 college on. 16 A So, I attended the University of Florida and I 17 obtained a Bachelor's degree and a Master's degree in 18 accounting in the year 2000. 19 Subsequent to graduation I had my first employment at 20 Arthur Anderson, which is a public accounting firm in Fort 21 Lauderdale, Florida. I worked at Arthur Anderson from 2000 to 22 2002. From 2002 to -- 23 Q I'll break it down. 24 Prior to your work at Arthur Anderson, did you obtain 25 any professional certification? A Yes. I obtained a CPA license in the state of Florida.</p>

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1 Q And when did you obtain that license, sir?

2 A I obtained that license in 2000.

3 Q Okay. So now talking about your time at Arthur

4 Anderson, which I believe you said was 2000 to 2002, sir?

5 A Correct.

6 Q What did you do at Arthur Anderson during that time?

7 A I was in the audit practice, so I worked on audits of

8 both public and private companies as a staff auditor; with

9 increasing responsibility to a senior auditor overseeing audit

10 engagements for the firm.

11 Q And in its most basic sense, what is an audit, sir?

12 A An audit is a -- when a company requests that a firm,

13 such as an accounting firm, comes in and does work and

14 procedures to check the books and records of the company; and

15 to issue -- potentially issue audited financial statements of

16 the company.

17 Q When an accounting firm reviews -- I know review is a

18 term of art, I will not use that word. When an accounting firm

19 analyzes financial records of a client of theirs, are there

20 different levels of review?

21 A Yes.

22 Q What are those different levels?

23 A Generally speaking there is a compilation; there is a

24 review; there is an audit; and there is maybe something else

25 called agreed-upon procedures.

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1 Q Okay. Taking -- leaving the agreed-upon procedures

2 out for a moment. Very briefly, can you explain those three

3 things?

4 A Sure. So, in terms of the level of work that an

5 accounting firm would undergo, the compilation is the lowest

6 level of work and assurance. So a report that is issued with a

7 compilation opinion states that.

8 Whereas, a review would be additional procedures that

9 are done.

10 And an audit would be the highest level of assurance

11 that there is substantive testing and other procedures done by

12 the accounting firm with respect to the financial statements.

13 Q And when you discussed your experience at Arthur

14 Anderson, was that solely in the audit, meaning one of those

15 three, or did that encompass more than just audits?

16 A My role encompassed everything, because we had

17 clients that had different needs. So I would have a client

18 that has a need to issue a compilation report or I might have a

19 client, same client, have a need to issue an audit report.

20 Generally speaking, an audit report is required for

21 publicly traded companies that file financial statements with

22 the SEC or have public debt.

23 Whereas a compilation would be more for another

24 purpose. If, for example, a company needed to provide numbers

25 to a lender or something like that, generally speaking.

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1 Q And, sir, when you just testified about your work at

2 Arthur Anderson, you said your role kind of expanded during

3 those two years. What did you mean by that?

4 A I started out as a staff person, so I was on client

5 engagements in a staff capacity doing work at the direction of

6 an audit senior, an audit manager. And after about a year was

7 promoted to an audit senior, where you are doing more of the

8 planning, you are doing more of the client interaction and

9 different levels of responsibility in a supervisory capacity

10 over an audit staff, if that makes sense.

11 Q It does.

12 What was the role you had at the time you left Arthur

13 Anderson in 2002?

14 A I was an audit senior.

15 Q Where did you go from Arthur Anderson, sir?

16 A In 2002 I went to Ernst & Young. It effectively took

17 over the practice of Arthur Anderson in Fort Lauderdale at the

18 time. So I was in the same office with the same clients. It

19 was just that the Ernst & Young firm took over that office from

20 Arthur Anderson at the time in 2002.

21 Q How long were you there with Ernst & Young?

22 A Ernst & Young, I was there for two years from 2002 to

23 2004. And I started as an audit senior, and continued in that

24 role as a -- an experienced audit senior when I left in 2004.

25 Q And did your responsibilities change in any way

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1 during those two years from 2002 to 2004?

2 A They did. I had increasing levels of responsibility

3 as I became more senior to the firm and more senior on the

4 client engagements that I was on. So I had more in supervisory

5 responsibilities, I had more interactions with the client on

6 more technical accounting matters, as I have gotten more, at

7 the time skilled in certain transactions and understanding

8 accounting rules and financial reporting disclosure.

9 Q Where did you go after Ernst & Young?

10 A I left Ernst & Young in June of 2004, and I joined a

11 firm called Kerzner International, which is a company, not an

12 audit firm. So Kerzner International at the time, based in

13 Plantation, Florida, was the owner and operator of luxury

14 resort hotels. And I served as my first role as the manager of

15 financial reporting.

16 Q And what made you decide to go to Kerzner

17 International in 2004?

18 A It was a unique opportunity to work in private

19 industry, which I had an affinity to do. And it was a good

20 circumstance for me because the individual they were looking

21 for had my -- I believed I fit the background for what they

22 were looking for, meaning some level of public accounting

23 experience, and an understanding also of the hospitality

24 industry.

25 At Ernst & Young I had worked on some hospitality

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<p>Hawthorn - by Defendant - Direct (Robert) Page 5124</p> <p>1 clients as well, so it gave me an opportunity to expand my 2 career and work at a private company in a capacity where I had 3 the right skill set.</p> <p>4 Q And from what years did you work at Kerzner 5 International, sir?</p> <p>6 A I worked at Kerzner International from 2004 to 2016.</p> <p>7 Q And can you describe for the Court how your role, if 8 in any way, changed at that time period in Kerzner?</p> <p>9 A Over the course of my employment at Kerzner I again 10 had increasing levels of responsibility. So I started as a 11 manager of financial reporting. At the time in 2004 to 2006 12 the company was a public company. So I was in charge of 13 overseeing the financial statements that were filed with the 14 SEC.</p> <p>15 In 2006 the company went private on private 16 transaction. And I continued in a role of financial reporting 17 but more so as a private company where you report to the 18 ownership interests of the company versus public company 19 reporting.</p> <p>20 And then as the -- my role expanded in 2000 -- let's 21 say 12 and thereafter, I got involved more also in treasury. 22 Became appointed as the vice president of treasury, where I 23 still held financial reporting oversight and responsibilities 24 because of my knowledge of that area.</p> <p>25 But also got involved working with the company's</p>	<p>Hawthorn - by Defendant - Direct (Robert) Page 5126</p> <p>1 packages, so to speak, that gave, you know, information on 2 quarterly board meetings to the ownership of the company and 3 directors of the company.</p> <p>4 Q When you testified a little earlier, you talked about 5 the "public accounting background," what do you mean by the 6 term "public accounting"?</p> <p>7 A Public accounting is generally referred to, again, a 8 firm like Arthur Anderson, Ernst & Young that is engaged in the 9 audits or other work of companies that are public registrants. 10 Again, so a company that might have stock traded on a stock 11 exchange or public debt. So, generally speaking, that's what 12 public accounting means. It deals with companies that have 13 those type of more stringent requirements than a private 14 enterprise that wouldn't necessarily have those thresholds of 15 reporting requirements.</p> <p>16 THE COURT: Mr. Robert, I am not sure everyone 17 can hear you as well as I can. Raise that and raise your 18 voice.</p> <p>19 MR. ROBERT: Thank you, Your Honor. First time 20 I am accused of that.</p> <p>21 THE COURT: If you switch places with him you 22 are fine.</p> <p>23 Q Mr. Hawthorn, you are familiar with a term called 24 GAAP, right?</p> <p>25 A Yes.</p>
<p>Hawthorn - by Defendant - Direct (Robert) Page 5125</p> <p>1 lenders; working with the company's other stakeholders in terms 2 of financial matters. Not only historical financial matters, 3 which is what the financial statements oversee or tell, but 4 also prospective financial matters like, you know, how the 5 company is capitalized, how the company is working with its 6 lenders on debt arrangements and things like that.</p> <p>7 Q You used a phrase, "vice president of treasury;" what 8 exactly does that mean or did it mean?</p> <p>9 A That meant my role was expanded to not just be with 10 financial reporting, but also work with lenders and also 11 oversee the cash flow of the company. So in treasury you are 12 also dealing with banks; you are dealing with lenders; you are 13 dealing with cash flow forecasting for the operations of the 14 company. Not necessarily just financial reporting, which is a 15 more historical-type role where you are issuing financials of 16 what happened in the past. But my role also expanded to be 17 more operational in terms of how the company is looking forward 18 prospectively and doing its business.</p> <p>19 Q You testified that you dealt with lenders and 20 stakeholders, what did you mean by stakeholders?</p> <p>21 A Board members of the company. So even though it is a 22 private company, the board was comprised of certain individuals 23 appointed to direct the operations of the company. So, we 24 would also, in my role, provide to the board of the company, 25 like, quarterly updates. So, I would help provide board</p>	<p>Hawthorn - by Defendant - Direct (Robert) Page 5127</p> <p>1 Q What is GAAP?</p> <p>2 A GAAP is an acronym for Generally Accepted Accounting 3 Principles.</p> <p>4 Q And what is your general understanding of what GAAP 5 is?</p> <p>6 A GAAP is effectively the rules and guidelines around 7 accounting practice in companies that are, you know, recording 8 books and records and how transactions are recorded and 9 reported.</p> <p>10 Q Okay. I now want to take you past 2016, where did 11 you go after Kerzner in 2016?</p> <p>12 A So in February of 2016 I was hired as the Chief 13 Accounting Officer of Trump Hotels based in New York.</p> <p>14 Q And what is the role -- what was the role of Chief 15 Accounting Officer at the Trump Hotels in New York?</p> <p>16 A So my role when I started was reporting to the CEO of 17 Trump Hotels, a gentleman named Eric Danziger at the time. My 18 role encompassed overseeing all of the financial and accounting 19 aspects of the hotel division of the Trump Organization.</p> <p>20 Q And how, if in any way, did your title and/or role 21 change since that time in 2016?</p> <p>22 A In 2016 while my title was effectively Chief 23 Accounting Officer, I was the highest ranking finance and 24 accounting executive in the hotel division. So, in January of 25 2020 my title was effectively updated to Chief Financial</p>

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<p>Hawthorn - by Defendant - Direct (Robert) Page 5128</p> <p>1 Officer of Trump Hotels. Although I continued to still report 2 to the CEO of Trump Hotels and was effectively doing the same 3 job. 4 Q Did the scope of your job then change at all from 5 2016 to '20, or just your title? 6 A The title. The scope was effectively the same. 7 Q Okay. And what, if anything -- withdrawn. 8 Since 2020, what position have you held with the 9 company? 10 A So in May of 2022, the CEO of Trump Hotels, Mr. Eric 11 Danziger, left the company. So the company promoted me to 12 Chief Operating Officer of Trump Hotels. I still have 13 continuing responsibility over finance and accounting, but I 14 now oversee the operational aspects of the hotel portfolio as 15 the highest executive level in the hotel division. Not just 16 for finance and accounting but also for operations. 17 Q And you had mentioned you had report -- withdrawn. 18 When Mr. Danziger -- was he the CEO of the hotel 19 group you said? 20 A Yes. 21 Q At that point he was your direct report? 22 A Yes. 23 Q Since he left the company, who is your direct report? 24 A My direct report is Eric Trump. 25 Q Okay. And that's the same today, correct?</p>	<p>Hawthorn - by Defendant - Direct (Robert) Page 5130</p> <p>1 A There is some overlap because certain of the hotels 2 are resort hotels, meaning that they have golf courses on the 3 property. And so there is some overlap where the golf course 4 is a component of the resort hotel, and its financials roll up 5 into the reporting of that hotel resort. 6 Q And would Doral be one of those? 7 A Doral is a good example. 8 Q Okay. Going to the hotel division specifically, if 9 you could explain how the accounting team in the hotel division 10 works? 11 A I would describe our structure as very decentralized, 12 meaning that each hotel has its own general manager who 13 oversees the entire property, and has its own finance 14 department that does the day-to-day finance of the hotel. 15 So, for example, if you mention Doral, Doral has its 16 own general manager. Doral has its own director of finance. 17 Each hotel has its own departments like that to do the 18 day-to-day accounting and finance work and day-to-day 19 operations; under the auspices and the direction of the 20 corporate office where I reside, but obviously we entrust the 21 teams at the properties to handle the day-to-day of the 22 operations. 23 Q So looking at it from an organizational chart, for 24 the purpose if you are sitting at the role of the COO of the 25 hotel division, who is it in the hotels that reports to you?</p>
<p>Hawthorn - by Defendant - Direct (Robert) Page 5129</p> <p>1 A Correct. 2 Q And is there a CEO of the hotel division? 3 A No, there is no one with that title. But I, as the 4 Chief Operating Officer or COO, I am at the highest executive 5 level of the hotel division of the company. 6 Q And I think you described it a few moments ago, but 7 just to be clear, what exactly are the responsibilities of the 8 Chief Operating Officer of the hotel division? Is it okay if I 9 call it the hotel division? 10 A That's accurate. It is not just finance and 11 accounting but it is everything related to the hotel division 12 operations, including sales and marketing; including 13 operational aspects of how to operate a hotel; how we set rates 14 for room rates; and how we employ, employees over across the 15 hotel portfolio. So not just financing accountant, but all 16 operational aspects. 17 Q I referred to the hotel division. What, if any, 18 other divisions does the Trump Organization have? 19 A So broadly speaking there is commercial real estate 20 in the organization. Then there is hospitality-related assets 21 like hotels. And then similar to that there is a golf 22 division. So there is private and public golf courses in the 23 company. 24 Q And do any of the golf courses fall within your 25 bucket?</p>	<p>Hawthorn - by Defendant - Direct (Robert) Page 5131</p> <p>1 A All of the general managers of the hotels. So the 2 leaders of the actual hotel properties. 3 Q And when you want financial information about these 4 individual hotels, how do you go about getting it? 5 A Each individual hotel prepares its own financial 6 information; maintains its own books and records or general 7 ledger, is a common term for books and records. So at the 8 property level those are all maintained. We have a mechanism 9 at the corporate office where we have a reporting timeline 10 where the hotels will report to us in a very standardized way. 11 There are monthly financial reports. 12 And our other applicable reports that we will review, 13 and discuss and review these with the properties, to get a 14 better understanding and be, kind of, on top of the operation 15 and understanding what is happening in the business. 16 Q I know you are familiar with the name Allen 17 Weisselberg, correct? 18 A Yes. 19 Q Where was Allen Weisselberg within the corporate 20 structure? 21 A Allen Weisselberg was the Chief Financial Officer of 22 the Trump Organization. 23 Q And what, if anywhere -- withdrawn. 24 How, if in any way, did your role change after 25 Mr. Weisselberg left the company?</p>

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1 A After Mr. Weisselberg left the company I have been
2 called upon from time to time as needed to assist with how the
3 company is operating generally in other divisions, so not just
4 the hotel division. And I have been called upon to, kind of,
5 ask how we could replicate certain practices and procedures
6 that we do in the hotel division across the company.
7 Q And if you could add a little more detail to that?
8 A Sure. I mean, I think the hotel division, in my
9 humble opinion, because I have -- I am overseeing it, we have a
10 good set of procedures and controls and ways we go about doing
11 the day-to-day business in the operations. So, for example, we
12 have a standardized chart of accounts. I know it sounds kind
13 of boring, but if every hotel has the same general chart of
14 accounts, it is easy to have consistency and roll up across the
15 company.
16 And do you want me to keep explaining?
17 Q Let me break it down a little.
18 A Okay.
19 Q Did there come a time that someone within the Trump
20 Organization asked you to assist in these other projects after
21 Mr. Weisselberg left?
22 A Yes. I think Eric Trump has asked me -- well, I know
23 Eric Trump has asked me to assist in other matters where I can
24 be of assistance to the company.
25 Q Okay. And just so that we are clear, that assistance

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1 is in what form?
2 A It is helping to utilize certain of the
3 characteristics of the hotel division and other ways to create,
4 you know, more efficiencies, better procedures and practices
5 across the company as a whole.
6 Q You talked about uniformity, and I think you used a
7 phrase "roll up" a couple of minutes ago. What did you
8 discover when you were asked to help -- I'll use the word
9 "modernize" the other divisions?
10 A So as an example, I think as I was explaining before,
11 the hotel division has the benefit of already an existing
12 structure where every hotel is accounted for in the same way.
13 As I was asked to, kind of, assist in other areas of the
14 business, for example in the golf division, which is similar to
15 the hospitality division hotels, the golf division at the time
16 of, let's say, summer of 2021, didn't have that same
17 uniformity. As the golf division grew over time, golf courses
18 were acquired and the property level comptrollers entrusted to
19 oversee the books and records, either continued to use the same
20 chart of accounts that they had on a previous ownership, or had
21 discretion in how they could book transactions in a chart of
22 accounts that made sense for their property.
23 So as an example, one of the projects that I helped
24 to oversee over the last year and a half with some team members
25 from my team, is to help standardize the chart of accounts for

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1 golf, so that you could consistently compare across every golf
2 course the operations, the performance and understand, if
3 everything is booked the same way and the same accounts, you
4 can have consistency. That's an example.
5 Q You used the phrase, "chart of accounts," what do you
6 mean by that?
7 A The chart of accounts is the, for lack of a better
8 term, the books and records of the company, where all of the
9 debits and credits go when you book journal entries. So there
10 is typically a number assigned to a certain general ledger
11 account. A description assigned to a certain general ledger
12 account that comprises the assets, liabilities and equity of
13 the books and records of the trial balance. And so it is much
14 more efficient as a corporate oversight to evaluate the
15 performance of your portfolio if everyone is on the same chart.
16 Now, that's not to say that each entity had anything
17 wrong with it. It is just that each entity maybe booked things
18 in a different account than a different entity. So if you are
19 trying to cross compare certain things, it may not be as
20 noticeable because they are not on an apples to apples basis.
21 So this is kind of inherent, you know, efficiency in the
22 organization and the golf division similar to what we had in
23 the hotel division as an example.
24 Q Has there been any new accounting software that has
25 been used as a result of your involvement in these other

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1 divisions?
2 A So, in addition to the chart of accounts project at
3 golf, which is utilizing the same software which is golf
4 specific, there is an undertaking ongoing now at the Trump
5 Organization corporate accounting level to input new general
6 ledger accounting software, so to be more modern, to be more
7 like the hotel division. Meaning in a way that today in 2023
8 there is software packages available that helps people do their
9 jobs a little bit easier, more consistent and have more
10 control, standardization.
11 So we have a -- I am assisting with a project at the
12 corporate office accounting level to put in a new system that
13 will help in this effort to improve the efficiency and the
14 reporting and the technical capabilities of the -- the other
15 divisions of the company, like the commercial real estate and
16 the corporate office and that sort of thing.
17 Q When you talk about the corporate office, what are
18 you referring to?
19 A So, the corporate office resides generally at
20 725 Fifth Avenue in New York, which has a back office
21 accounting function. There is a team that oversees those
22 assets. Whereas I oversee the hospitality hotel assets.
23 Q And what is the difference between the corporate
24 accounting level you used -- you phrased, as opposed to how
25 things work at the hotels or golf courses?

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1 A Maybe to put it in the appropriate context, that was
2 kind of the corporate office's, kind of, generally referred to
3 the prior regime of Jeff McConney and Allen Weisselberg.
4 Whereas now we have other individuals in certain roles
5 overseeing the commercial assets, the real estate assets of the
6 portfolio.
7 Q And the commercial assets are no longer governed by
8 the corporate accounting department, or are they?
9 A They are.
10 Q Is there a distinction between who is running -- who
11 is in the corporate accounting department versus who is at the
12 golf courses and hotels? If so, what is that?
13 A There is. So we have, again, myself in hotels. We
14 have an individual in golf. We have individuals in the
15 corporate accounting function today.
16 You know, for example, I think you may know Donna
17 Kidder. She continues to be in the capacity of an assistant
18 comptroller. We have a director of finance now that is running
19 the oversight of that department, that runs that day-to-day.
20 Q What, if any, involvement did you have in the last
21 few years with the check issuing system at the Trump
22 Organization?
23 A Can you repeat the question?
24 Q Sure. What, if any, involvement have you had in the
25 last few years with the check issuing system of the Trump

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1 Organization?
2 A By check issuing system you are referring to
3 disbursements?
4 Q Yes, disbursements, paying bills.
5 A Sure. So as an example of, kind of, how the company
6 used to do things versus how it does it now, the company under
7 the prior regime, you know, ran as it did as a family run
8 enterprise using very basic functions. For example, to pay
9 bills and vendors everything was always paid via paper check.
10 That's -- that worked in the 1980s and it still works today.
11 But there is other ways to get vendors paid more quickly, more
12 timely, more accurately. So, I was asked to assist in, kind
13 of, helping the corporate office, kind of, maybe update
14 modernize the way things are done, because we do things in the
15 hotel division that is more, let's say, in the way companies
16 operate today.
17 Q Did there come a point in time someone at the Trump
18 Organization specifically asked you to assist with this
19 disbursement issue?
20 A Yes.
21 Q And who was that person?
22 A Eric Trump.
23 Q And what were the circumstances surrounding -- first
24 of all, when was that, if you recall?
25 A It was probably in the summer of 2021.

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1 Q What were the circumstances surrounding that, sir?
2 A So, just for perspective and background, right, the
3 way that the corporate office functioned, had previously
4 worked, is that there was only -- if you are only paying with
5 check and you only have three signers who can sign checks, you
6 are very limited on how you can make disbursements. And the
7 three signers that were always entrusted with overseeing the
8 bank accounts were Allen Weisselberg, Donald Trump Jr. and Eric
9 Trump. So, in practice, Allen Weisselberg in his role, to my
10 understanding, would be the one that would review check
11 disbursements and sign them so that they would go out, because
12 that was his role.
13 I guess at the time of summer of 2021 Allen
14 Weisselberg was no longer in the role of Chief Financial
15 Officer. He was removed from those duties. So, when the
16 operation keeps needing to run, checks need to be signed. So
17 now you only have two signers who can sign checks, Donald J.
18 Trump Jr. and Eric Trump. So I recall walking into Eric
19 Trump's office and he called me in to assist, and he had a
20 stack of checks to sign that was very high.
21 And he said: Well, what do I do with all of these?
22 Because typically Eric would never sign checks. It would be
23 Allen. Allen would sign all of the checks and Eric would work
24 on the operation. But if you need to pay vendors, who is going
25 to sign the check? It is really Eric or Don.

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1 So Eric came to me and he said: Well, Mark, how do
2 you do this in the hotel division?
3 I said: Well, we don't do it like this. We pay
4 through ACH. We pay through virtual means, electronic means.
5 We have systems and processes that are available and tools that
6 are available to the company to modernize, kind of, the
7 functionality. So that's how I got involved in that project.
8 So commensurate with, kind of, the upgrade of the
9 general ledger package of the Trump Organization at large and
10 the corporate office, my role has helped assist in replicating
11 some of the hotel division efficiencies to the organization so
12 that we are able to pay vendors in a more efficient way. Saves
13 a lot of time and resources when you are not needing to put a
14 stamp on envelopes and trace and track down outstanding checks.
15 So, kind of one of the initiatives I have helped with. And
16 Eric Trump, I know, is proud of being as paperless as we can in
17 disbursements.
18 Q You have heard of something during the course of this
19 trial called a Statement of Financial Condition, correct, sir?
20 A Yes.
21 Q And did you have any involvement in the preparation
22 of President Trump's Statement of Financial Condition?
23 A I did not.
24 Q Did there come a time that you became aware of a
25 document called President Trump's Statement of Financial

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<p>Hawthorn - by Defendant - Direct (Robert) Page 5140</p> <p>1 Condition?</p> <p>2 A Yes.</p> <p>3 Q And when was that approximately?</p> <p>4 A In connection with one of the hotel audits that I was</p> <p>5 working on. There was a request from one of those auditors to</p> <p>6 get some more information about the parent company of the</p> <p>7 hotel. And I was doing some diligence to try to provide the</p> <p>8 best available information. In doing so, I was aware that</p> <p>9 there was this document that existed. And I helped to</p> <p>10 facilitate a meeting with the accounting team in the hotel --</p> <p>11 that was doing the audit of the hotel, and the accounting team</p> <p>12 that was familiar with the statement, so that they could</p> <p>13 discuss it and understand whatever questions they had.</p> <p>14 (The following proceedings were stenographically</p> <p>15 recorded by Senior Court Reporter Michael Ranita.)</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>M. Hawthorn - by Defense - Direct (Mr. Robert) Page 5142</p> <p>1 company. It's not required by any lender currently, and/or any</p> <p>2 other constituency.</p> <p>3 Q Okay.</p> <p>4 I want to switch topics for a minute and talk to you</p> <p>5 about Mazars. Are you familiar with a company known as Mazars?</p> <p>6 A Yes.</p> <p>7 Q And what is Mazars?</p> <p>8 A Mazars is an accounting firm. It was the main</p> <p>9 accounting firm of The Trump Organization when I started in</p> <p>10 2016, and I guess prior to that they had a long standing</p> <p>11 relationship with The Trump Organization to be the, um, you</p> <p>12 know, financial, um, statement preparers and auditors, as well</p> <p>13 as the tax preparers for the company.</p> <p>14 Q And who was the main point of contact that you dealt</p> <p>15 with at Mazars while they were the outside accountants to The</p> <p>16 Trump Organization?</p> <p>17 A The main audit partner was Donald Bender.</p> <p>18 Q How often would you be in contact with Mr. Bender?</p> <p>19 A I would be in contact with him frequently as it related</p> <p>20 to the audits and compilations of the hotel assets that we were</p> <p>21 entrusted, to insure that financial reports were issued for</p> <p>22 those entities.</p> <p>23 Q So with regard to your interaction with Mr. Bender,</p> <p>24 what services were you, on behalf of the hotel group, if you</p> <p>25 will, seeking from Mazars and Mr. Bender?</p>
<p>M. Hawthorn - by Defense - Direct (Mr. Robert) Page 5141</p> <p>1 Q When you talk about the accounting team who was</p> <p>2 familiar, who are you referring to?</p> <p>3 A At the time that was Whitley Penn.</p> <p>4 Q So when was this -- was this meeting virtual, in person</p> <p>5 or something else, telephone?</p> <p>6 A Um, so this was a meeting that I helped to coordinate.</p> <p>7 It was effectively a video conference on the Google Meet</p> <p>8 platform that was, I think, in November of 2021, if I'm correct.</p> <p>9 That helped to facilitate the Whitley Penn accounting team. The</p> <p>10 other team involved was an audit firm called Johnston</p> <p>11 Carmichael. They are one of the audit firms that we use for the</p> <p>12 Scotland entities. So we have a couple of assets in Scotland.</p> <p>13 That was the team that needed some information about the parent.</p> <p>14 And so I helped to facilitate that virtual meeting.</p> <p>15 Q Other than your participation in facilitating this</p> <p>16 virtual meeting in 2021, do you recall having any other</p> <p>17 knowledge or involvement with the President Trump Statement of</p> <p>18 Financial Condition?</p> <p>19 A No.</p> <p>20 Q Are you aware of whether The Trump Organization still</p> <p>21 prepares a Statement of Financial Condition for President Trump?</p> <p>22 A It is not prepared, to my knowledge.</p> <p>23 Q And what, if anything, has replaced that now at The</p> <p>24 Trump Organization, if you are aware of it?</p> <p>25 A There is not a roll up financial statement of the</p>	<p>M. Hawthorn - by Defense - Direct (Mr. Robert) Page 5143</p> <p>1 A It would be compilation services and audit services.</p> <p>2 Q What about tax services or tax advice?</p> <p>3 A Limited for me. My role is primarily related to</p> <p>4 financial reporting of individual entities in the hospitality</p> <p>5 portfolio.</p> <p>6 Q What do you mean by "compilation services"?</p> <p>7 A A "compilation" is effectively the assistance of the</p> <p>8 accounting firm to put together the annual financial statements</p> <p>9 of the entity that's being asked to be done on, where the</p> <p>10 accounting firm would put together the balance sheet, income</p> <p>11 statement, um, statement of cash flows, in a summarized</p> <p>12 annualized report.</p> <p>13 Q And would they do this for all of the hotel properties?</p> <p>14 A They would do it for hotel properties that required to</p> <p>15 have a compilation statement.</p> <p>16 Q And who, if anyone, would be making this requirement?</p> <p>17 A It was required by certain lenders.</p> <p>18 Q And do the extent that those properties fell within</p> <p>19 your division or your wheelhouse, you would have had involvement</p> <p>20 with Mr. Bender with those; correct?</p> <p>21 A Correct.</p> <p>22 Q And you talked about audit services, too. What were</p> <p>23 you referring to there?</p> <p>24 A Audit services was -- are engagements that Mazars was</p> <p>25 entered into an engagement with the company to do an actual</p>

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<p>M. Hawthorn - by Defense - Direct (Mr. Robert) Page 5144</p> <p>1 financial audit of an entity. So we had a property, a hotel</p> <p>2 property that required an audit from its, um -- under the terms</p> <p>3 of its lease agreement, and also under the terms of its debt.</p> <p>4 So one property under those requirements needed to have an audit</p> <p>5 issued versus a compilation.</p> <p>6 Q If you, on behalf of your division, had accounting</p> <p>7 questions, who, if anyone, would you turn to outside of The</p> <p>8 Trump Organization?</p> <p>9 A We would turn to Mazars.</p> <p>10 Q And who, if anyone, would you turn to within The Trump</p> <p>11 Organization during that time period that Mazars was the outside</p> <p>12 accountant?</p> <p>13 A It would be myself.</p> <p>14 Q Other than consulting with yourself, is it fair to say</p> <p>15 that Mazars would have been the only other entity you had</p> <p>16 contacted with?</p> <p>17 A Correct.</p> <p>18 Q Primarily that would have been Mr. Bender?</p> <p>19 A Correct. I could still hold a CPA license. I'm not a</p> <p>20 practicing CPA. You know, I'm -- I worked work for a private</p> <p>21 company, so while I still keep up with accounting rules and</p> <p>22 regulations and changes, relied heavily on Mazars to understand</p> <p>23 what the current pronouncements are in accounting so that when</p> <p>24 we are issuing -- when they are issuing financial statements,</p> <p>25 that we make sure that we are properly disclosing required</p>	<p>M. Hawthorn - by Defense - Direct (Mr. Robert) Page 5146</p> <p>1 The Trump Organization?</p> <p>2 A A firm called Whitley Penn.</p> <p>3 Q And what, if any involvement, did you have in the</p> <p>4 selection of Whitley Penn to be the new external accountants for</p> <p>5 The Trump Organization?</p> <p>6 A I had some involvement because the audits and</p> <p>7 compilations under my responsibility, I, you know, took great</p> <p>8 pride in to make sure were accurate. We wanted to make sure we</p> <p>9 had a good firm that had the capability to do the work. So the</p> <p>10 initial meetings, I was part of it with respect to the</p> <p>11 hospitality properties that we needed to have certain work</p> <p>12 performed, such as these audits and compilations.</p> <p>13 Q Were you involved in the selection of the Whitley Penn</p> <p>14 firm, or after they were selected, for lack of a better word, to</p> <p>15 help get them up to speed, or both?</p> <p>16 A A little bit of both. My input was valued based on my</p> <p>17 kind of interactions with Whitley Penn at the onset, and the</p> <p>18 questions that I would ask if they were capable of handling the</p> <p>19 work. Um, and then I was one of the probably primary liaisons</p> <p>20 with the audit partners at Whitley Penn, especially with respect</p> <p>21 of the hospitality properties.</p> <p>22 Q And the primary point of contact at Whitley Penn was,</p> <p>23 and is?</p> <p>24 A On the audit, same gentleman named Camron Harris.</p> <p>25 Q You talked about on the audit side. What do you mean</p>
<p>M. Hawthorn - by Defense - Direct (Mr. Robert) Page 5145</p> <p>1 disclosures that were ensuring that we are properly recording</p> <p>2 entries appropriately and in accordance with the latest</p> <p>3 standards.</p> <p>4 Q How did you communicate with Mazars?</p> <p>5 A Telephone, e-mail, um, frequent communication as</p> <p>6 needed.</p> <p>7 Q In-person meetings as well?</p> <p>8 A In-person, of course.</p> <p>9 Q What kind of information did you give Mazars about the</p> <p>10 hotels in your division?</p> <p>11 A We would give them the information that they would</p> <p>12 require to put together the compilation or for their audit,</p> <p>13 which would be the underlying financial statements of the</p> <p>14 entity, and any supporting backup, or schedules, or detail that</p> <p>15 they required so that they could conduct audit testing.</p> <p>16 Q Do you recall ever an instance where Mazars asked you</p> <p>17 for something and you didn't provide it to them?</p> <p>18 A No.</p> <p>19 Q At some point in time, Mazars was no longer the outside</p> <p>20 accountants for The Trump Organization; correct?</p> <p>21 A Correct.</p> <p>22 Q Do you remember approximately when that was?</p> <p>23 A Um, I don't recall exactly, but it would have been 2020</p> <p>24 or 2021, around there.</p> <p>25 Q And who comes in to be the new outside accountants for</p>	<p>M. Hawthorn - by Defense - Direct (Mr. Robert) Page 5147</p> <p>1 by that?</p> <p>2 A Whitley Penn was taking over the kind of the role of</p> <p>3 Mazars previously. Whitley Penn also has a tax division. So</p> <p>4 the company relies on Whitley Penn, and its tax division of its</p> <p>5 firm to help with the tax preparation of tax filings of all the</p> <p>6 entities that require them. So there's another audit partner</p> <p>7 and another component of that practice that oversees, let's say,</p> <p>8 tax compliance work versus audit and financial accounting work.</p> <p>9 Q So when we refer to an audit partner -- I know this</p> <p>10 confused me for the longest time -- it doesn't necessarily just</p> <p>11 mean an audit; correct?</p> <p>12 A Correct. It means attestation services is a fancy word</p> <p>13 for it.</p> <p>14 Q My question is, what is an attestation service?</p> <p>15 A It's work that is engaged with a firm and a client, to</p> <p>16 whatever extent they both agree, that the client has engaged the</p> <p>17 firm to do work to substantiate the books and records of the</p> <p>18 company. If it's an audit, to understand the policies and</p> <p>19 practices of the company.</p> <p>20 So effectively, the value of an audit firm to any</p> <p>21 company, right, is that they want to evidence to an outside</p> <p>22 party that someone else has looked at these numbers or looked at</p> <p>23 these books and records and has done procedures to understand</p> <p>24 them, and the issuance of the final report is also being</p> <p>25 represented by this firm.</p>

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<p>M. Hawthorn - by Defense - Direct (Mr. Robert) Page 5148</p> <p>1 Q With regard to your division, how, if in any way, is</p> <p>2 Whitley Penn tasked with anything different than Mazars?</p> <p>3 A It's a similar -- it's similar generally. They are</p> <p>4 tasked in my division to be the firm that, again, prepares the</p> <p>5 compilation statements, that does the audit work for the</p> <p>6 entities that need audits.</p> <p>7 And then while I'm not a tax person, I still have some</p> <p>8 involvement with their tax division when it comes to the</p> <p>9 hospitality assets and certain information that they might</p> <p>10 require.</p> <p>11 Q You mentioned a little while ago that when the process</p> <p>12 of, I guess, on boarding a new accounting firm -- do you know</p> <p>13 what I mean when I say "on boarding"?</p> <p>14 A Yes.</p> <p>15 Q That you were involved not just as it related to your</p> <p>16 division, but more generally, can you explain a little bit more</p> <p>17 about that?</p> <p>18 A Um, again, I had some input based on my background as a</p> <p>19 former accounting firm personnel and auditor myself to, to, um,</p> <p>20 meet with Whitley Penn during the selection process if we wanted</p> <p>21 them to be our firm. So I, you know, got a chance to meet with</p> <p>22 them in person, on the phone, um, kind of understand their</p> <p>23 qualifications, their staffing levels, that they could handle</p> <p>24 the work. So I was probably just another helpful resource to,</p> <p>25 um, vouch that we believed that they had the capability to, you</p>	<p>M. Hawthorn - by Defense - Direct (Mr. Robert) Page 5150</p> <p>1 Q You testified a few moments ago that generally speaking</p> <p>2 the scope of work between Whitley Penn and Mazars was basically</p> <p>3 the same; fair?</p> <p>4 A Yes.</p> <p>5 Q What kind of -- and I'm going to take you back to the</p> <p>6 period 2011. What kind of reporting did Mazars do for The Trump</p> <p>7 Organization?</p> <p>8 MR. AMER: Objection. Foundation. The witness</p> <p>9 said he didn't start to be employed until, I think, 2016.</p> <p>10 MR. ROBERT: The witness is now the COO of the</p> <p>11 hotel division.</p> <p>12 Q When you first joined the company in 2016, what, if</p> <p>13 anything, did you come to learn about how things had been done</p> <p>14 previously to help do you your job, if anything.</p> <p>15 A I had to understand how the books and records were</p> <p>16 prepared prior to my joining the company. I also had to review</p> <p>17 various agreements, contracts and financial statements going</p> <p>18 back many years to understand how these assets performed</p> <p>19 previously and what the reporting requirements, um, you know,</p> <p>20 are of these entities.</p> <p>21 Q Did you review financial statements that had been</p> <p>22 prepared by Mazars for The Trump Organization from 2011 forward?</p> <p>23 A I did.</p> <p>24 Q And what did you come to learn from those?</p> <p>25 A That every year, as required, these financial</p>
<p>M. Hawthorn - by Defense - Direct (Mr. Robert) Page 5149</p> <p>1 know, be our accounting firm.</p> <p>2 Q Switching topics slightly, if I use the phrase</p> <p>3 "financial reporting", what does that mean to someone with your</p> <p>4 background?</p> <p>5 A "Financial reporting" is very generally just the um,</p> <p>6 financial summary of an entity. Um, reporting could be very</p> <p>7 simply internal reporting from management to review operational</p> <p>8 performance and make decisions. It's a very broad term.</p> <p>9 Financial reporting can go from very, you know, like I said,</p> <p>10 very internal books and records to external reporting, which is</p> <p>11 a more formal report that's issued on an annual basis, or</p> <p>12 quarterly basis, required for any purpose.</p> <p>13 Generally speaking, financial reporting, between, if</p> <p>14 it's internal, sometimes referred to as management reporting,</p> <p>15 it's very much customary based on the industry that you are in.</p> <p>16 So, like, for example, in the hospitality industry, the</p> <p>17 hospitality accounts, we refer to the Uniform System for</p> <p>18 Accounts for the Lodging Industry, USALI. So anyone in hotel</p> <p>19 accounting would know that term because it's an internal</p> <p>20 management financial reporting guidelines and structure, so that</p> <p>21 we, as a hotel company, are booking things and recording things</p> <p>22 similar to other hospitality companies; that's not necessarily</p> <p>23 GAAP required, right? Whereas GAAP and other more stringent</p> <p>24 financial metrics are applicable to external reporting audits,</p> <p>25 compilations, things like that.</p>	<p>M. Hawthorn - by Defense - Direct (Mr. Robert) Page 5151</p> <p>1 statements were issued; that they were submitted to lenders as</p> <p>2 required, and that they were completed as needed.</p> <p>3 Q So going back, let's say, to 2011, how many of these</p> <p>4 different financial reports did Mazars do that you had looked</p> <p>5 at?</p> <p>6 A Hard to say. Probably over a hundred. Mazars, maybe</p> <p>7 50, something like that.</p> <p>8 Q And what ran the scope of what kind of reports these</p> <p>9 were?</p> <p>10 A Compilations, reviews, audits. They did a lot of work</p> <p>11 for the company in terms of issuing entity-level financial</p> <p>12 statements.</p> <p>13 Q In addition to you reviewing these records back in 2016</p> <p>14 when you joined the company, did you have an opportunity to look</p> <p>15 at them, again, before you testified here today?</p> <p>16 A I did.</p> <p>17 Q And did you prepare a chart outlining all of the</p> <p>18 various reports that Mazars and Whitley Penn have done for The</p> <p>19 Trump Organization since 2011?</p> <p>20 A I did.</p> <p>21 MR. ROBERT: Your Honor, I would like to put on the</p> <p>22 screen D-1054, which is a demonstrative exhibit that was</p> <p>23 prepared by Mr. Hawthorn.</p> <p>24 (Whereupon, the exhibit was displayed on the</p> <p>25 screen.)</p>

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<p>M. Hawthorn - by Defense - Direct (Mr. Robert) Page 5152</p> <p>1 MR. ROBERT: We have a copy to hand up, please. 2 (The witness was handed the exhibit.) 3 Q Mr. Hawthorn, what is this document? 4 A So this is a summary document that illustrates, for the 5 years 2011 to 2022, all of the financial statements that were 6 issued by various accounting firms on behalf of the company for 7 various entities. The chart is simply showing that from 2011 to 8 2022, across numerous United States based properties, that there 9 have been 82 financial statements, annual financial statements 10 issued for these entities. It indicates in the box whether it 11 was a compilation, an audit or a review. 12 And then also on the lower part of the chart it also 13 includes other accounting firms. I think I mentioned the 14 Scotland property in the past that had an audit firm named JCCA, 15 an Ireland audit done by a firm called BDO, both are 16 internationally recognized accounting firms in those areas. 17 So those areas also required audited financial 18 statements for years presented. So it provides a snapshot for 19 all of the work that the accounting firms and the company at 20 large has done over the last ten years to issue compliant 21 financial statements. 22 Q Sir, to Mr. Amer's point, from 2011 to 2015, you did 23 not work at The Trump Organization; correct? 24 A Correct. 25 Q And the preparation of these reports in 2011 to 2015,</p>	<p>M. Hawthorn - by Defense - Direct (Mr. Robert) Page 5154</p> <p>1 this entity, so the entity, Trump Endeavor 12, has a loan 2 outstanding with, at the time, Deutsche Bank. Under the terms 3 of the loan agreement, the lender requires annual compilation 4 financial statements of the borrower. So that's why these were 5 prepared from 2016 onward. 6 Q And do you recall Mazars asking you for any 7 information, with regard to this compilation, that you didn't 8 provide to them? 9 A Say that again. 10 Q Do you recall ever being asked by Mazars to provide you 11 information to prepare this compilation that you didn't provide 12 to Mazars? 13 A No. We provided them everything they asked for. 14 Q Going to the second item on 2016, what, if any, 15 involvement did you have in the compilation for the 401 North 16 Wabash, LLC entity? 17 A So similar to the above, so 401 North Wabash, LLC that 18 is the legal entity of the ownership of the commercial space and 19 unsold units at the Trump Chicago. Again, that entity has, at 20 that time, debt outstanding with Deutsche Bank under the loan 21 agreement. 22 The loan agreement requires that the borrower provides 23 entity-level compilation financial statements to the lender. So 24 from all those years presented, those were provided. 25 Q And I know I pronounced it wrong. I didn't say</p>
<p>M. Hawthorn - by Defense - Direct (Mr. Robert) Page 5153</p> <p>1 obviously you were not involved in the creation or preparation 2 of those; correct? 3 A Correct. 4 Q Was the 2016 year the first year that you were 5 personally involved or would it be more accurate to start with 6 the ones in 2017? 7 A 2016 I started in February, so this would be a year 8 ended December 31st, 2016, generally speaking, year. That 9 report would have been issued in 2017 after the fiscal year end 10 closed. 11 Q So let's take a look at 2016 to start, if we could. 12 What, if any, involvement did you have in the compilation report 13 prepared by Mazars for -- withdrawn. 14 What is Trump Endeavor 12? 15 A Trump Endeavor 12 is the legal entity that is the 16 ownership entity of Trump National Doral. That is the 643 room 17 hotel resort with four golf courses in Florida. 18 Q Mr. Hawthorn, what, if any, involvement did you have in 19 the compilation report prepared by Mazars in 2016 for Trump 20 Endeavor 12? 21 A So I was the liaison for the company on behalf of the 22 hotel division so that Mazars could prepare the compilation on 23 the company's behalf. 24 Q And for whose purpose was that compilation prepared? 25 A So the compilation was prepared because the lender of</p>	<p>M. Hawthorn - by Defense - Direct (Mr. Robert) Page 5155</p> <p>1 "triplex", but I was close enough. So it's 401 North Wabash? 2 THE COURT: Wabash. 3 MR. ROBERT: I'll call it the Chicago property? 4 A That's the address of the Chicago property. 5 Q Mr. Hawthorn, moving to the third item, Trump Old Post 6 Office, LLC, what, if any, involvement did you have in the audit 7 that was performed by Mazars in 2016? 8 A So I was involved in that similar to the above. The 9 procedures were more detailed than a compilation, because it's 10 an audit. So the entity, Trump Old Post Office, LLC, again, at 11 the time had a loan outstanding. The loan required that the 12 borrower provide audited financial statements. 13 In the other cases they were compilation financial 14 statements. So just following the terms of the loan, Trump Old 15 Post Office, LLC's requirement was for an audit. 16 So in a similar fashion, I oversaw and was a liaison 17 for Mazars to get them the information they needed for 18 completing those audits. There's also another line that says 19 "compilation." So that was an entity where we had both an audit 20 and a compilation done for a certain period of time. Um, that 21 was also required as a result of the loan instrument requiring 22 certain testing at a different date than the audit date. So, 23 therefore, in a certain period of time, as you see from 2019 to 24 2021, a compilation was also performed. 25 MR. ROBERT: Don't worry, Judge. I'm not going to</p>

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<p>M. Hawthorn - by Defense - Direct (Mr. Robert) Page 5156</p> <p>1 do each year, but I'll get to 2019 in a minute.</p> <p>2 Q Mr. Hawthorn, I'm not going to ask you about each</p> <p>3 entity, this one question, but fair to say with all the entities</p> <p>4 on this chart there was never a time that you can recall that</p> <p>5 Mazars asked you for information and you didn't provide it; fair</p> <p>6 enough?</p> <p>7 A Correct.</p> <p>8 Q Going to the --</p> <p>9 THE COURT: Already asked. Leading.</p> <p>10 MR. ROBERT: He didn't object, and I'm trying to</p> <p>11 move it along.</p> <p>12 THE COURT: You asked him previously --</p> <p>13 MR. AMER: For the relevance, you know, I think</p> <p>14 hopefully we are done with the chart soon.</p> <p>15 MR. ROBERT: We are not. This chart demonstrates</p> <p>16 that there are over 116 financial statements that no one had</p> <p>17 a problem with, and all the work that Mazars did and all the</p> <p>18 work Whitley Penn did, this is absolutely relevant.</p> <p>19 THE COURT: I'm not joining the relevance fray, I'm</p> <p>20 just saying, you asked him if he ever was asked by Mazars</p> <p>21 for information and he did not give it. And he said, "No."</p> <p>22 And I think you asked pretty much the exact same question.</p> <p>23 MR. ROBERT: I don't plan to ask it anymore on this</p> <p>24 chart; that much I could assure you, Judge.</p> <p>25 Q Moving to 40 Wall Street, LLC. Do you see that in</p>	<p>M. Hawthorn - by Defense - Direct (Mr. Robert) Page 5158</p> <p>1 Q And, again, fair to say that starting in 2016, that's</p> <p>2 when you became involved in those?</p> <p>3 A Correct.</p> <p>4 Q And what, if any, involvement did you have --</p> <p>5 withdrawn.</p> <p>6 What is SLC Turnberry, Ltd?</p> <p>7 A That is the legal entity that is the ownership entity</p> <p>8 of the hotel property named Trump Turnberry in Scotland.</p> <p>9 Q What, if any, involvement did you have in the 2016</p> <p>10 audit of the SLC Turnberry, Ltd. property, sir?</p> <p>11 A Similar to Trump Old Post Office, LLC, my involvement</p> <p>12 was to oversee the relationship with the audit firm and make</p> <p>13 sure they got all the information they needed so the report</p> <p>14 could be issued.</p> <p>15 Q What, if any, difference was there the way you had to</p> <p>16 deal with audits of international properties versus domestic</p> <p>17 properties?</p> <p>18 A There's some difference because accounting standards</p> <p>19 are different in the UK and Ireland as opposed to the US. But</p> <p>20 generally speaking, it's the similar broad based</p> <p>21 responsibilities.</p> <p>22 Q And what, if any, involvement did you have in the 2016</p> <p>23 audit of -- withdrawn.</p> <p>24 What is Trump International Golf Club Scotland, Ltd?</p> <p>25 A That is the legal entity name of the golf course and</p>
<p>M. Hawthorn - by Defense - Direct (Mr. Robert) Page 5157</p> <p>1 2016?</p> <p>2 A Yes.</p> <p>3 Q What, if any, involvement did you have in an audit?</p> <p>4 A I did not have involvement in that one.</p> <p>5 Q Same question for TIHT Commercial?</p> <p>6 A I did not have direct involvement.</p> <p>7 Q Trump Plaza, LLC?</p> <p>8 A I did not have any involvement.</p> <p>9 Q Trump Tower Commercial?</p> <p>10 A I did not have direct involvement.</p> <p>11 Q Why is it, sir, that with regard to 40 Wall Street,</p> <p>12 TIHT Commercial, LLC, Trump Plaza, LLC, or Trump Tower</p> <p>13 Commercial, LLC, that you had no involvement in that?</p> <p>14 A Those aren't in the hospitality portfolio. Those are,</p> <p>15 again, commercial real estates, but I'm aware in my position</p> <p>16 that these audits were done.</p> <p>17 Q And your answer would be the same for those assets, for</p> <p>18 the assets meaning 40 Wall, TIHT Commercial, Trump Plaza, Trump</p> <p>19 Tower Commercial, your answer would be the same for -- from 2011</p> <p>20 -- well, from 2016 to 2022, those were not under your</p> <p>21 supervision; fair enough?</p> <p>22 A Correct.</p> <p>23 Q Okay. Moving down in 2016, what is JCCA?</p> <p>24 A That's an abbreviation for a firm called Johnston</p> <p>25 Carmichael. That is an audit firm of Scotland entities.</p>	<p>M. Hawthorn - by Defense - Direct (Mr. Robert) Page 5159</p> <p>1 small hotel in Aberdeen, Scotland.</p> <p>2 Q What, if any, involvement did you have in the audit of</p> <p>3 that property in 2016?</p> <p>4 A I had the same involvement as Turnberry. I interacted</p> <p>5 with the audit firm, as necessary, to assist with the issuance</p> <p>6 of those financials.</p> <p>7 Q Continuing to move down, who is BDO?</p> <p>8 A BDO is another accounting firm. It's an international</p> <p>9 accounting firm, in this case, based out of Ireland. So they</p> <p>10 oversaw the audits of our Ireland properties.</p> <p>11 Q Sir, what is TIGL Ireland Enterprises, Ltd?</p> <p>12 A That is the legal entity of that property. So both</p> <p>13 those entities are two legal entities that comprise the</p> <p>14 ownership and operation of Trump Doonbeg, which is another</p> <p>15 property in Ireland.</p> <p>16 Q What is the difference between TIGL Ireland Enterprises</p> <p>17 Ltd. and TIGL Management?</p> <p>18 A They just oversee different functions of the resort.</p> <p>19 One oversees the hotel accommodation. One oversees the golf</p> <p>20 course component. Just generally speaking, it required two</p> <p>21 legal entities for its set up.</p> <p>22 Q What, if any, involvement did you have in the audit of</p> <p>23 TIGL Ireland Enterprise, Ltd. audit, 2016?</p> <p>24 A Same as Scotland. Oversight, ensuring that the audit</p> <p>25 firm got what they needed to do the audits.</p>

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<p>M. Hawthorn - by Defense - Direct (Mr. Robert) Page 5160</p> <p>1 Q And same thing as TIGL management, correct, sir?</p> <p>2 A Correct.</p> <p>3 Q Just so the record is clear, these are golf courses.</p> <p>4 Why is it that they fell within your purview of hotels?</p> <p>5 A These are hotel resorts. There are hotels that have</p> <p>6 overnight guest rooms, as well as a golf course. So similar to</p> <p>7 Doral, Turnberry, Aberdeen and Doonbeg are all overnight</p> <p>8 accommodation services, hotel properties that have a golf course</p> <p>9 as an amenity in the golf courses.</p> <p>10 Q Drawing your attention to 2019 for a moment, and you</p> <p>11 kind of alluded to this earlier, if I draw your attention to</p> <p>12 Trump Old Post Office, LLC, do you see that?</p> <p>13 A Yes.</p> <p>14 Q There is a compilation in addition to an audit for</p> <p>15 2019; correct?</p> <p>16 A Yes.</p> <p>17 Q Why is that?</p> <p>18 A That was required by the lender in accordance with a</p> <p>19 reporting test. So they required not only annual audited</p> <p>20 financials, but they required annual, what we call "debt service</p> <p>21 testing." There is an acronym called DSCR, which is debt</p> <p>22 service coverage ratio. That loan agreement required testing</p> <p>23 over a trailing 12-month period ending in January, whereas the</p> <p>24 fiscal year financial statements were a 12-month period ending</p> <p>25 in August. So we did an audit for the August period, and we did</p>	<p>M. Hawthorn - by Defense - Direct (Mr. Robert) Page 5162</p> <p>1 of documents in explaining what was done for each property.</p> <p>2 If the Court and Attorney General don't want it to</p> <p>3 come in evidence that way, I'll go through each year and ask</p> <p>4 him was there an audit, what involvement did you have. I'm</p> <p>5 happy to do it. That's fine.</p> <p>6 MR. AMER: I think the problem is the best evidence</p> <p>7 rule. If you are going to put in evidence about each of</p> <p>8 these audits, then you should put in the audit or</p> <p>9 compilation. You shouldn't just put in a chart that</p> <p>10 summarizes something that isn't already in evidence.</p> <p>11 MR. ROBERT: It's not --</p> <p>12 MR. AMER: It's a problem, I think.</p> <p>13 MR. ROBERT: I'm not attempting to get into the</p> <p>14 bona fides of what was there, just that these were done and</p> <p>15 he was involved in getting them done. I'm not suggesting</p> <p>16 and I don't want to get into having to put in 116 financial</p> <p>17 statements.</p> <p>18 MR. AMER: Well, so this document we saw for the</p> <p>19 first time last night, and I don't think it was created</p> <p>20 prior to that or shortly before that. And it purports to</p> <p>21 summarize a lot of evidence, but that evidence has not been</p> <p>22 introduced into -- as exhibits in this case. So it's just</p> <p>23 not proper to use a summary chart in this fashion.</p> <p>24 MR. ROBERT: I'm happy to do it the long way,</p> <p>25 Judge.</p>
<p>M. Hawthorn - by Defense - Direct (Mr. Robert) Page 5161</p> <p>1 a compilation for the DSCR testing period.</p> <p>2 MR. ROBERT: Your Honor, I'm going to try to finish</p> <p>3 this chart very quickly, but to do that I would like to move</p> <p>4 D-1054, rather than demonstrative, into evidence, otherwise</p> <p>5 I have to ask him a question about each line item to get the</p> <p>6 testimony out. And I want to make it simpler, so I could</p> <p>7 refer to the document as a whole.</p> <p>8 MR. AMER: My initial question is, why aren't we</p> <p>9 marking this as demonstrative instead of an exhibit.</p> <p>10 MR. ROBERT: It should be an exhibit.</p> <p>11 MR. AMER: It's got D-1054. Why don't we mark it</p> <p>12 as demonstrative?</p> <p>13 MR. ROBERT: Let's introduce this in evidence as</p> <p>14 D-1054, a document created by Mr. Hawthorn. I'm fine with</p> <p>15 that. It would make this go much faster.</p> <p>16 MR. AMER: I thought we weren't introducing into</p> <p>17 evidence demonstratives.</p> <p>18 MR. ROBERT: No, I'm changing my mind, because it</p> <p>19 will take me at least a half hour to go through each item</p> <p>20 with Mr. Hawthorn. This is much easier.</p> <p>21 THE COURT: I don't think demonstratives just go in</p> <p>22 as ordinary evidence.</p> <p>23 MR. ROBERT: So I'll withdraw the request to put it</p> <p>24 in as a demonstrative and enter it as a piece of evidence.</p> <p>25 It's a document created by Mr. Hawthorn based on his review</p>	<p>M. Hawthorn - by Defense - Direct (Mr. Robert) Page 5163</p> <p>1 THE COURT: Do it the long way.</p> <p>2 MR. ROBERT: Okay.</p> <p>3 THE COURT: If that's what plaintiff wants.</p> <p>4 MR. ROBERT: That's fine.</p> <p>5 Q Drawing your attention to 2017, Mr. Hawthorn --</p> <p>6 A Yes.</p> <p>7 Q -- were you involved in a compilation involving Trump</p> <p>8 Endeavor 12, LLC?</p> <p>9 A Yes.</p> <p>10 Q What was your role with regard to that compilation?</p> <p>11 MR. AMER: Different objection, and I am going to</p> <p>12 have to involve you with the relevance fray, your Honor. I</p> <p>13 don't see how any of this is relevant.</p> <p>14 We are not challenging the audits or compilations</p> <p>15 that were submitted to any lender by the borrowing entity.</p> <p>16 This case is all about Donald J. Trump's financial</p> <p>17 disclosure under the guaranties in the form of his Statement</p> <p>18 of Financial Condition.</p> <p>19 As far as I'm aware, this chart doesn't include any</p> <p>20 entry relating to the compilation that was the Statement of</p> <p>21 Financial Condition for Mr. Trump under the guaranty. So I</p> <p>22 just don't see how it's relevant.</p> <p>23 MR. ROBERT: So, first of all, your Honor, this is</p> <p>24 the first time I'm hearing that the government is not making</p> <p>25 a claim against any of the guarantor's of the loan, so if</p>

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<p style="text-align: right;">Page 5164</p> <p>1 that's news --</p> <p>2 MR. AMER: That's not what I said. For disclosure</p> <p>3 of their compilation or "their" being the borrower's</p> <p>4 compilation or audit financials.</p> <p>5 MR. ROBERT: But the named defendants in the case</p> <p>6 include, in particular, Trump Endeavor 12, 401 North</p> <p>7 Wabash --</p> <p>8 THE COURT: Wabash.</p> <p>9 MR. ROBERT: Wabash, and Trump Old Post Office,</p> <p>10 LLC. So their conduct is clearly an issue, unless you want</p> <p>11 to withdraw the claims against those corporate or business</p> <p>12 entities.</p> <p>13 What we are demonstrating through this is that</p> <p>14 these entities prepared financial information. This</p> <p>15 financial information was prepared either by Mazars or</p> <p>16 Whitley Penn, or by the international accountants.</p> <p>17 Mr. Hawthorn was involved in this, and there was no issue</p> <p>18 with these. I don't see any issue with that at all.</p> <p>19 (Continued on the next page.)</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 5166</p> <p>Hawthorn - by Defendant - Direct (Robert)</p> <p>1 Q And what, if any, involvement did you have with</p> <p>2 that -- withdrawn.</p> <p>3 What was your role with regard to that?</p> <p>4 A Same role as in 2016: Overseeing the audit, that the</p> <p>5 audit firm got the information they required to issue their</p> <p>6 report.</p> <p>7 Q Were you -- what, if any, involvement did you have</p> <p>8 with -- just trying to read this, Your Honor -- withdrawn.</p> <p>9 In 2017, were you involved in an audit involving SLC</p> <p>10 Turnberry Limited?</p> <p>11 A Yes.</p> <p>12 Q As well as an audit of Trump International Golf Club</p> <p>13 Scotland Limited in 2017?</p> <p>14 A Yes.</p> <p>15 Q And what was your involvement, sir?</p> <p>16 A Overseeing the audit from the client's side to see</p> <p>17 that the audit firm got the information they needed to issue</p> <p>18 the report.</p> <p>19 Q Was there an audit that was done for the Doonbeg</p> <p>20 properties in Ireland in 2017?</p> <p>21 A Yes.</p> <p>22 Q And how many audits were there?</p> <p>23 A Two.</p> <p>24 Q What was your involvement with those?</p> <p>25 A Overseeing the audit engagement process to ensure the</p>
<p style="text-align: right;">Page 5165</p> <p>Hawthorn - by Defendant - Direct (Robert)</p> <p>1 MR. AMER: It is irrelevant to the case. We are</p> <p>2 not challenging the financial statements that were</p> <p>3 prepared and submitted by the borrowing entities on their</p> <p>4 own behalf. We are challenging the Statements of</p> <p>5 Financial Condition by the guarantor.</p> <p>6 MR. ROBERT: Then what is your claim against the</p> <p>7 individual defendants if it is not for the financial -- if</p> <p>8 it is not for them entering into the loan agreements?</p> <p>9 I am sorry, Judge.</p> <p>10 THE COURT: Overruled. I believe they are</p> <p>11 relevant. And we will save time just letting him go the</p> <p>12 long way.</p> <p>13 MR. ROBERT: Could I have the last question read</p> <p>14 back, please?</p> <p>15 THE COURT: Read back the last question, which</p> <p>16 is a ways back.</p> <p>17 MR. ROBERT: That's why I forgot it.</p> <p>18 (Whereupon, the record was read back by the</p> <p>19 court reporter.)</p> <p>20 A Same as my role in the previous year, seeing that the</p> <p>21 information was provided to the accounting firm so that they</p> <p>22 could issue the report.</p> <p>23 Q And were you involved in an audit of Trump Old Post</p> <p>24 Office in 2017?</p> <p>25 A Yes.</p>	<p style="text-align: right;">Page 5167</p> <p>Hawthorn - by Defendant - Direct (Robert)</p> <p>1 audit firm got the information they needed to issue their</p> <p>2 report.</p> <p>3 Q Turning to 2018. Mr. Hawthorn, was there a</p> <p>4 compilation prepared by Mazars for Trump Endeavor 12 LLC?</p> <p>5 A Yes.</p> <p>6 Q What, if any, involvement did you have with that?</p> <p>7 A Overseeing that to see that the audit firm got the</p> <p>8 information they required to issue their report.</p> <p>9 Q And sir, was there a compilation report in 2018</p> <p>10 prepared by Mazars for 401 North Wabash LLC?</p> <p>11 A Yes.</p> <p>12 THE COURT: Better, but still not there.</p> <p>13 MR. ROBERT: What is the right pronunciation?</p> <p>14 MR. KISE: He may need to listen to Johnny Cash</p> <p>15 on the weekends to learn about Wabash.</p> <p>16 THE WITNESS: I would pronounce it Wabash.</p> <p>17 (wah-bash)</p> <p>18 MR. AMER: Just to be clear, I am not against</p> <p>19 Mr. Robert collapsing these questions into a single</p> <p>20 question to deal with multiple years or multiple entities.</p> <p>21 So, that wasn't -- I don't know that the long way means he</p> <p>22 has to ask a separate question for each year.</p> <p>23 THE COURT: Let me just try what I would do</p> <p>24 here. I would just let it in as a demonstrative, as</p> <p>25 demonstrative evidence after asking him whether his answer</p>

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1 would be the same. You say it is irrelevant, so let's
2 just let it in and move.
3 MR. AMER: We are fine with that. That wasn't
4 my issue.
5 MR. ROBERT: If it is solely in for
6 demonstrative purposes, there is nothing in the record
7 that what is contained in here is exactly what he prepared
8 and he was involved in the audits. If we are saying I can
9 ask a generalized question and it goes in for -- that's
10 why I sought to introduce this as a piece of evidence as
11 opposed to as for demonstrative.
12 THE COURT: I changed my mind. Let's do it your
13 way. As long as plaintiff agrees and we can agree on some
14 language that he would testify that he was aware -- I am
15 not sure of the right word, of the -- all of the audits,
16 compilations and anything else in here actually occurred.
17 MR. AMER: That's fine with me. My only point
18 was Mr. Robert could ask a question for the years 2018 to
19 2021, were you involved in preparing the compilation for
20 Trump Endeavor 12 LLC. And we would deal with all of
21 those years in one question, instead of having to ask the
22 same question for each year separately.
23 MR. KISE: Perhaps Mr. Amer would want to do the
24 direct and cross today and move it along to feel better?
25 MR. AMER: I am just trying to be helpful,

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1 Mr. Kise.
2 MR. KISE: I know you are. I just couldn't
3 resist.
4 THE COURT: I think I can just do this myself.
5 Mr. Hawthorn, this is a chart that you prepared,
6 correct?
7 THE WITNESS: Yes, sir.
8 THE COURT: And submitted it last night,
9 apparently, to the plaintiffs. Or maybe you don't know
10 that.
11 MR. ROBERT: I can attest that that's right.
12 THE COURT: Okay. And this list, I see, reviews
13 audits and compilations of the entities listed on the
14 left, for the years listed on the right; is that correct?
15 THE WITNESS: Yes.
16 THE COURT: And if you can summarize, what was
17 your involvement in or knowledge of these various reports,
18 I'll call them?
19 THE WITNESS: So my knowledge is that there is
20 an individual report for each one of those entries. So
21 there is 116 sets of financial statements that are
22 available to cite and to see for these demarcations here.
23 THE COURT: And --
24 THE WITNESS: Personally, I was involved from my
25 2016 joining the company, thereafter. When I joined the

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1 company in 2016 my role required me to understand the
2 history of these entities and therefore I was able to cite
3 and see and review the years prior to my joining the
4 company.
5 THE COURT: And I am not asking if you read
6 every line, but did you actually see either hard copy or
7 digital copy each one of these 116 "reports," I'll call
8 it?
9 THE WITNESS: Yes.
10 THE COURT: All right. It is in.
11 (Whereupon, the document referred to was deemed
12 marked for evidence as Defendant's Exhibit 1054 by
13 the Court.)
14 THE COURT: And I want to compliment the
15 witness. He is the first one to really be able to stare
16 at me and still have his voice picked up by the
17 microphone. You are very good at that. It is a skill.
18 All right. It is in evidence for the limited
19 purposes. But if there is any further objection I'll
20 reconsider.
21 MR. AMER: That's fine, Your Honor, for the
22 limited purposes.
23 THE COURT: Okay.
24 Q So with regard to Trump Endeavor 12 and 401 North
25 Wabash, the reports listed in D-1054 were produced for purposes

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1 of loans that were procured, correct?
2 A Correct.
3 Q And what is your familiarity, if any, with the
4 Chicago and Doral loans?
5 A I am familiar that those entities named are the
6 borrowers under those loans. I am familiar in my role of
7 overseeing the hotel division -- I am familiar with the loan
8 instrument. I had to read it. I had to understand it as part
9 of my job function.
10 Q And those two properties fall within your purview of
11 your division, correct?
12 A Correct, they are hotel properties.
13 Q So I want to talk to you about the Chicago loan.
14 Okay, sir?
15 A Yes, sir.
16 Q And when was the Chicago loan taken out,
17 approximately?
18 A My understanding is that the Chicago loan was taken
19 out in June of 2014 with an original principal balance of
20 \$69 million.
21 Q And pursuant to the loan documents back in June of
22 2014, was there a guaranty that was attached to it?
23 A Yes, I believe there was.
24 Q And what, if anything, do you know about that
25 guaranty in terms of a net worth requirement?

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<p>Hawthorn - by Defendant - Direct (Robert) Page 5172</p> <p>1 A My understanding is that the inception of the loan, 2 which was in June of 2014, there was a 100 percent guaranty on 3 the loan. And there was a requirement of a \$2.5 billion net 4 worth at that point in time, June 2014.</p> <p>5 Q And Mr. Hawthorn, what, if anything, happened with 6 regard to that loan in December of 2014, just about six months 7 later?</p> <p>8 MR. AMER: Objection, lack of foundation. 9 THE COURT: Sustained.</p> <p>10 But you can try to get a foundation, form a 11 foundation.</p> <p>12 Q Mr. Hawthorn, did there come a time -- withdrawn. 13 Was that loan for principal, interest or both?</p> <p>14 A It was a principal -- it was an interest-only loan. 15 So therefore the requirement was to pay monthly interest. And 16 the principal would mature at the maturity of the loan.</p> <p>17 Q Did there come a time when principal was reduced on 18 that loan?</p> <p>19 A Yes.</p> <p>20 Q And when was that?</p> <p>21 A That was six months later, December 2014.</p> <p>22 Q And how much principal was paid down at that point?</p> <p>23 MR. AMER: This is the same foundation 24 objection.</p> <p>25 THE COURT: Yeah. He wasn't working there, so.</p>	<p>Hawthorn - by Defendant - Direct (Robert) Page 5174</p> <p>1 on the loans and what happened with the loans over the 2 life of the loans. And there is no evidence in the record 3 that this witness in his role that was circumscribed to 4 the hotel division, would have had that type of 5 responsibility or involvement in how the loans operated. 6 So, and I think to turn this witness from a fact witness 7 into an expert witness on the loans, is improper. He 8 wasn't designated as an expert and it is, you know, not 9 anything that was ever disclosed to us in the form of an 10 expert report. So he shouldn't be allowed to become an 11 expert in these loans.</p> <p>12 THE COURT: Well, Mr. Amer, I have a different 13 take. I don't think he needs to be an expert to say a 14 loan was paid off. But he wasn't there. So, to me it is 15 hearsay.</p> <p>16 MR. ROBERT: Your Honor, this witness is going 17 to be laying out certain facts. And we will have expert 18 testimony from Mr. Unell later in the week, which is the 19 banking expert that would be akin to an expert. But 20 Mr. Hawthorn clearly would know what was paid and when it 21 was paid, as his role, he was the CFO and now the COO of 22 the hotel division. This loan was operational before it 23 was paid off during his time as CFO and then COO. So he 24 certainly would know what the term of the loan was, when 25 payments were made to the loan; and what the implications</p>
<p>Hawthorn - by Defendant - Direct (Robert) Page 5173</p> <p>1 MR. ROBERT: He testified that he has reviewed 2 the loan documents. He knows the loan documents. He is 3 familiar with them because this is now one of his 4 properties that he is overseeing and in charge of, so he 5 knows what happened to the loan. And eventually we are 6 going to get into what happened from 2016 on. And the 7 loan documents are in evidence already.</p> <p>8 MR. AMER: Your Honor -- 9 THE COURT: Wouldn't this be hearsay?</p> <p>10 MR. ROBERT: No. 11 THE COURT: Anyway, Mr. Amer? 12 MR. AMER: I think if we have lengthier 13 discussion on this line of questioning that probably 14 requires us to excuse the witness, Your Honor.</p> <p>15 THE COURT: Okay. I'll ask you to step in the 16 back. 17 (Whereupon the witness stepped down from the 18 stand and exited the courtroom.) 19 THE COURT: Go ahead, Mr. Amer. 20 MR. AMER: I haven't heard any foundation that 21 would explain why this fact witness would have all of this 22 knowledge about the loan servicing, which I understand was 23 done through corporate accounting, which he didn't work 24 in. And I am concerned that what is happening here is 25 that we are turning a fact witness into an expert witness</p>	<p>Hawthorn - by Defendant - Direct (Robert) Page 5175</p> <p>1 of those payments were for the Trump Organization and for 2 the guarantor. That is certainly something he would know.</p> <p>3 THE COURT: And when was this paid off? 4 MR. ROBERT: Well, the original loan of 69 5 million was reduced to 45 million in 2014. And then the 6 loan was paid off in October of '23, just a couple of 7 weeks ago.</p> <p>8 THE COURT: Well, how does he know what happened 9 in 2014?</p> <p>10 MR. ROBERT: He is going to know that from the 11 fact that he has reviewed the documents. And there is 12 also an e-mail that I am about to introduce, which is 13 between Emily Schroeder of Deutsche Bank and Jeff 14 McConney, that confirms that this payment was made in 15 December of -- in 2014.</p> <p>16 MR. AMER: That's the point. Right? They had 17 Mr. McConney on the stand. He was in corporate 18 accounting. He had a role to play with the loan. I 19 haven't heard anything about this witness's job 20 description that would suggest that he had anything other 21 than a passing knowledge of the fact that these loans 22 existed. But not that he had any responsibility for 23 maintaining the loans or interacting with the bank 24 personnel about these loans. So I think this is just 25 having this witness review a bunch of documents so that he</p>

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1 can testify about loans that he didn't have any 2 responsibility for. 3 THE COURT: Mr. Kise? You are standing so you 4 are either leaving or you want to say something. 5 MR. KISE: I am happy to go back to Florida, 6 I'll tell you that. Do I need to speak? That's the next 7 question, before I violate your first principle. 8 THE COURT: Well, I want to split the baby. 9 What happened in 2014 he wouldn't know if he says it was 10 paid off later. 11 But let me ask plaintiffs a direct question. Is 12 there some doubt that this stuff happened? If yes, yes. 13 But if not, why should we fight about it? 14 MR. AMER: Because they are not getting it in 15 through a witness who has any actual knowledge about what 16 happened. If they want to put it in through a different 17 witness, if they want to call Mr. Garten or somebody else 18 who had a role. We can do this on a foundational basis. 19 If you want to just see if they can lay the proper 20 foundation based on questions about his role and 21 responsibility, we could do it that way. 22 MR. ROBERT: First -- 23 THE COURT: You are not answering my question. 24 Is the -- do you doubt what he is saying, what he is going 25 to say, that the loan was reduced and then paid off?		1 through the witness. In his role as the CFO and COO he 2 reviews loan documents; he is intimately involved; has 3 intimate knowledge of the provisions of the loans. 4 I was trying to be simple because Ms. Schroeder, 5 who is testifying tomorrow, it is her e-mail, he can get 6 it in through her. But it makes more sense to do it this 7 way. 8 I'll do whatever the Court wants. 9 THE COURT: Lay a foundation. 10 MR. ROBERT: Okay, fine. 11 THE COURT: Let's get the witness back. 12 MR. ROBERT: Thank you, Judge. 13 (Whereupon the witness resumed the stand.) 14 THE COURT: Welcome back. 15 Okay. Next question. 16 Q Mr. Hawthorn, in your combined role as CFO of the 17 hotel group and now COO of the hotel group what, if any, 18 involvement do you have in overseeing the Chicago loan? 19 A So, I oversee the compliance of the loan in terms of 20 the property level obligations. So, that includes the 21 oversight of the compilation report that was submitted, 22 oversight of the DSCR test that needs to be or had to be 23 submitted; and also to ensure that the interest is paid on 24 time. Because the borrower pays monthly interest to ensure 25 that the loan is compliant with its terms.	
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1 MR. AMER: I think there are some things in the 2 exhibits that we have seen that we are disputing. 3 Particularly whether there was a continuing requirement 4 for the guarantor to submit a certification, at least in 5 the documents we have seen, that they sent us last night. 6 There is going to be a dispute over that. 7 MR. ROBERT: Whether -- 8 THE COURT: That can't be done in cross 9 examination? 10 MR. AMER: If the testimony is going to come in 11 on that, it should come in through a witness who actually 12 knows about it, not a witness who has just read a bunch of 13 documents to, you know, come to testify today about it for 14 the first time. 15 THE COURT: Well then the cross-examining could 16 be: How do you know? Oh, you don't really know. 17 MR. AMER: Well, then -- 18 THE COURT: I am not telling you how to run your 19 show, but. 20 MR. AMER: I understand that. But there is a 21 need for foundation. And that's a common objection, and 22 there is a reason for it, Your Honor. 23 THE COURT: Okay. Mr. Robert, can you deal with 24 the objection? 25 MR. ROBERT: Your Honor, I can lay a foundation		1 Q What is a DSCR test? 2 A So that is the debt service coverage ratio test. It 3 is a very common ratio that lenders put into loan agreements to 4 help provide evidence that the borrower has sufficient cash 5 flow or net operating income, sometimes is what it is called, 6 to service the loan. 7 Q And what, if anything, do you need to know about the 8 loan documents themselves to be able to understand how to 9 prepare a DSCR? 10 A You need to understand definitions in the loan 11 agreement, defined terms, how things are calculated. You need 12 to understand provisions in the loan regarding financial 13 reporting, and other compliance matters. As well as just the 14 loan generally to understand how you can be compliant with your 15 obligation as a borrower. 16 Q Is one of the issues of the DSCR how much of the 17 principal amount is still due to the bank? 18 MR. AMER: Objection, leading. 19 THE COURT: Sustained. 20 Q What are some of the factors that you must look at to 21 determine whether the DSCR is satisfied? 22 A The DSCR is a periodic test. It is an annual test 23 derived from the income statement of the loan. The revenues 24 and expenses, which derives the net operating income, which is 25 your numerator. And then the interest expense is the	

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<p>Hawthorn - by Defendant - Direct (Robert) Page 5180</p> <p>1 denominator.</p> <p>2 Q Are you familiar in these loans of a concept known as</p> <p>3 a step down?</p> <p>4 A Yes.</p> <p>5 Q What is a step down?</p> <p>6 A A step down is a concept relating to the guaranty of</p> <p>7 the loan, and the percentage of which the loan is guaranteed.</p> <p>8 Q And what are the factors that go into the, in</p> <p>9 particular, the Doral loan -- withdrawn.</p> <p>10 What are the factors specific with the Chicago loan</p> <p>11 that you need to understand to understand the step down</p> <p>12 percentage?</p> <p>13 A The step down percentage is effectively dependent on</p> <p>14 the DSCR and/or another term called the loan-to-value or the</p> <p>15 LTV, another acronym.</p> <p>16 Q And this may sound very simplistic, sir, but the</p> <p>17 loan-to-value, by definition you have to know how much of the</p> <p>18 principal loan is still outstanding, correct?</p> <p>19 MR. AMER: Objection, leading.</p> <p>20 THE COURT: Sustained.</p> <p>21 Q What are the factors you need to consider in</p> <p>22 determining the LTV, sir?</p> <p>23 A You need to know the principal of the loan. And we</p> <p>24 don't determine the value, the bank would determine the value.</p> <p>25 Q Those are the two factors necessary to determine the</p>	<p>Hawthorn - by Defendant - Direct (Robert) Page 5182</p> <p>1 document that has been marked as D-1055 for</p> <p>2 identification.</p> <p>3 THE COURT: And six-minute warning.</p> <p>4 MR. ROBERT: Thank you.</p> <p>5 (Handing)</p> <p>6 Q I ask the witness to take a look at the document for</p> <p>7 a moment.</p> <p>8 Putting the document to the side for a minute, going</p> <p>9 back to the notion of a step down percentage; what is the</p> <p>10 significance of that?</p> <p>11 A It is the percentage of the loan principal that is</p> <p>12 guaranteed by the guarantor.</p> <p>13 Q And what, if anything, under the terms of this loan</p> <p>14 happened to the guaranty in December of 2014?</p> <p>15 MR. AMER: Objection, foundation.</p> <p>16 THE COURT: Sustained.</p> <p>17 Q Mr. Hawthorn, are there provisions in this loan that</p> <p>18 speak of what happens to the guaranty as the principal amount</p> <p>19 is reduced?</p> <p>20 A Yes.</p> <p>21 Q And what factors under the terms of the loan are</p> <p>22 looked at in determining what happens to the guaranty?</p> <p>23 A The principal, the DSCR and/or the LTV.</p> <p>24 Q Is there some sort of formula that is then used?</p> <p>25 A Yes.</p>
<p>Hawthorn - by Defendant - Direct (Robert) Page 5181</p> <p>1 LTV, correct?</p> <p>2 A Correct.</p> <p>3 Q So I am going to ask you again, sir, what, if</p> <p>4 anything, happened in December of 2014 with regard to the</p> <p>5 principal of this loan?</p> <p>6 A So the principal was paid down.</p> <p>7 MR. AMER: Objection, foundation grounds.</p> <p>8 THE COURT: Sustained.</p> <p>9 Q Were you -- did there come a time that you became</p> <p>10 aware of what the principal amount of the loan was?</p> <p>11 A Yes.</p> <p>12 Q And what is the -- what was the principal amount of</p> <p>13 the loan prior to October of 2023?</p> <p>14 MR. AMER: Objection. Can we find out how he</p> <p>15 became aware as part of the foundation?</p> <p>16 THE COURT: Yes. Sustained.</p> <p>17 Q Did you become aware of this, sir?</p> <p>18 A It is in the financial statements that I prepare with</p> <p>19 the accounting firm.</p> <p>20 Q So, again, sir, in December of 2014, was there --</p> <p>21 what, if anything, happened with regard to the principal</p> <p>22 balance of this loan?</p> <p>23 A It was \$45 million. It was reduced from 69 million</p> <p>24 to 45 million.</p> <p>25 MR. ROBERT: I am going to show the witness a</p>	<p>Hawthorn - by Defendant - Direct (Robert) Page 5183</p> <p>1 Q What is that formula, sir?</p> <p>2 A The loan-to-value is the bank appraised value over</p> <p>3 the principal. The DSCR is the net operating income over the</p> <p>4 interest expense.</p> <p>5 Q And did there come a time in 2014 that the guaranty</p> <p>6 was changed on the Chicago loan?</p> <p>7 MR. AMER: Objection, foundation.</p> <p>8 THE COURT: Sustained.</p> <p>9 Q What, if anything, are you aware of with regard to</p> <p>10 the guaranty in or around December of 2014 as relates to the</p> <p>11 Chicago loan?</p> <p>12 MR. AMER: Objection, foundation.</p> <p>13 THE COURT: What, if anything, are you aware of?</p> <p>14 Sustained.</p> <p>15 Q Was there -- withdrawn.</p> <p>16 As a result of the payment of the \$15 million in</p> <p>17 December of 2014, what, if anything -- what, if any effect, did</p> <p>18 that have on the guaranty?</p> <p>19 MR. AMER: Objection, foundation.</p> <p>20 THE COURT: To the -- the actual payment? Is</p> <p>21 that?</p> <p>22 MR. AMER: To the affect on the guaranty of a</p> <p>23 payment made two years before he started working for the</p> <p>24 company.</p> <p>25 THE COURT: If he knows the payment was made as</p>

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<p>1 an accountant, well, I suppose --</p> <p>2 MR. ROBERT: He is also the one doing the DSCR</p> <p>3 test every month and looking at the loan-to-value ratio,</p> <p>4 so he clearly knows this.</p> <p>5 MR. KISE: Yes, Your Honor. All of this</p> <p>6 foundation stuff seems to be dancing on the head of a pin.</p> <p>7 Corporations only speak through appropriate individuals.</p> <p>8 So if someone leaves the company, and a new person comes</p> <p>9 in, and that new person has to learn what happened before</p> <p>10 they got there, that doesn't mean everything that they now</p> <p>11 know can't be -- they can't testify to. I mean, what if</p> <p>12 the other person is dead? What if the other person who</p> <p>13 left is no longer employed? So it is kind of, I don't</p> <p>14 want to use the word, silly, but it is almost silly that a</p> <p>15 person who is now the de facto CFO/COO that is in the role</p> <p>16 in the company that would have to have this broad</p> <p>17 understanding of what took place historically, can't</p> <p>18 testify.</p> <p>19 This man testified as the corporate</p> <p>20 representative in their own deposition. He was the</p> <p>21 designee. So I don't really understand all of this</p> <p>22 foundational stuff. Just because someone in a corporation</p> <p>23 wasn't there -- there were things that happened in the</p> <p>24 corporation in the 1980s and 1990s, but as the person now</p> <p>25 responsible for that, he would have to know that. And</p>		<p>1 company at the time. Any CFO or COO that takes over in a</p> <p>2 role is going to have that limitation that they weren't</p> <p>3 there prior to when they arrived. That doesn't mean they</p> <p>4 can't testify with competence and knowledge about matters</p> <p>5 within the ambit of their responsibilities.</p> <p>6 THE COURT: I'll pick up on something you said.</p> <p>7 What he learned. That's why plaintiff is entitled to ask</p> <p>8 how did he learn it.</p> <p>9 MR. KISE: How did he learn it, that's fair, and</p> <p>10 they can ask that. How did he learn it. If they want to</p> <p>11 question the --</p> <p>12 THE COURT: Well --</p> <p>13 MR. KISE: -- the limits of that, that's fine.</p> <p>14 THE COURT: It is not just the cross examination</p> <p>15 point. It is a foundation point.</p> <p>16 MR. KISE: How did he learn? He reviewed the</p> <p>17 documents.</p> <p>18 MR. AMER: So.</p> <p>19 MR. ROBERT: I think as the CFO --</p> <p>20 MR. AMER: Excuse me. Excuse me. We are at a</p> <p>21 point where I think the witness needs to be excused again,</p> <p>22 or you want to take a break?</p> <p>23 THE COURT: We will break for lunch and order</p> <p>24 the witness not to discuss the case or his testimony</p> <p>25 during the break.</p>	
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<p>1 they can't be precluded from testifying because they</p> <p>2 weren't actually present at the time, as long as they have</p> <p>3 a sufficient basis of knowledge in their current role in</p> <p>4 the company to testify about it.</p> <p>5 And as Your Honor pointed out correctly, if they</p> <p>6 want to explore the limits of that knowledge on cross</p> <p>7 examination, then they can explore the limits of that</p> <p>8 knowledge on cross examination. But to say that the</p> <p>9 person in that role now can't testify because he wasn't</p> <p>10 actually there, doesn't make any legal sense.</p> <p>11 THE COURT: I think this is an interesting</p> <p>12 philosophical issue. I tend to take a somewhat hard line</p> <p>13 view on -- I think I have said this before -- witnesses,</p> <p>14 either you are a fact witness or an expert witness. If</p> <p>15 you are a fact witness, how do you know. Did you see it?</p> <p>16 Did you hear it?</p> <p>17 MR. KISE: Did you learn it though? He is not</p> <p>18 an expert witness. He is not an expert witness because he</p> <p>19 is testifying about factual matters that took place before</p> <p>20 he joined the company. He is a fact witness for the</p> <p>21 company. And if he learned it through reviewing</p> <p>22 documents, reviewing things in his role that would</p> <p>23 naturally encompass these issues, then there is just</p> <p>24 really no reason to preclude his testimony based on</p> <p>25 foundation simply because he wasn't physically at the</p>		<p>1 THE WITNESS: Yes, sir.</p> <p>2 THE COURT: Okay. See you all at 11:45. Not</p> <p>3 lunch.</p> <p>4 MR. ROBERT: We knew what you meant, Judge.</p> <p>5 THE COURT: It is called a sanity break.</p> <p>6 (Pause in the proceeding.)</p> <p>7 (The following proceedings were stenographically</p> <p>8 recorded by Senior Court Reporter Michael Ranita.)</p>	

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1 THE COURT OFFICER: All rise. Part 37 is back in
2 session. Please be seated and come to order.
3 THE COURT: I have to ask the witness to go in the
4 back for just another minute or two. I hope it's not so bad
5 back there. I spend half my day back there.
6 Where is your buddy.
7 MR. ROBERT: He went back to Florida, maybe.
8 THE COURT: Here's what I'm going to do. As I
9 often do, or sometimes do, I'll telegraph what I plan to do,
10 and you can argue strenuously if you really feel strongly.
11 MR. AMER: I did want a quick opportunity to
12 respond to Mr. Kise.
13 There were two things that Mr. Kise said that I
14 think need a response. One is, he referred to this witness
15 as the "de facto CFO" of the company. And I want to make
16 clear that I don't believe that is supported by the
17 testimony. I think he said his role was in the hotel
18 division, and, in fact, the corporate accounting department
19 has a new director of finance, whose name remains
20 undisclosed, but we'll get to that.
21 But the other thing that he said in terms of
22 foundation, I think is also unsupported. The witness -- and
23 this is really the crux of it. I think we are entitled to
24 the foundation for how this witness knows what happened to
25 the guaranty, the effect on the guaranty, based on some

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1 payment made in 2014 before he was working there. And I
2 believe the witness has said that his foundation for that is
3 the preparation of financial statements in 2016 and later.
4 And I just don't understand how preparing a financial
5 statement would give him any knowledge of what the effect of
6 the payment was on the guaranty two years earlier.
7 So those are my two points, your Honor.
8 THE COURT: Well, here's what I plan to do. I'll
9 just repeat, you are either a fact witness or you are an
10 expert witness. He's not an expert. He's a fact witness,
11 so what did he see? What did he hear?
12 I'll see to Mr. Amer's point, and we'll ask the
13 foundation of his knowledge, if there's a question that is
14 not obvious that he would know. If he says, as I expect may
15 be, well, I saw a document. I saw a receipt. You know, I
16 saw it on the screen. Um, I'll let him say that, but I'm
17 the Judge, and whether the document -- the record is
18 reliable, and whether I believe he actually saw it. And
19 that will be enough foundation for him to say it, but I'll
20 decide what it means in the long run.
21 Mr. Amer, is that -- and Mr. Robert, any comments?
22 MR. ROBERT: I don't have a problem with that at
23 all.
24 MR. AMER: I think --
25 THE COURT: You don't have a problem?

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1 MR. ROBERT: No, sir. It's fair game.
2 THE COURT: Mr. Amer?
3 MR. WALLACE: I think if he is going to rely on a
4 document or a function that he performed, then the dots need
5 to be connected. He can't just say he relies on a document
6 if the document actually doesn't shed light on what it is he
7 is about to testify to.
8 MR. ROBERT: So two things, your Honor. Well --
9 THE COURT: Maybe you should quit while you are
10 ahead.
11 MR. ROBERT: Sounds like a good idea. That's why
12 I'm stopping.
13 THE COURT: Which is another way of saying, rule
14 number one.
15 All right. Let's get the witness again.
16 MR. ROBERT: Yes, sir.
17 (Whereupon, the witness stepped into the witness
18 stand.)
19 MR. ROBERT: May I proceed?
20 THE COURT: Please.
21 Q Mr. Hawthorn, how did you come to the knowledge that in
22 December of 2014, a \$15 million payment was made toward
23 principal on the Chicago loan?
24 A The balance of 45 million is stated in the financial
25 statements for that year that I've reviewed.

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1 Q And why -- what exactly do you review in the financial
2 statements that led you to see that?
3 A The balance sheet.
4 Q Is the balance sheet something that you review every
5 year?
6 A Yes.
7 Q And you started that practice in 2016?
8 A Yes.
9 Q And when you assumed your role in 2016, had you looked
10 at the balance sheet for prior years?
11 A Yes.
12 Q How many years back did you look at those, if you
13 remember?
14 A As far back as I needed to to understand the history of
15 the entity.
16 Q Would that certainly include 2014 and 2015?
17 A Yes.
18 Q And sir, so the testimony is clear, it is from that
19 review that you know that the \$15 million payment was made;
20 correct?
21 A Correct.
22 Q Okay.
23 I'm going to draw -- and, sir, in addition to knowing
24 that the payment was made, how, if in any way in your
25 preparation of the financials, are you concerned about what

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<p>M. Hawthorn - by Defense - Direct (Mr. Robert) Page 5192</p> <p>1 effect the guaranty has on that loan?</p> <p>2 MR. AMER: Objection. Leading.</p> <p>3 THE COURT: Can you read it back.</p> <p>4 (Whereupon, the requested question was read back by</p> <p>5 the court reporter.)</p> <p>6 THE COURT: Well, it's convoluted, but if you could</p> <p>7 answer, I'll allow it.</p> <p>8 A I understand that the guaranty is linked to the</p> <p>9 stepdown percentage in the loan agreement.</p> <p>10 Q And why would that matter to you in your role as CFO</p> <p>11 and COO of the hotel group, with regard to this loan?</p> <p>12 A Because I oversee the hotel portfolio and I oversee all</p> <p>13 aspects relating to hotel assets.</p> <p>14 Q But more specific than that, is there a financial</p> <p>15 reason in your role as to why you would want to know whether the</p> <p>16 guaranty was in effect or not?</p> <p>17 MR. AMER: Objection. Leading.</p> <p>18 THE COURT: Leading.</p> <p>19 Q What do you want to understand with regard to the loans</p> <p>20 that are -- withdrawn.</p> <p>21 Part of your role is to oversee the loans for the</p> <p>22 properties in your division; correct?</p> <p>23 A Yes.</p> <p>24 Q And what are the factors that you look at when</p> <p>25 determining -- withdrawn.</p>	<p>M. Hawthorn - by Defense - Direct (Mr. Robert) Page 5194</p> <p>1 guaranty?</p> <p>2 A My understanding is that in connection with the</p> <p>3 principal reduction, that the stepdown percentage, effectively</p> <p>4 the guaranty percentage, was reduced to zero.</p> <p>5 Q And do you know if The Trump Organization received</p> <p>6 confirmation from anyone about that fact?</p> <p>7 MR. AMER: Objection. Lack of foundation.</p> <p>8 We are talking about 2014 now, right?</p> <p>9 MR. ROBERT: Right. So I'm asking him if he knows</p> <p>10 in or around 2014, or '15, whether The Trump Organization</p> <p>11 had confirmation of that from anyone other than you.</p> <p>12 MR. AMER: Lack of foundation.</p> <p>13 THE COURT: I think that is a foundational</p> <p>14 question.</p> <p>15 MR. ROBERT: Yeah.</p> <p>16 THE COURT: Overruled.</p> <p>17 A So I reviewed correspondence with the lender and the</p> <p>18 company's representatives about the matter.</p> <p>19 Q And in front of you has been presented Defendant's</p> <p>20 Exhibit 1055. Is this one of the documents that you reviewed?</p> <p>21 A Yes.</p> <p>22 Q What is this document?</p> <p>23 A This is an e-mail from Deutsche Bank to Jeff McConney</p> <p>24 in 2015.</p> <p>25 Q Let's go to the bottom of it and work our way up.</p>
<p>M. Hawthorn - by Defense - Direct (Mr. Robert) Page 5193</p> <p>1 What do you want to know about those loans?</p> <p>2 A I want to know everything about them so I could</p> <p>3 understand them to do my job.</p> <p>4 Q I can't ask you a leading question, so what would that</p> <p>5 include?</p> <p>6 A That would include terms and conditions of the loan, it</p> <p>7 would include the principal balance, it would include interest</p> <p>8 rates, it would include any guarantee provisions and anything</p> <p>9 contained therein that we, as a company, need to be compliant</p> <p>10 with.</p> <p>11 Q Now, you just focused on the guarantee provisions. Why</p> <p>12 would you want to know about the guarantee provisions?</p> <p>13 A To have an understanding of the loan and the</p> <p>14 obligations of borrower.</p> <p>15 Q The examples that you just gave, did you do that</p> <p>16 process with regard to the Chicago loan?</p> <p>17 A I did.</p> <p>18 Q And did you do that process when you took over your</p> <p>19 role in 2016?</p> <p>20 A I did.</p> <p>21 Q And could you do this every subsequent year with regard</p> <p>22 to this loan?</p> <p>23 A Yes.</p> <p>24 Q And sir, after this payment was made in December of</p> <p>25 2014, what was your understanding as to the effect of the</p>	<p>M. Hawthorn - by Defense - Direct (Mr. Robert) Page 5195</p> <p>1 (Whereupon, the exhibit was displayed on the</p> <p>2 screen.)</p> <p>3 Q What do you see occurring on January 21st, 2015, at</p> <p>4 12:12 p.m?</p> <p>5 MR. AMER: I'm going to object, your Honor. This</p> <p>6 is a witness just reading a document that was sent before he</p> <p>7 worked for the company. How is this appropriate?</p> <p>8 THE COURT: Sustained.</p> <p>9 MR. ROBERT: Your Honor, if I may, first of all, I</p> <p>10 spent hours listening to having the Attorney General have</p> <p>11 people read from e-mails.</p> <p>12 Secondly, this is one of the documents --</p> <p>13 THE COURT: But, well, a lot of those e-mails they</p> <p>14 sent, they received, they were there at the time, had</p> <p>15 independent confirmation.</p> <p>16 MR. ROBERT: Your Honor, this witness said this was</p> <p>17 one of the e-mails he reviewed in coming to his assessment.</p> <p>18 I think the e-mail comes into evidence because it's a</p> <p>19 corporate record, but nonetheless, I'll introduce it subject</p> <p>20 to connection, because Ms. Schroeder is going to be here</p> <p>21 tomorrow or Wednesday -- I'm not sure what day she is</p> <p>22 testifying -- and say she sent this e-mail exchange to</p> <p>23 Mr. McConney. The e-mail is coming in whether we do it</p> <p>24 today, tomorrow or subject to connection, but it's coming</p> <p>25 in.</p>

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<p>M. Hawthorn - by Defense - Direct (Mr. Robert) Page 5196</p> <p>1 THE COURT: Why should it come in with this</p> <p>2 witness?</p> <p>3 MR. ROBERT: Because he claims that this is one of</p> <p>4 the documents that he used to confirm his knowledge that</p> <p>5 Deutsche Bank agreed with his assessment that the guaranty</p> <p>6 was no longer in existence once there was the pay down.</p> <p>7 THE COURT: That satisfied Engoron's two prong</p> <p>8 test.</p> <p>9 Overruled. I'm changing my mind, overruled.</p> <p>10 MR. ROBERT: So we then have 1055 in evidence,</p> <p>11 correct, sir?</p> <p>12 THE COURT: I'm sorry?</p> <p>13 MR. ROBERT: D-1055 is in evidence, correct?</p> <p>14 THE COURT: You didn't move it into evidence</p> <p>15 before. You were just asking him to --</p> <p>16 MR. ROBERT: Okay. I'll refer and just go through</p> <p>17 the questions and move it in afterwards, subject to</p> <p>18 connection, if you want, for tomorrow.</p> <p>19 THE COURT: Let's do that.</p> <p>20 MR. ROBERT: If I could have the question read</p> <p>21 back, please.</p> <p>22 THE COURT: Please.</p> <p>23 (Whereupon, the requested question was read back by</p> <p>24 the court reporter.)</p> <p>25 A I see an e-mail inquiry to Jeffrey McConney, to Emily</p>	<p>M. Hawthorn - by Defense - Direct (Mr. Robert) Page 5198</p> <p>1 for the required guaranty. Thus, Mr. Trump's guaranty burns</p> <p>2 down to zero percent."</p> <p>3 MR. ROBERT: Your Honor, I move Defendant's</p> <p>4 Exhibit 1055 into evidence.</p> <p>5 MR. AMER: No objection.</p> <p>6 THE COURT: It's in.</p> <p>7 (Defendant's Exhibit 1055 was admitted in</p> <p>8 evidence.)</p> <p>9 Q Mr. Hawthorn, what obligations, if any, did you</p> <p>10 understand The Trump Organization had from 2015 through August</p> <p>11 of 2020 with regard to this loan?</p> <p>12 A Um, I'm familiar with the borrower's reporting</p> <p>13 requirements, which included the issuance and the delivery of</p> <p>14 the compilation financial statements, as well as the DSCR test</p> <p>15 on an annual basis, accompanied with a compliance certificate</p> <p>16 certifying that the amounts presented to the lender were</p> <p>17 accurate.</p> <p>18 Q And these were presented every year, sir?</p> <p>19 A Yes, sir.</p> <p>20 MR. ROBERT: I'm not going to take him through each</p> <p>21 year, Judge.</p> <p>22 If we could slow the witness and the Court</p> <p>23 Defendant's Exhibit 1047, please, and cull it up on the</p> <p>24 screen.</p> <p>25 (Whereupon, the exhibit was displayed on the</p>
<p>M. Hawthorn - by Defense - Direct (Mr. Robert) Page 5197</p> <p>1 Schroeder, inquiring that the loan is now paid down to 45</p> <p>2 million and that the DJT guaranty is gone.</p> <p>3 Q And do you see a response to that e-mail on the earlier</p> <p>4 page?</p> <p>5 (Whereupon, the exhibit was displayed on the</p> <p>6 screen.)</p> <p>7 Q</p> <p>8 A I do.</p> <p>9 Q And what is Ms. Schroeder's response?</p> <p>10 A Her response is "confirmed."</p> <p>11 Q Let's go in between, Mr. Hawthorn. It starts at the</p> <p>12 bottom of the page.</p> <p>13 A Her response is, "I'm pretty sure you are correct. I</p> <p>14 just want to take a quick look at the docs and will get back to</p> <p>15 you to it confirm."</p> <p>16 Q Does Mr. McConney respond to that on January 21st about</p> <p>17 an hour and change later?</p> <p>18 A He does. He says, "Thanks, Emily."</p> <p>19 Q And does Ms. Schroeder respond to him a half hour</p> <p>20 later?</p> <p>21 A She does.</p> <p>22 Q What did she say?</p> <p>23 A She says, "Confirmed, Jeff. Once the loan is at 45</p> <p>24 million or below, the LTV versus the appraised value of 133</p> <p>25 million is 34 percent, which is below the 35 percent threshold</p>	<p>M. Hawthorn - by Defense - Direct (Mr. Robert) Page 5199</p> <p>1 screen.)</p> <p>2 MR. ROBERT: We also have a copy for the Attorney</p> <p>3 General.</p> <p>4 (The witness was handed the exhibit.)</p> <p>5 Q Mr. Hawthorn, you've been handed a document identified</p> <p>6 as Defendant's Exhibit 1047. What is this document?</p> <p>7 A This document is correspondence that I prepared and</p> <p>8 submitted to Deutsche Bank in connection with the annual</p> <p>9 compliance testing.</p> <p>10 Q Who is Joshua Frank, sir?</p> <p>11 A Joshua Frank is a representative of Deutsche Bank. He</p> <p>12 was my primary contact at the bank when dealing with any matters</p> <p>13 relating to this loan.</p> <p>14 Q And what do we find on the page identified as 1047-2,</p> <p>15 and 3, and 4?</p> <p>16 A So attached to my cover letter, which is dash one, dash</p> <p>17 two is the annual compliance certificate of 401 North Wabash</p> <p>18 Venture, LLC for the 2018 year.</p> <p>19 Q And the rest of the document D1047-five through</p> <p>20 D-1047-12?</p> <p>21 A Those are the accompanying financial statements, the</p> <p>22 actual issued compilation statements of the entity for the year</p> <p>23 2018.</p> <p>24 Q And this is the package that you sent to Mr. Frank on</p> <p>25 April 30th, 2019?</p>

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<p>M. Hawthorn - by Defense - Direct (Mr. Robert) Page 5200</p> <p>1 A Correct.</p> <p>2 MR. ROBERT: Your Honor, I move Defendant's</p> <p>3 Exhibit 1047 into evidence.</p> <p>4 MR. AMER: No objection.</p> <p>5 THE COURT: Granted. It's in.</p> <p>6 Q Drawing your attention to page two of that, which would</p> <p>7 be 1047-2, 3 and 4, what, if any, involvement did you have in</p> <p>8 the preparation of the compliance certificate?</p> <p>9 A I prepared it.</p> <p>10 Q And what did you do to prepare that certificate, sir,</p> <p>11 specifically?</p> <p>12 A I had to review the 2018 issued financial statements</p> <p>13 and the numbers therein. I had to also compute the DSCR for the</p> <p>14 period. And then I had to list out those amounts on this</p> <p>15 certificate for visibility, and the computation of the DSCR for</p> <p>16 that period.</p> <p>17 (Whereupon, the exhibit was displayed on the</p> <p>18 screen.)</p> <p>19 Q And what are we looking at on the top of D-1047? It's</p> <p>20 actually the bottom of D-1047-2 onto the top of page three.</p> <p>21 What are we looking at this there?</p> <p>22 A Section two is a confirmation of the debt service</p> <p>23 coverage ratios, the DSCR, and its components for that fiscal</p> <p>24 year.</p> <p>25 Q What are those components, sir?</p>	<p>M. Hawthorn - by Defense - Direct (Mr. Robert) Page 5202</p> <p>1 12?</p> <p>2 A These are the compilation financial statements of this</p> <p>3 entity for this fiscal year.</p> <p>4 Q And these were required under the terms of the loan?</p> <p>5 A Correct.</p> <p>6 Q Okay. Thank you, sir.</p> <p>7 I'm now going to ask the witness to look at what was</p> <p>8 has been marked as Defendant's Exhibit 1051, and ask that it be</p> <p>9 handed to the witness, the Court and Attorney General.</p> <p>10 (Whereupon, the exhibit was displayed on the</p> <p>11 screen.)</p> <p>12 (The witness was handed the exhibit.)</p> <p>13 Q Mr. Hawthorn, you've been handed what's been marked as</p> <p>14 Defendant's Exhibit 1051 for identification. Do you recognize</p> <p>15 this document?</p> <p>16 A Yes.</p> <p>17 Q Mr. Hawthorn, what is this document?</p> <p>18 A This is an e-mail from myself to Joshua Frank at</p> <p>19 Deutsche Bank, with the same information that was shown</p> <p>20 previously, but for this time it's the 2019 year.</p> <p>21 Q And for saving time, attached to this is your cover</p> <p>22 letter; correct?</p> <p>23 A Correct.</p> <p>24 Q And what is on pages three through five?</p> <p>25 A It's the compliance certificate for the 2019 year.</p>
<p>M. Hawthorn - by Defense - Direct (Mr. Robert) Page 5201</p> <p>1 A Those components are the operating income and operating</p> <p>2 contributions over less operating expenses, and that amount</p> <p>3 divided by the debt service expense for the period, coming to a</p> <p>4 calculation of 2.384 for this period.</p> <p>5 Q What, if any, significance is there to the 2.38?</p> <p>6 A The 2.38 is compared to the threshold required in the</p> <p>7 loan agreement. If you see in section two, it says that they</p> <p>8 are required to maintain a DSCR of 1.25. So it's exceeding</p> <p>9 that. And therefore, the ratio in this particular year is</p> <p>10 complied with.</p> <p>11 Q I'm then going to draw your attention to D1047-4.</p> <p>12 A Okay.</p> <p>13 Q Who signed this document?</p> <p>14 A This was signed by Donald Trump, Jr., as president of</p> <p>15 the 401 North Wabash Venture, LLC entity.</p> <p>16 Q What, if any, involvement did you have in Mr. Trump</p> <p>17 executing this agreement, referring to Mr. Donald Trump, Jr?</p> <p>18 A I provided Donald Trump, Jr. this packet, noting that</p> <p>19 it was complete, that the team, led by myself, prepared it; that</p> <p>20 it was ready to be submitted so that he may sign the certificate</p> <p>21 so it could be submitted.</p> <p>22 Q And this was a conversation you would have had with</p> <p>23 him; correct?</p> <p>24 A Yes. Probably also documented in an e-mail.</p> <p>25 Q Okay. And what are we looking at at D-1047-5 through</p>	<p>M. Hawthorn - by Defense - Direct (Mr. Robert) Page 5203</p> <p>1 Q And what is at six through 14?</p> <p>2 A It is the compilation financial statements for the 2019</p> <p>3 year.</p> <p>4 Q And sir, with regard to -- what, if any, involvement</p> <p>5 did you have in the preparation of the compliance certificate?</p> <p>6 A I prepared it.</p> <p>7 Q Using the same method and procedure you just testified</p> <p>8 about for the previous year?</p> <p>9 A Correct.</p> <p>10 Q What, if any, involvement did you have in Mr. Donald</p> <p>11 Trump, Jr's. execution of this agreement?</p> <p>12 A Similar to 2018 and every other year, I would advise</p> <p>13 him that the work had been completed, that we were comfortable</p> <p>14 with it being submitted, and we would present it to him for</p> <p>15 signature so it could be sent duly to the lender.</p> <p>16 MR. ROBERT: Your Honor, I move Defendant's</p> <p>17 Exhibit 1051 into evidence.</p> <p>18 MR. AMER: No objection.</p> <p>19 THE COURT: Granted. It's in.</p> <p>20 (Defendant's Exhibit 1051 was admitted in</p> <p>21 evidence.)</p> <p>22 Q Mr. Hawthorn, what, if anything, happened with regard</p> <p>23 to this loan in August of 2020?</p> <p>24 A August of 2020, we recall was during the COVID-19</p> <p>25 pandemic. During that year, businesses such as hotels were shut</p>

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<p>M. Hawthorn - by Defense - Direct (Mr. Robert) Page 5204</p> <p>1 down and not able to conduct business. So that year was a year 2 where, on its face, we would not have met the DSCR requirement, 3 because the net operating income would not have exceeded the 4 interest expense for the period, although, the borrower 5 continued to make its monthly interest payments and was not in 6 default of any obligation. It was still able to make the 7 payments. 8 The calculation in and of itself was not meeting the 9 threshold because of a low economic environment, and people not 10 able to stay at the hotel. 11 Q What, if anything, happened with regard to this loan as 12 a result of that? 13 A What happened is if in this period you do not meet the 14 DSCR, the lender, at any time during the loan, has the 15 opportunity to do its own fair value assessment, doing an 16 appraisal of the loan to determine the loan to value. So the 17 fact that this DSCR was not met, it allows them the opportunity 18 to do that. 19 There's also, I guess, three prongs by which a DSCR can 20 -- if it's failed on its face, can be effectively remedied. One 21 is, the lender would commission an appraisal as I described. 22 The other is the lender could have the borrower post 23 collateral of a certain amount to satisfy the lender. 24 And the third is that the borrower can pay down the 25 loan to a certain amount to satisfy the lender per the terms of</p>	<p>M. Hawthorn - by Defense - Direct (Mr. Robert) Page 5206</p> <p>1 at that point? 2 A So the stepdown percentage being the amount of loan 3 that's guaranteed, it basically means that the loan would then 4 be guaranteed no longer at zero percent, but it would be 5 guaranteed at ten percent. So in August of 2020, the loan would 6 then be guaranteed as 4.5 million. 7 In addition, the net worth requirement, which before 8 was zero of the guarantor, now goes to ten percent of 9 2.5 billion, the original amount, therefore, the net worth 10 requirement is 250 million. 11 Q Did The Trump Organization take Deutsche Bank up on the 12 offer to increase the stepdown basis to zero -- to ten percent? 13 A Yes. 14 Q And at the same time did Trump Organization agree to 15 have a minimum net worth of \$250 million? 16 A Yes. 17 MR. ROBERT: Your Honor, I would like to show the 18 witness Defendant's Exhibit 1050. 19 (Whereupon, the exhibit was displayed on the 20 screen.) 21 Q Mr. Hawthorn, what do you recognize this document to 22 be? 23 A This is correspondence from Deutsche Bank to the 24 attention of the entity 401 North Wabash Venture. 25 Q And do you recognize the signatures on page three of</p>
<p>M. Hawthorn - by Defense - Direct (Mr. Robert) Page 5205</p> <p>1 the agreement. 2 MR. AMER: Your Honor, I'm going to move to strike 3 the answer. The question was what, if anything, happened 4 with regard to this loan as a result of that, "that" meaning 5 COVID. I don't think the answer responded to that. 6 MR. ROBERT: He's -- I'm sorry, your Honor. 7 THE COURT: Granted. The question was a lot 8 simpler than the answer. 9 THE WITNESS: Sorry. 10 THE COURT: These things happen. 11 Q With regard to this particular loan, did The Trump 12 Organization receive notice from Deutsche Bank? 13 A Yes. 14 Q And what did Deutsche Bank -- what was your 15 understanding as to what the Trump Organization -- withdrawn. 16 Did The Trump Organization DSCR fall below the 17 acceptable limit? 18 A Correct. 19 Q What, if any, options did the Trump Organization have 20 at that time with regard to this loan? 21 A They could either post collateral, pay down the loan, 22 or reinstate the stepdown percentage to an acceptable level, 23 which would have been ten percent at that point in time. 24 Q And what does that mean in practical terms for The 25 Trump Organization if they were going to increase the stepdown</p>	<p>M. Hawthorn - by Defense - Direct (Mr. Robert) Page 5207</p> <p>1 this letter? 2 A Yes. 3 Q Whose signatures are those? 4 A Donald Trump, Jr. and Eric Trump. 5 Q Could these signatures indicate this is the official 6 acceptance of that proposal with the increase of the stepdown 7 basis that you just referenced? 8 A Yes. 9 MR. ROBERT: Your Honor, I move Defendant's 10 Exhibit 1050 into evidence. 11 MR. AMER: For notice purposes or for more than 12 notice purposes. 13 MR. ROBERT: For the fact that the Trump 14 Organization did, in fact, agree to increase the stepdown 15 percentage, which had been zero, to 10 percent. 16 THE COURT: If that's all he wants it admitted for, 17 I'm fine with that. 18 Mr. Amer, do you agree? 19 MR. AMER: That's fine. 20 THE COURT: It's in for that purpose. 21 MR. ROBERT: Well, to be clear, it would be 22 everything contained in the paragraph that says, "This will 23 also confirm that" because that's what The Trump 24 Organization is confirming. 25 THE COURT: Well, they are saying "we confirm it."</p>

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<p>M. Hawthorn - by Defense - Direct (Mr. Robert) Page 5208</p> <p>1 MR. ROBERT: And then The Trump Organization, 2 signed by Eric Trump and Donald Trump, Jr. on behalf of the 3 corporate entity, are agreeing to that term. 4 THE COURT: Okay. 5 MR. AMER: Just so we are clear, it's coming in for 6 the acknowledgment and agreement that appears on the final 7 page that's signed by the Trump employees; is that right? 8 MR. ROBERT: Can I just read what you just said. 9 I'm going to read it from there. 10 (Whereupon, there is a brief pause in the 11 testimony.) 12 MR. ROBERT: Yeah, that The Trump Organization is 13 agreeing to what Deutsche Bank offered them, yes. 14 THE COURT: Okay. That's what it's in for. 15 Q What, if any, impact did this have, then, on the loan, 16 sir? 17 A So this increased the stepdown percentage or the 18 guaranty percentage from zero to 10 percent. 19 Q And again, as to the net worth? 20 A The net worth was now 250 million. 21 Q What, if anything, happened with regard to this loan a 22 year or so later in July of 2021? 23 A Performance since rebounded after the pandemic 24 subsided. Hotel guests were able to come to the hotel again. 25 So in the subsequent reporting, the DSCR test, because revenues</p>	<p>M. Hawthorn - by Defense - Direct (Mr. Robert) Page 5210</p> <p>1 A The interest rate increased. 2 Q And what, if any, impact did this new DSCR in July of 3 2021 have on the guaranty? 4 A The guaranty went away again. 5 Q And did The Trump Organization, in fact, allow the 6 guaranty to go away in July of 2021? 7 A Yes. 8 MR. AMER: Objection. Leading. 9 THE COURT: Sustained. Leading. 10 Q And what, if any, impact was -- what, if any, impact 11 was there on the guaranty in July of 2021 as a result of the 12 DSCR now being above the limit? 13 A The guaranty went away. 14 Q And what, if any, impact did the guaranty going away 15 have on the loan itself? 16 A No guaranty means no net worth requirement of the 17 guarantor. 18 Q And what, if any, impact did it have on the interest 19 rate? 20 A It increased the interest rate 25 basis points. 21 Q Now, I would like to show the witness what's been 22 marked as Defendant's Exhibit 1046? 23 (Whereupon, the exhibit was displayed on the 24 screen.) 25 (The witness was handed the exhibit.)</p>
<p>M. Hawthorn - by Defense - Direct (Mr. Robert) Page 5209</p> <p>1 were able to rebound, the DSCR test was, um, met on the face. 2 Q And what, if any, impact did that have on the loan and 3 revival of the guaranty you just spoke of? 4 A At that point in time, then the company had the option 5 to take the stepdown percentage back down to zero and remove the 6 guaranty entirely again. 7 Q What, if anything, did The Trump Organization do with 8 that? 9 MR. AMER: I'm sorry. Again, I'll move to strike 10 the answer, because I think the question was what impact did 11 it have on the guaranty, and answer was the company had the 12 option to do something. But that doesn't respond to what 13 actually happened. 14 MR. ROBERT: I think it does, because he's 15 explaining, as a result of what they do with the guaranty 16 that affects the company's interest rate. 17 THE COURT: I understand Mr. Amer's point. 18 MR. ROBERT: Let me see the question and I'll ask 19 it again. Can I scroll this up? 20 (Whereupon, there is a brief pause in the 21 testimony.) 22 Q Let's break it down. 23 What, if any, impact did this development in the change 24 of the DSCR have in July of 2021 as to the loan itself? Not the 25 guaranty, just the loan.</p>	<p>M. Hawthorn - by Defense - Direct (Mr. Robert) Page 5211</p> <p>1 Q Mr. Hawthorn, I've shown you what has been marked as 2 Defendant's Exhibit D-1046 for identification. 3 What do you recognize this document to be? 4 A This is an e-mail correspondence from myself to Julie 5 Brand, who, at the time, was the director of finance for the 6 Trump Chicago Hotel. 7 MR. ROBERT: Your Honor, I move Defendant's 8 Exhibit 1046 into evidence. 9 MR. AMER: No objection. 10 THE COURT: Granted. It's in. 11 (Defendant's Exhibit 1046 was admitted in 12 evidence.) 13 Q Mr. Hawthorn, if you could please read what you are 14 telling -- withdrawn. 15 Who is Ms. Brand again? 16 A She, at the time, was the director of finance for the 17 Trump Chicago Hotel. 18 Q And what, if any, role would the director of finance 19 have with regard to this loan? 20 A At the property level, the property is responsible for 21 paying the interest, the monthly interest from available cash 22 flows at the property, so she would receive the monthly invoice 23 of the loan every month. 24 Q And what did you exactly tell Ms. Brand in this e-mail, 25 if you could read it to the Court, please.</p>

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<p style="text-align: right;">Page 5212</p> <p>1 A I said, "Julie, FYI below, the good news for the 2 company is that the results allow for the partial guaranty to go 3 away. That means that the ten percent guaranty went to zero." 4 And then I say, "The not so good news for the hotel is 5 that the margin on the LIBOR interest rate now goes up by 25 6 basis points, from 1.75 to 2.0 percent, and you'll see that on 7 next month's invoice, and expect the monthly interest to be 8 slightly higher prospectively." 9 (Continued on the next page.) 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 5214</p> <p>Hawthorn - by Defendant - Direct (Robert)</p> <p>1 A Because the step down percentage went back up to 2 10 percent, the requirement was reinstated to submit guarantor 3 financials. 4 Q And then with regard to that what, if anything, 5 happened in July of 2021? 6 A Because the step down percentage went back down to 7 zero percent, there is no longer a requirement to submit 8 guarantor financials. 9 Q And, sir, was this loan paid in full? 10 A Yes. 11 Q And when was this loan paid in full? 12 A October of 2023. 13 Q And, sir, what, if any, requirement was there with 14 regard to presenting the bank with a Statement of Financial 15 Condition for this loan from July of 2021 to the time the loan 16 was repaid in August of 2023? 17 A None. 18 MR. ROBERT: Your Honor, I would like to show 19 the witness what has been marked as DD-2, this time truly 20 a demonstrative piece of evidence. If we can show it to 21 the witness, the Court, and put it up on the screen, 22 please? 23 Do we have copies of it? Sorry, I am still old 24 school with the paper. 25 (Handing)</p>
<p style="text-align: right;">Page 5213</p> <p>Hawthorn - by Defendant - Direct (Robert)</p> <p>1 Q And Mr. Hawthorn, to your understanding, why is it 2 that the interest rate went up by 25 basis points at this time? 3 A Because the step down percentage was reduced from 4 10 percent to zero. 5 Q Is it your understanding from based on your review of 6 the loan documents and your review of the various financial 7 statements, that from the time the guaranty was voided in 8 December of 14 through August of 2020, that the Trump 9 Organization was required to send Statements of Financial 10 Condition to the bank? 11 MR. AMER: Objection, leading. 12 THE COURT: Sustained, leading. 13 Q What, if any, obligations of the loan that had 14 existed prior to December of 2014 were no longer in effect from 15 2014 to 2020, if any? 16 MR. AMER: Objection, foundation. 17 THE COURT: Can I ask for a readback. 18 (Whereupon, the record was read back by the 19 court reporter.) 20 THE COURT: Overruled, based on the totality of 21 his prior testimony. 22 A There is no requirement to submit guarantor 23 financials. 24 Q And sir, what, if anything, changed in August of 2020 25 with regard to the guarantor financials?</p>	<p style="text-align: right;">Page 5215</p> <p>Hawthorn - by Defendant - Direct (Robert)</p> <p>1 Q Mr. Hawthorn, you have been handed what has been 2 marked as a demonstrative exhibit marked as DD-2; do you 3 recognize this document? 4 A Yes. 5 Q What is this document? 6 A This is a timeline of the loan and key events from 7 June 2014 through October 2023. 8 Q Did you prepare this document? 9 A I assisted with the preparation of it. 10 Q And does this document reflect the testimony you just 11 gave about when the SOFC was required by Deutsche Bank and when 12 it wasn't? 13 A Yes. 14 Q So according to this demonstrative piece of evidence 15 from December of 2014 through August of 2020, the SOFC was not 16 required, correct? 17 MR. AMER: Can we have some clarity on what 18 Statement of Financial Condition this is relating to? 19 Because we have this SFCs of the borrower entities; there 20 is also the guarantor SFC; so it is unclear what this is. 21 MR. ROBERT: I think it is a disingenuous 22 objection because this case is about the SOFC. But so the 23 record is clear, this is evidencing President Trump's 24 Statement of Financial Condition, which is the guarantor's 25 Statement of Financial Condition, which is the basis of</p>

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Hawthorn - by Defendant - Direct (Robert)	Page 5216	Hawthorn - by Defendant - Direct (Robert)	Page 5218
1 the lawsuit that the Attorney General brought. That's		1 Q And do you know the principal amount of that loan,	
2 what this is referencing.		2 sir?	
3 THE COURT: Well, now we know. So okay.		3 A 125 million.	
4 MR. AMER: Thank you.		4 Q And, sir, do you have an understanding as to whether	
5 MR. ROBERT: If I could have the last question		5 there was guaranty associated with that loan?	
6 read back, please?		6 A Yes.	
7 THE COURT: Please read back.		7 Q And do you have an understanding as to what the terms	
8 (Whereupon, the record was read back by the		8 of that guaranty were back in June of 2012?	
9 court reporter.)		9 A My understanding is it was a 100 percent guaranty.	
10 A Correct.		10 Q And anything with regard to a net worth requirement?	
11 Q And sir, based on this demonstrative, the SOFC was		11 A My understanding is that the original loan at the	
12 also not required from July of 2021 through August of 2023,		12 onset had a \$2.5 billion net worth provision.	
13 correct?		13 Q What, if anything, happened with regard to this loan	
14 A Correct.		14 in August of 2013?	
15 Q Okay. I want to now draw your attention to the Doral		15 A I understand that the loan had an amendment.	
16 loan. Okay, sir?		16 Q And what was the import of that amendment?	
17 A Okay.		17 A The import of the amendment was to bring it to the	
18 Q What, if any, involvement did you have in your role		18 concept of the step down percentage, similar to Chicago, to	
19 as CFO/COO of the hotel unit with regard to the Doral loan?		19 allow for a partial guaranty of the loan.	
20 A So in my role I am responsible for the oversight of		20 Q And that was in August of 2013?	
21 the hotel portfolio, including Doral, including the		21 A Yes.	
22 understanding of the loan agreement, under which Doral is a		22 Q And without going through everything, it is similar	
23 borrower, and understanding its terms.		23 in concept to what we just talked about with regard to Chicago?	
24 I was also responsible for the preparation of the		24 A Yes.	
25 annual financial statements, along with the accounting firm, to		25 Q And sir, what, if anything, happened with regard to	
Hawthorn - by Defendant - Direct (Robert)	Page 5217	Hawthorn - by Defendant - Direct (Robert)	Page 5219
1 be submitted to the borrower.		1 this loan in August of 2015?	
2 And just like the Chicago loan, there is also a DSCR		2 A My understanding is that the step down percentage was	
3 annual test.		3 elected to be 10 percent. And that meant that the guarantors	
4 And also a step down percentage test.		4 guaranty is 10 percent of the loan balance. So effectively the	
5 So very similar document, very similar		5 guarantor is guaranteeing 12.5 million of the loan at that	
6 responsibilities on my part in my role to understand the		6 point in time, no longer 100 percent of the loan. And at the	
7 document and to ensure our compliance with it.		7 same time because it is a 10 percent step down percentage, the	
8 Q And in your role of overseeing these various		8 net worth requirement of the guarantor is 250 million at that	
9 financial statements and documents for the -- for Doral, did		9 point in time.	
10 you become familiar with the loan itself and the amount of the		10 Q And did that net worth requirement from August of	
11 loan?		11 2015 of \$250 million change from then to the time the loan was	
12 A Yes.		12 changed?	
13 Q And in that course of your work, did you also become		13 A It did not. It remained the same.	
14 familiar with the terms and conditions of that loan?		14 Q When was this loan paid in full, sir?	
15 A Yes.		15 A The loan was repaid in May of 2022.	
16 Q And why would your knowledge of the terms and		16 Q Going back to the period of August of 2015 and the	
17 conditions of that loan be important to do your job as CFO/COO		17 step down basis, what, if any, option was given to the Trump	
18 of the hotels?		18 Organization to exercise the step down basis?	
19 A Again to understand the obligations of that		19 A The company had the option to elect the step down	
20 particular property, which falls under my responsibility.		20 percentage to go all the way to zero percent because the LTV	
21 Q Are you aware, sir, that there was a loan taken out		21 was satisfied to allow that to occur. The company, however,	
22 with Deutsche Bank for Doral?		22 elected to keep the step down percentage at 10 percent at that	
23 A Yes.		23 point in time.	
24 Q And do you know approximately when that loan was?		24 Q Which then led to the \$250 million net worth	
25 A I believe it was in 2012.		25 requirement and the 12 and a half million dollar guaranty	

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1 limit, correct?		1 A Donald Trump Jr.	
2 A Correct.		2 Q And the process that you articulated earlier with how	
3 Q And, sir, during the course of this loan what, if		3 you would present this to Mr. Trump Jr. for his execution with	
4 any, requirements of reporting did the Trump Organization have,		4 regard to the Chicago property, would be the same as for this?	
5 or particularly Trump Endeavor 12?		5 A Correct.	
6 A Trump Endeavor 12 had compilation financial		6 MR. ROBERT: Your Honor, I move Defendant's	
7 statements that were prepared annually every year, issued by		7 Exhibit 1048 into evidence.	
8 Mazars and then Whitley Penn. Those financial statements were		8 MR. AMER: No objection.	
9 submitted to the borrower and also submitted along with a		9 THE COURT: Granted, it is in.	
10 compliance certificate and a DSCR calculation every year, just		10 (Whereupon, the document referred to was deemed	
11 like the Chicago loan we looked at previously.		11 marked for evidence as Defendant's Exhibit 1048 by	
12 THE COURT: Was the question what they did or		12 the Court.)	
13 what they were obligated to do?		13 MR. ROBERT: I would like to show the witness	
14 MR. ROBERT: First it is what they are obligated		14 what has been marked as Defendant's Exhibit 1052.	
15 to do. And now I am going to show documents that showed		15 (Hanging)	
16 what they did that were consistent.		16 Q Mr. Hawthorn, what do you recognize Defendant's	
17 THE COURT: He didn't answer what they were		17 Exhibit 1052 for identification to be?	
18 obligated to do. He answered what they did.		18 A This is my correspondence to Deutsche Bank in a	
19 Q The answer you just gave, what they were supposed to		19 similar fashion; but this time it is for the year 2019.	
20 do, did the Trump Organization, in fact, do that?		20 Q And this, again, has your letter attached as well as	
21 A Yes.		21 the compliance certificate and the financial statement prepared	
22 MR. ROBERT: Just give me a second. I want to		22 by Mazars, correct?	
23 limit this to one year to make it faster.		23 A Correct.	
24 Q And these financials were required to be provided		24 MR. ROBERT: I move Defendant's Exhibit 1052	
25 once a year, correct, sir?		25 into evidence.	
Hawthorn - by Defendant - Direct (Robert)	Page 5221	Hawthorn - by Defendant - Direct (Robert)	Page 5223
1 A Correct.		1 MR. AMER: No objection.	
2 Q I would like to show the witness Exhibit D-1048.		2 THE COURT: Granted, it is in.	
3 (Hanging)		3 (Whereupon, the document referred to was deemed	
4 MR. ROBERT: And I'll make the second year very		4 marked for evidence as Defendant's Exhibit 1052 by	
5 fast Judge, don't worry.		5 the Court.)	
6 THE COURT: You read my mind.		6 Q And the same questions I asked you, sir. What was	
7 MR. ROBERT: I try.		7 your involvement in the preparation of the compliance	
8 Q Mr. Hawthorn, I have handed you what has been marked		8 certificate?	
9 as Exhibit 1048 for identification. Do you recognize this		9 A I prepared it.	
10 document?		10 Q And in the same manner as you earlier testified?	
11 A Yes.		11 A Yes.	
12 Q What do you recognize this document to be?		12 Q And this is signed by Donald Trump Jr. on behalf of	
13 A This is my correspondence to Joshua Frank at Deutsche		13 Trump Endeavor 12?	
14 Bank relating to Trump Endeavor 12 LLC.		14 A Yes.	
15 Q What is attached to the letter?		15 Q And the manner in which you present -- withdrawn.	
16 A Annual compliance certificates for the year 2018,		16 Did you present this to him for signature?	
17 along with a calculation of the DSCR, along with the annual		17 A Yes, I did.	
18 financial statements of the entity.		18 Q And the manner in which you presented it to him for	
19 Q And the -- what, if any, role did you have in the		19 signature is the same as you testified to earlier?	
20 preparation of the compliance certificate?		20 A Yes.	
21 A I prepared it.		21 MR. ROBERT: I would now like to show the	
22 Q And the same steps that you testified about earlier		22 witness what has been marked for demonstrative purposes	
23 for the Chicago loan would apply to the Trump Endeavor 12 loan?		23 Defendant's Exhibit DD-3.	
24 A Correct.		24 Q And sir, while that is being handed up. When was the	
25 Q And the signatory on page D1048-4 is whose?		25 Trump National Doral loan paid in full?	

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<p>Hawthorn - by Defendant - Direct (Robert) Page 5224</p> <p>1 A May of 2022. 2 (Handing) 3 Q And sir, this demonstrative exhibit DD-3, who 4 prepared this? 5 A I assisted with the preparation of it. 6 Q And reviewing this, is this consistent with your 7 testimony you gave earlier this morning with regard to this 8 timeline? 9 A Yes. 10 Q So from August of 2015 through May of 2022, the 11 guaranty was only 10 percent with a \$250 million net worth 12 requirement, correct? 13 A Correct. 14 Q Sir, another one of the properties in your division 15 is the Trump Old Post Office, correct? 16 A Correct. 17 Q And sir, the loan involving the Old Trump Post 18 Office, what, if any, involvement did you have with that loan? 19 (sic.) 20 A Similar to Chicago and Doral, I had to understand the 21 terms and conditions of the loan; I had to ensure that the 22 property level, borrower level information was provided to the 23 lender as required. 24 Q And what, if any, terms and conditions were there 25 that the Trump Organization needed to undertake with regard to</p>	<p>Hawthorn - by Defendant - Direct (Robert) Page 5226</p> <p>1 Deutsche Bank relating to the Trump Old Post Office LLC loan. 2 And this is for the year -- this is for the 12 months ending 3 January 31, 2019. 4 Q And sir, there is a compliance certificate attached 5 to it? 6 A Yes. 7 Q And what, if any, involvement did you have in the 8 preparation of the compliance certificate? 9 A I prepared it. 10 Q Using the same methods that you talked about earlier? 11 A Yes. 12 Q And this is signed by Donald Trump Jr. on behalf of 13 Trump Old Post Office LLC? 14 A Yes. 15 Q Did you present this to Mr. Trump Jr. for signature? 16 A Yes. 17 Q Is the manner in which you did that the same as you 18 testified to earlier on the other documents? 19 A Yes. 20 Q What is the final document from Mazars attached to 21 this? 22 A This is the compilation financial statement for the 23 entity for the year ended -- for the 12 months ended 24 January 31, 2019. 25 MR. SUAREZ: Your Honor, I move Defendant's</p>
<p>Hawthorn - by Defendant - Direct (Robert) Page 5225</p> <p>1 that loan in terms of reporting? 2 A Annual financial statements to be submitted with a 3 compliance certificate similar to these other two loans; as 4 well as a DSCR calculation similar to these other two loans. 5 Q And sir, is that, in fact, what happened with regard 6 to this particular loan? 7 A Yes. 8 Q Now, a little earlier you testified that this 9 property had two certifications each year, correct? 10 A Yes. 11 Q I am going to take you through each one separately, 12 but I am going to start with the one in May of 2019. 13 MR. ROBERT: If we could show the witness 14 defense exhibit 1049? 15 And this time, Judge, I am only going to use one 16 year's worth. 17 (Handing) 18 Q Sir, this would be consistent with each year of the 19 loan, correct? 20 A Yes. 21 Q Okay. 22 Sir, you have been handed what has been marked as 23 Defendant's Exhibit 1049 for identification. What do you 24 recognize this document to be? 25 A This is my correspondence to Joshua Frank and</p>	<p>Hawthorn - by Defendant - Direct (Robert) Page 5227</p> <p>1 Exhibit 1049 into evidence. 2 MR. AMER: No objection. 3 THE COURT: Granted, it is in evidence. 4 (Whereupon, the document referred to was deemed 5 marked for evidence as Defendant's Exhibit 1049 by 6 the Court.) 7 Q Mr. Hawthorn, in a moment I am going to show you an 8 e-mail -- hold this -- hold this to the side for a moment. 9 MR. ROBERT: I would like to show the witness 10 Exhibit PX-497. We have copies of it. 11 Yes, Andy, I am actually using one of yours. 12 (Handing) 13 Q Mr. Hawthorn, do you recognize the document that has 14 been identified for identification as PX-497? 15 A Yes. 16 Q And what is this document, sir? 17 A This is my correspondence to Deutsche Bank for the 18 Trump Old Post Office LLC loan, and its reporting requirements 19 for the year ended August 31, 2019. 20 MR. ROBERT: I move Plaintiff's Exhibit 497 into 21 evidence. I don't think it has already been introduced. 22 MR. AMER: No objection. 23 THE COURT: Granted, it is in evidence. 24 (Whereupon, the document referred to was deemed 25 marked for evidence as Plaintiff's Exhibit 497 by the</p>

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<p>Hawthorn - by Defendant - Direct (Robert) Page 5228</p> <p>1 Court.)</p> <p>2 Q Mr. Hawthorn, before we look at the document itself</p> <p>3 PX-497, what is the difference between these two, aside from</p> <p>4 the date?</p> <p>5 A Between the two Trump Old Post Office documents?</p> <p>6 Q Correct. One being, one you send in May and one you</p> <p>7 send in December?</p> <p>8 A The one sent in December submits the annual audited</p> <p>9 financial statements of the entity. This entity had a fiscal</p> <p>10 year end of August 31, 2019. Attached to this submission were</p> <p>11 the annual audited financial statements.</p> <p>12 Q Okay. So, Defendant's Exhibit 1049, which I showed</p> <p>13 you a few moments ago, that would be the same as the ones I</p> <p>14 showed you for Chicago and the ones I showed you for Doral,</p> <p>15 correct?</p> <p>16 A They would include the DSCR provision. They would</p> <p>17 not include or reattach the annual financial statements.</p> <p>18 Q And they were also not audits that were attached to</p> <p>19 those, correct?</p> <p>20 A Correct. Those were compilations. This was an</p> <p>21 audit.</p> <p>22 Q Okay. So what was the requirement that -- withdrawn.</p> <p>23 What was the reason why the Trump Organization</p> <p>24 provided audited financials with this December 2019 exchange</p> <p>25 with the bank?</p>	<p>Hawthorn - by Defendant - Direct (Robert) Page 5230</p> <p>1 monitor who has been put in place in the Trump Organization.</p> <p>2 What, if any, involvement have you had with the monitor?</p> <p>3 A I have had significant involvement with Judge Barbara</p> <p>4 Jones, who is the appointed monitor that we work with</p> <p>5 regularly.</p> <p>6 Q When did you first come into contact with Judge</p> <p>7 Jones?</p> <p>8 A In November of 2022.</p> <p>9 Q And what were the circumstances surrounding that</p> <p>10 first meeting with her?</p> <p>11 A She came to our offices with certain of her staff</p> <p>12 members and therefore --</p> <p>13 Q Let's break it down. Who was it that came with her,</p> <p>14 if you remember?</p> <p>15 A Members of her team. She is with a firm called</p> <p>16 Bracewell, so there were representatives from Bracewell on her</p> <p>17 team. And then on our side it was myself, it was Alan Garten</p> <p>18 and I believe certain of our attorneys were present as well.</p> <p>19 Q And what was discussed at that first meeting?</p> <p>20 MR. AMER: I am going to object, Your Honor, to</p> <p>21 hearsay, to the extent that it is going to include what</p> <p>22 Judge Jones or any of her colleagues said to the Trump</p> <p>23 Organization individuals.</p> <p>24 MR. ROBERT: This is as good a time as any. We</p> <p>25 are going to add Barbara Jones and Tom Kokakis to the</p>
<p>Hawthorn - by Defendant - Direct (Robert) Page 5229</p> <p>1 A In clarification with the lender, that I did</p> <p>2 personally and with other representatives, we confirmed that</p> <p>3 the DSCR testing period for this loan was on a 12-month ended</p> <p>4 January 31, period. And therefore the DSCR was not computed</p> <p>5 off of the annual financial statements which were on an</p> <p>6 August 31, 2019, year. So we had to do two sets of financial</p> <p>7 statements for compliance purposes, the audited financial</p> <p>8 statements which were satisfying that requirement, the entities</p> <p>9 on a fiscal year ending August. Then the DSCR was required to</p> <p>10 be due on a 12-month January period. And again, only a</p> <p>11 compilation was required.</p> <p>12 Q And sir, how would you describe the difference, and I</p> <p>13 know when we started the exam you gave us the difference</p> <p>14 between an audit, a review and compilation, but specifically,</p> <p>15 aside from you explaining that the dates are different, how did</p> <p>16 this audit of Trump Old Post Office LLC differ from the</p> <p>17 compilation that is provided earlier in the year?</p> <p>18 A Well, you can see in the audit itself it has a full</p> <p>19 set of footnotes. The work done by Mazars and the audit</p> <p>20 opinion indicates it was an audit. So it was much more</p> <p>21 detailed procedures for an audit. There was substantive</p> <p>22 testing done of the entity. Whereas, a compilation is less</p> <p>23 testing, more putting the numbers together in a document.</p> <p>24 Q I am going to switch gears now. You can put that</p> <p>25 aside. Thank you, Mr. Hawthorn. And talk to you about the</p>	<p>Hawthorn - by Defendant - Direct (Robert) Page 5231</p> <p>1 witness list. I ask if we need a subpoena issued by the</p> <p>2 Court or can just serve them with a subpoena, because</p> <p>3 their testimony is crucial to the equitable relief you are</p> <p>4 seeking. So we might as well clear that up as well.</p> <p>5 MR. AMER: It doesn't relate to my objection.</p> <p>6 MR. ROBERT: I'll rephrase the question.</p> <p>7 But you raise a good point. We will need her</p> <p>8 testimony. So we can handle that in the break, talk to</p> <p>9 the Court about that.</p> <p>10 MR. AMER: Again, I think the witness can say</p> <p>11 what the Trump Organization employees told Judge Jones and</p> <p>12 her staff, but I don't think it is appropriate to have</p> <p>13 this witness relay what they were told, because that's</p> <p>14 hearsay.</p> <p>15 THE COURT: You want to make sure that I am not</p> <p>16 arguing for you before you argue I see.</p> <p>17 MR. KISE: Right.</p> <p>18 THE COURT: I think -- I am surprised at the</p> <p>19 objection. But why don't we see what the specific</p> <p>20 questions are.</p> <p>21 MR. AMER: I think the question I objected to</p> <p>22 was: Tell us what was discussed. So it raises the issue,</p> <p>23 Your Honor.</p> <p>24 THE COURT: I don't think what was discussed</p> <p>25 would be hearsay. What was discussed.</p>

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1 You were there, right?		1 we respond to them timely and get them what they need.	
2 Overruled.		2 So, ongoing it has been very detailed. It has been	
3 What was discussed? The topics, not the		3 very thorough. And you know, any and all questions that they	
4 statements which we can then address.		4 ask we have been transparent and open and happy to assist them	
5 MR. AMER: As long as it is limited to the		5 in whatever information they need.	
6 topics I don't have any problem.		6 Q So you --	
7 MR. ROBERT: Does the Attorney General have any		7 MR. AMER: My only objection is to the phrase,	
8 objection to us calling Judge Jones or her colleagues to		8 mutual, good mutual understanding. I think that implies	
9 testify?		9 that it went both ways. He can certainly testify as to	
10 MR. AMER: I am not going to be able to answer		10 his understanding. But I don't think it is appropriate	
11 that right now. I have to discuss it with my colleagues.		11 for him to testify about what Judge Jones and her staff	
12 THE COURT: Okay. So what was discussed		12 had an understanding of.	
13 generally, not did Judge Jones say.		13 THE COURT: He wouldn't know what was in their	
14 A So, the November 2022 meeting was an introductory		14 mind.	
15 meeting. Judge Jones and her team were interested in learning		15 As long as I have you, Mr. Amer, I am assuming	
16 about the company, its structure, its organization, and its key		16 that Ms. Jones was there to ask questions and listen, not	
17 executives in place running the company, and how it runs today.		17 just say things. And anything she said was probably not	
18 So that was an introductory meeting that set in motion a very		18 going to be introduced to prove the truth of its contents	
19 cooperative, transparent, regular partnership where myself, as		19 here, so, that's why I found that a strange objection.	
20 one of the individuals on behalf of the company, meets		20 MR. ROBERT: I would respectfully disagree.	
21 regularly with Judge Jones and her team members.		21 MR. AMER: Since I don't know what this witness	
22 At the onset of the meeting it was clear that it		22 will say about what Judge Jones may have said at the	
23 would take some time for the monitor and their representatives		23 meeting, it is hard to know in advance whether it is just	
24 to fully understand the depth and the complexity of the		24 for notice purposes or not.	
25 organization. So they did ask a lot of questions to understand		25 But, in terms of my prior objection on good	
Hawthorn - by Defendant - Direct (Robert)	Page 5233	Hawthorn - by Defendant - Direct (Robert)	Page 5235
1 the entity's structure, who does what in the organization, how		1 mutual understanding?	
2 process flows work. So it was definitely a significant		2 THE COURT: Yes, sustained. I'll note for the	
3 undertaking on our side to make sure we were being fully		3 record that the witness wouldn't know what was really in	
4 compliant, answering all of their questions diligently,		4 Judge Jones' mind. He might have heard hearsay, you	
5 responding to inquiries and so forth.		5 people have been great.	
6 Q What was the matter -- withdrawn.		6 MR. ROBERT: On that point, yes, there was	
7 Were requests for information made of you and the		7 conversations. Judge Jones made observations and comments	
8 Trump Organization?		8 which I think are plainly relevant.	
9 A Yes.		9 I'll serve this as an opportunity to give notice	
10 Q And how did you provide that information to the		10 under our order that we intend to call Judge Jones and Tom	
11 monitor -- withdrawn.		11 Kokakis in our case in our defense. We will work out the	
12 Did the monitor request it be sent to her or to		12 scheduling with the Attorney General and the Court.	
13 others?		13 Q But in addition to that, are you aware of any request	
14 A As an administrative matter the monitor and their --		14 the monitor made of the Trump Organization that was not	
15 her designees set up a data room that allowed for information		15 complied with?	
16 that they requested to be provided to them in the format that		16 A No.	
17 they requested. The onset of the monitorship obviously was a		17 Q Are you aware of whether the monitor found anything	
18 lot of questions, again, to get an understanding of the company		18 wrong in all of the months she has been looking at Trump	
19 which is, you know, has a lot of entities and a lot of business		19 Organization records?	
20 components to it, and a lot of operating businesses.		20 A No.	
21 So, as they, meaning the monitor and their designees,		21 Q Have you been advised that she uncovered any fraud at	
22 asked questions, we would provide the information they		22 the Trump Organization?	
23 requested. There would be a lot of follow-up questions. And		23 A No.	
24 through the course of since November 2022, we have gotten into		24 Q Are you advised as to whether she uncovered anything	
25 a pretty good mutual understanding of what they require and how		25 improper?	

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<p>Hawthorn - by Defendant - Direct (Robert) Page 5236</p> <p>1 A We have had ongoing conversations and as they have 2 asked questions they have delved more into questions. And so 3 there have been certain observations they have highlighted to 4 us to inquire more. We believe everything that they have 5 deemed as an observation that we have responded to diligently, 6 and you know, very adequately, that what they have observed we 7 have a response for. But I would certainly say in my 8 experience in all of the meetings and correspondence no one 9 from that team has ever communicated to us that they have 10 uncovered any fraud or irregularities. 11 MR. ROBERT: I have no further questions of this 12 witness, Your Honor. Thank you. 13 THE COURT: I was just about to announce the 14 five minute break. But Mr. Amer, do you want to start? 15 Or whomever? 16 MR. AMER: I can start. 17 THE COURT: Yeah, let's. Five minutes are five 18 minutes. 19 MR. ROBERT: I am willing to stipulate those 20 five. 21 THE COURT: Let's start the cross examination. 22 We have six minutes. 23 MR. AMER: Thank you, Your Honor. 24 25</p>	<p>M. Hawthorn - by Defense - Cross (Mr. Amer) Page 5238</p> <p>1 Q And that's assurance to the client; correct? 2 A Assurance to the reader of the financial statements. 3 Q Is it also the lowest level of assurance for the client 4 who retains the outside accounting firm? 5 A It's lower than an audit, but in context it means the 6 lowest level of assurance to the reader of the financial 7 statements. 8 Q Does that also indicate, though, to the client that 9 what they are paying for is the lowest level of assurance among 10 the three choices you outlined? 11 A Yes. 12 Q And you indicated that with a compilation. I think you 13 said there's no substantive testing; is that right? 14 A There's no testing of invoices and samples where an 15 audit would have that type of thing. 16 Q There's no testing of the financial figures in the 17 compilation; correct? 18 A There's observation and review and an understanding of 19 what goes into the numbers. An auditor doing a compilation 20 isn't just going to kind of cover their ears and eyes to what's 21 happening, and seeing the numbers, but they are not going to 22 pull underlying documents like an audit to verify that -- so 23 like in an audit, for example, Mr. Amer, you would have an 24 auditor test certain transactions by pulling source data, 25 whereas in a compilation, the accounting firm would put together</p>
<p>Hawthorn - by Defendant - Cross (Amer) Page 5237</p> <p>1 CROSS-EXAMINATION 2 BY MR. AMER: 3 Q Good afternoon, Mr. Hawthorn. 4 A Good afternoon. 5 Q I want to go through a number of comments you made 6 during your direct to seek some clarification. You talked 7 about compilation being the lowest level of assurance; do you 8 recall that? 9 A Yes. 10 (The following proceedings were stenographically 11 recorded by Senior Court Reporter Michael Ranita.) 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>M. Hawthorn - by Defense - Cross (Mr. Amer) Page 5239</p> <p>1 the numbers, maybe do some analytical procedures to see how it 2 all looks, and ask some questions. But it would definitely be 3 less substantive procedures than an audit. 4 Q Just to go back to my question, which was specific to 5 testing in a compilation, there's no substantive testing of the 6 figures; yes? 7 A Generally speaking, yes. 8 Q I'm correct, yes? 9 A There's what I would call analytical procedures, but no 10 testing of underlying documents. 11 Q And you indicated that for the entities that you were 12 responsible for, they had both compilations and audits; correct? 13 A Correct. 14 Q And am I correct that there was no reason why The Trump 15 Organization could not have retained Mazars to do an audit of 16 Donald J. Trump's financial statements as opposed to just a 17 compilation; right? 18 A I don't know. 19 Q You don't know of any reason why they couldn't have 20 hired Mazars to do an audit; right? 21 A I don't know. It's not -- that wouldn't be my area, 22 being in the hospitality division. So if you are asking a 23 hypothetical -- 24 Q No, I'm asking, as you sit here today, you were aware 25 of no reason why The Trump Organization could not have retained</p>

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<p>1 Mazars to do an audit instead of a compilation; is that fair?</p> <p>2 A And I think I previously testified there is no</p> <p>3 requirement for an audit. So if the company -- if any private</p> <p>4 company doesn't have a requirement for an audit for some</p> <p>5 constituency like a lender or a government agency, there's</p> <p>6 really no need for an audit.</p> <p>7 Q Despite the fact --</p> <p>8 THE COURT: You are not answering the question. Am</p> <p>9 I correct, Mr. Amer? You agree?</p> <p>10 MR. AMER: Correct. I agree.</p> <p>11 THE COURT: But you are asking it in the negative.</p> <p>12 Why don't you ask it in the positive.</p> <p>13 Is there any reason -- and Mr. Amer, if you want to</p> <p>14 ask a different question, or whatever, is there any reason</p> <p>15 The Trump Organization could not have asked for an audit?</p> <p>16 THE WITNESS: I would just say, other than time and</p> <p>17 resources and the cost of it, no.</p> <p>18 THE COURT: Did I ask it in the negative? Sorry.</p> <p>19 Let me rephrase it. We are going to get the same answer.</p> <p>20 MR. AMER: It's harder than it looks.</p> <p>21 A The same answer, I think.</p> <p>22 THE COURT: Could The Trump Organization have asked</p> <p>23 for an audit if they were willing to pay for it?</p> <p>24 THE WITNESS: Yes.</p> <p>25 THE COURT: Okay. See, it's not so hard, Mr. Amer.</p>		<p>1 properties that we own and/or manage. So the organization,</p> <p>2 as you may be familiar, owns commercial real estate,</p> <p>3 operates golf courses and has other holdings. So the hotel</p> <p>4 division operates specifically to the owned and managed</p> <p>5 hotels in the hotel portfolio."</p> <p>6 So in terms of what's within the hotel's division,</p> <p>7 that is just the owned and managed hotel portfolio; is that</p> <p>8 right?</p> <p>9 A Yes.</p> <p>10 Q And --</p> <p>11 THE COURT: If you want another few minutes, fine,</p> <p>12 or we could break now. It's up to you.</p> <p>13 MR. AMER: We could break now. That's fine.</p> <p>14 THE COURT: You're hungry. Okay. 2:15 as usual.</p> <p>15 And I'll direct the witness not to discuss the</p> <p>16 case, or his testimony, of course. You've heard that</p> <p>17 several times.</p> <p>18 (Whereupon, the case on trial was adjourned until</p> <p>19 2:15 for the luncheon recess.)</p> <p>20 * * * * *</p> <p>21 A F T E R N O O N S E S S I O N</p> <p>22 * * * * *</p> <p>23 THE COURT OFFICER: All rise. Part 37 is back in</p> <p>24 session. The Honorable Judge Arthur Engoron presiding.</p> <p>25 Please be seated and come to order.</p>	
M. Hawthorn - by Defense - Cross (Mr. Amer)	Page 5241	Proceedings	Page 5243
<p>1 MR. AMER: Took you two tries, so.</p> <p>2 Q And I want to ask you about your specific role at The</p> <p>3 Trump Organization. Am I correct that your current position is</p> <p>4 within the hotels division?</p> <p>5 A Correct.</p> <p>6 Q And you oversee the hotel brand operations and are the</p> <p>7 most senior executive person within the hotel division; correct?</p> <p>8 A Yes.</p> <p>9 Q And am I correct that your responsibilities as Chief</p> <p>10 Operating Officer of Trump Hotels is limited to the owned and</p> <p>11 managed hotels of the portfolio of the hotel division?</p> <p>12 A No.</p> <p>13 Q Can we go ahead and put up Mr. Hawthorn's trial</p> <p>14 testimony from last month? It's at lines 14 -- page 1417,</p> <p>15 starts at line 17?</p> <p>16 (Whereupon, the exhibit was displayed on the</p> <p>17 screen.)</p> <p>18 MR. AMER: Sixteen.</p> <p>19 Q "So are you the most senior executive person within the</p> <p>20 hotel's division at The Trump Organization?</p> <p>21 "ANSWER: Yes.</p> <p>22 "QUESTION: And can you just explain to us how the</p> <p>23 hotel's division fits within the overall corporate structure</p> <p>24 of The Trump Organization?</p> <p>25 "ANSWER: Everything related to the hotel</p>		<p>1 THE COURT: I'm going to ask Mr. Amer to hold his</p> <p>2 horses for a few moments, but he could stand at the podium.</p> <p>3 I have considered defendant's late request to add</p> <p>4 Judge Barbara Jones and attorney Tom Kokakis of her staff to</p> <p>5 the witness list. I hereby preclude their testimony.</p> <p>6 Besides being untimely, defendant's request is inappropriate</p> <p>7 as Judge Jones and her staff are arms of the court, and you</p> <p>8 cannot question the Court in this matter.</p> <p>9 The independent monitor order stated that they are</p> <p>10 to report back to the Court via their reports, and the</p> <p>11 reports speak for themselves. I also do not want to create</p> <p>12 the possibility of any conflicts of interest of any kind.</p> <p>13 The last thing this case needs is to have Judge Jones need</p> <p>14 to step aside.</p> <p>15 Finally, I am not aware of a single instance in</p> <p>16 which a litigant asked to examine an independent monitor, or</p> <p>17 anything like an independent monitor, and I spent part of</p> <p>18 the lunch break researching the issue. I couldn't find any</p> <p>19 examples. And for sure I'm not aware of any court granting</p> <p>20 or allowing this.</p> <p>21 But I'll hear from the defendants if they have</p> <p>22 authority for their request.</p> <p>23 MR. KISE: We don't at this time, your Honor, but</p> <p>24 to the extent that we research the issue and decide to raise</p> <p>25 it, then we'll return to it.</p>	

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<p>M. Hawthorn - by Defense - Cross (Mr. Amer) Page 5244</p> <p>1 MR. ROBERT: Will there be a formal order or will</p> <p>2 you so order the transcript?</p> <p>3 THE COURT: I would ask that you just so order the</p> <p>4 transcript.</p> <p>5 And yes, Mr. Kise, I would grant your request. If</p> <p>6 you find some authority for the proposition, of course I'll</p> <p>7 hear it.</p> <p>8 MR. KISE: Thank you.</p> <p>9 THE COURT: Okay. Let's get the witness back on</p> <p>10 the witness stand.</p> <p>11 (Whereupon, the witness stepped into the witness</p> <p>12 stand.)</p> <p>13 THE COURT: Mr. Amer, please continue.</p> <p>14 MR. AMER: Thank you, your Honor.</p> <p>15 Q We were discussing your role and responsibilities at</p> <p>16 The Trump Organization. And I want to ask you a few more</p> <p>17 questions to clarify what that role is.</p> <p>18 Have you ever worked in the corporate accounting</p> <p>19 department at Trump Tower, which is the department that</p> <p>20 Mr. Weisselberg and Mr. McConney worked in?</p> <p>21 A No.</p> <p>22 Q Did you take over Mr. Weisselberg's responsibilities</p> <p>23 that he had when he was CFO of the corporate accounting</p> <p>24 department after he left the organization?</p> <p>25 A Partially.</p>	<p>M. Hawthorn - by Defense - Cross (Mr. Amer) Page 5246</p> <p>1 direct examination by Mr. Robert:</p> <p>2 "QUESTION: So when you testified a week ago, you</p> <p>3 mentioned that Mark Hawthorn was the CFO of The Trump</p> <p>4 Organization. Is that actually his official title?</p> <p>5 "ANSWER: I think he's still chief financial</p> <p>6 officer. He, he's assumed that role, I guess I just said,</p> <p>7 sort of. So he is the, you know, the finance guy within</p> <p>8 Trump, Trump world now and has taken on all those decisional</p> <p>9 responsibilities. He is an actual CPA and does that. So it</p> <p>10 may not -- again, we are not as -- not as big on title, but</p> <p>11 he's functioning in that capacity, correct."</p> <p>12 Are you functioning in the capacity as the chief</p> <p>13 financial officer of The Trump Organization?</p> <p>14 A No.</p> <p>15 Q I think you mentioned that others are -- well, first of</p> <p>16 all, do you oversee the corporate accounting department?</p> <p>17 A No.</p> <p>18 Q I think you mentioned that others are overseeing the</p> <p>19 corporate accounting department in the wake of Mr. McConney and</p> <p>20 Mr. Weisselberg leaving the company; correct?</p> <p>21 A Yes.</p> <p>22 Q And you mentioned Donna Kidder. Is she the assistant</p> <p>23 controller now?</p> <p>24 A Yes.</p> <p>25 Q You also mentioned that there is now a director of</p>
<p>M. Hawthorn - by Defense - Cross (Mr. Amer) Page 5245</p> <p>1 Q And is the partial point the responsibility that you</p> <p>2 were asked to assist in in standardizing the accounting</p> <p>3 methodology across various divisions?</p> <p>4 A That's a good example.</p> <p>5 Q What else, aside from that standardization project, do</p> <p>6 you consider to be responsibility that Mr. Weisselberg had that</p> <p>7 you now have?</p> <p>8 A I would say just helpful guidance and accounting</p> <p>9 knowledge to any arms of the business that are needing of</p> <p>10 assistance.</p> <p>11 Q Were you ever asked to provide helpful guidance and</p> <p>12 accounting knowledge with respect to the preparation of Donald</p> <p>13 J. Trump's Statement of Financial Condition?</p> <p>14 A No.</p> <p>15 MR. AMER: I would like to show you some trial</p> <p>16 testimony from Donald Trump, Jr., just so we could further</p> <p>17 clarify your role. It's page 3987 starting at line 13,</p> <p>18 continuing onto the next page, line two.</p> <p>19 (Whereupon, the exhibit was displayed on the</p> <p>20 screen.)</p> <p>21 MR. AMER: So if we could get the rest of the</p> <p>22 answer on the page on the screen.</p> <p>23 (Whereupon, the exhibit was displayed on the</p> <p>24 screen.)</p> <p>25 Q This is Donald Trump, Jr.'s trial testimony during his</p>	<p>M. Hawthorn - by Defense - Cross (Mr. Amer) Page 5247</p> <p>1 finance; is that right?</p> <p>2 A Yes.</p> <p>3 Q And what is that person's name?</p> <p>4 A His name is Michael love chuck.</p> <p>5 Q And when did he assume the position of director of</p> <p>6 finance?</p> <p>7 A He's been a director of finance at the company for over</p> <p>8 20 years. He served as the director of finance for the Trump</p> <p>9 International Hotel and Tower in New York, a hotel property.</p> <p>10 Subsequently to that, he took on the same role for the</p> <p>11 Trump International SoHo Hotel and the Trump International</p> <p>12 Washington, D.C. Hotel when that hotel was sold in May of 2022.</p> <p>13 He did not leave the company. He was able to use the</p> <p>14 skills and expertise in the corporate accounting function as the</p> <p>15 director of finance.</p> <p>16 Q Is it your testimony that he is now functioning in the</p> <p>17 capacity as the chief financial officer of The Trump</p> <p>18 Organization?</p> <p>19 A No.</p> <p>20 Q Is there anyone else other than Ms. Kidder and Mr. Love</p> <p>21 chuck, who is overseeing the corporate accounting department?</p> <p>22 A ^ Splg Mr. Love chuck would be the highest individual</p> <p>23 of financial expertise in that area.</p> <p>24 Q I'm just trying to find out if there are any other</p> <p>25 people?</p>

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<p>M. Hawthorn - by Defense - Cross (Mr. Amer) Page 5248</p> <p>1 A There's a team, yes.</p> <p>2 Q Who are they?</p> <p>3 A They are the accounting staff for that team.</p> <p>4 Q The same staff that was there before Mr. Weisselberg</p> <p>5 left?</p> <p>6 A Some yes, some are now.</p> <p>7 Q Has any individual in the corporate accounting</p> <p>8 department taken over in the capacity as the chief financial</p> <p>9 officer of The Trump Organization?</p> <p>10 A No.</p> <p>11 Q And to the extent --</p> <p>12 MR. AMER: Can we put up Mr. Trump's testimony we</p> <p>13 were just looking at.</p> <p>14 (Whereupon, the exhibit was displayed on the</p> <p>15 screen.)</p> <p>16 Q And to the extent that Donald Trump, Jr.'s testimony</p> <p>17 could be read to suggest that you are functioning in the</p> <p>18 capacity of CFO of The Trump Organization, that would be</p> <p>19 incorrect?</p> <p>20 A There is no CFO of The Trump Organization.</p> <p>21 Q And to the extent that his testimony could be read to</p> <p>22 mean that you have taken on all of the decisional</p> <p>23 responsibilities that Mr. Weisselberg had, his testimony would</p> <p>24 be inaccurate; correct?</p> <p>25 MR. ROBERT: Objection.</p>	<p>M. Hawthorn - by Defense - Cross (Mr. Amer) Page 5250</p> <p>1 correct?</p> <p>2 A Yes.</p> <p>3 Q Were you ever asked by anyone within The Trump</p> <p>4 Organization to assist with respect to any other engagement with</p> <p>5 Ankura?</p> <p>6 A No.</p> <p>7 MR. AMER: Let's go ahead and put up D-1054.</p> <p>8 (Whereupon, the exhibit was displayed on the</p> <p>9 screen.)</p> <p>10 (The witness was handed the exhibit.)</p> <p>11 Q Do you recall you testified about this chart?</p> <p>12 A Yes.</p> <p>13 Q Correct? And I believe you said you prepared this</p> <p>14 chart; is that right?</p> <p>15 A Yes.</p> <p>16 Q And with respect to the statements that predate your</p> <p>17 arrival at The Trump Organization in 2016, am I correct that</p> <p>18 your knowledge of those prior statements was based on your</p> <p>19 review of those statements upon your arrival?</p> <p>20 A Upon or thereafter.</p> <p>21 Q Well, how far after?</p> <p>22 A In the process of being subpoenaed for information, I</p> <p>23 was part of the team that helps provide all of these documents,</p> <p>24 as requested. And as a process of understanding and going</p> <p>25 through the history of how these documents were prepared and</p>
<p>M. Hawthorn - by Defense - Cross (Mr. Amer) Page 5249</p> <p>1 THE COURT: What's the objection?</p> <p>2 MR. ROBERT: He's saying to the extent his</p> <p>3 testimony could be interpreted that way. It's either the</p> <p>4 testimony is or it isn't. This witness is not there to</p> <p>5 extrapolate how one could interpret Mr. Trump, Jr.'s</p> <p>6 testimony.</p> <p>7 MR. AMER: I'll withdraw --</p> <p>8 THE COURT: Rephrase.</p> <p>9 MR. AMER: -- and rephrase.</p> <p>10 Q When Mr. Trump testified that you have taken on all</p> <p>11 those decisional responsibilities of the CFO of The Trump</p> <p>12 Organization, he was wrong; correct?</p> <p>13 A I think the word "all" makes it incorrect.</p> <p>14 Q And we spoke about the project to standardize across</p> <p>15 the various divisions how the general ledgers are kept; correct?</p> <p>16 A Yes.</p> <p>17 Q Was that a project that you undertook with an outside</p> <p>18 consulting firm named Ankura?</p> <p>19 A No.</p> <p>20 Q Were you involved in a project related to updating the</p> <p>21 accounting processes with Ankura?</p> <p>22 A The company engaged Ankura to assist with an evaluation</p> <p>23 of the finance function so that areas of improvement could be</p> <p>24 identified.</p> <p>25 Q And that was something that you worked with Ankura on;</p>	<p>M. Hawthorn - by Defense - Cross (Mr. Amer) Page 5251</p> <p>1 issued, I've seen all these documents. So we have an electronic</p> <p>2 folder of keeping record of all of these individual statements.</p> <p>3 Q Let me just clarify, because I want to zero in on when</p> <p>4 you reviewed the statements from 2011 to 2015, did you review</p> <p>5 those upon arriving at the organization in 2016 in order to be</p> <p>6 able to perform your job functions?</p> <p>7 A Certainly, yes, the ones related to the hotel division</p> <p>8 that I was getting up to speed on. Certainly the other ones</p> <p>9 relating to the commercial aspect, I didn't learn about until</p> <p>10 much later.</p> <p>11 Q So specifically let's identify those. The ones that</p> <p>12 relate to commercial properties, that wouldn't have been -- that</p> <p>13 aren't within the auspices of the hotel division, that's 40 Wall</p> <p>14 Street, TIH Commercial, LLC, Trump Plaza and Trump Tower</p> <p>15 Commercial; correct?</p> <p>16 A Correct.</p> <p>17 Q And is it the case, then, that the statements for those</p> <p>18 entities from 2011 all the way through 2022 were not statements</p> <p>19 you -- that you reviewed until you prepared to testify here at</p> <p>20 this trial; is that right?</p> <p>21 A Not exactly.</p> <p>22 Q What is incorrect about that?</p> <p>23 A In my role as being the liaison for the monitor, I'm</p> <p>24 now copied on all correspondence of any financial documents</p> <p>25 submitted to lenders. So in addition to all these annual</p>

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<p>M. Hawthorn - by Defense - Cross (Mr. Amer) Page 5252</p> <p>1 statements for those properties, I'm also copied on quarterly</p> <p>2 bank compliance statements, so that we made information flow</p> <p>3 directly to the monitor.</p> <p>4 So, for example, the 2021 audited statements of 40</p> <p>5 Wall, TIHT Commercial, LLC, Trump Plaza, LLC, and Trump Tower</p> <p>6 Commercial, LLC, I am copied on correspondence relating to</p> <p>7 submission of those to lenders, including the 2021 financial</p> <p>8 statements, because in my role as a liaison to the monitor, I</p> <p>9 want to make sure we are encompassing any and all requests that</p> <p>10 they need.</p> <p>11 Q So we all understand the monitor was appointed in 2023,</p> <p>12 okay?</p> <p>13 A Incorrect. November of 2022.</p> <p>14 THE COURT: I think it was 2022.</p> <p>15 Q November of 2022. So just to be clear, you did not</p> <p>16 review -- can we just refer to 40 Wall Street, TIH Commercial,</p> <p>17 Trump Plaza, and Trump Tower Commercial as "the four commercial</p> <p>18 properties"?</p> <p>19 A Yes, sir.</p> <p>20 Q Okay. So am I correct that you did not review any of</p> <p>21 the statements on this chart for the four commercial properties</p> <p>22 prior to November of 2022?</p> <p>23 A That's fair.</p> <p>24 Q And you had no involvement in preparing the statements</p> <p>25 for the four commercial properties; correct?</p>	<p>M. Hawthorn - by Defense - Cross (Mr. Amer) Page 5254</p> <p>1 MR. AMER: Now let's go ahead and look at D-1055.</p> <p>2 (Whereupon, the exhibit was displayed on the</p> <p>3 screen.)</p> <p>4 (The witness was handed the exhibit.)</p> <p>5 Q This is a series of e-mails that you testified about on</p> <p>6 direct. Do you recall that?</p> <p>7 A Yes.</p> <p>8 Q Was the first time you saw this document in preparation</p> <p>9 for testifying at this trial?</p> <p>10 A Yes.</p> <p>11 Q So this was not anything that you looked at when you</p> <p>12 came -- when you were first employed back in 2016; right?</p> <p>13 A This particular e-mail? I don't recall having looked</p> <p>14 at it then.</p> <p>15 Q And this was not anything that you saw in connection</p> <p>16 with your role as liaison for the monitor; right?</p> <p>17 A Correct.</p> <p>18 Q And you'll see in Ms. Schroeder's e-mail, she mentions</p> <p>19 in the last sentence, "Mr. Trump's guaranty burns down to 0."</p> <p>20 Do you see that?</p> <p>21 A Yes.</p> <p>22 Q Is there anything in this document indicating that when</p> <p>23 the guaranty burns down to zero, that means the guarantor is no</p> <p>24 longer obligated to submit a compliance certificate attaching</p> <p>25 the guarantor's Statement of Financial Condition?</p>
<p>M. Hawthorn - by Defense - Cross (Mr. Amer) Page 5253</p> <p>1 A Correct.</p> <p>2 Q You testified on direct that you were not aware of any</p> <p>3 instance with respect to the preparation of the statements on</p> <p>4 this chart where Mazars asked for information and didn't receive</p> <p>5 it; is that right?</p> <p>6 A Correct.</p> <p>7 Q Okay.</p> <p>8 But with respect to the four commercial properties,</p> <p>9 since you weren't involved in the preparation of those</p> <p>10 statements, is it fair to say you wouldn't know what Mazars</p> <p>11 asked for or what was provided in response to those requests;</p> <p>12 right?</p> <p>13 A Yes, I was thinking about the hotel statements.</p> <p>14 Q So your response to Mr. Robert's question with respect</p> <p>15 to not knowing of any instance where Mazars asked for something</p> <p>16 and didn't get it in return, it excluded the four commercial</p> <p>17 property statements; right?</p> <p>18 A That's fair.</p> <p>19 Q And similarly, you had zero involvement in preparing</p> <p>20 Donald J. Trump's Statement of Financial Condition; correct?</p> <p>21 A Correct.</p> <p>22 Q And so you would have no knowledge of any requests that</p> <p>23 Mazars made during the course of the preparation of those</p> <p>24 statements; right?</p> <p>25 A Correct.</p>	<p>M. Hawthorn - by Defense - Cross (Mr. Amer) Page 5255</p> <p>1 A The e-mail does not say that.</p> <p>2 MR. AMER: And if we look at demonstrative DD2.</p> <p>3 (Whereupon, the exhibit was displayed on the</p> <p>4 screen.)</p> <p>5 Q This is a document I believe you testified you assisted</p> <p>6 in preparing; correct?</p> <p>7 A Yes.</p> <p>8 Q Were there others involved in its preparation?</p> <p>9 A In-house counsel and myself. I drew it on a piece of</p> <p>10 paper out of my mind, and they helped put it into a nice format.</p> <p>11 Q Other than formatting, is the entirety of the contents</p> <p>12 of this document something you prepared?</p> <p>13 A Um, most of it.</p> <p>14 Q Well, which part isn't?</p> <p>15 A The dates, the key terms, just the timeline, right. I</p> <p>16 could go back to the loan documents, understand the timeline of</p> <p>17 the loan to help simplify for the explanation of the history of</p> <p>18 this particular instrument.</p> <p>19 Q Well, how about what's in red? Is that yours?</p> <p>20 A Yes.</p> <p>21 Q Okay. And what was the basis for your concluding that</p> <p>22 the Donald J. Trump Statement of Financial Condition was not</p> <p>23 required between December 2014 and August 2020?</p> <p>24 A My understanding of the loan documents.</p> <p>25 Q And was that also the basis for your understanding that</p>

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<p>M. Hawthorn - by Defense - Cross (Mr. Amer) Page 5256</p> <p>1 -- was that also the basis for your stating that Donald J. 2 Trump's Statement of Financial Condition was not required 3 between July 2021 and October 2023? 4 A Yes, the loan documents. 5 MR. AMER: Let's go ahead and look at a document 6 that we've marked as Plaintiff's Exhibit 503. 7 (Whereupon, the exhibit was displayed on the 8 screen.) 9 MR. AMER: That's in evidence, actually. 10 (The witness was handed the exhibit.) 11 Q This is an e-mail from Joshua Frank at Deutsche Bank 12 that has a scan. 13 MR. AMER: And then if you look at the next page. 14 (Whereupon, the exhibit was displayed on the 15 screen.) 16 Q You'll see that it's a May 10, 2016 compliance 17 certificate. Do you see that? 18 A Yes. 19 Q And this is a compliance certificate from the 20 guarantor, Donald J. Trump. Do you see that? 21 A I see it. 22 Q Have you seen this document before? 23 A No. 24 MR. AMER: Can we put the side by side with the 25 demonstrative chart that we were just looking at.</p>	<p>M. Hawthorn - by Defense - Cross (Mr. Amer) Page 5258</p> <p>1 screen.) 2 MR. AMER: Actually, if we could just flip through 3 until we get to the Chicago one. 4 (Whereupon, the exhibit displayed on the screen was 5 scrolled through.) 6 (The witness was handed the exhibit.) 7 MR. AMER: Go back to five. 8 Q Do you see, on page five, there is a compliance 9 certificate. And that's on the Chicago loan? 10 A Yes. 11 Q We could go back. You saw that it was in respect to 12 the three loans, that included Chicago; right? 13 A Mm-hmm. 14 Q Had you seen this document before preparing the chart? 15 A No. 16 Q And so this is a 2018 compliance certificate attaching 17 the 2018 Statement of Financial Condition. Do you see that? 18 A Yes. 19 Q And it's your understanding that this was submitted 20 notwithstanding your view that there was no obligation to do so; 21 is that right? 22 A Correct. 23 Q And let's look at one more. 24 MR. AMER: Plaintiff's Exhibit 502. 25 (Whereupon, the exhibit was displayed on the</p>
<p>M. Hawthorn - by Defense - Cross (Mr. Amer) Page 5257</p> <p>1 (Whereupon, the exhibit was displayed on the 2 screen.) 3 Q You'll see that this is a compliance certificate being 4 sent during the period of time where you've written in red in 5 this chart that the Statement of Financial Condition was not 6 required. Do you see that? 7 A Yes. 8 Q Were you aware, when you were preparing this chart, 9 that, in fact, The Trump Organization had submitted a compliance 10 certificate in May 2016 that attached the 2015 Statement of 11 Financial Condition for Donald J. Trump as guarantor? 12 A Yes. 13 Q So it's your understanding that despite your view that 14 there was no obligation to provide a compliance certificate, 15 that nevertheless, the company did submit a compliance 16 certificate? 17 A Correct. 18 MR. AMER: Let's go ahead and -- 19 Q By the way, did you ask to see any of the compliance 20 certificates that had been submitted during the period where you 21 write in red that the statement was not required? 22 A I did not. 23 MR. AMER: Let's go ahead and show Plaintiff's 24 Exhibit 393 in evidence. 25 (Whereupon, the exhibit was displayed on the</p>	<p>M. Hawthorn - by Defense - Cross (Mr. Amer) Page 5259</p> <p>1 screen.) 2 Q And this is a year later. This compliance certificate 3 also for the Chicago loan; correct? 4 A Yes. 5 Q Have you seen this before? 6 A No. 7 Q This is a compliance certificate that was submitted 8 attaching the 2019 Statement of Financial Condition for Donald 9 J. Trump as guarantor; right? 10 A Yes. 11 Q And it's your understanding that this was submitted 12 notwithstanding your view that there was no obligation to do so; 13 is that correct? 14 A Correct. 15 MR. AMER: Let's go ahead and mark as Plaintiff's 16 Exhibit 5 -- I'm sorry. 17 Your Honor, I'm not sure that 502 was admitted into 18 evidence, but if it hasn't been, I would ask that it be 19 admitted. 20 THE COURT: Granted. It's in. 21 (Plaintiff's Exhibit 502 was deemed marked and 22 admitted in evidence.) 23 MR. AMER: Let's go ahead and look at Plaintiff's 24 Exhibit 563. 25 (Whereupon, the exhibit was displayed on the</p>

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<p style="text-align: right;">Page 5260</p> <p>1 screen.)</p> <p>2 (The witness was handed the exhibit.)</p> <p>3 (Continued on the next page.)</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 5262</p> <p>Hawthorn - by Defendant - Cross (Amer)</p> <p>1 THE COURT: Okay. Hold on.</p> <p>2 Mr. Kise?</p> <p>3 MR. KISE: Your Honor --</p> <p>4 MR. AMER: Do we need to excuse the witness if</p> <p>5 this is going to be a lengthy --</p> <p>6 MR. KISE: No. It is a quick question.</p> <p>7 Turnabout is fair play, I think is the phrase.</p> <p>8 What is the foundation about asking this witness</p> <p>9 for this document? It is hearsay and he is reading it</p> <p>10 into evidence between two individuals, neither of which is</p> <p>11 the witness. I don't know what the -- he is just reading</p> <p>12 it into evidence. It is hearsay. What is the purpose</p> <p>13 of --</p> <p>14 THE COURT: Well, we didn't let him finish and</p> <p>15 then ask questions.</p> <p>16 MR. KISE: Maybe we should excuse the witness</p> <p>17 then, because we kind of need to know what the question is</p> <p>18 before he reads the entire thing into evidence.</p> <p>19 MR. AMER: The witness has indicated he prepared</p> <p>20 a chart that says in this timeframe no Statement of</p> <p>21 Financial Condition was required to be submitted. And</p> <p>22 that's his view that there was no such obligation. This</p> <p>23 letter goes directly to that point, Your Honor.</p> <p>24 THE COURT: Objection overruled.</p> <p>25 MR. KISE: If he has never seen it before.</p>
<p style="text-align: right;">Page 5261</p> <p>Hawthorn - by Defendant - Cross (Amer)</p> <p>1 Q You will see, Mr. Hawthorn, that this is an e-mail</p> <p>2 from Gregory Candela to Adam Rosen dated September 23, 2022.</p> <p>3 Do you see that?</p> <p>4 A Yes, I see it.</p> <p>5 Q And this is during the period of time where you</p> <p>6 indicated in your chart in red that a Statement of Financial</p> <p>7 Condition is not required, right?</p> <p>8 A Correct.</p> <p>9 Q And this is -- the subject of this is the Chicago</p> <p>10 loan, correct?</p> <p>11 A Correct.</p> <p>12 Q I am going to read to you from this document. Have</p> <p>13 you seen this e-mail before?</p> <p>14 A No.</p> <p>15 Q "Adam, I write in response to your request,</p> <p>16 communicated to me on September 8, that in connection with the</p> <p>17 amended and restated guaranty of Donald J. Trump with respect</p> <p>18 to the outstanding loan by Deutsche Bank Trust Company Americas</p> <p>19 to 401 North Wabash Venture LLC, Deutsche Bank agree to accept,</p> <p>20 in lieu of the annual Statement of Financial Condition of the</p> <p>21 guarantor as of June 30, 2022, required by section 11(i)(A) of</p> <p>22 the guaranty to be delivered to Deutsche Bank by October 28,</p> <p>23 2022, a one-page spreadsheet that shows his material assets and</p> <p>24 liabilities, but does not show any valuations of real estate</p> <p>25 assets."</p>	<p style="text-align: right;">Page 5263</p> <p>Hawthorn - by Defendant - Cross (Amer)</p> <p>1 THE COURT: So?</p> <p>2 MR. KISE: Okay.</p> <p>3 THE COURT: Okay, overruled.</p> <p>4 If you want to continue reading, or whatever.</p> <p>5 MR. AMER: I do, just the next sentence.</p> <p>6 Q "The modified financial reporting you have proposed</p> <p>7 is not acceptable to Deutsche Bank."</p> <p>8 Do you see that?</p> <p>9 A I see it.</p> <p>10 Q Were you aware that there was a request made to</p> <p>11 excuse the Trump Organization from having to submit Donald J.</p> <p>12 Trump's annual Statement of Financial Condition as of June 30,</p> <p>13 2022 during the period where you wrote in your chart that no</p> <p>14 such obligation existed?</p> <p>15 A I was aware of a disagreement between the parties on</p> <p>16 the interpretation of the loan.</p> <p>17 Q Well, this is not a disagreement, this is a request</p> <p>18 that the bank accept something in lieu of the Statement of</p> <p>19 Financial Condition. And the bank says no, it is not</p> <p>20 acceptable. Right?</p> <p>21 MR. KISE: Your Honor, now he is testifying and</p> <p>22 arguing with the witness. The witness answered his</p> <p>23 question.</p> <p>24 MR. ROBERT: I am curious if Mr. Amer is going</p> <p>25 to show the response from Mr. Rosen to Mr. Candela. Which</p>

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Hawthorn - by Defendant - Cross (Amer)	Page 5264	Hawthorn - by Defendant - Cross (Amer)	Page 5266
1 maybe is the next document to show the witness?		1 Court reporter.)	
2 MR. AMER: I am going to conduct my exam the way		2 Q Let's go ahead and look at Plaintiff's Exhibit 562.	
3 I am going to conduct it.		3 THE COURT: Mr. Kise?	
4 MR. ROBERT: For completeness, I would think you		4 MR. KISE: Your Honor, this e-mail that he is	
5 want to respond.		5 moving into evidence, the one between Candela and Rosen, I	
6 MR. AMER: You can do redirect.		6 mean, it is one thing to question him about it for	
7 THE COURT: There is a little bit of testimony		7 impeachment, but to move it into evidence substantively	
8 in your question. Can you rephrase?		8 without any foundation, that's quite a different matter	
9 MR. AMER: The witness characterized this as a		9 altogether. What is the foundation? This isn't between	
10 disagreement.		10 either of the recipients -- the recipient or the sender.	
11 Q Where in this letter do you see a disagreement?		11 And it is being offered to prove what, the truth of the	
12 A Not in this e-mail.		12 matter asserted? It is a hearsay document.	
13 Q Okay. This e-mail is a rejection of a proposal,		13 THE COURT: The credibility of the witness.	
14 correct?		14 MR. KISE: That's impeachment.	
15 A Yes.		15 THE COURT: The correctness of the witness.	
16 Q And at the bottom of this e-mail, if we could go down		16 MR. KISE: That's impeachment, not substantive	
17 to the bottom, it says Deutsche Bank will not agree to waive or		17 evidence. I don't see how this comes in as substantive	
18 otherwise modify the guarantor's obligation to deliver to		18 evidence. It is hearsay.	
19 Deutsche Bank no later than October 28, 2022, his annual		19 MR. AMER: We can limit it for purposes of	
20 Statement of Financial Condition (as defined in the guaranty)		20 notice, Your Honor, to Adam Rosen of the Trump	
21 as of June 30, 2022.		21 Organization.	
22 Do you see that?		22 THE COURT: Admitted as evidence of notice?	
23 A I see it.		23 MR. AMER: Notice of the contents -- notice of	
24 Q Were you aware in September 2022 that Deutsche Bank's		24 the contents of the letter, the e-mail which is Deutsche	
25 view was that the guarantor had an obligation to deliver Donald		25 Bank's position. Notice to Adam Rosen of Deutsche Bank's	
Hawthorn - by Defendant - Cross (Amer)	Page 5265	Hawthorn - by Defendant - Cross (Amer)	Page 5267
1 J. Trump's Statement of Financial Condition?		1 position that they were not accepting the proposal.	
2 A Yes.		2 THE COURT: Sounds good to me. Seems to be an	
3 Q And your view is that no such obligation existed; is		3 important part of this case.	
4 that right?		4 MR. KISE: Notice of Deutsche Bank's position?	
5 A Yes.		5 THE COURT: Right.	
6 Q And your view is based on the loan documentation that		6 MR. KISE: Same objection.	
7 is the same documentation that Deutsche Bank is looking at when		7 Q This is another e-mail from Mr. Candela to Mr. Rosen.	
8 they write this e-mail, correct?		8 This one dated a month later in October of 2022. This is still	
9 A Yes.		9 during the period of time where you have written in red that	
10 THE COURT: Well, he wouldn't necessarily know		10 there was no obligation to submit a compliance certificate,	
11 what Deutsche Bank was looking at. But I understand.		11 correct?	
12 Q It is the same loan documentation that Deutsche Bank		12 A Yes.	
13 had in its files. Right?		13 Q Have you seen this e-mail before?	
14 THE COURT: He doesn't know what they looked at.		14 A No.	
15 But you could -- we will take the question to mean, did		15 Q And in the second paragraph, which I'll just read to	
16 they have the same information that the witness looked at.		16 you, Mr. Candela writes to Mr. Rosen at the Trump Organization:	
17 And his answer is yes.		17 Having considered the request, Deutsche Bank is	
18 THE WITNESS: I believe so, yes.		18 willing to agree to extend the guarantor's time by which to	
19 MR. AMER: Your Honor, I move to admit		19 deliver the three financial reports specified above by from	
20 Plaintiff's Exhibit 563.		20 October 28 to December 31 on the condition that:	
21 THE COURT: Granted, it is in.		21 And then little (ii): The guarantor timely delivers	
22 MR. ROBERT: Same objection.		22 his annual certificate of compliance required by section	
23 THE COURT: Overruled.		23 11(i)(D) of the guaranty by the due date of October 28.	
24 (Whereupon, the document referred to was deemed		24 Do you see that?	
25 marked for evidence as Plaintiff's Exhibit 563 by the		25 A Yes.	

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Hawthorn - by Defendant - Cross (Amer) Page 5268

1 Q Were you aware when you were preparing your chart
2 indicating there was no obligation for the guarantor to provide
3 a Statement of Financial Condition, that the bank's view was
4 that the extension -- that an extension would be granted to
5 December 31 on the condition that the guarantor timely delivers
6 his annual certificate of compliance?
7 A I am sorry, that was a long question, you lost me.
8 THE COURT: Do you want a readback?
9 MR. AMER: If I could get a readback.
10 THE COURT: Read back, please.
11 (Whereupon, the record was read back by the
12 court reporter.)
13 A I was probably not aware, no.
14 Q Would you agree that the bank's position as set forth
15 in this e-mail is inconsistent with your view that there was no
16 obligation to provide a Statement of Financial Condition for
17 the guarantor in this time period?
18 A Correct.
19 Q And if you look further down in this e-mail,
20 Mr. Candela writes: For your awareness and in considering the
21 request and proposing the agreement described above, Deutsche
22 Bank considered various factors, including but not limited to
23 the following:
24 And then I want to mention the second bullet, which
25 says:

Hawthorn - by Defendant - Cross (Amer) Page 5269

1 By operation of the guaranty, because the
2 loan-to-value ratio produced by last year's appraisal was less
3 than 35 percent, the step-down percentage of the guaranty is
4 currently zero percent.
5 Do you understand that to be a confirmation that the
6 guaranty has burned off?
7 A Correct.
8 Q And so notwithstanding the fact that the guaranty has
9 burned off, Deutsche Bank is still insisting that the guarantor
10 must deliver Donald J. Trump's Statement of Financial Condition
11 as part of a certificate of compliance, correct?
12 A That's what this e-mail says.
13 Q And the next bullet says:
14 Also by operation of the guaranty, because the
15 step-down percentage of the guaranty is currently zero percent,
16 the guarantor is not currently subject to a minimum net worth
17 requirement.
18 Do you see that?
19 A Yes.
20 Q And can we agree that notwithstanding the fact that
21 there is no minimum net worth requirement, Deutsche Bank is
22 still insisting that Donald J. Trump submit a certificate of
23 compliance with his Statement of Financial Condition?
24 A Yes.
25 Q So, would you agree that Deutsche Bank views the

Hawthorn - by Defendant - Cross (Amer) Page 5270

1 guarantor as being under an obligation to submit a certificate
2 of compliance with Donald J. Trump's Statement of Financial
3 Condition, notwithstanding the fact that the guaranty has
4 burned down to zero and there is no net worth requirement?
5 A I don't know if this is the only e-mail related to
6 the exchange, so I don't know if this was the final conclusion.
7 Again, there is likely responses from Mr. Rosen that iterate
8 our position as a company, so I can't say if this was the final
9 determination or not. This is just one e-mail.
10 Q Well, can we agree that based on this e-mail that is
11 what the bank's position is?
12 A As of the date of this e-mail and as of the time of
13 this e-mail, yes.
14 MR. AMER: Your Honor, I move to admit
15 Plaintiff's Exhibit 562 for notice purpose.
16 THE COURT: Granted, it is in.
17 (Whereupon, the document referred to was deemed
18 marked for evidence as Plaintiff's Exhibit 562 by the
19 Court.)
20 Q I want to show you Defendant's Exhibit 1047 which you
21 were asked about on direct.
22 I believe Mr. Hawthorn, your testimony was that you
23 prepared this compliance certificate, right?
24 A Yes.
25 Q And I think you said that in order to prepare this

Hawthorn - by Defendant - Cross (Amer) Page 5271

1 you had to review the borrowing entity's compilation statement
2 and the numbers in that statement; is that right?
3 A Yes.
4 Q And is that what you believe you were required to do
5 as the person preparing this compliance certificate?
6 A Yes.
7 Q And am I correct that you were never asked by anyone
8 to prepare the compliance certificate for any year for the
9 guarantor on the loans?
10 A Correct.
11 MR. AMER: Let's go ahead and pull up
12 demonstrative DD-3.
13 Q And this is a chart you prepared relating to the
14 Doral loan?
15 A Yes.
16 (Hanging)
17 Q Did you receive any assistance preparing this, other
18 than assistance in formatting?
19 A Mostly my work.
20 Q Well, you say "mostly," is there work that isn't
21 yours?
22 A Um, no. Again, it was probably in consultation with
23 in-house counsel.
24 Q And am I correct that you are not suggesting on this
25 chart that there was ever a point in the life of this loan

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<p>Hawthorn - by Defendant - Cross (Amer) Page 5272</p> <p>1 where the guarantor ceased to have an obligation to submit a 2 compliance certificate with Mr. Trump's Statement of Financial 3 Condition? 4 A I am sorry, could you say it one more time? 5 Q Sure. I'll rephrase it. 6 Are you suggesting that there was ever a point in the 7 life of this loan where the guarantor ceased to have an 8 obligation to submit a compliance certificate attaching 9 Mr. Trump's Statement of Financial Condition? 10 A No, I am not suggesting that. 11 Q Mr. Hawthorn, you also testified about your role in 12 liaising with the monitor; do you recall that? 13 A Yes. 14 Q And you characterized the relationship with the 15 monitor in various ways. I would like to share with you some 16 portion of the Judge's summary judgment decision discussing the 17 monitor's reporting, and ask you if you are familiar with it. 18 MR. AMER: If we could pull up the Court's 19 decision at page 33? 20 Q First of all, have you read the Court's summary 21 judgment decision in this case? 22 A Not wholly, but the section you have there I am 23 familiar with. 24 Q And the decision states on August 3, 2023 Judge Jones 25 reported as follows:</p>	<p>Hawthorn - by Defendant - Cross (Amer) Page 5274</p> <p>1 A Yes. 2 Q And she -- and Judge Jones finally states: 3 In addition, annual audited financial statements for 4 certain entities prepared by an external accounting firm list 5 depreciation expenses. However, interim internally prepared 6 financial statements provided to third parties for these same 7 entities inconsistently report depreciation expenses. 8 Were you aware that Judge Jones had identified such 9 inconsistencies? 10 A Yes. 11 MR. AMER: That's all I have, Your Honor. 12 THE COURT: Any redirect? 13 MR. ROBERT: We have some, but we will need to 14 print a few documents we would need to use. I ask if we 15 can take our afternoon break a few minutes earlier and 16 then resume. 17 THE COURT: Okay. All right, 3:25. 18 MR. ROBERT: Thank you, sir. 19 (Pause in the proceedings.) 20 COURT OFFICER: All rise. Part 37 is back in 21 session. Please be seated and come to order. 22 THE COURT: Can we discuss scheduling, 23 particularly Friday of this week and next week, the 24 following week. 25 I'll ask defendants in the first instance what</p>
<p>Hawthorn - by Defendant - Cross (Amer) Page 5273</p> <p>1 Since my appointment, I have reviewed material, 2 financial and accounting information submitted by the Trump 3 Organization. As part of my review, I have made preliminary 4 observations regarding certain current financial disclosures 5 with respect to the Trump Organization's reporting of financial 6 information. 7 Specifically, I have observed that information 8 regarding certain are material liabilities provided to 9 lenders -- such as intercompany loans between or among Trust 10 entities and Donald J. Trump, certain of the Trust's contingent 11 liabilities, as well as refundable golf club membership 12 deposits -- has been incomplete. 13 Were you aware that Judge Jones had issued a report 14 indicating that an aspect of the organization's reporting of 15 financial information has been incomplete? 16 A Yes, we are aware of this letter. 17 Q I was asking more if you were aware of the specific 18 statement conclusion that Judge Jones reached that certain 19 reporting had been incomplete? 20 A Yes. 21 Q She goes on to -- Judge Jones goes on to say the 22 Trust has also not consistently provided all required annual 23 and quarterly certifications attesting to the accuracy of 24 certain financial statements. 25 Were you aware that Judge Jones reported that?</p>	<p>Hawthorn - by Defendant - Cross (Amer) Page 5275</p> <p>1 they are intending. 2 MR. KISE: I think, Judge, the witnesses 3 identified for this week will take us through Friday, the 4 ones that we already have, the Deutsche Bank witnesses. 5 THE COURT: Let's go over who they are so we are 6 sure we are on the same page. 7 MR. KISE: Williams, Sullivan, Pereless. Well, 8 Mr. Birney will probably spill over until tomorrow, some 9 tomorrow. And then we have, I think, Williams, Sullivan, 10 Pereless, Bravlik and then Unell, who is the banking 11 expert. 12 We will start -- we may not be done with 13 Ms. Bravlik until Thursday morning, so I think, you know, 14 the plan anyway, is that Unell will take us through 15 Friday. 16 THE COURT: I'll turn the microphone over to my 17 person who sits alongside of me. 18 MS. GREENFIELD: Just in case, can we have 19 another witness for Friday? Who were you planning to call 20 next Monday? Can they be available just in case we finish 21 that witness early? 22 MR. KISE: So Mr. Chin is in another trial on 23 Friday, who is called for Monday. 24 MS. GREENFIELD: Who do we have for Monday? 25 MR. KISE: Monday is Fred Chin.</p>

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Hawthorn - by Defendant - Cross (Amer)	Page 5276	Hawthorn - by Defendant - Redirect	Page 5278
<p>1 THE COURT: And you expect that to be an entire</p> <p>2 day.</p> <p>3 MR. KISE: That one, yes, he will be. And then</p> <p>4 Moens, Schubin, on Tuesday.</p> <p>5 MS. GREENFIELD: I am sorry, can you spell</p> <p>6 those?</p> <p>7 MR. KISE: M-O-E-N-S, Lawrence Moens.</p> <p>8 And then John Schubin S-C-H-U-B-I-N.</p> <p>9 And then he will continue over a little bit on</p> <p>10 Wednesday. And then we will have Eric Trump on Wednesday</p> <p>11 the 6th, either late morning or early afternoon. And then</p> <p>12 Elie Bartov B-A-R-T-O-V will be the Thursday and over into</p> <p>13 Friday.</p> <p>14 MS. GREENFIELD: Okay. And then who else?</p> <p>15 MR. KISE: And then the Monday will be President</p> <p>16 Trump, the 11th, at least that's the plan. I don't have</p> <p>17 final confirmation that's his schedule, but I think we can</p> <p>18 make that work.</p> <p>19 THE COURT: And that's your final witness?</p> <p>20 MR. KISE: Right. So there may be, kind of like</p> <p>21 we had with the plaintiff's case, there may be a little</p> <p>22 gap between when Bartov is done and Trump takes the stand,</p> <p>23 because I don't know that we can get him here on the 8th.</p> <p>24 Fridays and Saturdays tend to be pretty challenging.</p> <p>25 THE COURT: Okay.</p>		<p>1 just to make sure we are not creating gaps on the</p> <p>2 schedule.</p> <p>3 THE COURT: Well, if that's all his testimony</p> <p>4 would be, legality or the effect of the easements, I</p> <p>5 suppose that would fall under the rule that there are no</p> <p>6 legal experts allowed.</p> <p>7 MR. WALLACE: I believe we briefed that in our</p> <p>8 preliminary -- our motions, which were held in abeyance</p> <p>9 pending people being free to reraise their objections</p> <p>10 during trials. That's a note that we plan to reraise that</p> <p>11 objection.</p> <p>12 MR. KISE: We could potentially argue that this</p> <p>13 Friday before Mr. Schubin takes the stand next week, and</p> <p>14 that way we will know.</p> <p>15 MR. WALLACE: That's fine from our perspective.</p> <p>16 THE COURT: Fine.</p> <p>17 So the redirect of current witness.</p> <p>18 MR. ROBERT: Yes, Your Honor.</p> <p>19 (Whereupon, the witness resumed the stand.)</p> <p>20 THE COURT: Okay. Please proceed.</p> <p>21 MR. ROBERT: Thank you, Your Honor.</p> <p>22 Can you hear me?</p> <p>23 THE COURT: Yes.</p> <p>24 (Transcript continued on next page.)</p> <p>25</p>	
Hawthorn - by Defendant - Cross (Amer)	Page 5277	Hawthorn - by Defendant - Redirect (Robert)	Page 5279
<p>1 MR. ROBERT: Just so we are clear, if Mr. Birney</p> <p>2 doesn't finish today, which he probably won't, we may have</p> <p>3 to take a break with him and put him on after we are done</p> <p>4 with the Deutsche Bank witnesses.</p> <p>5 MS. GREENFIELD: I recall you said that last</p> <p>6 week. We got that.</p> <p>7 When do we know if there is going to be a</p> <p>8 rebuttal?</p> <p>9 MR. WALLACE: I believe we will know by the</p> <p>10 middle of next week. We will update you on Friday if at</p> <p>11 that point we think there is a need to bring back any</p> <p>12 rebuttal witnesses, and if so who they would be. It will</p> <p>13 be minimal at this point though, I think it is fair to</p> <p>14 say.</p> <p>15 MS. GREENFIELD: Okay. Thank you.</p> <p>16 MR. WALLACE: I would just also note, I think we</p> <p>17 will reraise our objections to Mr. Schubin's testimony.</p> <p>18 He is an attorney who is going to testify about the legal</p> <p>19 standards surrounding easements on the Mar-a-Lago</p> <p>20 property. So we plan to renew an objection to his</p> <p>21 testimony, since, in our view, that is a legal opinion and</p> <p>22 is an improper basis for expert testimony.</p> <p>23 I think we may have other objections to some of</p> <p>24 the experts, but that one I think we would seek to exclude</p> <p>25 Mr. Shubin at some point. And we can arrange that timing</p>		<p>1 REDIRECT EXAMINATION</p> <p>2 BY MR. ROBERT:</p> <p>3 Q Mr. Hawthorn, when Mr. Amer was questioning you he</p> <p>4 asked you some questions regarding the analytical procedures</p> <p>5 used for a compilation report; do you remember that?</p> <p>6 A Yes.</p> <p>7 Q And you testified that there was no testing involved,</p> <p>8 correct?</p> <p>9 A Yes.</p> <p>10 Q What, if in any way, does GAAP affect the procedures</p> <p>11 to follow for a compilation?</p> <p>12 A GAAP is still to be followed and also complied with.</p> <p>13 Q You were also asked a series of questions about the</p> <p>14 loan for Chicago; do you remember that?</p> <p>15 A Yes.</p> <p>16 Q And Mr. Amer showed you some e-mails that set forth</p> <p>17 Deutsche Bank's position; do you remember that?</p> <p>18 A Yes.</p> <p>19 Q After that exchange of e-mails in October of 2022,</p> <p>20 did the Trump Organization ever submit a Statement of Financial</p> <p>21 Condition to Deutsche Bank?</p> <p>22 A No.</p> <p>23 Q And did the bank ever send a default notice to the</p> <p>24 Trump Organization after October of 2022?</p> <p>25 A No.</p>	

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Hawthorn - by Defendant - Redirect (Robert)	Page 5280	Hawthorn - by Defendant - Redirect (Robert)	Page 5282
1 Q And ultimately that loan was paid off, correct?		1 Q Do you have an understanding of what Judge Jones is	
2 A Correct.		2 saying in that last sentence?	
3 Q Mr. Amer also was questioning you about portions of		3 A I do.	
4 Justice Engoron's summary judgment decision; do you remember		4 Q What is that?	
5 that?		5 A During the course of the monitorship, as I mentioned,	
6 A Yes.		6 we had a lot of discourse between the monitor of what they	
7 Q And specifically he was asking you questions related		7 observed and what our response to those observations were. So,	
8 to Justice Engoron quoting from Barbara Jones' August 3, 2023		8 ten months into the monitorship we were advised by the	
9 letter; do you remember that?		9 monitor's representatives that they would be advising the Court	
10 A Yes.		10 of some updates. They provided to us in a meeting certain of	
11 MR. ROBERT: I would like to present to the		11 those matters for discussion, with which we provided responses.	
12 witness Defendant's Exhibit 1057 for identification.		12 Specifically to the matters that are raised here,	
13 (Hanging)		13 that's what this is talking about.	
14 Q Mr. Hawthorn, what do you recognize this document to		14 Q And, sir, was the information incomplete?	
15 be?		15 A It is our view that it was not because of our	
16 A This is a letter from Judge Jones on Bracewell		16 response to the information. Specifically, for each point	
17 letterhead updating the Court on the status of the monitorship.		17 noted here, the observation of information regarding certain	
18 MR. ROBERT: Your Honor, I'll represent that		18 material provided to lenders, as you know the company no longer	
19 this is filed on the public docket as NYSCEF 647. And I		19 prepares a Statement of Financial Condition. It is not	
20 ask that this document be introduced into evidence as		20 required by any lender. The company simply prepares a	
21 Defense Exhibit 1057.		21 statement of assets, material assets and material liabilities	
22 MR. AMER: No objection.		22 to lenders. So one of the lenders, for example, today, that	
23 THE COURT: Granted. It is in.		23 has the Doral loan, receives that information.	
24 (Whereupon, the document referred to was deemed		24 Obviously because it is being provided to a lender it	
25 marked for evidence as Defendant's Exhibit 1057 by		25 is provided to the monitor. And the monitor had some questions	
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1 the Court.)		1 about it. One of the questions arose relating to one of our	
2 Q Mr. Hawthorn, I am going to draw your attention to		2 Scotland entities. So if you remember, we have a hotel in	
3 page two of this letter.		3 Scotland, Trump Turnberry. We also have Trump Aberdeen. In	
4 MR. ROBERT: If you could put it up on the		4 connection with the monitor's also review of those financial	
5 screen, Nate, as well?		5 statements, because they review all of the financial	
6 Q And I start by drawing your attention to the first		6 statements, they identified to us and had questions about what	
7 paragraph. Do you see that, sir?		7 was disclosed in those financial statements about an	
8 A Yes.		8 intercompany loan to the Trust.	
9 Q Let's go through the first paragraph. What does the		9 Our response was, yes, that exists because the	
10 first sentence say?		10 company upon purchasing the Trump Turnberry asset in 2014	
11 A As noted above, since my appointment I have reviewed		11 effectively loaned money to the Scotland entity, was set up as	
12 material, financial and accounting information submitted by the		12 a shareholder loan, and therefore that entity owes back money	
13 Trump Organization.		13 to the Trust, to the parent entity.	
14 Q Continue, sir.		14 This is what is referred to as an intercompany loan.	
15 A As part of my review I have made preliminary		15 It is not a loan to a third party. It is not a loan that is	
16 observations regarding certain -- certain financial disclosures		16 callable accept by the owner of the loan, which is the same	
17 with respect to the Trump's organizations reporting of		17 party.	
18 financial information.		18 So, the monitor's observation to us was, your	
19 Q Continue.		19 statement of liabilities doesn't include this loan. Why does	
20 A Specifically, I have observed that information		20 it not?	
21 regarding certain material liabilities provided to lenders --		21 And our response was, well, if you are going to put	
22 such as intercompany loans between or among Trust entities and		22 the loan as a liability, you also have to put the asset, the	
23 Donald J. Trump, certain of the Trust's contingent liabilities,		23 receivable as well, because the Trust is owed that money from	
24 as well as refundable golf club membership deposits -- has been		24 itself, effectively.	
25 incomplete.		25 They asked why was that information not included if	

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<p>Hawthorn - by Defendant - Redirect (Robert) Page 5284</p> <p>1 you are submitting this to lenders. And our response is, it is 2 not something a lender would be concerned about because it is 3 not to a third party, it is to yourself. So in our view the 4 statement that we provided and continue to provide, is 5 completely accurate and completely transparent. 6 However, they had -- even though no lender had asked 7 us to make a change about it, the monitor said, would you take 8 our question under advisement and perhaps going forward you 9 could make a footnote on the schedule identifying that this is 10 an intercompany loan. So that's what this item is related to. 11 It is simply a loan within the Trust, not owed to a third 12 party. 13 So for someone to say it is incomplete, we actually 14 disagree with that because it is not something a lender would 15 be interested in. It is not an obligation outside of yourself. 16 If you are going to put a loan, you also have to put the 17 receivable. We didn't think it made sense to gross up assets 18 and liabilities. Rather, just if you want us to disclose it as 19 a footnote, we will. So prospectively we have done that. We 20 have made that revision. 21 (Whereupon, the following proceedings were 22 stenographically recorded by Senior Court Reporter Michael 23 Ranita.) 24 25</p>	<p>M. Hawthorn - by Defense - Redirect (Mr. Robert) Page 5286</p> <p>1 of those submissions in January and February of 2023, included 2 certain balance sheet information and income statement 3 information of our golf courses to, um, leasing companies for 4 golf course maintenance equipment. Certainly not material 5 things in the scope of the company at large, but because it was 6 going to a leasing company, we wanted to make sure the monitor 7 saw that. Included on those balance sheets for those 8 individual, um, golf clubs includes a liability for refundable 9 membership deposits. 10 Most of those deposits come about when The Trump 11 Organization acquired a club in the past, and the policy of the 12 club was that those membership deposits for people who joined 13 the club were refundable. So therefore it's a liability on your 14 balance sheet. 15 Um, the reality is prospectively, and now, the company 16 doesn't have that policy. It doesn't have refundable membership 17 deposits. If someone wants to join the club, they have to pay 18 the cost to join the club now, and those deposits are generally 19 non-refundable. 20 Now, the monitor identified, well, okay certain of 21 these golf clubs that you are giving to a golf course 22 maintenance leasing company shows these liabilities, why 23 wouldn't you have that on the statement of material assets and 24 liabilities to the main lender, and why would it not be 25 disclosed.</p>
<p>M. Hawthorn - by Defense - Redirect (Mr. Robert) Page 5285</p> <p>1 Q We now go on Mr. Hawthorn, to the last sentence of this 2 paragraph. Can you read that? 3 A Sorry, the other comment in the sentence says "that 4 certain contingent liabilities, as well as refundable golf club 5 membership deposits has been incomplete. We were also aware 6 that the statement of material liabilities" -- 7 MR. AMER: I'm sorry, your Honor, I don't think 8 this responds to the question. I'm not sure. 9 MR. ROBERT: I told him to finish the sentence. 10 MR. AMER: I thought you asked him to read the next 11 sentence. 12 MR. ROBERT: I apologize if I said the next 13 sentence. 14 A There's two items noted in that sentence I want to make 15 sure I address it for completeness. The monitor asked us why 16 certain membership deposits at golf clubs would not be reflected 17 in the statement of material liabilities. The only reason that 18 the monitor observed these particular liabilities is that they 19 inquired of us for any and all financial reporting. 20 So when I made a statement before about a mutual 21 understanding, it was a mutual understanding about materiality. 22 At the onset of the monitorship, we were being as diligent and 23 forthright as we could, disclosing everything we possibly could. 24 The order said provide sales tax returns, financial 25 information to any party, and so we did that. Included in some</p>	<p>M. Hawthorn - by Defense - Redirect (Mr. Robert) Page 5287</p> <p>1 And our response is, they are not included on there 2 because if you included those liabilities, there's actually a 3 greater asset value associated with them. If those members 4 leave, a new member would have to join. You know, for a new 5 member to join, those members leave, and you would get a much 6 greater value from the new membership coming in. So from our 7 perspective and our disclosure to the monitor, by not including 8 those liabilities, we are actually being conservative, otherwise 9 we will have to put a much larger asset value offsetting those 10 liabilities, if that makes sense. 11 THE COURT: I follow that. What if they couldn't 12 find somebody to become a new member? 13 THE WITNESS: That's a possibility. But, um, in 14 our experience, membership changes very frequently. Certain 15 clubs, there are waiting lists to join membership. So in 16 most instances people are waiting to join, for old members 17 to leave for new members to come in. 18 Nonetheless, the statement of assets and 19 liabilities has a footnote that literally says, um, certain 20 contingent liabilities may be excluded. And, again, the 21 unfortunate thing about this disclosure doesn't mention 22 anything about materiality. In my experience, as an auditor 23 and public accounting, like none of these items are material 24 to the organization's financial representation as a whole, 25 if you are talking about these types of liabilities.</p>

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1 THE COURT: How much was the average membership
2 back then?
3 THE WITNESS: Um, it's hard to say. It varies by
4 club.
5 THE COURT: Several hundred thousand dollars?
6 THE WITNESS: Sure.
7 THE COURT: Where are we drawing the line on
8 materiality?
9 THE WITNESS: We are talking about billions of
10 dollars of asset value, and liability value of much less
11 than that.
12 THE COURT: All right. Just continue.
13 Q Fair to say, Mr. Hawthorn, that you respectfully
14 disagree with the statement that it's incomplete?
15 A We explained to the monitor, we don't think it's
16 incomplete. We think it's accurate. In working with the
17 monitor in good faith, we understood their requests. We
18 understood that even though the lender asked for us to include
19 this or has a concern with this, we would take their advice and
20 prospectively take the footnote and make it clear.
21 Q Let's go down to the last sentence in this paragraph.
22 If you could read that.
23 A "The trust also has not consistently provided all
24 required annual and quarterly certifications attesting to the
25 accuracy of certain financial statements."

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1 Q What is your view as to that statement, sir?
2 A Again, all of the multitude of financial statements,
3 quarterly compliance, annual compliance certificates that the
4 monitor reviewed, they identified that for a handful of them,
5 and those would relate to the commercial properties we talked
6 about earlier, like Trump Plaza, Trump International Commercial,
7 that historically, if you look at the actual loan document,
8 which was written many years ago, the financial reporting
9 section says the submission of these financials should also be
10 accompanied by a certification signed, right. And if you look
11 going back to the inception of these loans, every time it was
12 submitted by the company, there was no manual signature on the
13 paper that it was scanned and delivered to the lender.
14 Our response was, well, we understand that that's not
15 technically what the loan document says, but the bank has never
16 asked us to sign it over many years, so the practice has always
17 just continued. Um, and frankly when you submit something on
18 its face to a lender, you are already de facto, you know,
19 disclaiming the accuracy of it saying these are the statements
20 that you need. However, we said, "No problem. Going forward,
21 if you would like to add a signature line and someone to
22 physically sign the statement, we will do that." And we did
23 that going forward.
24 So, again, I get to say that something relating to a
25 statement --

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1 THE COURT REPORTER: I'm sorry, something
2 relating --
3 A To say that something is incomplete is very broad and
4 general, but I think the specificity of it, again, in my
5 experience, this is nothing adversely material. This is nothing
6 misleading. This is nothing with an intent to defraud. These
7 are all observations that we discussed with the monitor when
8 they were advising of us these points.
9 Q I move to the next paragraph, Mr. Hawthorn.
10 MR. ROBERT: If we could bring that up on the
11 screen.
12 (Whereupon, the exhibit was displayed on the
13 screen.)
14 A So this says, "In addition, annual audited financial
15 statements for certain entities, prepared by an external
16 accounting firm, list depreciation expenses. However, interim
17 internally prepared financial statements provided to third
18 parties for these same entities inconsistently report
19 depreciation expenses."
20 Again, this arose from the same disclosure of financial
21 information sent to a golf course maintenance lender, back in
22 January and February, that even if we were to do it today, it
23 may not even meet the materiality threshold. But nonetheless,
24 those statements, if you are signing up to lease golf course
25 maintenance equipment like mowers and blowers and things like

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1 that, the leasing company wants to understand that you have
2 available cash flow and available financial wherewithal when you
3 submit your financial statements.
4 They don't require audited financial statements, which
5 would be in accordance with GAAP and have noncash charges, such
6 as depreciation expense. So we simply provide internally
7 prepared management financial expense, revenue, expected net
8 operating income. On those statements, what they observed, and
9 what we agreed with, is that the depreciation line was blank and
10 it was zero.
11 And our response was, at the time these were needed to
12 be prepared, depreciation expense was not yet finalized.
13 Depreciation expense for these entities is usually done on an
14 annual basis at the end of the period, because these entities
15 don't have audited financial statements. They only are needed
16 for tax returns and other purposes for filing taxes, and
17 therefore the accounting firm, Whitley Penn, Mazars, previously,
18 would do that calculation on behalf of the company at the end of
19 the year.
20 So our point was, yes, we agree with that statement,
21 and, again, our response was, number one, it's okay, because
22 it's an internal statement. It's not intended to be an audited
23 statement.
24 And number two, the receiving party doesn't really care
25 about depreciation because it's a noncash charge. It doesn't

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<p>M. Hawthorn - by Defense - Redirect (Mr. Robert) Page 5292</p> <p>1 impact a lender's analysis if you have cash flow to service a 2 lease. 3 So we did have an internal conference call with the 4 monitor in August, or probably in July of 2023 as they reviewed 5 these points with us. They were, again, cordial, they were 6 explaining to us. We explained our responses very clearly. Um, 7 they did give us a draft of this before it went out. We did 8 strongly disagree with their draft because of the way it was 9 worded. It's very, you know, it's very vague and doesn't give 10 materiality. So I think to someone reading it without the 11 context might assume certain conclusions. But, again, with me 12 providing some specificity over these things being not adversely 13 material to the company, and our responses to them being, you 14 know, what we believed to be accurate, I just wanted to clarify 15 that point. 16 Q For this last paragraph we just read are you telling us 17 that those third parties are literally the golf course 18 maintenance contracts for the plow and the lawn mower? 19 A Correct. 20 Q Let's go to the next paragraph, Mr. Hawthorn. 21 (Whereupon, the exhibit was displayed on the 22 screen.) 23 Q If you could read that, please. 24 A "The defendants maintain that its practices related to 25 these items are adequate. However, in the interest of</p>	<p>M. Hawthorn - by Defense - Recross (Mr. Amer) Page 5294</p> <p>1 MR. ROBERT: I have no further questions, your 2 Honor. Thank you. 3 THE COURT: Any recross? 4 MR. AMER: Just a few questions. Can I do it from 5 here? 6 THE COURT: Sure. 7 RECROSS EXAMINATION 8 BY MR. AMER: 9 Q Mr. Hawthorn, am I correct that you had no role or 10 responsibility with respect to golf courses that were just golf 11 courses? 12 A Now I do, in some capacity, but not previously, because 13 the golf courses are part of the chart of accounts conversion 14 project, for example. 15 Q And prior to that point in time when you would have had 16 some responsibility for just the golf courses, you wouldn't have 17 had any involvement in the membership deposit -- the refundable 18 deposit membership liabilities? 19 A I would have with respect to the hotels that have that 20 component. So, for example, Doral has that component. 21 Q My question was golf courses that are just golf 22 courses. 23 A Oh, correct. 24 Q And all of the explanations that you've given on 25 redirect were all things that you told to Judge Jones her staff;</p>
<p>M. Hawthorn - by Defense - Redirect (Mr. Robert) Page 5293</p> <p>1 cooperation and transparency, defendants have agreed to address, 2 in future disclosures to lenders, the items I have identified, 3 and otherwise adjust their practices based upon my observations. 4 The Trump Organization will continue to inform the monitor 5 regarding the form and substance of these disclosures." 6 Q And is this paragraph consistent with the conversations 7 that you had with the monitor at or around the time of this 8 letter? 9 A It is consistent. Again, these are observations that 10 they identified to us. We provided our responses that we 11 believed everything was adequate, correct, materially correct. 12 But also in good faith working with the monitor, we are happy to 13 amend certain things to satisfy their observations. Even if 14 lenders didn't ask us, we'll go ahead and do that. 15 Q Mr. Hawthorn, I'm going to draw your attention to the 16 last paragraph and ask you to read the first sentence? 17 (Whereupon, the exhibit was displayed on the 18 screen.) 19 A "Based upon the foregoing, and having carefully 20 reviewed the information provided to me, it appears that the 21 defendants continue to cooperate with me and the requirements of 22 the Court's orders." 23 Q Sir, at any time did the monitor accuse The Trump 24 Organization of disseminating false and misleading information? 25 A No.</p>	<p>Proceedings Page 5295</p> <p>1 correct? 2 A Yes. 3 Q And those were all things that you told Judge Jones and 4 her staff before she finalized the letter that was then quoted 5 by the Judge in his decision; correct? 6 A Yes. 7 MR. AMER: That's all I have, your Honor. 8 THE COURT: Any re-redirect? 9 MR. ROBERT: Nothing further, your Honor, except I 10 would renew our request, and we'll brief it for you, about 11 our ability to call Judge Jones, because I think the 12 Attorney General just reopened the door asking about the 13 conversations and what she was aware of at the time the 14 letter was written. 15 Apparently the Attorney General is not accepting 16 the language in that letter to not be critical of The Trump 17 Organization, notwithstanding the language at the end that 18 says that "they cooperated with me and the requirements of 19 this Court's orders." So clearly the government is of the 20 view that somehow this letter says what it doesn't say. 21 So, therefore, we would renew our application to 22 have Judge Jones testify to either explain what she meant by 23 this, because right now there is clearly a disputed issue 24 between us and the government as to what it means. 25 THE COURT: Do you want to call -- let them call</p>

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<p>1 Judge Jones?</p> <p>2 MR. AMER: No. And we think your Honor is correct,</p> <p>3 that the case law does not permit it. I would also say that</p> <p>4 the point of sharing the portion of the decision that</p> <p>5 discusses Judge Jones's observations was to contrast that</p> <p>6 with what this witness characterized as the relationship</p> <p>7 between The Organization and Judge Jones and her staff,</p> <p>8 which I think is inconsistent -- we would submit is</p> <p>9 inconsistent with what the Judge's observations were in her</p> <p>10 August 3rd letter.</p> <p>11 MR. ROBERT: We would respectfully disagree,</p> <p>12 because it was this Court that used the words "fraud" and</p> <p>13 "misleading information" accusing The Trump Organization of</p> <p>14 engaging in that. Those words appear nowhere in Judge</p> <p>15 Jones' report. They appear nowhere in the earlier reports</p> <p>16 submitted to Court. It was never a word or a concept that</p> <p>17 was ever a disseminated to this witness, or anyone else</p> <p>18 involved in the monitorship process, whether by Judge Jones,</p> <p>19 the accountants she retained, or anyone else.</p> <p>20 Notwithstanding the hundreds of thousands of dollars that</p> <p>21 have been paid to the monitor and the accountant, which is</p> <p>22 evidence of their due diligence of combing through</p> <p>23 voluminous financial records, and there has been no evidence</p> <p>24 of any false or misleading information.</p> <p>25 THE COURT: Well, go ahead.</p>		<p>1 virtually certain she will, and say what it doesn't say in</p> <p>2 that letter; there is no fraud. There's no -- hasn't been</p> <p>3 any indicia of fraud. There hasn't been any ongoing indicia</p> <p>4 of inappropriate activity. We are talking about, as this</p> <p>5 witness just testified, minor accounting discrepancies, all</p> <p>6 of which occur in a major corporation all the time.</p> <p>7 So we need the monitor here to be able to, at least</p> <p>8 present live testimony that can be considered, not hearsay,</p> <p>9 in the record, as to whether or not there needs to be some</p> <p>10 equitable relief to address things that we think do not</p> <p>11 exist. We think she will say they don't exist, but the</p> <p>12 government is clearly pounding the table saying, "No, no,</p> <p>13 no. This is a fraudulent enterprise. We have to shut it</p> <p>14 down and put them out of business." When you have a monitor</p> <p>15 that's been in place for now 14 or 15 months and hasn't</p> <p>16 uncovered any evidence of that, has a cooperative</p> <p>17 relationship with the company, and clearly has confidence</p> <p>18 that what the company is doing now is fine.</p> <p>19 The idea that the government could even assert that</p> <p>20 somehow we need to put these people out of business and shut</p> <p>21 them down seems a nonstarter. It's almost as much as a</p> <p>22 nonstarter as the whole certification roundabout we went</p> <p>23 through, even when the guaranty is zero and there is no net</p> <p>24 worth requirement, somehow or other there is harm if there's</p> <p>25 a problem with the certification.</p>	
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<p>1 MR. KISE: Your Honor, and again, we'll brief this,</p> <p>2 but just as an aside, in Bankruptcy Court, monitors are</p> <p>3 called examiners, they routinely testify. In SEC</p> <p>4 receivership proceedings, the examiner or the receiver</p> <p>5 routinely testifies, they're fiduciaries.</p> <p>6 THE COURT: That's receiver, not monitor; right?</p> <p>7 MR. KISE: But it's the same concept. It's the</p> <p>8 exact same concept. The fact that they are arms of the</p> <p>9 court and have fiduciary responsibilities does not in any</p> <p>10 shape, form or fashion preclude them from testifying.</p> <p>11 Additionally, a monitor can't communicate through a</p> <p>12 report, because the report by itself is hearsay. The</p> <p>13 report, itself, is hearsay. You can't take a report and use</p> <p>14 that as truth of the matter asserted. The report, itself,</p> <p>15 is hearsay.</p> <p>16 As you could see the challenges that arise from</p> <p>17 doing that, without the monitor here to testify, I mean,</p> <p>18 they obviously have a very different view of what that</p> <p>19 letter says than we do. They have opened the door by asking</p> <p>20 this witness direct questions. I mean, they were cute.</p> <p>21 They took your quoting of the letter, but it's the same</p> <p>22 principle. So they -- what the monitor thinks is clearly</p> <p>23 and squarely at issue with respect to equitable relief that</p> <p>24 this Court is considering.</p> <p>25 If the monitor is going to come in here, which I'm</p>		<p>1 But, in any event, I don't see how monitor</p> <p>2 testimony is not squarely and highly relevant here. And</p> <p>3 there is nothing to preclude the monitor from testifying</p> <p>4 simply because she's got fiduciary obligations to the Court.</p> <p>5 She is an independent monitor, just like in a Bankruptcy</p> <p>6 Court, an independent examiner; just like in an SEC</p> <p>7 proceeding, they are all the same.</p> <p>8 THE COURT: Well, Mr. Kise, I won't even ask you,</p> <p>9 I'll just suggest that every time you want to speak about a</p> <p>10 particular issue that maybe you don't have to argue the</p> <p>11 whole case.</p> <p>12 MR. KISE: I feel like I have to, because we don't</p> <p>13 seem to be getting anywhere. We don't seem to be</p> <p>14 communicating at all. We have evidence that comes in after</p> <p>15 -- witness after witness after witness, there's no problem.</p> <p>16 There's no -- even today with the certifications, okay. So</p> <p>17 even assuming they are right, there is a problem with the</p> <p>18 certification, how does that go to equitable relief when</p> <p>19 this is no guaranty. It's zero.</p> <p>20 The document that they put into evidence says that</p> <p>21 the guaranty was zero or 10 percent. Has there ever been</p> <p>22 any allegation that the net worth of Donald Trump was below</p> <p>23 \$250 million? No. So all we are doing is having this sort</p> <p>24 of circuitous discussion about them jumping up and down</p> <p>25 saying, "There's fraud. There's fraud. There's fraud."</p>	

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<p>1 But no one has said that, including the monitor. That's the</p> <p>2 point of having the monitor come here. They are the only</p> <p>3 ones in the courtroom jumping up and down saying there is</p> <p>4 fraud, even though no one else is. The bank isn't. The</p> <p>5 monitor isn't, and so I think we definitely need to be</p> <p>6 entitled to bring that in.</p> <p>7 So, yes, I apologize for pleading the case, but</p> <p>8 that's kind of my job, is to plead the case, especially when</p> <p>9 no one seems to be listening, particularly at that table.</p> <p>10 THE COURT: Well, I think you just proved my point.</p> <p>11 Every time you talk, it's a campaign speech.</p> <p>12 MR. AMER: We hear everything they say. We are</p> <p>13 just not convinced or impressed.</p> <p>14 MR. KISE: No, they are not. Exactly. They are</p> <p>15 not. And with respect, your Honor, it's not a campaign</p> <p>16 speech.</p> <p>17 MR. AMER: I didn't mean that to be an invitation</p> <p>18 to hear it all over again, your Honor.</p> <p>19 THE COURT: You know, I could excuse the witness,</p> <p>20 but he might be enjoying this.</p> <p>21 MR. KISE: He probably is.</p> <p>22 THE COURT: A few things, one, I'll wait to see if</p> <p>23 you come up with any monitor cases.</p> <p>24 Two, if the Attorney General had been the first one</p> <p>25 to bring up the -- anything about the monitor, that would be</p>		<p>1 he should be in his little anteroom in the Judge's chambers,</p> <p>2 and I told Ms. Hernandez to watch the proceedings so she</p> <p>3 knows when to come in.</p> <p>4 MR. WALLACE: Ms. Hernandez is a lawyer on the</p> <p>5 defendant's team, and if she's watching the case, that is</p> <p>6 different than a fact witness.</p> <p>7 THE COURT: All right. So we are good on that.</p> <p>8 MR. WALLACE: Thank you for the clarification.</p> <p>9 THE COURT: Quick front bar.</p> <p>10 (Whereupon, there is a discussion held off the</p> <p>11 record, at the bench, among the Court and all Counsel.)</p> <p>12 THE COURT OFFICER: Is the court ready for the</p> <p>13 witness?</p> <p>14 THE COURT: We're ready.</p> <p>15 THE COURT OFFICER: Witness entering.</p> <p>16 MS. HERNANDEZ: Good afternoon, your Honor.</p> <p>17 THE COURT: Good afternoon.</p> <p>18 (Whereupon, the witness stepped into the witness</p> <p>19 stand.)</p> <p>20 THE COURT OFFICER: Please raise your right hand.</p> <p>21 (The witness complied.)</p> <p>22 THE COURT OFFICER: Do you solemnly swear or affirm</p> <p>23 that any testimony you give will be the truth, the whole</p> <p>24 truth and nothing but the truth?</p> <p>25 THE WITNESS: I do.</p>	
Proceedings	Page 5301	P. Birney - by Defense - Direct (Ms. Hernandez)	Page 5303
<p>1 one thing, but if I remember correctly, you brought it up</p> <p>2 first, asked a whole bunch of questions, and then they just</p> <p>3 wanted to basically respond, answer to those questions. So</p> <p>4 I don't think they opened the door. You tried to open the</p> <p>5 door.</p> <p>6 And third, as I had said earlier, the monitor is</p> <p>7 supposed to report with statements. If there are</p> <p>8 disagreements about what they mean, I'll worry about that.</p> <p>9 Okay, I'll decide what her reports mean and the implications</p> <p>10 thereof.</p> <p>11 So anything else from either side?</p> <p>12 MR. AMER: Nothing from the plaintiff.</p> <p>13 THE COURT: All right. We have -- the witness is</p> <p>14 excused. You could sit out there and be amused, if you</p> <p>15 want.</p> <p>16 Nice to meet you.</p> <p>17 THE WITNESS: Thank you.</p> <p>18 THE COURT: Okay. We have another witness for the</p> <p>19 defense?</p> <p>20 MR. ROBERT: We call Patrick Birney.</p> <p>21 MR. WALLACE: Your Honor, for the record is</p> <p>22 Mr. Birney a fact witness watching the proceedings? I don't</p> <p>23 think --</p> <p>24 MR. ROBERT: First of all, he's already been called</p> <p>25 in your case. So I know of no prohibition. But secondly,</p>		<p>1 P A T R I C K B I R N E Y, called by and on behalf of the</p> <p>2 Defendant, having been first duly sworn, was examined and</p> <p>3 testified as follows:</p> <p>4 THE COURT OFFICER: Please have a seat. State your</p> <p>5 full name and home or business address for the record.</p> <p>6 THE WITNESS: Patrick Birney, 725 Fifth Avenue,</p> <p>7 New York, New York 10022.</p> <p>8 THE COURT: Okay. Please proceed.</p> <p>9 MS. HERNANDEZ: Thank you, your Honor.</p> <p>10 DIRECT EXAMINATION</p> <p>11 BY MS. HERNANDEZ:</p> <p>12 Q Mr. Birney, what is your educational background after</p> <p>13 high school?</p> <p>14 A I earned a degree in economics from the University of</p> <p>15 Michigan.</p> <p>16 Q Where did you work after college?</p> <p>17 A AON Risk Solutions.</p> <p>18 Q What was your position at AON?</p> <p>19 A Account specialist.</p> <p>20 Q What were your responsibilities as an accountant</p> <p>21 specialist?</p> <p>22 A I worked on an account management and sales team. Um,</p> <p>23 I had a lot of clients who I worked on their renewals for</p> <p>24 schedules of insurance, renewal exposures, auto ID cards,</p> <p>25 invoicing, et cetera.</p>	

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<p>P. Birney - by Defense - Direct (Ms. Hernandez) Page 5304</p> <p>1 Q And where did you work after you left AON?</p> <p>2 A The Trump Organization.</p> <p>3 Q What was your title when you began at The Trump</p> <p>4 Organization?</p> <p>5 A Senior financial analyst.</p> <p>6 Q What were your responsibilities as a senior financial</p> <p>7 analyst?</p> <p>8 A Um, I worked on the insurance renewals and the, um,</p> <p>9 golf course financials and operations.</p> <p>10 Q And what year did you start working at The Trump</p> <p>11 Organization?</p> <p>12 A 2015.</p> <p>13 Q So after senior financial analyst, what was the next</p> <p>14 position you held at The Trump Organization?</p> <p>15 A Associate.</p> <p>16 Q And what were your responsibilities as an associate?</p> <p>17 A Similar responsibilities, worked on insurance and the</p> <p>18 golf course financials. I worked on other projects. I did a</p> <p>19 lot.</p> <p>20 Q And what position did you hold after associate?</p> <p>21 A Assistant vice president of financial operations.</p> <p>22 Q And what were your responsibilities as an assistant</p> <p>23 vice president?</p> <p>24 A Similar, similar responsibilities; insurance, golf</p> <p>25 courses. I do a lot of things for the company.</p>	<p>P. Birney - by Defense - Direct (Ms. Hernandez) Page 5306</p> <p>1 but I went to him for any question that I had at that point.</p> <p>2 Q So throughout the preparation of the 2016 statement,</p> <p>3 what was the interface between you and Mr. McConney as you got</p> <p>4 used to this new role?</p> <p>5 A I worked with Jeff a lot in 2016. Any question that I</p> <p>6 had, anything I had to gather, I went to him.</p> <p>7 Q And what was your role in preparing these Statements of</p> <p>8 Financial Condition?</p> <p>9 A I gathered information and inputted it into multiple</p> <p>10 spreadsheets.</p> <p>11 Q What spreadsheets were those?</p> <p>12 A The, um, supporting data spreadsheet. Um, there was a</p> <p>13 loan spreadsheet, um, escrow spreadsheet, a cash spreadsheet. I</p> <p>14 think there was a fifth spreadsheet, um, and then any of the</p> <p>15 backup information that -- that was used for those spreadsheets.</p> <p>16 Q Okay.</p> <p>17 And you mentioned the support data spreadsheet, what</p> <p>18 was your intention in maintaining and updating that support data</p> <p>19 spreadsheet?</p> <p>20 A Can you repeat the question, please.</p> <p>21 Q Sure. What was your intention when you were</p> <p>22 maintaining and updating the support data spreadsheet for the</p> <p>23 Statement of Financial Condition?</p> <p>24 A So every new year, um, I would just copy and paste the</p> <p>25 spreadsheet from the year before so that it would have one year</p>
<p>P. Birney - by Defense - Direct (Ms. Hernandez) Page 5305</p> <p>1 Q And what position did you hold after assistant vice</p> <p>2 president?</p> <p>3 A Vice president financial operations.</p> <p>4 Q And what are your responsibilities as vice president?</p> <p>5 A Same thing.</p> <p>6 Q And when did you get that title?</p> <p>7 A About a year ago.</p> <p>8 Q Is that your current title at The Trump Organization?</p> <p>9 A Yes.</p> <p>10 Q When did you become involved in the preparation of</p> <p>11 President Trump's Statement of Financial Condition?</p> <p>12 A 2016.</p> <p>13 Q Why did you become involved?</p> <p>14 A Um, because Jeff McConney told me I'm going to work on</p> <p>15 something.</p> <p>16 Q And what years were you involved in working on the</p> <p>17 Statements of Financial Condition?</p> <p>18 A 2016 through 2021.</p> <p>19 Q And in the first year that you were working on it in</p> <p>20 2016, what did Jeff McConney explain to you about the process to</p> <p>21 prepare the Statements of Financial Condition?</p> <p>22 A I think he told me that I was going to work on</p> <p>23 something, um, and he e-mailed me the supporting data</p> <p>24 spreadsheet for the Statement of Financial Condition. Um, I</p> <p>25 don't know how much detail he gave in the initial briefing, um,</p>	<p>Page 5307</p> <p>1 was the previous year and one year was the current year. And</p> <p>2 then I would update those numbers and that information for the</p> <p>3 current year.</p> <p>4 Q And who did you intend to look at the supporting data</p> <p>5 spreadsheet?</p> <p>6 A Anybody who worked on the spreadsheet. Um, Jeff</p> <p>7 McConney, Allen Weisselberg, ultimately, the accounting firm.</p> <p>8 Q And what did you expect them to learn by looking</p> <p>9 through the spreadsheet?</p> <p>10 A How assets were valued.</p> <p>11 Q And did you intend to be accurate when maintaining and</p> <p>12 updating the spreadsheet?</p> <p>13 A Yes.</p> <p>14 (Continued on the next page.)</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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1 Q So very generally, what sort of information would you
2 have included in that supporting data spreadsheet?
3 A It depends on the asset. It depends on the year. In
4 general, financial statement information, income statements,
5 balance sheets, square footage information, value of
6 residential unit information.
7 Q And then you mentioned in a previous answer that you
8 would send Mazars the backup, can you describe what you mean
9 with when you say, "the backup"?
10 A There is backup for the information on the supporting
11 data spreadsheet for all of the assets and liabilities.
12 Basically indicates where the information was from and what
13 information was used.
14 Q And that's the information used throughout the
15 supporting data spreadsheet?
16 A Yes.
17 Q And how would that normally be divided, backup?
18 A It would be divided by asset.
19 Q Can you please describe your interface with Mazars on
20 the Statement of Financial Condition?
21 A Usually in the last month of working on the Statement
22 of Financial Condition we would begin sending information to
23 Mazars, supporting data spreadsheet drafts, any backup to the
24 supporting data spreadsheet, any other spreadsheet. The Word
25 doc that ultimately became the Statement of Financial Condition

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1 would be sent to Mazars.
2 Mazars would call with questions, reach out to us
3 with questions. There was back and forth in that final month,
4 generally.
5 Q Thank you. And who at Mazars would you normally
6 speak to about the statement?
7 A Donald Bender and Jenn Safron.
8 Q So you mentioned follow-up questions Mazars would
9 ask. Did they ever ask you about appraisals that were not
10 utilized in the Statement of Financial Condition?
11 A Not that I can recall.
12 Q And did they ever ask you to change the methodology
13 that a property was valued by?
14 A Not that I can recall.
15 MS. HERNANDEZ: Okay. So I am going to pull up
16 what has already been admitted into evidence as PX758.
17 Q Do you recognize this document, Mr. Birney?
18 A Yes.
19 Q What is it?
20 A It is a version of the Statement of Financial
21 Condition supporting data spreadsheet for 2017.
22 Q And does this appear to be the final version for
23 2017?
24 A I don't know that.
25 Q Do you see in column E? What would those numbers

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1 indicate there?
2 A I believe those numbers are from Mazars.
3 Q So would this appear to be the spreadsheet that
4 Mazars checked for 2017?
5 MR. HAREN: Objection as to "checked."
6 THE COURT: I am sorry.
7 MR. HAREN: Objection as to the word "checked."
8 THE COURT: Do you have a different word?
9 MR. HAREN: I think she is trying to establish
10 whether this was or was not the final version and whether
11 the numbers on the spreadsheet indicate that Mazars
12 processed -- processed it in some way.
13 But whether Mazars did some kind of process that
14 resulted in those numbers is not the same as Mazars
15 checking the numbers, so.
16 MS. HERNANDEZ: I am happy to change it to
17 processed.
18 Q Does this appear to be the spreadsheet that Mazars
19 processed?
20 A It appears to be a spreadsheet that -- a spreadsheet
21 that Mazars processed.
22 Q Okay. And so I am going to take you to row 30 of the
23 spreadsheet.
24 Can you tell me a little bit about Trump Tower?
25 A As it relates to the spreadsheet?

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1 Q Sure. Just in general, a little bit about the
2 property.
3 A Sure. Trump Tower is a commercial and residential
4 real estate asset. It is a condominium for residential, and
5 then it also has office space and retail space.
6 Q And how was Trump Tower valued in 2017?
7 THE WITNESS: Can you scroll down slightly,
8 please?
9 (The image on the screen was scrolled)
10 A It was valued by dividing net operating income into a
11 cap rate.
12 Q And how would you have gathered the information used
13 to value Trump Tower in 2017?
14 THE WITNESS: Can you scroll up just slightly,
15 please?
16 (The document on the screen was scrolled.)
17 A I would have asked Jeff McConney for the
18 December 2016 financial statement for Trump Tower. And then I
19 probably would have asked Jeff for everything else that is
20 here, unless it was already in the backup from the previous
21 year's SOFC backup.
22 Q Would you look at the previous year's SOFC in
23 compiling a new year's information?
24 MR. WALLACE: Objection to the aspect of
25 "would," as opposed to whether the witness did something.

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1 THE COURT: Let's start with did, rather than
2 would.
3 Q Did you look at the previous year's Statement of
4 Financial Condition?
5 MR. WALLACE: Objection, leading.
6 MS. HERNANDEZ: You tricked me there, Kevin.
7 THE COURT: It is leading, sorry. We led you
8 down the wrong path.
9 MS. HERNANDEZ: We did, right.
10 Q How did the previous year's Statement of Financial
11 Condition play into the process for creating or maintaining and
12 updating the spreadsheet for a new year?
13 A My process would have started by doing what we did in
14 the previous year. So obtaining the same sort of information.
15 And as we are looking at 2017, right?
16 Q Correct.
17 A I would have had the backup for 2016, because I
18 worked on that statement, and I probably would have looked at
19 the same backup for 2016 and requested that for the updated
20 year.
21 Q So it would build upon each other every year?
22 A Generally, yes.
23 MS. HERNANDEZ: And so, for Trump Tower I am
24 going to pull up what has been premarked in evidence as
25 PX-761.

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1 (Handing)
2 Q Do you recognize this document, Mr. Birney?
3 THE COURT: While he is looking, is this in
4 evidence?
5 MS. HERNANDEZ: Not yet.
6 THE COURT: Not yet. Okay.
7 A Yes.
8 Q What is this document?
9 A The backup to the 2017 Trump Tower commercial
10 valuation, the backup to the information in the supporting data
11 spreadsheet.
12 Q Would you -- is this the information you would have
13 sent to Mazars?
14 A This is the information that was sent to Mazars.
15 MS. HERNANDEZ: Your Honor, I would like to move
16 Plaintiff's Exhibit 761 into evidence.
17 THE COURT: Granted, it is in.
18 (Whereupon, the document referred to was deemed
19 marked for evidence as Plaintiff's Exhibit 761 by the
20 Court.)
21 Q So whose handwriting is this on the first page,
22 Mr. Birney?
23 A Mine.
24 Q And what is the first page of this document?
25 A It is an income statement for the year ending

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1 December 31, 2016 for Trump Tower Commercial LLC.
2 Q And why would you have sent this to Mazars?
3 A Because it is the backup for the number -- for the
4 numbers that were used on the supporting data spreadsheet.
5 Q And who would have done this adding tape in the
6 middle of the document?
7 A I think I did.
8 Q And why would you have done that?
9 A To indicate the calculations that were made.
10 Q And what calculations are these?
11 A The top one is for, it looks like average security
12 cost without excessive security due to political campaign.
13 The next one is for operating expenses.
14 Q So why did you have to do that, average security cost
15 for this year?
16 A Because I was told to.
17 MS. HERNANDEZ: Okay. And if we could go to
18 page four.
19 Q What is this document? Or what is this page of the
20 document?
21 A It looks like it indicates the Trump Tower campaign
22 lease information.
23 Q And what role did this play in the 2017 value?
24 A Can you show the spreadsheet back on the screen?
25 Q Sure.

Birney - by Defendant - Direct (Hernandez) Page 5315

1 MS. HERNANDEZ: Nate, can you pull up PX-758
2 again?
3 A It has something to do with the rental income for
4 vacant campaign-related space line items on the supporting data
5 spreadsheet. I just can't pinpoint the data right now.
6 Q Okay. But this would have been the data you were
7 looking at when putting these figures in in the supporting data
8 spreadsheet?
9 A I believe so.
10 MS. HERNANDEZ: Okay. And then, Nate can you
11 actually pull it up side by side, PX-761?
12 And can you go to the last page?
13 And zoom in on --
14 Q Well, let me ask you first. Mr. Birney, what is the
15 last page of the backup for Trump Tower?
16 A It is a list of class A office building sales in
17 Manhattan, in midtown Manhattan, with the cap rate identified
18 that was used for this year; identified with the star.
19 MS. HERNANDEZ: And Nate, can you pull up number
20 five with the star?
21 It is okay if you have to take the supporting
22 data spreadsheet down.
23 Q Is this the star you are referring to, Mr. Birney?
24 A Yes.
25 Q What does that star indicate?

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1 A It indicates that that number was used.
 2 Q That this cap rate was used?
 3 A Yeah. It indicates that the 2.9 percent cap rate was
 4 used.
 5 Q And where had you -- where would you have gotten this
 6 market data from?
 7 A I think I got it from Jeff, who got it from Cushman,
 8 I think.
 9 MS. HERNANDEZ: And can we pull up PX-758 again?
 10 Q Is that what is reflected there on the cap rate note
 11 on line 79?
 12 THE WITNESS: Can you scroll down slightly?
 13 (The document on the screen was scrolled.)
 14 Q Sorry, it would be 83 to 84.
 15 A Yes.
 16 Q So we are going to go to Niketown, the next property.
 17 Can you tell me a little bit about Niketown?
 18 A Yes. Niketown is a retail space located on
 19 57th Street, adjacent to Trump Tower.
 20 Q And how did you value Niketown in 2017?
 21 A Similar approach to Trump Tower. It was net
 22 operating income divided by cap rate.
 23 Q And how would you have gathered the information again
 24 to value Niketown here?
 25 A I probably would have had it from the year before.

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1 MS. HERNANDEZ: Okay. And so I am going to pull
 2 up what has been premarked as D-1056.
 3 THE COURT: Five-minute warning.
 4 MS. HERNANDEZ: Thank you, Your Honor.
 5 (Handing)
 6 Q Do you recognize this document, Mr. Birney?
 7 A Yes.
 8 Q And what is this document?
 9 A It is the backup to the supporting data spreadsheet
 10 for the Niketown asset for 2017.
 11 Q And this would have -- would this have been sent to
 12 Mazars?
 13 A This was sent to Mazars.
 14 MS. HERNANDEZ: Your Honor, I would like to move
 15 what has been premarked has Defendant's Exhibit 1056 into
 16 evidence.
 17 THE COURT: Granted, it is in.
 18 (Whereupon, the document referred to was deemed
 19 marked for evidence as Defendant's Exhibit 1056 by
 20 the Court.)
 21 Q So, what are the first -- what is the first page of
 22 this document, this backup?
 23 A It is a lease summary for the Nike lease.
 24 Q And going to page two, who would have done the
 25 highlights and stars on this page?

Birney - by Defendant - Direct (Hernandez) Page 5318

1 MR. WALLACE: Objection again to the "would."
 2 Q Who highlighted and added stars to this page?
 3 A I did.
 4 Q And why would -- why did you add those highlights and
 5 stars?
 6 A To draw attention to it, because that was the number
 7 that was used -- those were the numbers that were used in the
 8 supporting data spreadsheet.
 9 Q And looking to page three.
 10 Is that the same reason you added highlights and
 11 stars to the numbers at the bottom of the page?
 12 MR. WALLACE: Objection, leading.
 13 THE COURT: Sustained.
 14 Q Why did you add stars to the numbers at the bottom of
 15 the page?
 16 A To draw attention to the figures that were used in
 17 the supporting data spreadsheet.
 18 Q And what figures are these?
 19 A Can you pull the spreadsheet up again?
 20 Q Sure.
 21 MS. HERNANDEZ: Thank you, Nate.
 22 A Both figures were used, both the 1,652,847 and
 23 1,702,432.
 24 Q I think you were continuing, were used?
 25 A Were used in the supporting data spreadsheet.

Birney - by Defendant - Direct (Hernandez) Page 5319

1 MS. HERNANDEZ: That's a good stopping place for
 2 me today, Your Honor.
 3 THE COURT: You are not finished with the
 4 witness but it is a good stopping place?
 5 MS. HERNANDEZ: Yes, sir.
 6 THE COURT: Okay. We will see you all 10:00
 7 tomorrow.
 8 MS. FAHERTY: Do you want to instruct the
 9 witness, Your Honor?
 10 THE COURT: I instruct the witness not to
 11 discuss this case or his testimony or anything related to
 12 it during the evening break while you are still a witness.
 13 Thank you.
 14 (Whereupon, the trial stood adjourned to
 15 November 28, 2023 at 10:00 a.m.)
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In The Matter Of:

*Attorney General of the State of New York v.
Donald J. Trump, et. al.*

November 28, 2023

Michael Ranita - Senior Court Reporter

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4 PEOPLE OF THE STATE OF NEW YORK, BY LETITIA.
5 JAMES, ATTORNEY GENERAL OF THE STATE OF NEW
6 YORK,
7 Index: 452564/2022
8 Plaintiff,
9
10 -against-
11
12 DONALD J. TRUMP; DONALD TRUMP, JR.; ERIC TRUMP;
13 IVANKA TRUMP; ALLEN WEISSELBERG; JEFFREY
14 MCCONNEY; THE DONALD J. TRUMP REVOCABLE TRUST;
15 THE TRUMP ORGANIZATION, INC; TRUMP ORGANIZATION,
16 LLC; DJT HOLDINGS, LLC; DJT HOLDINGS MANAGING
17 MEMBER; TRUMP ENDEAVOR 12, LLC; 401 NORTH WAGASH
18 VENTURE, LLC; TRUMP OLD POST OFFICE, LLC; 40 WALL
19 STREET, LLC; AND SEVEN SPRINGS, LLC,
20
21 Defendants.
22
23 -----x
24 60 Centre Street
25 New York, New York 10007
November 28, 2023

B E F O R E: HONORABLE ARTHUR F. ENGORON, Supreme Court Justice

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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: Good morning everyone. So, defendants,
8 I understand that you have a new witness and that Mr. Birney
9 will be back to finish at a later time. Okay.
10 Would you like to call your new witness?
11 MR. SUAREZ: Good morning, your Honor. The defense
12 calls Dave Williams of Deutsche Bank. And also in the
13 courtroom today I would like to point out to the Court that
14 Deutsche Bank's Counsel, David Zensky, is also here.
15 THE COURT: Okay. Thank you. Let's get the next
16 witness.
17 THE COURT OFFICER: Witness entering.
18 (Whereupon, the witness stepped into the witness
19 stand.)
20 THE COURT OFFICER: Raise your right hand.
21 (The witness complied.)
22 THE COURT OFFICER: Do you solemnly swear or affirm
23 that any testimony you give will be the truth, the whole
24 truth and nothing but the truth?
25 THE WITNESS: I do.

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D. Williams - by Defense - Direct (Mr. Suarez)

1 DAVID COSBY WILLIAMS, called by and on
2 behalf of the Defendant, having been first duly sworn, was
3 examined and testified as follows:
4 THE COURT OFFICER: Please have a seat. Please
5 state your full name and home or business address for the
6 record.
7 THE WITNESS: David Cosby Williams, 890 Hammocks
8 Way, Edisto Island, South Carolina.
9 DIRECT EXAMINATION
10 BY MR. SUAREZ:
11 Q Mr. Williams, good morning.
12 A Good morning.
13 Q I'm JESUS Suarez. I represent certain of the
14 defendants in this case.
15 Briefly, Mr. Williams, what is your educational
16 background?
17 A I have an undergraduate degree in political science and
18 a master's of business administration.
19 THE COURT: Did you take public speaking at all?
20 You have to speak much louder right into the mic. As close
21 as possible.
22 THE WITNESS: I got you.
23 Q Are you employed at Deutsche Bank?
24 A Yes.
25 Q How long have you been employed at Deutsche Bank?

<p>D. Williams - by Defense - Direct (Mr. Suarez) Page 5324</p> <p>1 A Almost 17 years.</p> <p>2 Q In what capacities have you been employed at Deutsche</p> <p>3 Bank?</p> <p>4 A As a senior lender and team leader.</p> <p>5 Q Do you currently work in the Private Wealth Management</p> <p>6 Group at Deutsche Bank?</p> <p>7 A Yes, Wealth Management.</p> <p>8 Q How long have you worked in that division?</p> <p>9 A Seventeen years.</p> <p>10 Q And what have your titles been since you joined that</p> <p>11 division?</p> <p>12 A Senior lender and team leader, also a managing</p> <p>13 director.</p> <p>14 Q What is the role of a senior lender in the Private</p> <p>15 Wealth Management Division?</p> <p>16 A So, we underwrite structured loans, credit requests for</p> <p>17 high net worth individuals.</p> <p>18 Q Can you describe the underwriting process for high net</p> <p>19 worth individuals, in general terms.</p> <p>20 A Sure. Um, typically I would consider myself to be a</p> <p>21 product specialist, my product being credit. Um, generally</p> <p>22 speaking, um, credit specialist or profit specialist is called</p> <p>23 in when a credit opportunity is identified.</p> <p>24 Um, we speak with client or clients representatives in</p> <p>25 their office about the credit requests. We gather information,</p>	<p>D. Williams - by Defense - Direct (Mr. Suarez) Page 5326</p> <p>1 A For structured lending products, it's generally anyone</p> <p>2 that, um, has a net worth in excess of a hundred million and</p> <p>3 investable assets of at least 10 million.</p> <p>4 Q Were you involved in loans made by Deutsche Bank to</p> <p>5 entities sponsored by President Donald J. Trump?</p> <p>6 A Yes, I was involved.</p> <p>7 Q What was your involvement in those loan transactions?</p> <p>8 A So I did not get involved until, I believe, 2014, um,</p> <p>9 as a reviewer and supporter of what ended up being the last loan</p> <p>10 that we made to Mr. Trump.</p> <p>11 Q Was Mr. Trump qualified by the bank -- there are a lot</p> <p>12 of folks named Trump in this case. I'll refer to him as</p> <p>13 President Trump just as an honorary.</p> <p>14 Was President Trump qualified as an ultrahigh net worth</p> <p>15 individual by the Private Wealth Management Division by Deutsche</p> <p>16 Bank?</p> <p>17 A Yes.</p> <p>18 Q How is net worth typically calculated by the Wealth</p> <p>19 Management Division at Deutsche Bank to determine whether</p> <p>20 someone is an ultrahigh net worth individual?</p> <p>21 A Um, to determine that, typically it's on the basis of</p> <p>22 the, um, financial information that the client provides.</p> <p>23 Q And what is the significance from a lender's</p> <p>24 perspective of a hundred million dollar net worth?</p> <p>25 A Um, I would say that would demonstrate that they have</p>
<p>D. Williams - by Defense - Direct (Mr. Suarez) Page 5325</p> <p>1 um, we prepare our due diligence, um, we underwrite the loan,</p> <p>2 submit for internal credit approval, work with typically outside</p> <p>3 legal counsel to document the loan, and then we coordinate with</p> <p>4 client's counsel to close the loan, fund the loan, and then we</p> <p>5 monitor the loan for -- during its lifetime, so to speak.</p> <p>6 Q What is a high net worth individual from the</p> <p>7 perspective of Deutsche Bank's Wealth Management Division?</p> <p>8 A Generally, I would say that anyone that has a net worth</p> <p>9 in excess of 25 or \$50 million.</p> <p>10 Q Are you familiar with the term "ultrahigh net worth"?</p> <p>11 A Yes.</p> <p>12 Q What is an ultrahigh net worth individual from the</p> <p>13 perspective of Deutsche Bank's Wealth Management Division?</p> <p>14 A Generally, someone that has a net worth in excess of</p> <p>15 100 million.</p> <p>16 Q How does someone become a client of the Wealth</p> <p>17 Management Division of Deutsche Bank?</p> <p>18 A Sometimes the client could be referred to the bank, um,</p> <p>19 by, um, an attorney or accountant or other professional. Often</p> <p>20 times a client, um, is sourced by what we refer to as a</p> <p>21 relationship manager or a banker within Deutsche Bank who, um,</p> <p>22 makes introduction, and then, um, provided that the client meets</p> <p>23 our, um, target market profile, um, that individual is then, um,</p> <p>24 put through our KYC process.</p> <p>25 Q What is a "target market profile"?</p>	<p>D. Williams - by Defense - Direct (Mr. Suarez) Page 5327</p> <p>1 the financial wherewithal to provide financial support to a</p> <p>2 credit transaction.</p> <p>3 Q In underwriting a loan, is it possible for the bank to</p> <p>4 calculate an individual's net worth to mathematical certainty?</p> <p>5 MR. WALLACE: Objection. Leading.</p> <p>6 THE COURT: Okay. I think the question is sort of</p> <p>7 harmless, but --</p> <p>8 MR. SUAREZ: Your Honor, I understand that I'm</p> <p>9 allowed to ask, with your Honor's permission, certain</p> <p>10 leading questions just to get the frame of reference going.</p> <p>11 I'm not suggesting an answer, and he's free to elaborate.</p> <p>12 It's not a yes or no question.</p> <p>13 THE COURT: I think they are called preliminary</p> <p>14 questions that are leading, but accessible or introductory</p> <p>15 questions. I didn't think this was one of those. And I</p> <p>16 think this is all about nothing, but can you rephrase it</p> <p>17 somehow so that it's more of a general ask than, "isn't this</p> <p>18 the case?"</p> <p>19 Q What, if anything, does the underwriting process</p> <p>20 endeavor to do to calculate an individual's assets to a</p> <p>21 mathematical certainty?</p> <p>22 A Um, I don't believe that's possible.</p> <p>23 Q Why not?</p> <p>24 A I think an individual's net worth is, as it's reported,</p> <p>25 is largely subjective or is subject to the use of estimates.</p>

<p>D. Williams - by Defense - Direct (Mr. Suarez) Page 5328</p> <p>1 Q What, if anything, do you do as a lender to make sure</p> <p>2 that the bank's view of asset values is appropriate in light of</p> <p>3 a client's self-reported asset values?</p> <p>4 A So as part of our due diligence and underwriting</p> <p>5 process, we subject clients' reported information through or to</p> <p>6 some adjustments to account for that.</p> <p>7 Q How does the bank view adjustments that it makes to a</p> <p>8 client's stated asset values in the underwriting process?</p> <p>9 A I'm sorry, can you repeat that.</p> <p>10 Q Sure. How does the bank react to differences in the</p> <p>11 adjusted values of -- reached by the bank as opposed to those</p> <p>12 reported by the client?</p> <p>13 A Again, it's part of our underwriting process. Um, it's</p> <p>14 a process that we apply to every client, um, regardless of</p> <p>15 what's reported.</p> <p>16 Q Is a difference of opinion in asset values between the</p> <p>17 client and the bank a disqualifying factor to extend credit?</p> <p>18 A No.</p> <p>19 Q Why not?</p> <p>20 A I think, again, it's -- it's a difference of opinion.</p> <p>21 Um, I think we expect, um, a clients provided information to be,</p> <p>22 um, accurate. At the same time, um, it's not an industry</p> <p>23 standard that these financial statements are audited. Um, they</p> <p>24 are largely relying on the use of estimates. Um, that said, we</p> <p>25 account for that and make some adjustments as a conservative</p>	<p>D. Williams - by Defense - Direct (Mr. Suarez) Page 5330</p> <p>1 document.</p> <p>2 A Okay.</p> <p>3 Q And if I could direct your attention to the section</p> <p>4 that says "2.9 Commercial Real Estate." Are you familiar with</p> <p>5 this section?</p> <p>6 A Yes.</p> <p>7 Q Do you see where it says, "The commercial real estate</p> <p>8 lending team within PWM are considered commercial properties as</p> <p>9 collateral for borrowers short-term bridge financing needs, as</p> <p>10 well as longer term financing for up to ten years."</p> <p>11 A Yes.</p> <p>12 Q And then, "In both cases, loans will have recourse to</p> <p>13 one or more guarantors."</p> <p>14 A Yes.</p> <p>15 Q And then it goes onto list a client's eligibility</p> <p>16 criteria. And then it says, "Typical borrowers will have a net</p> <p>17 worth of over \$50 million."</p> <p>18 A Yes, I see that.</p> <p>19 Q Did President Trump meet this criteria in connection</p> <p>20 with the loans obtained from Deutsche Bank?</p> <p>21 A Yes.</p> <p>22 Q And then it says, "Borrowers must have a proven</p> <p>23 successful track records" -- excuse me. "Borrowers must have</p> <p>24 proven successful track records in the US commercial real estate</p> <p>25 markets." Do you see that?</p>
<p>D. Williams - by Defense - Direct (Mr. Suarez) Page 5329</p> <p>1 measure.</p> <p>2 Q What does it mean to "make adjustments as a</p> <p>3 conservative measure"?</p> <p>4 A Well, again, I would say it's a factor of, um, the type</p> <p>5 of financial information that is, um, typically provided by, um,</p> <p>6 high net worth and ultrahigh net worth individuals. Um, again,</p> <p>7 we -- you go into it with the expectation or understanding that,</p> <p>8 um, there is a use of estimates, um, in the preparation of the</p> <p>9 financial statements.</p> <p>10 MR. SUAREZ: Could we please pull up pre-marked</p> <p>11 Exhibit D-66 for identification.</p> <p>12 (Whereupon, the exhibit was displayed on the</p> <p>13 screen.)</p> <p>14 Q Mr. Williams, do you recognize this document?</p> <p>15 MR. SUAREZ: We'll give you a hard copy right now.</p> <p>16 (The witness was handed the exhibit.)</p> <p>17 A Yes.</p> <p>18 Q What is this document?</p> <p>19 A Credit Risk Management Credit Guidelines for Private</p> <p>20 Wealth Management Americas, dated June of 2012.</p> <p>21 MR. SUAREZ: If you could please turn to page 17 of</p> <p>22 this document.</p> <p>23 (Whereupon, the exhibit was displayed on the</p> <p>24 screen.)</p> <p>25 Q Which is page 17 of the exhibit, page 16 of the actual</p>	<p>D. Williams - by Defense - Direct (Mr. Suarez) Page 5331</p> <p>1 A Yes.</p> <p>2 Q Did President Trump satisfy that criterion in</p> <p>3 connection with the loans obtained from Deutsche Bank?</p> <p>4 MR. WALLACE: Objection. Leading.</p> <p>5 THE COURT: I feel like I have to sustain that.</p> <p>6 It's leading.</p> <p>7 Q What, if any, view did Deutsche Bank have as to whether</p> <p>8 President Trump satisfied that criteria?</p> <p>9 A He met this criteria.</p> <p>10 Q Going on, there is a section that says "PWM commercial</p> <p>11 real estate lending may offer: Interim loan facilities for up</p> <p>12 to five years for the purpose of acquisition or repositioning a</p> <p>13 particular property." Do you see that?</p> <p>14 A Yes.</p> <p>15 Q Were the loans offered by the Wealth Management</p> <p>16 Division and guaranteed by President Trump consistent with that</p> <p>17 criteria?</p> <p>18 A Yes.</p> <p>19 Q Then it goes onto say "Long term loan facilities for</p> <p>20 stabilized properties of up to eight years designed to give</p> <p>21 borrowers some flexibility when compared to traditional conduit</p> <p>22 financing."</p> <p>23 What does it mean "to give borrowers some flexibility</p> <p>24 when compared to traditional conduit financing"?</p> <p>25 A So "conduit financing" is nonrecourse financing. By</p>

<p>D. Williams - by Defense - Direct (Mr. Suarez) Page 5332</p> <p>1 that, I mean, generally speaking, no individual is signed on as</p> <p>2 a guarantor for the loan. Structures are a little bit more</p> <p>3 rigid in terms of prepayments, um, might be a little bit higher</p> <p>4 priced. Loan-to-value on the collateral may be slightly lower.</p> <p>5 So within Wealth Management lending for commercial real estate</p> <p>6 transactions with a personal guaranty, we might offer more</p> <p>7 flexible terms in terms of all of those things, higher</p> <p>8 loan-to-value, better pricing, more flexibility in terms of</p> <p>9 repayment.</p> <p>10 Q And moving on to the "additional criteria." It says</p> <p>11 "PWM lending will consider a maximum advance rate of up to</p> <p>12 85 percent, depending upon term, loan covenants, property type,</p> <p>13 debt service, coverage ratios, and markets in which the property</p> <p>14 exists." Do you see that?</p> <p>15 A Yes.</p> <p>16 Q Which of any of those factors are determinative in the</p> <p>17 bank's decision to make a loan?</p> <p>18 A I'm sorry, can you repeat the question.</p> <p>19 Q Are any of those factors determinative of -- in the</p> <p>20 bank's decision to make the loan?</p> <p>21 A Yes, I would say those are all factors.</p> <p>22 Q Are they all factors that are considered by the bank in</p> <p>23 its underwriting process?</p> <p>24 A Yes.</p> <p>25 Q And do you see where it says, "It is anticipated that</p>	<p>D. Williams - by Defense - Direct (Mr. Suarez) Page 5334</p> <p>1 MR. SUAREZ: Can we zoom in on section 4.25,</p> <p>2 Verification of Material Facts.</p> <p>3 (Whereupon, the exhibit was displayed on the</p> <p>4 screen.)</p> <p>5 Q Where it says "It is the credit officer's</p> <p>6 responsibility to independently verify all material facts</p> <p>7 pertaining to a credit (e.g., if told that an entity benefits</p> <p>8 from a statutory guarantee, evidence should be obtained to</p> <p>9 support this view; if told that a line is fully utilized, this</p> <p>10 should be checked; if told an entity is a subsidiary of another</p> <p>11 entity, this should be supported by evidence on the KYC form)</p> <p>12 these examples are meant to be illustrative rather than</p> <p>13 exhaustive."</p> <p>14 What does this mean, Mr. Williams?</p> <p>15 A This is illustrative or a summary of, um, significant</p> <p>16 part of our due diligence in which, as it states, we</p> <p>17 independently verify all material facts as they pertain to a</p> <p>18 credit transaction.</p> <p>19 Q And was this process adhered to in connection with the</p> <p>20 loan made by the Wealth Management Division of Deutsche Bank to</p> <p>21 the Trump Old Post Office, LLC?</p> <p>22 A Yes.</p> <p>23 Q Was it adhered to in the loan made by the Wealth</p> <p>24 Management Division to 401 North Wabash?</p> <p>25 A I believe so.</p>
<p>D. Williams - by Defense - Direct (Mr. Suarez) Page 5333</p> <p>1 this program will appeal to those borrowers who are acquiring or</p> <p>2 repositioning non-stabilized properties"?</p> <p>3 A Yes.</p> <p>4 Q What, if any, view do you have as to whether the loans</p> <p>5 extended by the Wealth Management Division and guaranteed</p> <p>6 President Trump satisfied this criteria?</p> <p>7 A They satisfied this criteria.</p> <p>8 MR. SUAREZ: Your Honor, I move Defendant's</p> <p>9 Exhibit 66 into evidence.</p> <p>10 THE COURT: Granted. It's in.</p> <p>11 (Defendant's Exhibit 66 was deemed marked and</p> <p>12 admitted in evidence.)</p> <p>13 MR. SUAREZ: If we could please pull up pre-marked</p> <p>14 for identification Defendant's Exhibit 378.</p> <p>15 (Whereupon, the exhibit was displayed on the</p> <p>16 screen.)</p> <p>17 Q Mr. Williams, do you recognize this document?</p> <p>18 A Yes.</p> <p>19 Q What is this document?</p> <p>20 A It's the Private Wealth Management Credit Process Guide</p> <p>21 from February of 2012.</p> <p>22 Q Can you please turn to page 17 of this document, which</p> <p>23 is also page 17 of the exhibit?</p> <p>24 (Whereupon, the exhibit was displayed on the</p> <p>25 screen.)</p>	<p>D. Williams - by Defense - Direct (Mr. Suarez) Page 5335</p> <p>1 MR. WALLACE: Objection.</p> <p>2 A Yes.</p> <p>3 MR. WALLACE: Objection. Foundation.</p> <p>4 THE COURT: I thought you were going to object to</p> <p>5 leading.</p> <p>6 MR. WALLACE: It is leading, but I'm trying to let</p> <p>7 us get through this.</p> <p>8 THE COURT: So far through his own ingenuity or my</p> <p>9 liberality, Mr. Suarez has circumvented all your leading</p> <p>10 objections. He gets it in any way.</p> <p>11 Was this adhered to in the Wabash loan, was that</p> <p>12 basically the question?</p> <p>13 MR. SUAREZ: Yes.</p> <p>14 THE COURT: Do you want to add leading to the list?</p> <p>15 MR. WALLACE: I will add leading to the list, your</p> <p>16 Honor, and I will add that we haven't established which</p> <p>17 specific loans using the terms Mr. Suarez is using here.</p> <p>18 THE COURT: We would have to identify the loans a</p> <p>19 little bit more, or the loan.</p> <p>20 Q Are you aware of any instance in which Deutsche Bank</p> <p>21 failed to adhere to its own credit lending guidelines when</p> <p>22 making loans guaranteed by President Trump?</p> <p>23 A No.</p> <p>24 MR. SUAREZ: If you could please turn to page 18.</p> <p>25 (Whereupon, the exhibit was displayed on the</p>

<p>D. Williams - by Defense - Direct (Mr. Suarez) Page 5336</p> <p>1 screen.)</p> <p>2 Q Do you see where it says "Principles for writing a</p> <p>3 credit report"?</p> <p>4 A Yes.</p> <p>5 Q Do you see where -- five bullet points down it says</p> <p>6 "Does the report clearly show how the approved exposures accord</p> <p>7 with the approved business strategy"?</p> <p>8 A Yes.</p> <p>9 Q What is the significance of that principle?</p> <p>10 A One of the considerations in underwriting a credit</p> <p>11 request is the overall business strategy as it pertains to the</p> <p>12 client.</p> <p>13 Generally speaking, we prefer not to enter into a</p> <p>14 credit transaction on a stand-alone business basis, but as part</p> <p>15 of a broader relationship with the bank.</p> <p>16 Q Are you aware of any facts that Deutsche Bank failed to</p> <p>17 adhere to that principle when extending credit guaranteed by</p> <p>18 president Donald Trump?</p> <p>19 A No.</p> <p>20 MR. SUAREZ: Your Honor, I move Defendant's</p> <p>21 Exhibit 378 into evidence.</p> <p>22 THE COURT: Granted. It's in.</p> <p>23 (Defendant's Exhibit 378 was deemed marked and</p> <p>24 admitted in evidence.)</p> <p>25 Q Are you familiar with a payment default?</p>	<p>Williams - by Defendant - Direct (Suarez) Page 5338</p> <p>1 Q Is the repayment of a loan the bank's primary</p> <p>2 consideration when underwriting the loan?</p> <p>3 MR. WALLACE: Objection, leading.</p> <p>4 THE COURT: Sustained.</p> <p>5 Q Why is the bank concerned with a repayment on its</p> <p>6 loans?</p> <p>7 A When we make a loan I would say that's a key or</p> <p>8 perhaps the primary consideration, is how we are anticipating</p> <p>9 or expecting to be repaid in full.</p> <p>10 Q And how does that affect the bank's reaction to a</p> <p>11 payment default as opposed to a covenant default; if at all?</p> <p>12 A A covenant default would occur if the client or</p> <p>13 borrower failed to adhere to a particular covenant. Covenants</p> <p>14 are generally set at the loan's origination as guardrails; an</p> <p>15 opportunity to come back to the table, so to speak, with the</p> <p>16 client in the event a covenant default is triggered.</p> <p>17 A payment default alternatively speaks, again,</p> <p>18 definitively to client's ability to repay the loan.</p> <p>19 Q Can you describe what you mean by a guardrail that</p> <p>20 permits the bank to come back to the table?</p> <p>21 A I can provide an example.</p> <p>22 Q Sure.</p> <p>23 A We may require a guarantor to maintain a minimum</p> <p>24 level of stated net worth. If throughout the life of the loan</p> <p>25 the guarantor fails to adhere to that minimal requirement, it</p>
<p>Page 5337</p> <p>1 A Yes.</p> <p>2 Q What is a payment default?</p> <p>3 (Whereupon, the exhibit displayed on the screen was</p> <p>4 taken down.)</p> <p>5 A It's when a client or a borrower fails to make a timely</p> <p>6 payment on a loan.</p> <p>7 Q Are you familiar with a covenant default?</p> <p>8 A Yes.</p> <p>9 Q What is a covenant default?</p> <p>10 A When a borrower or client fails to adhere to</p> <p>11 requirements of a particular financial or reporting covenant.</p> <p>12 Q What, if anything -- withdrawn.</p> <p>13 How, if at all, does the bank react differently to a</p> <p>14 payment of default as opposed to a covenant default?</p> <p>15 A Generally speaking, a payment default is a more</p> <p>16 material default than a covenant default.</p> <p>17 Q Why is that?</p> <p>18 A It speaks definitively to the repayment of the loan.</p> <p>19 (Continued on the next page.)</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Williams - by Defendant - Direct (Suarez) Page 5339</p> <p>1 gives us an opportunity to discuss that with the client, better</p> <p>2 understand what may have triggered that default, and then</p> <p>3 determine a course of action going forward.</p> <p>4 Q What, if any, payment default on a credit facility</p> <p>5 guaranteed by President Trump are you familiar with?</p> <p>6 A I am not aware of any payment defaults.</p> <p>7 Q What, if any, covenant default are you aware of with</p> <p>8 respect to a credit facility guaranteed by President Trump?</p> <p>9 A I am not aware of any covenant defaults.</p> <p>10 MR. SUAREZ: Let's please pull up Plaintiff's</p> <p>11 Exhibit 293, previously in evidence.</p> <p>12 (Handing)</p> <p>13 MR. SUAREZ: Can you please turn to page five of</p> <p>14 this document? Which is page five of the exhibit, page</p> <p>15 four of the document. And focus on the section in the</p> <p>16 bottom of the page labeled "liquidity."</p> <p>17 Q Do you see where it says on December 20, 2011, a</p> <p>18 structured lending team of Dave Williams and Emily Schroder</p> <p>19 visited the offices of the guarantor and reviewed bank and</p> <p>20 brokerage statements that confirmed 178 million in cash</p> <p>21 balances and 51.8 million marketable securities; totaling</p> <p>22 229 million held in the name of the guarantor. In addition,</p> <p>23 they also reviewed statements for operating companies that were</p> <p>24 wholly owned by the guarantor, which evidenced another</p> <p>25 29 million cash and marketable securities?</p>

Williams - by Defendant - Direct (Suarez)	Page 5340	Williams - by Defendant - Direct (Suarez)	Page 5342
1 A Yes.		1 Q What importance, if any, did the underwriting of the	
2 Q What role, if any, did you have in connection with		2 guarantor place on a 50 percent discount in his stated	
3 loans guaranteed by President Trump in 2011?		3 liquidity?	
4 A So I was not otherwise involved, but I was here in		4 MR. WALLACE: Objection, both on foundation and	
5 Manhattan on that date. Our manager at the time, Tom Sullivan,		5 he said he wasn't involved in the underwriting, and	
6 was otherwise unavailable, so he asked me to accompany		6 clarity.	
7 Ms. Schroder on that visit to the client's offices.		7 THE COURT: I don't see the relevance here, but	
8 Q And did -- did you, in fact, visit the offices of		8 go ahead, Mr. Suarez.	
9 President Trump on that day?		9 MR. SUAREZ: He said he was involved in the	
10 A Yes.		10 visit to confirm the cash. And that he is an underwriter	
11 Q How long did you spend at the office?		11 familiar with Deutsche Bank's Private Wealth Management	
12 A I would say 90 minutes.		12 Group, now the Wealth Management Division's underwriting	
13 Q Who did you meet with at the office?		13 guidelines.	
14 A The one person I recall was Allen Weisselberg.		14 THE COURT: I'll overruled myself. I	
15 Q What documents did you review?		15 understand. All right. Let's just get an answer.	
16 A The bank and brokerage statements referenced in the		16 Do you need a readback?	
17 exhibit, as well as Mr. Trump's personal tax returns.		17 THE WITNESS: Please.	
18 Q Why did you endeavor to verify the bank and brokerage		18 THE COURT: Read it back, please.	
19 accounts containing cash?		19 (Whereupon, the record was read back by the	
20 A So that goes back to the credit policy that we		20 court reporter.)	
21 previously discussed with respect to verification of any		21 THE COURT: The question was, "did the	
22 material facts. Client had reported certain amount of		22 underwriter," right?	
23 liquidity on his financial statements, and this was simply part		23 MR. SUAREZ: Correct.	
24 of the process of verifying the amounts of those accounts.		24 THE COURT: He wasn't the underwriter, correct?	
25 MR. SUAREZ: If we could turn to the next page.		25 MR. SUAREZ: It is the underwriting of the	
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1 Q And focus in on the last sentence of the first		1 guaranty by the underwriter. I'll try to rephrase it.	
2 paragraph, where it says: The guarantor has indicated that		2 Q What, if any, importance was placed by the	
3 they have received tax opinions supporting the treatment of		3 underwriter on the fact that the guarantor's stated liquidity	
4 such deposits and are not required to be included as part of		4 was adjusted by 50 percent?	
5 taxable income. However, for purposes of calculating adjusted		5 MR. WALLACE: I am going to object again. He is	
6 liquidity we have elected to include net 50 percent reserve		6 being asked -- it is just not clear to me if he is being	
7 (94 million representing 54 -- excuse me. (94 million		7 asked what another person who was the underwriter placed	
8 representing 50 percent of the 188 million life-to-date deposit		8 on the importance of the question. It is just unclear to	
9 balance) against the reported liquidity.		9 me what the witness is being asked.	
10 What does an adjusted liquidity mean?		10 THE COURT: Let's try to get to the heart of the	
11 A So again, this predated my involvement. But as the		11 matter.	
12 exhibit states, this is referring to membership deposits. So,		12 Were you the underwriter on this loan?	
13 there was some adjustment that was made to account for the fact		13 THE WITNESS: No, sir.	
14 that these were not necessarily owned or held by Mr. Trump.		14 THE COURT: Would you know what the underwriter	
15 Q What, if anything, does this reflect concerning the		15 thought about this adjustment?	
16 bank's own due diligence of the guarantor's reported liquidity?		16 THE WITNESS: Not necessarily.	
17 A I believe this is all part of our due diligence		17 THE COURT: Objection sustained.	
18 process and the adjustments that I spoke of previously.		18 Q In your experience as an underwriter with the Wealth	
19 Q And how did the lending underwriters react, if at		19 Management Division, what, if any, reaction would you have to a	
20 all, to a 50 percent adjustment of cash-on-hand?		20 guarantor's stated liquidity being reduced by 50 percent?	
21 A I couldn't say.		21 A So, I think it is atypical, but not entirely unusual,	
22 Q Was it important to confirm the guarantor's liquidity		22 just depends on the circumstances.	
23 in connection with an underwriting?		23 Q What, if anything, does the adjustment of the stated	
24 MR. WALLACE: Objection, leading.		24 liquidity, in your experience as an underwriter at Deutsche	
25 THE COURT: Sustained.		25 Bank -- withdrawn.	

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1 We will slice that one later.		1 A Yes.	
2 Are you aware of how --		2 Q Are you familiar with the concept of a step-down?	
3 MR. SUAREZ: If we can turn to the first page of		3 A Yes.	
4 this document?		4 Q What is a step-down?	
5 Q Are you familiar with an entity named Trump Endeavor		5 A I believe in the context you are referring to, it	
6 12 LLC?		6 pertains to a step-down of a personal guaranty.	
7 A Yes.		7 MR. SUAREZ: Can we please turn to Plaintiff's	
8 Q How are you familiar with that entity?		8 Exhibit 291?	
9 A That was one of the borrowers for one of our loans or		9 (Handing)	
10 credit transactions.		10 Q Mr. Williams, are you familiar with a borrower 401	
11 Q What was the collateral for the loan made to the		11 North Wabash Venture LLC?	
12 Trump Endeavor 12 LLC entity?		12 A Yes.	
13 A As stated here in the exhibit, it is the first		13 Q How are you familiar with that borrower?	
14 mortgage lien and first priority security interest in the Doral		14 A It was one of three loans that we ultimately extended	
15 Golf Resort and Spa located in Miami, Florida.		15 to Mr. Trump.	
16 MR. WALLACE: Can I note, to clarify for the		16 Q If I refer to this loan as the Trump Chicago loan or	
17 record, that Trump Endeavor 12 LLC does not appear on the		17 the Chicago loan, will you understand what I am referring to?	
18 page that we are looking at?		18 A Yes.	
19 MR. SUAREZ: Sure it does.		19 Q Was there a step-down in the Trump Chicago loan?	
20 MR. WALLACE: Where?		20 A I believe so, yes.	
21 The borrower is TBD SPV acceptable lender.		21 Q Was there a step-down in the Doral loan?	
22 MR. SUAREZ: Okay. Let's scroll up.		22 MR. WALLACE: Objection, leading.	
23 Q Are you aware what entity the SPV acceptable lender		23 THE COURT: Sustained. It does suggest the	
24 ultimately was for the loan collateralized for the Doral Golf		24 answer and it is a yes or no question.	
25 Course?		25 Q What, if anything, are you aware of concerning the	
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1 A Ultimately it was Trump Endeavor.		1 existence of a step-down in the Trump Doral loan?	
2 Q That's Trump Endeavor 12 LLC?		2 A I believe that loan had a step-down provision as	
3 A Yes.		3 well.	
4 Q Is that a loan that the Wealth Management division		4 Q Are step-down provisions consistent with the Wealth	
5 made to that entity for the purposes of acquiring a golf course		5 Management Group's approved business strategies?	
6 in Doral?		6 MR. WALLACE: Objection, leading.	
7 A Yes.		7 Q How, if at all, are step-down's consistent with	
8 Q May we refer to that as the Doral loan?		8 Deutsche Bank's Wealth Management Group's approved business	
9 A Fine by me.		9 strategies?	
10 Q Okay.		10 A They are considered from time to time.	
11 MR. SUAREZ: If we turn to Plaintiff's Exhibit		11 Q On what basis are step-down provisions approved by	
12 290.		12 the Wealth Management Group?	
13 Q Do you see there it says: Borrower, Trump Endeavor		13 A Typically it depends on the strength of the	
14 12 LLC?		14 collateral, specifically the loan-to-value. If the	
15 A Yes.		15 loan-to-value is lower we might be inclined to consider a	
16 MR. SUAREZ: And then if we scroll down.		16 step-down or perhaps no personal guaranty.	
17 Q Do you see where it says: The collateral property		17 Q Why is that?	
18 consists of a 622-acre golf course and spa that includes four		18 A If the loan-to-value against the collateral is lower,	
19 tournament class golf courses; and goes on to list additional		19 then arguably there is less reliance on the personal guaranty.	
20 characteristics of the golf course?		20 Q And what, if anything, does the loan-to-value of the	
21 A Yes.		21 collateral affect the bank's consideration on whether to agree	
22 Q And the resort?		22 to a step-down on the guaranty?	
23 A Yes.		23 A Can you rephrase the question?	
24 Q Is that consistent with your understanding of the		24 Q How, if at all, is the bank's decision to agree to a	
25 Trump Doral loan?		25 step-down impacted by the quality of the collateral?	

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1 A So, again, the lower the loan-to-value, the more		1 20? We can zoom in here on required net worth.	
2 inclined we might be willing to consider a partial guaranty or		2 Q It says: Guarantor shall maintain a net worth of not	
3 perhaps no guaranty.		3 less than the product of X, \$2.5 billion, times Y, the	
4 Q Why is that the case?		4 applicable guaranty level.	
5 A Again, because there is arguably less reliance on the		5 Are you familiar with the Trump Chicago loan had a	
6 personal guaranty, more on the collateral. Is the collateral		6 different provision here on the required net worth?	
7 sufficiently strong enough to support the loan perhaps, without		7 A Yes, now that you are showing that to me, I am	
8 the addition of the personal guaranty.		8 reminded of that.	
9 Q And how, if at all, does the likelihood of repayment		9 Q And that's, to be clear, that's the Trump Chicago	
10 affect the bank's decision to agree to a step-down on a		10 loan term?	
11 guaranty?		11 MR. SUAREZ: No. I am sorry. Let me rephrase	
12 A That can also be a factor, as determined by,		12 that.	
13 typically, debt service coverage of a particular property type		13 Q Do you see on the left it says: At all times during	
14 or collateral.		14 the term of the loan --	
15 Q And how, if at all, is that consistent with the		15 MR. SUAREZ: And it might be helpful if we	
16 Wealth Management Group's approved business strategies?		16 scroll up to the top of page two where it says "facility	
17 A It is consistent.		17 details." Page two of the exhibit.	
18 MR. SUAREZ: We can bring up PX-290, which is		18 Q And this was a reference to the Trump Doral, correct?	
19 already in evidence. And turn to page four of 20. And		19 A Yes. At this time or this memo pertains to the Trump	
20 zoom in on the section that says "guaranty."		20 Doral facility, which, I believe at this time was the only	
21 Q Do you see where it says: Donald Trump shall		21 credit facility we had in place.	
22 continue to personally guarantee a percentage of principal,		22 Q And the terms were revised, correct?	
23 interest and operating shortfalls. However, the percentage of		23 A Yes, that appears to be the case.	
24 such guaranty shall be maintained in accordance with the		24 Q Okay.	
25 defined LTV range as indicated in the table below?		25 MR. WALLACE: I would like to note a foundation	
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1 A I see that.		1 objection, since I believe this document dates prior to	
2 Q Is that consistent with your understanding of a		2 the time that the witness said he was working on the loans	
3 step-down?		3 for the Trump Organization, which is 2014.	
4 A Yes check		4 THE COURT: Couldn't he know if they were	
5 Q It says: Any reduction in such guaranty levels will		5 revised later?	
6 be considered permanent, unless the guarantor elects to		6 MR. WALLACE: I am not suggesting that he might	
7 increase the guaranty level for purposes of curing any		7 not. I am asking if there is a foundation to establish	
8 shortfalls in accordance with the max LTV requirement.		8 his familiarity with the information contained in the	
9 Do you see that?		9 document.	
10 A Yes.		10 THE COURT: Okay. Let's get a foundation.	
11 Q Is that consistent with your understanding of a		11 Q Have you become familiar with the terms of the Trump	
12 step-down?		12 Doral loan?	
13 A Yes.		13 A Yes.	
14 Q From a lending perspective, why, if at all, are		14 Q How have you become familiar with the terms of the	
15 step-downs an appropriate business term?		15 Trump Doral loan?	
16 A So I think previously we discussed flexibility of		16 A So, once I got involved in the day-to-day of this	
17 wealth management lending relative to conduit financing, which		17 relationship in, again as I recall, it was in 2014, it was my	
18 requires no personal guaranty. So I would consider this as		18 responsibility to become familiar with the terms of the entire	
19 sort of a hybrid between conduit financing, which requires no		19 relationship and the history.	
20 personal guaranty, and wealth management lending, which		20 MR. SUAREZ: And on that basis I would ask about	
21 generally requires a personal guaranty.		21 changes to the loan part of his involvement?	
22 Q How does a reduction in the guaranty level affect, if		22 THE COURT: Well, I guess there might be one	
23 at all, the minimum net worth covenant on the Doral loan?		23 more foundation question.	
24 A It doesn't affect it.		24 Are you familiar with the history of the loan?	
25 MR. SUAREZ: Can we please turn to page five of		25 MR. SUAREZ: I believe he just said he was.	

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<p>1 THE COURT: Okay.</p> <p>2 MR. SUAREZ: I can follow up.</p> <p>3 THE COURT: All right. Just go ahead.</p> <p>4 Q Are you familiar with the history of the loan and how</p> <p>5 it has performed?</p> <p>6 A I am reasonably familiar, yes.</p> <p>7 Q And again, I would like to draw your attention to</p> <p>8 page five. And on the left-hand column it says: At all times</p> <p>9 during the term of the loan the guarantor must maintain a net</p> <p>10 worth of no less than 2.5 billion.</p> <p>11 Do you see that?</p> <p>12 A I see that, yes.</p> <p>13 Q And then on the next column there is a revision that</p> <p>14 says: At all times during the term of the loan the required</p> <p>15 net worth has a step-down on the net worth covenant.</p> <p>16 Do you see that?</p> <p>17 A Yes.</p> <p>18 (The following proceedings were stenographically</p> <p>19 recorded by Senior Court Reporter Michael Ranita.)</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>		<p>1 bears your signature?</p> <p>2 A So in Wealth Management lending, we sign in support of</p> <p>3 any given or particular transaction.</p> <p>4 MR. SUAREZ: If we could turn to page three of this</p> <p>5 document.</p> <p>6 (Whereupon, the exhibit was displayed on the</p> <p>7 screen.)</p> <p>8 Q At the top it says "Guaranty type." Do you see there</p> <p>9 where it says "Based on the updated appraised of 366 million,</p> <p>10 the current LTV is 34 percent, which would drop Donald Trump's</p> <p>11 personal guarantee in full (this was documented at the loan's</p> <p>12 origination). However, Trump has requested to maintain a ten</p> <p>13 percent guarantee on the combined loan amount of both tranches</p> <p>14 resulting in the facility being priced at L plus 1.75 percent.</p> <p>15 Retaining a ten percent guaranty level clearly strengthens the</p> <p>16 credit."</p> <p>17 A I see that, yes.</p> <p>18 Q What does that mean?</p> <p>19 A So based on an appraisal updated appraisal of the</p> <p>20 collateral property received at this time, the LTV was</p> <p>21 34 percent, which brought it below the maximum LTV of 35 percent</p> <p>22 that would have -- above which would have required his</p> <p>23 guarantee, personal guaranty. There was some optionality to</p> <p>24 that, um, wherein if he decided to retain or offer to continue</p> <p>25 to maintain his personal guaranty, pricing would have been</p>	
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<p>1 Q Is the change in the required net worth covenant</p> <p>2 consistent with Deutsche Bank's approved business strategies?</p> <p>3 MR. WALLACE: Objection. Leading.</p> <p>4 THE COURT: Sustained.</p> <p>5 Q What, if anything, is consistent with the change in the</p> <p>6 required net worth covenant with Deutsche Bank's approved</p> <p>7 business strategies?</p> <p>8 A I go back to my earlier answer when I said net worth is</p> <p>9 typically not a consideration for a step-down. Um, it appears</p> <p>10 that at some point, the date of this memo, um, it was determined</p> <p>11 that that was an appropriate change to make.</p> <p>12 MR. SUAREZ: If we could pull up Plaintiff's</p> <p>13 Exhibit 2960.</p> <p>14 (Whereupon, the exhibit was displayed on the</p> <p>15 screen.)</p> <p>16 MR. SUAREZ: Previously admitted into evidence.</p> <p>17 Q If you could take a look at page four of this document,</p> <p>18 the signature sections. Do you identify the signature above</p> <p>19 where it says "Dave Williams"?</p> <p>20 A I do.</p> <p>21 Q Is that your signature?</p> <p>22 A Yes.</p> <p>23 Q Are you familiar with this document?</p> <p>24 A Yes.</p> <p>25 Q And what, if anything, does it mean that this document</p>		<p>1 reduced by, I think it was about ten basis points, .10 percent.</p> <p>2 Q And what, if anything, does the report show about how</p> <p>3 the bank's proved exposure on this loan accorded with the banks</p> <p>4 approved business strategy?</p> <p>5 A I'm not sure that it does.</p> <p>6 Q Is anything in this report inconsistent with -- let me</p> <p>7 rephrase that.</p> <p>8 What, if anything, is inconsistent with the bank making</p> <p>9 its own analysis with respect to an approved business strategy</p> <p>10 of the bank?</p> <p>11 A I mean, when I think of a business strategy, I'm not</p> <p>12 necessarily thinking about, um, the guaranteed level on a loan.</p> <p>13 I'm thinking more about the individual's broader relationship</p> <p>14 with the bank.</p> <p>15 Q And what does it mean that the guarantor is requesting</p> <p>16 to maintain ten percent of the guarantee level?</p> <p>17 A So, again, as I recall, it was some optionality to the</p> <p>18 personal guaranty where if we retain some percentage of</p> <p>19 guarantee, the pricing -- the credit facility was reduced</p> <p>20 somewhat.</p> <p>21 MR. SUAREZ: If we could turn to page two of this</p> <p>22 report, the section where it says "interest rate."</p> <p>23 (Whereupon, the exhibit was displayed on the</p> <p>24 screen.)</p> <p>25 Q Does this section, which says, "L plus 1.75 percent or</p>	

<p>D. Williams - by Defense - Direct (Mr. Suarez) Page 5356</p> <p>1 prime minus .75 percent, with step-up to L plus two percent or</p> <p>2 prime minus .5 percent, if guaranty level falls below ten</p> <p>3 percent, see below?</p> <p>4 A I see that, yes.</p> <p>5 Q Is that the optionality that you were describing?</p> <p>6 A Yes.</p> <p>7 Q What is the affect on the interest rate of terminating</p> <p>8 the guaranty, if any?</p> <p>9 A So the interest rate was scheduled to increase from</p> <p>10 LIBOR plus 1.75 percent to LIBOR plus two percent. So a</p> <p>11 difference of 25 basis point .25 percent.</p> <p>12 MR. SUAREZ: Let's turn to Plaintiff's Exhibit 294.</p> <p>13 (Whereupon, the exhibit was displayed on the</p> <p>14 screen.)</p> <p>15 MR. SUAREZ: If we could turn to page 11 of this</p> <p>16 document -- of the exhibit.</p> <p>17 (Whereupon, the exhibit was displayed on the</p> <p>18 screen.)</p> <p>19 Q Mr. Williams, do you recognize your signature on this</p> <p>20 page?</p> <p>21 A I do.</p> <p>22 Q Does it appear above the line where it says "Dave</p> <p>23 Williams"?</p> <p>24 A It does.</p> <p>25 Q And what does your signature on this credit report</p>	<p>D. Williams - by Defense - Direct (Mr. Suarez) Page 5358</p> <p>1 Wabash Venture, LLC?</p> <p>2 A Yes.</p> <p>3 Q The second column has the original approved terms; is</p> <p>4 that right?</p> <p>5 A Yes.</p> <p>6 Q And the second column -- excuse me, the third column</p> <p>7 has the proposed revised terms?</p> <p>8 A Yes.</p> <p>9 Q Why would the loan terms be revised during the term of</p> <p>10 the loan?</p> <p>11 A So one of the reasons for presentation, as mentioned,</p> <p>12 was to review, but also to increase the loan amount for this</p> <p>13 particular facility, the Chicago Facility. So at that time it</p> <p>14 would not be unusual to revisit some of the original terms.</p> <p>15 MR. SUAREZ: If we could turn to page six.</p> <p>16 (Whereupon, the exhibit was displayed on the</p> <p>17 screen.)</p> <p>18 Q Do you see the section where it says "Guaranty"?</p> <p>19 A Yes.</p> <p>20 Q And the second column it says, "Donald Trump to</p> <p>21 personally guarantee a hundred percent of the principal,</p> <p>22 interest and operating shortfalls."</p> <p>23 A Yes.</p> <p>24 Q And do you see in the third column there is a change to</p> <p>25 that term?</p>
<p>D. Williams - by Defense - Direct (Mr. Suarez) Page 5357</p> <p>1 mean?</p> <p>2 A Again, that as a -- someone in lending, or lender, I've</p> <p>3 signed on in support of this transaction.</p> <p>4 MR. SUAREZ: If we could go back to page one of the</p> <p>5 report.</p> <p>6 (Whereupon, the exhibit was displayed on the</p> <p>7 screen.)</p> <p>8 Q What is the purpose of this report?</p> <p>9 A So in the reason for presentation it describes three</p> <p>10 things, annual review of the Trump Endeavor loan, annual review</p> <p>11 -- increase of the Chicago loan, and the approval of the Trump</p> <p>12 Old Post Office loan.</p> <p>13 Q And the Trump Old Post Office loan, that's the Trump</p> <p>14 OPO loan that we discussed earlier; correct?</p> <p>15 A Yes.</p> <p>16 Q Was a step-down present in the Chicago loan?</p> <p>17 A Yes, I believe so.</p> <p>18 MR. SUAREZ: Can we take a look at page six of</p> <p>19 Plaintiff's Exhibit 294.</p> <p>20 (Whereupon, the exhibit was displayed on the</p> <p>21 screen.)</p> <p>22 MR. SUAREZ: Actually, let's start at page five.</p> <p>23 (Whereupon, the exhibit was displayed on the</p> <p>24 screen.)</p> <p>25 Q Do you see at the top where it says Loan B, 401 North</p>	<p>D. Williams - by Defense - Direct (Mr. Suarez) Page 5359</p> <p>1 A Yes.</p> <p>2 Q It says, "Donald Trump shall continue to personally</p> <p>3 guarantee a percentage of principal, interest and operating</p> <p>4 shortfalls. However, once the principal balance of the loan</p> <p>5 falls below \$45 million, the percentage of such guaranty shall</p> <p>6 be maintained in accordance with defined LTV range as indicated</p> <p>7 in the table below. Any reduction in such guaranty levels will</p> <p>8 be considered permanent, unless guarantor elects to increase the</p> <p>9 guaranty level for purposes of curing any shortfalls in</p> <p>10 accordance with the max LTV requirement."</p> <p>11 Why would the bank agree to that change in the loan</p> <p>12 term?</p> <p>13 MR. WALLACE: I'm just going to note my objection</p> <p>14 to the "would" as opposed to why did the bank agree to the</p> <p>15 change in the loan term.</p> <p>16 Q I'm happy to restate it.</p> <p>17 Why did the bank agree to the loan -- the change in the</p> <p>18 loan term?</p> <p>19 A I believe it was in response to similar changes that we</p> <p>20 had made at this point -- by this point on the Doral loan, the</p> <p>21 Trump Endeavor loan.</p> <p>22 Q And how, if at all, would providing a step-down on the</p> <p>23 guaranty be consistent with the bank's approved business</p> <p>24 strategy?</p> <p>25 A So, again, it's consistent in certain cases.</p>

<p>D. Williams - by Defense - Direct (Mr. Suarez) Page 5360</p> <p>1 MR. SUAREZ: And if we could turn to page seven.</p> <p>2 (Whereupon, the exhibit was displayed on the</p> <p>3 screen.)</p> <p>4 Q Again, in the second column you'll see the original</p> <p>5 guarantor covenants. And on the third column you see the</p> <p>6 revised covenants.</p> <p>7 A Yes.</p> <p>8 Q What effect does a step-down on the guaranty have to</p> <p>9 the minimum liquidity covenant on this loan?</p> <p>10 A So it appears as long as the guarantor held certain</p> <p>11 amounts of unencumbered liquidity, and a portion of that at</p> <p>12 Deutsche Bank, the guarantor's guaranty level would step-down.</p> <p>13 Q At ten percent -- at a ten percent guarantee level,</p> <p>14 what was the unencumbered liquidity covenant for the guarantor?</p> <p>15 A Five million.</p> <p>16 Q And how much in that liquidity was required to be held</p> <p>17 with Deutsche Bank at a ten percent guarantee level?</p> <p>18 A All of it, or 5 million.</p> <p>19 THE COURT: A five-minute warning.</p> <p>20 Q Why did Deutsche Bank require a -- withdrawn.</p> <p>21 Why did Deutsche Bank require certain of the</p> <p>22 guarantor's liquidity be held with Deutsche Bank?</p> <p>23 A That's consistent with establishing a business strategy</p> <p>24 for the client. Again, as previously noted, we would rather</p> <p>25 make a loan with the prospect of it being made as part of a</p>	<p>D. Williams - by Defense - Direct (Mr. Suarez) Page 5362</p> <p>1 (Whereupon, the exhibit was displayed on the</p> <p>2 screen.)</p> <p>3 Q Do you recognize your signature on this page?</p> <p>4 A Yes.</p> <p>5 Q What does your signature on this page mean?</p> <p>6 A That I signed in support of this particular credit</p> <p>7 memo.</p> <p>8 MR. SUAREZ: Your Honor, I'm at a good place in my</p> <p>9 outline to take our break.</p> <p>10 THE COURT: Okay. We'll tack on another two</p> <p>11 minutes and see you all at 11:35.</p> <p>12 (Whereupon, a 15-minute break was agreed upon and</p> <p>13 taken by all parties.)</p> <p>14 THE COURT OFFICER: All rise. Part 37 is back in</p> <p>15 session. Please be seated and come to order.</p> <p>16 THE COURT: Okay. Do we have our witness?</p> <p>17 THE COURT OFFICER: Witness entering.</p> <p>18 (Whereupon, the witness stepped into the witness</p> <p>19 stand.)</p> <p>20 THE COURT: At the start of the break I forgot to</p> <p>21 admonish the witness not to talk to anybody about his</p> <p>22 testimony, or this case, or anything related. I trust and</p> <p>23 assume he didn't, so let's just proceed with the direct</p> <p>24 examination.</p> <p>25 Q Mr. Williams, if we could please go back to Plaintiff's</p>
<p>D. Williams - by Defense - Direct (Mr. Suarez) Page 5361</p> <p>1 broader non-credit relationship with a client.</p> <p>2 Q Was the guaranty on the Chicago loan ever terminated?</p> <p>3 A Yes.</p> <p>4 MR. SUAREZ: Can we take a look at Plaintiff's</p> <p>5 Exhibit 298.</p> <p>6 (Whereupon, the exhibit was displayed on the</p> <p>7 screen.)</p> <p>8 MR. SUAREZ: At page four.</p> <p>9 (Whereupon, the exhibit was displayed on the</p> <p>10 screen.)</p> <p>11 Q Do you see the section that where it says "Guaranty"?</p> <p>12 A Yes.</p> <p>13 Q See where it says "Guaranty NA, Donald Trump's personal</p> <p>14 guaranty has been eliminated due to the fact that the facility</p> <p>15 LTV is below the 35 percent threshold." Then it says, "based on</p> <p>16 the latest appraisal completed, the hotel collateral was valued</p> <p>17 at 133 million, which results in a 34 percent LTV?</p> <p>18 A Yes.</p> <p>19 Q How, if at all, was the termination of the guarantee on</p> <p>20 the Chicago loan consistent with the bank's approved business</p> <p>21 strategy?</p> <p>22 A It was consistent with the strategy that was originally</p> <p>23 set out when the loans were originated.</p> <p>24 MR. SUAREZ: If we turn to page seven of this</p> <p>25 document.</p>	<p>D. Williams - by Defense - Direct (Mr. Suarez) Page 5363</p> <p>1 Exhibit 294.</p> <p>2 (Whereupon, the exhibit was displayed on the</p> <p>3 screen.)</p> <p>4 MR. SUAREZ: If we could turn to the second page.</p> <p>5 (Whereupon, the exhibit was displayed on the</p> <p>6 screen.)</p> <p>7 Q "Assets under management." Do you see where the credit</p> <p>8 report states that "Donald J. Trump had 40.4 million in cash</p> <p>9 deposits"?</p> <p>10 A Yes.</p> <p>11 Q How, if at all, does that accord with the bank's</p> <p>12 approved business strategy?</p> <p>13 A It's consistent in that, again, when we were making a</p> <p>14 loan, we looked to establish a broader non-credit relationship</p> <p>15 with the client.</p> <p>16 MR. SUAREZ: If we could turn to page seven of the</p> <p>17 loan.</p> <p>18 (Whereupon, the exhibit was displayed on the</p> <p>19 screen.)</p> <p>20 Q What is the effect, if any, of the termination of the</p> <p>21 Doral guaranty on the minimum liquidity covenant?</p> <p>22 A This appears to be in the document referring to the</p> <p>23 Chicago loan on page five.</p> <p>24 Q I'm sorry. That's correct.</p> <p>25 MR. SUAREZ: If we could go back to page four.</p>

<p>D. Williams - by Defense - Direct (Mr. Suarez) Page 5364</p> <p>1 (Whereupon, the exhibit was displayed on the 2 screen.)</p> <p>3 Q Do you see where it says, "The DSC covenant shall be 4 increased to correspond with the defined step-downs in the 5 guaranty levels as indicated in the chart below." What does 6 that mean?</p> <p>7 A So it looks like we were just adjusting this covenant 8 so that it was consistent with, um -- it was just adjusted to 9 correspond with adjusted guaranty levels.</p> <p>10 Q What is the effect of the termination of the guaranty 11 level on the DSC covenant?</p> <p>12 A Can you repeat the question.</p> <p>13 Q Sure. What, if any, effect on the DSC covenant results 14 from the termination of the guaranty on the Doral loan?</p> <p>15 A So it looks like anytime the debt service coverage was 16 in excess of 1.25 times, the guaranty level reduced to zero, if 17 that's what you are asking.</p> <p>18 Q Yes.</p> <p>19 MR. SUAREZ: If you could turn to page ten. 20 (Whereupon, the exhibit was displayed on the 21 screen.)</p> <p>22 MR. SUAREZ: To the section that says 23 "recommendation." 24 (Whereupon, the exhibit was displayed on the 25 screen.)</p>	<p>D. Williams - by Defense - Direct (Mr. Suarez) Page 5366</p> <p>1 A So that's the value that's reflective of any 2 adjustments that we might have made to the value of those 3 certain assets.</p> <p>4 Q And how, if at all, was a difference of almost 5 \$1 billion between the reported value and the DB adjusted value, 6 impact the underwriting?</p> <p>7 A So it's part of the underwriting process, as I 8 mentioned earlier. It's a conservative measure to make these 9 adjustments. You might even say it's a stress test to ensure 10 that even after these adjustments, the guarantor exhibits a 11 certain level of financial strength that can support the loan.</p> <p>12 Q And how, if at all, did you react to the reduction by 13 almost \$1 billion of the reported value of the guarantor's club 14 portfolio from the DB adjusted value of 680 million?</p> <p>15 A I don't recall having any particular reaction. I would 16 say that was not an unusual adjustment.</p> <p>17 Q Then it says, "DB relationship." It says, "DJT 18 continues to develop his relationship with DB as Facility B will 19 be the fourth credit facility we have originated with him or his 20 family (three with DJT, one with DJT, Jr.) DJT has transferred 21 40 million in liquidity to DB, and has indicated he is 22 interested in continued -- to grow his noncredit relationship 23 with the firm." Do you see that?</p> <p>24 A I see that, yes.</p> <p>25 Q What does "noncredit relationship with the firm" mean?</p>
<p>D. Williams - by Defense - Direct (Mr. Suarez) Page 5365</p> <p>1 Q Do you see where it says, "Approval of (i) the annual 2 review for Facility A (Doral), (ii), the modification increase 3 to Facility B (Trump Chicago Hotel)", and then it says (ii) 4 again, "the origination of Facility C (Trump Old Post Office) 5 are being recommended based on"?</p> <p>6 A Yes, I see that.</p> <p>7 Q And then it says, "financial strength of the guarantor. 8 The financial profile of the guarantor includes, on an adjusted 9 basis, a net worth of 2.6 billion with 154.5 million in 10 unencumbered liquidity."</p> <p>11 A Yes, I see that.</p> <p>12 Q What does "on an adjusted basis" mean?</p> <p>13 A That refers to our credit underwriting and due 14 diligence process in which we make adjustments to client's 15 financial statements and stated net worth.</p> <p>16 Q How, if anything, does the adjusted basis -- withdrawn. 17 How, if at all, does the adjusted basis reflect the 18 bank's own analysis of the guarantor's financial strength?</p> <p>19 A Um, it reflects our analysis.</p> <p>20 Q And then in operating experience it says, "DJT's 21 extensive experience in operating private golf country clubs. 22 His current portfolio includes 13 such clubs, with a reported 23 value of 1.66 billion, and DB adjusted value of 680.6 million"?</p> <p>24 A Yes.</p> <p>25 Q What does "DB adjusted value" mean?</p>	<p>D. Williams - by Defense - Direct (Mr. Suarez) Page 5367</p> <p>1 A By its definition, it's anything that is not credit 2 related. So in this case it's referring to deposits or other 3 liquid assets that are held at Deutsche Bank.</p> <p>4 MR. WALLACE: I apologize, your Honor. When that 5 got read into the record, it was read Facility B instead of 6 Facility C.</p> <p>7 MR. SUAREZ: I think I said "Facility C." If I 8 misspoke. I apologize.</p> <p>9 MR. WALLACE: I just wanted to correct it.</p> <p>10 THE COURT: It's corrected for the record.</p> <p>11 Q How is Facility C a continued development of the 12 relationship with Deutsche Bank?</p> <p>13 A So, as it stated. It happened to be the fourth credit 14 facility we were originating with Mr. Trump, or his family.</p> <p>15 Q How, if at all, does the fact that Facility C was the 16 fourth credit facility originated with President Trump or his 17 family support the recommendations contained in this credit 18 report?</p> <p>19 A I think it was indicative of the growing or expansive 20 nature of the overall relationship and our comfort with it.</p> <p>21 Q Then going down to Facility A, it says, "Equity 22 injection of the guarantor: While the initial equity injection 23 of the guarantor was estimated at 50 million, we have been told 24 that the estimate has been increased to anywhere from 150 25 million to 160 million, with approximately 30 million already</p>

<p style="text-align: right;">Page 5368</p> <p>1 invested."</p> <p>2 A I see that, yes.</p> <p>3 Q How did that support the recommendation with respect to</p> <p>4 Facility A, if at all?</p> <p>5 A So as noted, this was an annual review of Facility A.</p> <p>6 It had already been on-the-books, so to speak, for a number of</p> <p>7 years, and this statement is indicative of the amount of equity</p> <p>8 Mr. Trump put into the project, the Doral project, with which we</p> <p>9 would take some comfort, because that reduces -- would reduce</p> <p>10 the amount of the loan facility that he would need. Said</p> <p>11 another way, he is putting more of his own money in and less of</p> <p>12 ours.</p> <p>13 (Continued on the next page.)</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 5370</p> <p>Williams - by Defendant - Direct (Suarez)</p> <p>1 this screen?</p> <p>2 MR. SUAREZ: Sure. If you notice there is page</p> <p>3 ten which has the recommendations and then --</p> <p>4 THE COURT: I think he means the screen right in</p> <p>5 front of him.</p> <p>6 THE WITNESS: Yes, there is nothing on it.</p> <p>7 MR. SUAREZ: It looks like we lost the cable</p> <p>8 then. We might need technical help.</p> <p>9 THE COURT: A technician, technician.</p> <p>10 Tommy, is there any way to see if --</p> <p>11 (Pause)</p> <p>12 THE COURT: Thank you.</p> <p>13 Q If you notice, the pagination on the credit report</p> <p>14 jumps around. Page ten has the recommendations; and then page</p> <p>15 11 has the signatures; and then page 12, the recommendations</p> <p>16 appear to continue up top there.</p> <p>17 And it says: Facility A and B leverage levels</p> <p>18 required for step-down of the guaranty.</p> <p>19 It says: The LTV levels required for decrease in the</p> <p>20 guaranty levels are low enough to ensure that the loan is more</p> <p>21 than adequately collateralized.</p> <p>22 What does that mean?</p> <p>23 A So it is a -- like a restatement or reminder, again</p> <p>24 this is all part of the annual review of these two facilities</p> <p>25 that have been on the books, I believe, for some time at this</p>
<p>Williams - by Defendant - Direct (Suarez)</p> <p style="text-align: right;">Page 5369</p> <p>1 Q And why does the fact that the guarantor is putting</p> <p>2 more of his own money in provide the bank a level of comfort?</p> <p>3 A He has more at stake in that particular asset and</p> <p>4 transaction.</p> <p>5 Q You see it goes on to say: Inspected enhanced value</p> <p>6 due to Capex?</p> <p>7 And it says: The resort is a world class location</p> <p>8 that has been home to a PGA event every year since the resort</p> <p>9 opened in 1962. As DJT expects to invest approximately</p> <p>10 150-160 million in capital improvements, it is expected that</p> <p>11 the value of our collateral will increase significantly over</p> <p>12 the term of the facility?</p> <p>13 A I see that, yes.</p> <p>14 Q How did that impact the recommendation contained in</p> <p>15 this credit report with respect to Facility A?</p> <p>16 A So in conjunction with the capital improvements that</p> <p>17 Mr. Trump was putting in personally through his own financial</p> <p>18 resources, as a result of those the anticipation was that we</p> <p>19 would expect to -- could reasonably expect to see some</p> <p>20 increased value in the property over time. Particularly since</p> <p>21 up to that time it had hosted a professional golf event every</p> <p>22 year for the previous 60 years.</p> <p>23 MR. SUAREZ: If we could turn to page 12 of this</p> <p>24 document?</p> <p>25 THE WITNESS: Would it be possible to see it on</p>	<p>Williams - by Defendant - Direct (Suarez)</p> <p style="text-align: right;">Page 5371</p> <p>1 point, that the loan-to-value levels on the properties</p> <p>2 corresponded with the decrease in the guaranty, such that as</p> <p>3 the loan-to-value of the collateral for each of these</p> <p>4 corresponding properties decreased, the guaranty would decrease</p> <p>5 with that.</p> <p>6 Q And moving on to Facility B. It says: Property</p> <p>7 produces sufficient cash flow to support the requested increase</p> <p>8 in debt at a 1.74X (P&I) and 2.45X (I/O) coverage ratio.</p> <p>9 How, if at all, is that meaningful to the</p> <p>10 underwriting decisions in connection with this facility?</p> <p>11 A So that's one of the underwriting considerations with</p> <p>12 respect to our due diligence for the collateral property, is</p> <p>13 its ability to generate sufficient cash flow to cover the</p> <p>14 repayment of the loan, both on an amortizing or principal and</p> <p>15 interest basis, as well as an interest only basis. I believe</p> <p>16 this loan was scheduled for repayment on an interest only</p> <p>17 basis.</p> <p>18 Q And how, if at all, is the cash flow generated by the</p> <p>19 collateral meaningful to the bank's underwriting of a facility?</p> <p>20 A It is very meaningful.</p> <p>21 Q And how, if at all, is the cash flow of a guarantor</p> <p>22 relevant to the bank's underwriting of a proposed credit</p> <p>23 facility?</p> <p>24 A It is definitely also a meaningful consideration.</p> <p>25 Q In Facility B it goes on to say: Quality of the</p>

<p>Williams - by Defendant - Direct (Suarez) Page 5372</p> <p>1 collateral and LTV. The property is in the form of a luxury 2 hotel building and nine remaining unsold condominiums located 3 in downtown Chicago. Based on the recent appraisal completed, 4 the hotel collateral was valued at 133 million, which would 5 result in a 55 percent LTV, not taking into account any of the 6 unsold condos, which are also being pledged as collateral. 7 How is that consideration meaningful to the decision 8 to approve the credit recommendation on this credit report? 9 A It is also an important consideration in that we are 10 customarily looking for the collateral in a commercial real 11 estate secured loan as a source of repayment. And this speaks 12 to the quality and strength of the collateral as a source of 13 repayment, particularly its location, as well as its value, as 14 was recently determined by an updated appraisal that resulted 15 in a moderate to low loan-to-value of 55 percent. 16 Q And with respect to the accelerated repayment in 17 addition to amortization, it says: Until the facility is paid 18 down to a balance of no more than 45 million, the facility will 19 amortize on a 30-year amortization schedule. In addition, 20 92 percent of the proceeds of the sale of any of the seven 21 condos pledged as collateral will be applied to the principal 22 balance of the loan. It is the borrower's intention to pay 23 down the facility to 45 million as soon as possible. 24 How did that impact the credit analysis for this 25 facility?</p>	<p>Williams - by Defendant - Direct (Suarez) Page 5374</p> <p>1 And it would also conceivably reduce our loan amount because he 2 is not borrowing that amount, he is putting that amount in from 3 his own proceeds. 4 Q And how does that equity injection by the guarantor, 5 if at all, impact the risk to the bank on that specific credit 6 facility? 7 A It arguably reduces our risk if he has got more 8 invested in his own money. He is certainly less inclined to 9 see the project fail. 10 MR. SUAREZ: If we can turn to page 14? 11 Q Are you familiar with the chart which appears here at 12 the center of page 14? 13 A Yes. 14 Q What does this chart represent? 15 A It is illustrative of Mr. Trump's reported financial 16 statements, as well as some adjustments that we made as part of 17 our standard underwriting and due diligence process. 18 Q For the year ending June 30, 2013, for the last two 19 columns from the right side of the page, what does the column: 20 DJT June 30, 2013 client reported, represent? 21 A That represents information that was provided with 22 his June 30, 2013 financial statement, personal financial 23 statement. 24 Q And what does the column: DJT June 30, 2013 (DB 25 adjusted) represent?</p>
<p>Williams - by Defendant - Direct (Suarez) Page 5373</p> <p>1 A So it was also a consideration in so far as -- As the 2 loan amount is paid down, the loan-to-value decreases, 3 therefore, increasing our comfort with the credit. 4 Q And for Facility C, that was the Old Post Office 5 loan, correct? 6 A Yes, that's correct. 7 Q It says: Equity injection of the guarantor. While 8 the initial equity injection of the guarantor was established 9 (sic.) at 42M -- 10 THE COURT: Not established. 11 MR. SUAREZ: Estimated. 12 THE COURT: Right. 13 MR. SUAREZ: Thank you. I am sorry. 14 Q -- at \$42 million, we have been told that the 15 estimate has been increased to anywhere from 150-160 million 16 with approximately 30 million already invested. 17 Do you see that? 18 A I see that, yes. 19 Q How was that relevant to the credit decisions 20 reflected in this memorandum? 21 A So, similar to, I believe it was the Doral loan, 22 Mr. Trump as the guarantor/principal owner, was putting in or 23 investing a significant amount of his own equity and liquidity 24 into the project, which gives us an increased level of comfort 25 given that he has more at stake in this particular transaction.</p>	<p>Williams - by Defendant - Direct (Suarez) Page 5375</p> <p>1 A The same financial statement after we apply our 2 standard adjustments, or they are also referred to as 3 "haircuts" to the assets and liabilities. 4 Q And what, if anything, does that column with the DB 5 adjusted values reflect of Deutsche Bank's own analysis of the 6 financial statement? 7 A Again, it is -- it is after we have made what I would 8 say are generally our standard adjustments that we apply to 9 really any given high-net-worth individual or 10 ultra-high-net-worth individual's provided financial 11 statements. 12 Q Now, if we start with liquidity, it says that the 13 guarantor reports liquidity of 339 million as of June 30, 2013 14 consisting of 150 million in Mr. Trump's name personally and 15 154 million held in various entities. 16 THE COURT: I think you misstated the number 17 there. Didn't you say 150 instead of 185? 18 MR. SUAREZ: Consisting of -- I can start again 19 if I was unclear. I don't have the realtime, so I 20 can't -- 21 THE COURT: I don't either, but I am pretty sure 22 you said 150 instead of 185. 23 I am correct I am told. 24 MR. SUAREZ: All right. I'll withdraw that. 25 Q In the section that says liquidity, it says: The</p>

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<p>1 guarantor reports liquidity of 339 million as of June 30, 2013</p> <p>2 consisting of 185 million in Mr. Trump's name personally and</p> <p>3 154 million held in various entities which Mr. Trump controls.</p> <p>4 Do you see that?</p> <p>5 A I do.</p> <p>6 Q And then the last paragraph says: DB adjusted</p> <p>7 liquidity represents the amount of liquidity that was verified</p> <p>8 via statements by Mr. Sullivan and Ms. Schroder on October 21,</p> <p>9 2013?</p> <p>10 A I see that, yes.</p> <p>11 Q Now, when you describe a standard adjustment, what do</p> <p>12 you mean by that?</p> <p>13 A I don't see a reference to a standard adjustment.</p> <p>14 Q I am sorry, I wasn't clear.</p> <p>15 Earlier when you said that the chart above reflected</p> <p>16 standard adjustments made by the underwriters, was it the case</p> <p>17 that the standard adjustments in connection with your -- with</p> <p>18 the bank's own analysis, as opposed to fixed adjustments that</p> <p>19 are made to each asset?</p> <p>20 MR. WALLACE: Objection, leading.</p> <p>21 THE COURT: Sustained.</p> <p>22 Q In reviewing the adjustments to the liquidity, what</p> <p>23 about them are standard?</p> <p>24 A So for liquidity there may be a difference in the</p> <p>25 client's reported liquidity as of the date of the financial</p>		<p>1 understanding is they were consulted in particular with respect</p> <p>2 to these four, as they were referred to, trophy properties and</p> <p>3 the valuation of those properties.</p> <p>4 Q And how, if at all, were the values reported by the</p> <p>5 guarantor adjusted by the DB Valuation Services Group?</p> <p>6 A Based on the memo I am reminded that in one</p> <p>7 particular case there was a recent appraisal that we were privy</p> <p>8 to that resulted in an adjustment. That's one particular</p> <p>9 example of where or how an adjustment was made.</p> <p>10 Q Was that a standard adjustment?</p> <p>11 A I think if information was available that could</p> <p>12 augment our analysis and adjustment of a particular property,</p> <p>13 then yeah, I would say that that was typical.</p> <p>14 Q What judgment, if any, did the underwriters use to</p> <p>15 adjust the basis of value for client reported assets?</p> <p>16 A So I think it was -- the underwriters were</p> <p>17 particularly relying on the Valuation Services Group, given</p> <p>18 this is their level of expertise -- rather, their area of</p> <p>19 expertise.</p> <p>20 Q Why was the DB Valuation Services Group's area of</p> <p>21 expertise relevant to the underwriting of these loan</p> <p>22 facilities?</p> <p>23 MR. WALLACE: Can I just note a foundation</p> <p>24 objection? I also think this memo is from before the</p> <p>25 witness was working on the loans. So, it is unclear, he</p>	
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<p>1 statements versus the client's liquidity as of a date, perhaps,</p> <p>2 sometime after that.</p> <p>3 In this case it appears that it was October when</p> <p>4 folks in the underwriting team viewed some financial statements</p> <p>5 and were -- rather, bank and brokerage statements, that might</p> <p>6 have had a different amount. Which would not be unusual, given</p> <p>7 it was several months later.</p> <p>8 Q When you see an adjustment to the liquidity from the</p> <p>9 client reported in the chart of 339.1 million to 154 --</p> <p>10 154.5 million, that's not a fixed adjustment that is made, it</p> <p>11 is a variable adjustment based on the bank's analysis, correct?</p> <p>12 A Yes.</p> <p>13 Q And with respect to the four trophy properties which</p> <p>14 appear on page 17 -- I am sorry, page 15 of this memorandum, of</p> <p>15 this exhibit. Page 14 of the document, page 15 of the exhibit.</p> <p>16 It says: The valuation for each of these properties</p> <p>17 were discussed with DB Valuation Services Group who advised on</p> <p>18 adjustments for each.</p> <p>19 A I see that.</p> <p>20 Q What is DB Valuation Services Group?</p> <p>21 A It was a group that I believe sat within the</p> <p>22 investment bank at Deutsche Bank.</p> <p>23 Q And how, if at all, did they provide input into the</p> <p>24 underwriting on the loans reflected in this memorandum?</p> <p>25 A So this, again, this predated my involvement. But my</p>		<p>1 is talking about the actual preparation of this memo or</p> <p>2 general bank procedures?</p> <p>3 THE COURT: Is that either/or? We can ask one</p> <p>4 way or ask it the other way?</p> <p>5 MR. WALLACE: I think that the question should</p> <p>6 just be clear as to whether they are asking about the</p> <p>7 preparation of this memo and whether the witness had</p> <p>8 involvement in it; or if he is being asked about general</p> <p>9 bank practices with this; as the foundation for the</p> <p>10 question.</p> <p>11 MR. SUAREZ: The witness signed this memo.</p> <p>12 THE COURT: He signed it?</p> <p>13 MR. KISE: Yes.</p> <p>14 THE COURT: Okay. I think that resolves that.</p> <p>15 MR. GABER: I believe he said this portion here</p> <p>16 on trophy properties predated his involvement. He was not</p> <p>17 involved in this. Perhaps we can seek clarification as to</p> <p>18 whether he was involved in this part of the underwriting</p> <p>19 and adjustment?</p> <p>20 THE COURT: How could he sign it if he -- if it</p> <p>21 predated him? What am I missing? Let's hear it from the</p> <p>22 witness, the horse's mouth.</p> <p>23 THE WITNESS: In this particular instance I</p> <p>24 signed off on this particular memo. However, this</p> <p>25 analysis was done, I believe -- was certainly at a time</p>	

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<p>1 that predated my involvement. I believe it was either</p> <p>2 with the origination of the original credit request or the</p> <p>3 second credit request, which both predated my involvement.</p> <p>4 Q And what, if anything, would you have done to become</p> <p>5 familiar with this analysis before you signed the credit memo?</p> <p>6 A I would have read those details.</p> <p>7 Q And how, if at all, would the adjustments recommended</p> <p>8 by the DB Valuation Services Group have impacted your decision</p> <p>9 to support the credit recommendations contained in this memo?</p> <p>10 A I am certain they gave me additional comfort.</p> <p>11 Q And what, if any, reaction did you have to the fact</p> <p>12 that the net equity reported by the guarantor and the DB</p> <p>13 adjusted net equity had a difference of almost \$1.4 billion?</p> <p>14 A No reaction. I would have felt that was within</p> <p>15 reasonably expected adjustments.</p> <p>16 Q And why would that be a reasonably expected</p> <p>17 adjustment?</p> <p>18 A I think absent these details and the support of the</p> <p>19 Valuation Services Group, we may have haircut these assets as</p> <p>20 much as 50 percent or more.</p> <p>21 Q And in this case the adjustment to the equity -- let</p> <p>22 me withdraw that.</p> <p>23 How, if at all, does the DB adjusted net equity</p> <p>24 reflect the analysis performed by the DB Valuation Services</p> <p>25 Group?</p>		<p>1 the -- there is a use of estimates in the client's provided</p> <p>2 financial statements. These particular assets represented a</p> <p>3 fair amount or might even say a significant amount of his</p> <p>4 stated net worth. Looking back to the credit policy, I believe</p> <p>5 it said we are expected to conduct some due diligence and</p> <p>6 verify the information provided to the extent that is possible.</p> <p>7 Again, given the Valuation Services Group's familiarity with</p> <p>8 these properties and perhaps even with the client, it only made</p> <p>9 sense that we availed ourselves to the Valuation Services Group</p> <p>10 to get their opinion and feedback as we are doing our due</p> <p>11 diligence and underwriting.</p> <p>12 MR. SUAREZ: If we could go back to page 14?</p> <p>13 Go back to the last two columns on the right</p> <p>14 that we were discussing earlier.</p> <p>15 Q Do you see that the June 30, 2013 client-reported net</p> <p>16 worth was \$4.9 billion approximately?</p> <p>17 A Yes.</p> <p>18 Q And the DB adjusted net worth was \$2.6 billion</p> <p>19 approximately?</p> <p>20 A Yes.</p> <p>21 Q What is the difference between the DB adjusted net</p> <p>22 worth and the client reported net worth for the year ending</p> <p>23 June 30, 2013?</p> <p>24 A Our adjustment was approximately 50 percent of the</p> <p>25 client's reported net worth.</p>	
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<p>1 A It is fully reflective of the input we received from</p> <p>2 DB Valuation Services Group.</p> <p>3 Q And how, if at all, was the input you received from</p> <p>4 the DB Valuation Services Group specific to each of the</p> <p>5 properties identified in the credit memo?</p> <p>6 A So my understanding is the underwriting team or</p> <p>7 individual who conducted this analysis, wrote this part of the</p> <p>8 credit memo, relied a fair amount on the feedback they received</p> <p>9 from the Valuation Services Group.</p> <p>10 Q And how, if at all, was the Valuation Services Group</p> <p>11 qualified to provide that information to the underwriters in</p> <p>12 connection with this credit memo?</p> <p>13 A So as stated, this group sat within the investment</p> <p>14 bank, specifically as part of the commercial real estate</p> <p>15 division within the investment bank, so this is their area of</p> <p>16 expertise. That is, being familiar with large commercial real</p> <p>17 estate properties. And in particular there may have been some</p> <p>18 familiarity with these four trophy properties as they are</p> <p>19 referred to, given that our investment bank had some prior</p> <p>20 relationship with Mr. Trump.</p> <p>21 Q And why would -- withdrawn.</p> <p>22 Why did the underwriting team request input from DB</p> <p>23 Valuation Services Group instead of accepting the values</p> <p>24 submitted by the applicant in this case?</p> <p>25 A So, again, there is a reasonable expectation that</p>		<p>1 Q And how, if at all, did that adjustment reflect</p> <p>2 Deutsche Bank's own analysis of the guarantor's financial</p> <p>3 condition?</p> <p>4 A It fully reflected our analysis.</p> <p>5 Q And the \$2,645,000,000 number that appears on this</p> <p>6 page, how is that number consistent with the figure at page ten</p> <p>7 which states: For all facilities, financial strength of the</p> <p>8 guarantor; the financial profile of the guarantor includes, on</p> <p>9 an adjusted basis, a net worth of 2.6 billion with</p> <p>10 154.5 million in unencumbered liquidity?</p> <p>11 A It is consistent.</p> <p>12 (Whereupon the proceedings were stenographically</p> <p>13 recorded by Senior Court Reporter Michael Ranita.)</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	

<p>D. Williams - by Defense - Direct (Mr. Suarez) Page 5384</p> <p>1 Q And what reaction, if any, did you have to the</p> <p>2 magnitude of the reduction between the guarantor's reported net</p> <p>3 worth and Deutsche Bank's own adjusted value?</p> <p>4 A My reaction was probably pretty measured, considering</p> <p>5 it's not unusual or atypical for any client's provided financial</p> <p>6 statements to be adjusted to this level, or to this extent.</p> <p>7 Q And what, if anything, concerning the basis for the</p> <p>8 decision to make that adjustment is reflected by this credit</p> <p>9 memorandum?</p> <p>10 A Can you repeat the question?</p> <p>11 Q Sure.</p> <p>12 What, if anything, is reflected in this credit</p> <p>13 memorandum concerning the basis for Deutsche Bank's decision to</p> <p>14 make the adjustment in the reported net worth?</p> <p>15 A I'm not sure I understand the question.</p> <p>16 MR. SUAREZ: I'll withdraw it.</p> <p>17 If we could turn to page 16 of this document.</p> <p>18 (Whereupon, the exhibit was displayed on the</p> <p>19 screen.)</p> <p>20 Q Do you see the section that says "Net cash flow"?</p> <p>21 (Whereupon, the exhibit was displayed on the</p> <p>22 screen.)</p> <p>23 Q And it says, "The guarantor demonstrates a diversified</p> <p>24 stream of cash flows which are generally recurring by nature"?</p> <p>25 A Yes, I see that.</p>	<p>D. Williams - by Defense - Direct (Mr. Suarez) Page 5386</p> <p>1 Q What is the difference between the client reported net</p> <p>2 cash flow and the DB adjusted net cash flow?</p> <p>3 A It appears to be predominantly what is categorized as</p> <p>4 nonoperating revenue, which was set aside, presumably, as</p> <p>5 nonrecurring.</p> <p>6 Q And is the magnitude of the change -- withdrawn.</p> <p>7 What, if anything, about the magnitude of the change</p> <p>8 between the client reported net cash flow and the DB adjusted</p> <p>9 net cash flow was relevant to your analysis in this credit</p> <p>10 memorandum?</p> <p>11 A So, again, to the extent the client, um, generates</p> <p>12 recurring cash flow from certain assets that he owns, we would</p> <p>13 look to that as a potential source of repayment.</p> <p>14 Q And how, if at all, was the magnitude of the change</p> <p>15 between the client reported net cash flow and the DB adjusted</p> <p>16 net cash flow relevant to your analysis of the credit facilities</p> <p>17 contained in this memorandum?</p> <p>18 A I should think it was a consideration.</p> <p>19 Q And what, if anything, does the change between the</p> <p>20 client reported net cash flow and the DB adjusted net cash flow</p> <p>21 reflect the bank's own analysis of the guarantor's financial</p> <p>22 strength?</p> <p>23 A So, in this particular year, based on our analysis, the</p> <p>24 client's assets did not generate sufficient recurring cash flow</p> <p>25 to offset his personal uses. However, I will note, in prior</p>
<p>D. Williams - by Defense - Direct (Mr. Suarez) Page 5385</p> <p>1 Q Why is the guarantor's net cash flow a factor evaluated</p> <p>2 in this credit memorandum?</p> <p>3 A It would also be looked to as a potential source of</p> <p>4 repayment for the loan.</p> <p>5 Q And what, if any, adjustments does Deutsche Bank make</p> <p>6 to the client's reported net cash flow?</p> <p>7 A So, in our analysis, one potential adjustment could be</p> <p>8 whether or not a source of cash flow is recurring or</p> <p>9 nonrecurring.</p> <p>10 Q And in this analysis --</p> <p>11 MR. SUAREZ: If we could zoom back into the page,</p> <p>12 the chart below.</p> <p>13 (Whereupon, the exhibit was displayed on the</p> <p>14 screen.)</p> <p>15 Q Do you see the second column says "DB adjusted fiscal</p> <p>16 year June 30, 2013"?</p> <p>17 A Yes.</p> <p>18 Q And "Client reported fiscal year June 30, 2013"?</p> <p>19 A Yes.</p> <p>20 Q What was the client reported fiscal year June 30, 2013</p> <p>21 net cash flow?</p> <p>22 A Approximately 150 million.</p> <p>23 Q And what was the DB adjusted net cash flow for the</p> <p>24 fiscal year ending June 30, 2013?</p> <p>25 A A negative, approximately, 26 million.</p>	<p>D. Williams - by Defense - Direct (Mr. Suarez) Page 5387</p> <p>1 years he noted the same. He reported the same, a deficit net</p> <p>2 cash flow, but we adjusted that to the positive. It's not</p> <p>3 unusual for a high net worth individual's cash flow to vary from</p> <p>4 year to year positive to negative.</p> <p>5 Q Is the bank capable of reaching it's own judgment based</p> <p>6 on the evaluation it makes of the guarantor's financial</p> <p>7 condition?</p> <p>8 A Certainly, yes.</p> <p>9 Q And how was the evaluation of the credit facilities in</p> <p>10 this memorandum, if at all, consistent with the bank's approved</p> <p>11 business strategies?</p> <p>12 A It's consistent.</p> <p>13 Q With respect to the Trump Chicago loan made to 401</p> <p>14 North Wabash Venture, LLC, at page 294 -- I'm sorry, Plaintiff's</p> <p>15 Exhibit 294, page six?</p> <p>16 (Whereupon, the exhibit was displayed on the</p> <p>17 screen.)</p> <p>18 Q What is the effect of the LTV on the loan dropping to</p> <p>19 35 percent and below?</p> <p>20 A It would have the effect of eliminating Mr. Trump's</p> <p>21 personal guaranty.</p> <p>22 Q And was the guaranty on the Trump Chicago loan</p> <p>23 eliminated?</p> <p>24 MR. WALLACE: Objection. Asked and answered.</p> <p>25 THE COURT: Déjà vu all over again.</p>

<p>D. Williams - by Defense - Direct (Mr. Suarez) Page 5388</p> <p>1 MR. SUAREZ: I'm sorry.</p> <p>2 THE COURT: He said, "Asked and answered." He</p> <p>3 objected, "Asked and answered", and I said, "Déjà vu all</p> <p>4 over again."</p> <p>5 I can't remember whether this was the exact same</p> <p>6 document or different, but it's the same point; right?</p> <p>7 MR. SUAREZ: I'll make a connection to the question</p> <p>8 and then I'll move on.</p> <p>9 A So ultimately, yes, the personal guaranty was reduced</p> <p>10 to zero on the Chicago loan.</p> <p>11 Q And moving onto page seven of this document for the</p> <p>12 minimum liquidity covenant.</p> <p>13 (Whereupon, the exhibit was displayed on the</p> <p>14 screen.)</p> <p>15 Q What was the effect of reducing the guaranty level to</p> <p>16 zero on the Trump Chicago loan?</p> <p>17 A Mr. Trump would have no longer been required to</p> <p>18 maintain any unencumbered liquidity, um, even, um, that he held</p> <p>19 at Deutsche Bank.</p> <p>20 Q What was the effect of the guaranty level, the</p> <p>21 reduction of the guaranty level to zero, if anything, with</p> <p>22 respect to the net worth covenant?</p> <p>23 A Once the guaranty reduced to zero, the net worth</p> <p>24 covenant was reduced to zero. Or said another way, it was</p> <p>25 eliminated or deleted.</p>	<p>D. Williams - by Defense - Direct (Mr. Suarez) Page 5390</p> <p>1 then across several different, what we refer to as product</p> <p>2 types, which are driven by the collateral type securing the</p> <p>3 loan.</p> <p>4 Q Who is responsible for maintaining the pricing grid?</p> <p>5 A That is the responsibility of what we refer to as the</p> <p>6 business, which is the client facing group, as well as, and more</p> <p>7 specifically, the lending group, um, drives the pricing ranges</p> <p>8 that are shown here on this grid.</p> <p>9 Q How does the pricing grid affect pricing, if at all?</p> <p>10 A When the lending group is making or considering making</p> <p>11 a loan secured by a particular type of asset, or maybe even</p> <p>12 unsecured as the grid shows to the far right, a lender is</p> <p>13 supposed to take into consideration these ranges when</p> <p>14 considering pricing.</p> <p>15 Q Is a lender allowed to deviate from the range provided</p> <p>16 on this grid?</p> <p>17 A Yes.</p> <p>18 Q In what circumstances can a lender deviate from the</p> <p>19 ranges provided on this grid?</p> <p>20 A So if the recommended pricing falls particularly below</p> <p>21 what's recommended here, some additional levels of approval</p> <p>22 would be required.</p> <p>23 Q How does competition in the marketplace drive, if at</p> <p>24 all, the decision to deviate from this grid?</p> <p>25 A It can be a factor.</p>
<p>D. Williams - by Defense - Direct (Mr. Suarez) Page 5389</p> <p>1 MR. SUAREZ: Okay. We could take this down.</p> <p>2 (Whereupon, the exhibit displayed on the screen was</p> <p>3 taken down.)</p> <p>4 Q What responsibilities does a lending officer have for</p> <p>5 determining the interest rate that is included in a credit</p> <p>6 facility?</p> <p>7 A It's one of the considerations that a lending officer</p> <p>8 makes, or takes into consideration when making a loan.</p> <p>9 Q And what obligation, if any, does a lending officer</p> <p>10 have to ensure that the approved exposures with respect to a</p> <p>11 credit facility are in accordance with the approved business</p> <p>12 strategies of the bank?</p> <p>13 A A lending officer has some responsibility in that</p> <p>14 regard.</p> <p>15 MR. SUAREZ: If we could please pull up Defendant's</p> <p>16 Exhibit 205, previously admitted.</p> <p>17 (Whereupon, the exhibit was displayed on the</p> <p>18 screen.)</p> <p>19 (The witness was handed the exhibit.)</p> <p>20 Q Are you familiar with the pricing grid that appears on</p> <p>21 Defendant's Exhibit 205?</p> <p>22 A Yes.</p> <p>23 Q What does this pricing grid reflect?</p> <p>24 A It reflects recommended pricing for various locations</p> <p>25 where Deutsche Bank does business, including the Americas, and</p>	<p>D. Williams - by Defense - Direct (Mr. Suarez) Page 5391</p> <p>1 Q How can it be a factor?</p> <p>2 A If while we are underwriting or performing our due</p> <p>3 diligence and we are recommending or suggesting pricing that</p> <p>4 falls within this grid, at some point we'll propose that to the</p> <p>5 client, or prospective client, and the feedback we might receive</p> <p>6 from the client is that maybe his existing loans with another</p> <p>7 institution are priced below what we are proposing; that would</p> <p>8 be one example, the feedback that we would receive that would</p> <p>9 indicate perhaps our pricing is above what's considered market.</p> <p>10 Q Would that be a basis to deviate downwards from the</p> <p>11 pricing grid?</p> <p>12 A Yes, perhaps.</p> <p>13 Q Are you aware of any circumstances where there was an</p> <p>14 upward deviation from the pricing grid?</p> <p>15 A It can happen, yes.</p> <p>16 Q Can you think of any time since you've been at Deutsche</p> <p>17 Bank where an upward deviation from the pricing grid has been</p> <p>18 imposed?</p> <p>19 A Yes.</p> <p>20 Q How frequently?</p> <p>21 A It happens from time to time.</p> <p>22 Q Are there any criteria that affect the range provided</p> <p>23 in the pricing grid?</p> <p>24 A Yeah, so in addition to competitive forces, um, a</p> <p>25 client's relationship with the bank, noncredit relationship, for</p>

<p>D. Williams - by Defense - Direct (Mr. Suarez) Page 5392</p> <p>1 example, investable assets could be a factor, as well as our</p> <p>2 internal risk rating of a client.</p> <p>3 Q How, if at all, does the collateral type affect where</p> <p>4 in the range a loan is priced?</p> <p>5 A So it's definitely a factor, as illustrated here by the</p> <p>6 grid, given that the grid shows a number of different collateral</p> <p>7 types, and within each of those collateral types is a range.</p> <p>8 Q Where on this grid did the Trump Doral loan fall?</p> <p>9 A So they were all commercial real estate secured</p> <p>10 transactions, which would fall under that column on the pricing</p> <p>11 grid with the recommended pricing of between two percent and</p> <p>12 two-and-a-half percent.</p> <p>13 Q And when you say they were all, to move things along,</p> <p>14 would that mean the Trump Chicago, Trump OPO and Trump Doral</p> <p>15 loans?</p> <p>16 A Yes, all three loans were commercial real estate</p> <p>17 secured.</p> <p>18 Q Would the financial wherewithal of the guarantor play a</p> <p>19 role in determining where on the range identified in this</p> <p>20 pricing grid a loan would fall?</p> <p>21 A Yes. That's a determinant in the risk rating, the</p> <p>22 internal risk rating that we arrive at.</p> <p>23 Q And how would the financial wherewithal of the</p> <p>24 guarantor affect the point within this range where a loan would</p> <p>25 be priced?</p>	<p>D. Williams - by Defense - Direct (Mr. Suarez) Page 5394</p> <p>1 THE COURT: Sustained.</p> <p>2 Q How, if at all, did Deutsche Bank's decision to price</p> <p>3 the loans we previously discussed reflect the bank's own</p> <p>4 adjusted net worth value of 2.5 billion for the guarantor?</p> <p>5 A It was a consideration or a factor.</p> <p>6 Q How, if at all, was an adjusted net worth of</p> <p>7 2.5 billion -- withdrawn.</p> <p>8 How, if at all, was a net worth of approximately</p> <p>9 2.5 billion on an adjusted basis for President Trump used to</p> <p>10 qualify him for this pricing grid?</p> <p>11 A Well, again, if we are even considering the loan, a</p> <p>12 client has to meet our stated minimums. When I say "has to</p> <p>13 meet", that's the target.</p> <p>14 Some exceptions could be made if the client does not</p> <p>15 meet those minimums, but certainly in this case, even on</p> <p>16 adjusted basis, Mr. Trump met those minimums.</p> <p>17 Q If Mr. Trump's adjusted basis net worth was 2 billion,</p> <p>18 would he have met these minimums?</p> <p>19 MR. WALLACE: Objection. Calls for speculation.</p> <p>20 THE COURT: Overruled.</p> <p>21 THE WITNESS: I'm sorry?</p> <p>22 THE COURT: That was overruled. Please answer.</p> <p>23 A Yes. Even if his net worth was \$2 billion, he would</p> <p>24 have met our minimum requirements.</p> <p>25 Q If his net worth was in excess of a billion dollars on</p>
<p>D. Williams - by Defense - Direct (Mr. Suarez) Page 5393</p> <p>1 A So, I guess to begin, if we were even at this point in</p> <p>2 our analysis, um, the presumption is that the client meets our</p> <p>3 target market minimum requirements for investable assets, stated</p> <p>4 net worth. Beyond that, if the client exhibits a certain amount</p> <p>5 of financial strength, well above or in excess of those minimum</p> <p>6 requirements, that could be a factor.</p> <p>7 Q How would you determine circumstances in which the</p> <p>8 financial strength of the guarantor would merit pricing at the</p> <p>9 low end of the range?</p> <p>10 A So, again, it would be a factor of risk rating,</p> <p>11 strength of the collateral, strength of the guarantor as</p> <p>12 reflected in the risk rating, also external market factors,</p> <p>13 competitive factors.</p> <p>14 Q And what, if anything, about President Trump's</p> <p>15 financial condition supported pricing at the lower end of the</p> <p>16 range?</p> <p>17 A He reported both a net worth and investable assets that</p> <p>18 were well in excess of our minimum requirements.</p> <p>19 Q What were the minimum requirements?</p> <p>20 A For commercial real estate it's a hundred million net</p> <p>21 worth, 10 million of investable assets.</p> <p>22 Q Did President Trump qualify for this pricing range with</p> <p>23 a net worth as adjusted by Deutsche Bank of approximately</p> <p>24 \$2.6 billion?</p> <p>25 MR. WALLACE: Objection. Leading.</p>	<p>D. Williams - by Defense - Direct (Mr. Suarez) Page 5395</p> <p>1 an adjusted basis, would he have met these minimum requirements?</p> <p>2 A Yes.</p> <p>3 Q If his net worth was in excess of 500 million on an</p> <p>4 adjusted basis, would he have met these minimum requirements?</p> <p>5 A Yes.</p> <p>6 Q If his net worth was in excess of a hundred million,</p> <p>7 would he have met these minimum requirements?</p> <p>8 A Yes.</p> <p>9 Q In fact, if he had, on an adjusted basis, at least</p> <p>10 \$100 million in cash, in marketable securities, would he have</p> <p>11 met these requirements?</p> <p>12 A Yes.</p> <p>13 THE COURT: Mr. Wallace, I consider those</p> <p>14 hypotheticals, not speculations, and I believe that the</p> <p>15 hypotheticals are admissible.</p> <p>16 MR. WALLACE: Noted, your Honor.</p> <p>17 Q What is the bank's goal in pricing a credit facility?</p> <p>18 A Well, I think it is our -- our, more or less, our sole</p> <p>19 determinant. If we are going to make a loan, it's up to us to</p> <p>20 decide if we are going to make a loan based on a certain pricing</p> <p>21 or not.</p> <p>22 Q What, if anything, to your knowledge, concerning</p> <p>23 President Trump's financial condition, would have qualified him</p> <p>24 to stay within that range of 2.0 to 2.5 percent for commercial</p> <p>25 real estate in the Americas?</p>

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<p>1 A So, again, he -- we had established that he already met</p> <p>2 the minimum requirements, so the range here as a guideline or</p> <p>3 recommended range for clients that meet those minimum</p> <p>4 requirements.</p> <p>5 MR. SUAREZ: Your Honor, may I have a minute to</p> <p>6 confer with my colleagues?</p> <p>7 THE COURT: Sure. Go ahead. I was going to issue</p> <p>8 a five-minute warning, but go ahead, and we'll see where we</p> <p>9 are.</p> <p>10 (Whereupon, there is a brief pause in the testimony</p> <p>11 as Counsel conferred.)</p> <p>12 MR. SUAREZ: Your Honor, if we could break now for</p> <p>13 lunch I may be able to greatly truncate the rest of my</p> <p>14 direct examination.</p> <p>15 THE COURT: I always like that. Okay. Lunch</p> <p>16 break. See you all at 2:15.</p> <p>17 MR. SUAREZ: Thank you.</p> <p>18 THE COURT: I'll direct the witness, order the</p> <p>19 witness, don't discuss the case, don't discuss your</p> <p>20 testimony or anything related during the lunch break.</p> <p>21 THE WITNESS: Understood, your Honor.</p> <p>22 (Whereupon, the case on trial was adjourned until</p> <p>23 2:15 for the luncheon recess.)</p> <p>24</p> <p>25</p>	<p>1 anyway. We would like to tell her 10:00 tomorrow morning,</p> <p>2 even though we may not be done with Pereless at that</p> <p>3 point. And then Ms. Vrablic may take the better part of</p> <p>4 the day.</p> <p>5 But to the extent there is any leftover time</p> <p>6 tomorrow, at this point we would anticipate either filling</p> <p>7 that with Patrick Birney or potentially Jack Weisselberg.</p> <p>8 And then followed by Mr. Unell, who will start Thursday</p> <p>9 morning, who is our next expert.</p> <p>10 MS. GREENFIELD: And you still think Unell is</p> <p>11 going to take Thursday and Friday?</p> <p>12 MR. ROBERT: Yeah at this point, yes, probably.</p> <p>13 Probably.</p> <p>14 MS. GREENFIELD: What is your direct</p> <p>15 approximately?</p> <p>16 MR. SUAREZ: I would anticipate that the Unell</p> <p>17 direct would take the balance of an entire day.</p> <p>18 MS. GREENFIELD: Entire day.</p> <p>19 And cross obviously.</p> <p>20 MR. WALLACE: I am very curious what he says</p> <p>21 that day. But if he is finished on Thursday, we will be</p> <p>22 able to finish Friday, even though it is a half day.</p> <p>23 MS. GREENFIELD: Next week is unchanged from</p> <p>24 what you said yesterday?</p> <p>25 MR. ROBERT: For Monday definitely with Chin,</p>
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<p>1 COURT OFFICER: All rise. Part 37 is back in</p> <p>2 session, the Honorable Judge Arthur Engoron presiding.</p> <p>3 Please be seated and come to order.</p> <p>4 THE COURT: Let's get the witness here.</p> <p>5 MR. ROBERT: Some housekeeping issues,</p> <p>6 scheduling issues we want to bring to the Court's</p> <p>7 attention.</p> <p>8 THE COURT: I'll turn the microphone over to the</p> <p>9 person who sits alongside me, scheduling expert.</p> <p>10 MR. ROBERT: So I guess I am happy to report</p> <p>11 that Mr. Suarez, although I am not going to speak for him,</p> <p>12 has no more direct of the witness right now and is going</p> <p>13 to turn him over for cross.</p> <p>14 MR. SUAREZ: That's correct.</p> <p>15 MR. ROBERT: In light of that we don't</p> <p>16 anticipate calling Mr. Sullivan. We reserve our rights to</p> <p>17 do so, but don't plan to do so at this point.</p> <p>18 We spoke with Mr. Wallace, who says that their</p> <p>19 cross examination of Mr. Williams is probably about a half</p> <p>20 hour or so, give or take.</p> <p>21 We plan to call Emily Pereless. Her examination</p> <p>22 by Mr. Suarez should take the balance of the afternoon.</p> <p>23 We then have Rosemary Vrablic, who is in New</p> <p>24 Rochelle. We spoke to the Attorney General, there doesn't</p> <p>25 seem to be a way she would be testifying this afternoon</p>	<p>1 and then Moens and Shubin.</p> <p>2 And then Wednesday I think is tentatively Eric</p> <p>3 Trump, but we will let you know.</p> <p>4 And Friday we will argue, I think, the motions</p> <p>5 in limine with the Court.</p> <p>6 MS. GREENFIELD: You skipped Thursday. That's</p> <p>7 Bartov still?</p> <p>8 MR. ROBERT: Bartov is Thursday, yes.</p> <p>9 And this Friday motions in limine as to Shubin,</p> <p>10 correct?</p> <p>11 MS. GREENFIELD: Okay.</p> <p>12 MR. ROBERT: All right. Thank you.</p> <p>13 THE COURT: Witness.</p> <p>14 (Whereupon, the witness resumed the stand.)</p> <p>15 THE COURT: I'll remind the witness, as usual,</p> <p>16 that he is still under oath.</p> <p>17 And let's start the cross examination.</p> <p>18 CROSS-EXAMINATION</p> <p>19 BY MR. GABER:</p> <p>20 Q Good afternoon, Mr. Williams. My name is Sherief</p> <p>21 Gaber. We met briefly at your deposition. It is good to see</p> <p>22 you again.</p> <p>23 So I wanted to start with, hopefully get you through</p> <p>24 this quickly, I am going to pull up and hand you a copy of what</p> <p>25 has been marked as PX-498.</p>

Williams - by Defendant - Cross (Gaber)	Page 5400	Williams - by Defendant - Cross (Gaber)	Page 5402
1 (Handing)		1 Q You have no reason to believe that these numbers came	
2 Q And if you could just take a look at this document,		2 from other than Donald J. Trump's personal financial statement?	
3 Mr. Williams, and tell me if you are familiar with it?		3 A No. I just qualify my response that it doesn't	
4 A Yes.		4 appear it is subject to any bank adjustments.	
5 Q Can you describe what this document is?		5 Q Okay.	
6 A It is a credit report dated September of 2019, an		6 THE COURT: Mr. Gaber, just speak up. Sometimes	
7 annual review of the entire Trump credit relationship.		7 you are a little muffled somehow.	
8 Q And if we look to page nine of the exhibit, it is		8 MR. GABER: I'll do my best to get into the	
9 correct that this bears your signature if we go down to the		9 microphone.	
10 signature block there?		10 Q Mr. Williams, can we take a look at page 11 of this	
11 A Yes, it appears to be.		11 document quickly, maybe to clarify it a bit before you refresh	
12 Q And I think Mr. Suarez asked you this, but can you		12 your recollection.	
13 tell me what your signature on this indicates?		13 It says here under "liquidity": The guarantor	
14 A It indicates that I sign in support of the credit		14 reports liquidity of \$76.2 million as of 6/30/18, consisting of	
15 transaction, or in this case the annual review.		15 funds in Mr. Trump's name, et cetera.	
16 Q And you are phrasing that "signed in support,"		16 And then it says: The client reported balances	
17 that's because you didn't have credit approval authority; is		17 marginally increased from the prior year. In the earlier	
18 that correct?		18 years, as Mr. Suarez had showed you, there was a description of	
19 A Correct.		19 you and/or others from Deutsche Bank going to Trump Tower to	
20 Q And it was Credit Risk Management that had credit		20 personally verify bank statements and other records to support	
21 approval authority at Deutsche Bank?		21 that liquidity number. I'll represent that after -- I mean,	
22 A Yes, correct.		22 I'll say, this memo doesn't mention your going to Trump Tower	
23 Q In the Private Wealth Division?		23 to check liquidity. That's because you didn't go in this year	
24 And who are the Credit Risk Management officers who		24 to check liquidity; is that correct?	
25 signed and ultimately approved this review?		25 A That's correct.	
Williams - by Defendant - Cross (Gaber)	Page 5401	Williams - by Defendant - Cross (Gaber)	Page 5403
1 A Gaston Allegre and Jim Baldino.		1 Q So these are client reported numbers only?	
2 MR. GABER: I ask that PX-498 be admitted into		2 A That appears to be a correct statement, yes.	
3 evidence.		3 Q Okay. And so I'll represent that after 2014 all of	
4 THE COURT: Granted, it is in.		4 the credit reports make no mention of anyone going to Trump	
5 (Whereupon, the document referred to was deemed		5 Tower. So if that's the case, would I similarly be able to	
6 marked for evidence as Plaintiff's Exhibit 498 by the		6 expect, if it is not mentioned in the memo that no one went to	
7 Court.)		7 personally check?	
8 Q If I can now direct you, Mr. Williams, to page two of		8 MR. SUAREZ: We object to the representation as	
9 this document. And we will pull it up on the screen as well.		9 creating an evidentiary record. If the government wants	
10 Under that last block where it says "Recommendation."		10 to create an evidentiary record of what those subsequent	
11 It says: Approval of the annual review for Facility A (Doral);		11 years say or don't say, they should move the exhibits in.	
12 Facility B (Chicago) and Facility C (OPO). And for all		12 I don't see a basis to represent what they say or don't	
13 facilities you will note the first item there says:		13 say. It is almost as if the government is introducing its	
14 Financial strength of the guarantor. The financial		14 own evidence without actually moving it in.	
15 profile of the guarantor includes a stated net worth of		15 MR. GABER: I think it is a simple hypothetical.	
16 6.12 billion which remains above the 2.5 billion minimum		16 THE COURT: I didn't think it was hypothetical.	
17 requirement, even on an adjusted basis. The guarantor		17 I thought it was: You represented that they did not	
18 maintains a strong unencumbered liquidity position of 76.2		18 include mention of a visit.	
19 million, a marginal increase from the previous year.		19 MR. GABER: I can rephrase it as a hypothetical.	
20 The \$6.12 billion number here, that came from the		20 THE COURT: Okay.	
21 Statement of Financial Condition of Donald J. Trump, correct?		21 Q If a credit memo is silent on whether or not someone	
22 A I believe so, yes.		22 went to personally verify financials at Trump Tower, is it fair	
23 Q And the 76.2 million dollars liquidity position, that		23 to assume that no one went?	
24 also came from the Statement of Financial Condition?		24 A I think that's a fair assumption.	
25 A It doesn't specify as such here. I would assume so.		25 Q Thanks.	

Williams - by Defendant - Cross (Gaber)	Page 5404	Williams - by Defendant - Cross (Gaber)	Page 5406
<p>1 MR. GABER: So if we can go to page four of the</p> <p>2 document now?</p> <p>3 Q So, under Endeavor, that's the Doral loan, correct?</p> <p>4 A Yes.</p> <p>5 Q Okay. So it says there in the paragraph starting</p> <p>6 Facility A: Facility A's DSCR breach was identified in a</p> <p>7 letter prepared by internal legal and sent to borrower June 5,</p> <p>8 2019.</p> <p>9 The letter noted the breach and DBTCA's intention to</p> <p>10 conduct an appraisal in order to test the loan-to-value in</p> <p>11 accordance with the loan agreement.</p> <p>12 Appraisal detail is noted in the sections that</p> <p>13 follow, but the results LTV (34.7 percent) clears the DSCR</p> <p>14 breach and does not trigger any guaranty-level changes called</p> <p>15 for in the below chart.</p> <p>16 So Mr. Williams, can you tell me what it means when</p> <p>17 it says a DSCR breach?</p> <p>18 A So, it suggests there was a breach of the Debt</p> <p>19 Service Coverage Covenant.</p> <p>20 Q Can you explain that covenant and that concept for</p> <p>21 me?</p> <p>22 A So, the calculation there on the document just above</p> <p>23 where it says actual DSC of 1.19 shows the inputs for the</p> <p>24 calculation: Income, less expenses, should equal the net</p> <p>25 operating income figure. Divide that by the debt service</p>		<p>1 President Trump. I think you described this DSCR breach as a</p> <p>2 DSCR covenant default or breach. Is there a difference in your</p> <p>3 mind between the DSCR breach and covenant default?</p> <p>4 A It depends on the nature of the breach. In this case</p> <p>5 the breach was considered also in conjunction with the</p> <p>6 loan-to-value of the property. And ultimately was determined</p> <p>7 that the loan-to-value cleared the debt service coverage</p> <p>8 breach.</p> <p>9 Q Okay. And I will just ask that you recall that even</p> <p>10 though the loan-to-value came in below 35 percent, the Trump</p> <p>11 Org had, in fact, elected to maintain a 10 percent guaranty in</p> <p>12 order to keep a more favorable interest rate?</p> <p>13 A I recall that he did that on at least one loan, yes.</p> <p>14 Q It might refresh your recollection if we can take a</p> <p>15 quick look at page six of this document.</p> <p>16 Under guaranty type, if you just take a look at that</p> <p>17 paragraph. The last sentence just says, or the last two</p> <p>18 sentences: As outlined below, the guaranty level at or below a</p> <p>19 35 percent LTV was originally contemplated to be zero percent,</p> <p>20 at which time pricing was scheduled to increase to L plus</p> <p>21 two percent. Retaining a 10 percent guaranty level, clearly</p> <p>22 strengthens the credit.</p> <p>23 Does that refresh your recollection that they</p> <p>24 maintained the guaranty in order to keep a more favorable</p> <p>25 pricing on the loan?</p>	
Williams - by Defendant - Cross (Gaber)	Page 5405	Williams - by Defendant - Cross (Gaber)	Page 5407
<p>1 figure for that year, equals the 1.19 times calculation.</p> <p>2 Q Okay. And what is the affect of a breach of the DSCR</p> <p>3 covenant?</p> <p>4 A So, it would have had an impact on the step-down</p> <p>5 percentage of the guaranty.</p> <p>6 Q Can you elaborate what sort of impact it could have</p> <p>7 on the step-down percentage?</p> <p>8 A So the chart there in the middle of the page outlines</p> <p>9 what occurs if and when a debt service coverage ratio</p> <p>10 exceeds -- meets or exceeds various multiples.</p> <p>11 Q And so can you just explain then what it means</p> <p>12 that -- that the appraisal, the resulting LTV of the appraisal</p> <p>13 clears the DSCR breach? What does it mean that the appraisal</p> <p>14 or LTV clears the DSCR breach?</p> <p>15 A So, depending on the results of the calculation, it</p> <p>16 looks like you compare that to various levels of debt service</p> <p>17 coverage relative to the percentage of guaranty that is</p> <p>18 required.</p> <p>19 Q And so if the loan-to-value ratio had been above</p> <p>20 35 percent, it could have increased the guaranty to 10 percent</p> <p>21 from zero?</p> <p>22 A That appears to be correct, yes.</p> <p>23 Q Okay. And I just want to clarify briefly, when you</p> <p>24 were speaking with Mr. Suarez you said that you were not aware</p> <p>25 of any covenant defaults in any of the loans guaranteed by</p>		<p>1 A Yes.</p> <p>2 MR. GABER: Okay. So can we move back to page</p> <p>3 five? Move on to the Wabash property.</p> <p>4 Q So, that paragraph starting Facility B: Facility B's</p> <p>5 DSCR breach was identified in a letter prepared by internal</p> <p>6 legal and sent to the borrower June 5, 2019. The letter noted</p> <p>7 the breach and DBTCA's intention to conduct an appraisal in</p> <p>8 order to test the loan-to-value in accordance with the loan</p> <p>9 agreement.</p> <p>10 And then the next paragraph says: Appraisal detail</p> <p>11 is noted in the sections that follow, but the results LTV</p> <p>12 (26.9 percent) clears the DSCR breach and does not trigger any</p> <p>13 guaranty level changes called for in the below chart.</p> <p>14 Can you explain what is meant by "guaranty level</p> <p>15 change"?</p> <p>16 A So, similar to the Doral or Endeavor loan, the</p> <p>17 guaranty, Mr. Trump's personal guaranty step-down, depending on</p> <p>18 the loan-to-value of the collateral.</p> <p>19 Q And if -- are there situations in which DSCR breach</p> <p>20 could trigger a level change upwards?</p> <p>21 MR. KISE: Objection, calls for a legal</p> <p>22 conclusion.</p> <p>23 THE COURT: Overruled. I don't think that's a</p> <p>24 legal question. I think that's an accounting question.</p> <p>25 Q Do you need a readback?</p>	

Williams - by Defendant - Cross (Gaber)	Page 5408	Williams - by Defendant - Cross (Gaber)	Page 5410
<p>1 A No, I think I understand.</p> <p>2 If based on the results of an appraisal the</p> <p>3 loan-to-value increased into a level which would have required</p> <p>4 the guaranty, then yes, I suppose that's possible that the</p> <p>5 guaranty could have been added back.</p> <p>6 Q So, the --</p> <p>7 MR. KISE: Objection, Your Honor. I move to</p> <p>8 strike that answer because that's speculation. He said "I</p> <p>9 suppose that's possible." That's not an answer, that's</p> <p>10 just a guess. Does he know or does he not?</p> <p>11 THE COURT: Okay. How certain or uncertain are</p> <p>12 you?</p> <p>13 THE WITNESS: I would say actually I am not</p> <p>14 certain, because I do recall earlier in my testimony some</p> <p>15 discussion of once the guaranty comes off, it stays off.</p> <p>16 Q Maybe we can come back to that.</p> <p>17 So in any case, this is indicating that the Chicago</p> <p>18 loan also had a DSCR breach in 2019?</p> <p>19 A Yes.</p> <p>20 Q Okay. So then moving onto OPO DSC covenant further</p> <p>21 down the page here:</p> <p>22 Facility C's DSCR breach was identified in a letter</p> <p>23 prepared by internal legal and sent to the borrower June 21,</p> <p>24 2019. It says: The letter noted the breach but noted DBTCA</p> <p>25 takes no position as to whether the operating contribution made</p>		<p>1 dated June 5, 2019. This one is addressed to 401 North Wabash</p> <p>2 Venture LLC. So, Mr. Williams is this the letter that was</p> <p>3 referenced -- or the notice that was referenced in the credit</p> <p>4 memo we were just looking at regarding the DSCR breaches?</p> <p>5 A It appears to be, yes.</p> <p>6 Q Okay. I would ask that this be admitted into</p> <p>7 evidence.</p> <p>8 THE COURT: Granted, it is in.</p> <p>9 (Whereupon, the document referred to was deemed</p> <p>10 marked for evidence as Plaintiff's Exhibit 520 by the</p> <p>11 Court.)</p> <p>12 Q And so this letter informs the Trump Organization of</p> <p>13 the DSCR breach, correct?</p> <p>14 A Yes.</p> <p>15 Q Okay. I am going to ask you to take a look at the</p> <p>16 bottom of the page, at the cc, at the carbon copies. So this</p> <p>17 is cced to Donald J. Trump as guarantor. That's being sent to</p> <p>18 Donald J. Trump as guarantor because a DSCR breach could</p> <p>19 trigger some obligations under the guaranty, correct?</p> <p>20 A I think there was an obligation to copy him according</p> <p>21 to the loan documents.</p> <p>22 Q But that's because -- I mean, beyond the notice, the</p> <p>23 DSCR breach could potentially implicate the guaranty that he</p> <p>24 signed --</p> <p>25 MR. SUAREZ: Objection, calls for a legal</p>	
Williams - by Defendant - Cross (Gaber)	Page 5409	Williams - by Defendant - Cross (Gaber)	Page 5411
<p>1 by the borrower cures the breach. However, the letter did</p> <p>2 identify DBTCA's intention, at its own expense, to conduct an</p> <p>3 appraisal of the subject property to test the LTV as permitted</p> <p>4 under the loan agreement.</p> <p>5 So this is indicating that the OPO loan also had a</p> <p>6 DSCR breach in June of 2019, correct?</p> <p>7 A Yes.</p> <p>8 Q Okay. Do you understand what it means when it says</p> <p>9 "operating contribution" here? DBTCA takes no position as to</p> <p>10 whether the operating contribution made by the borrower cures</p> <p>11 the breach?</p> <p>12 A Yes.</p> <p>13 Q Can you explain your understanding of that term?</p> <p>14 A The borrower or perhaps the guarantor made a</p> <p>15 contribution to the borrower here, as noted, in the amount of</p> <p>16 6.425 million, that in some ways could have been considered</p> <p>17 with the net operating income in determining the debt service</p> <p>18 coverage ratio.</p> <p>19 Q Okay. I am going to now hand you PX -- a document</p> <p>20 marked as PX-520 for identification.</p> <p>21 (Hanging)</p> <p>22 Q So there is a cover e-mail here and then the</p> <p>23 attachment. If you can just flip through -- well, flip to the</p> <p>24 second page here.</p> <p>25 So, Mr. Williams, this is several copies of a letter</p>		<p>1 conclusion.</p> <p>2 THE COURT: I think we spent a good part of the</p> <p>3 morning asking this witness what various contract</p> <p>4 provisions meant. Overruled.</p> <p>5 A So, I suppose the letter was sent to him in copy</p> <p>6 because of the nature of his guaranty.</p> <p>7 Q Thank you. I am going to now hand you an Exhibit</p> <p>8 that's been marked PX-521.</p> <p>9 So like the last one, this is a cover e-mail, and</p> <p>10 then several copies of a letter dated June 5, 2019. These</p> <p>11 letters are addressed to Trump Endeavor 12 LLC.</p> <p>12 So Mr. Williams, does this appear to be the letter</p> <p>13 referenced in the credit report we were just looking at</p> <p>14 regarding the DSCR breach at the Doral property?</p> <p>15 A Yes.</p> <p>16 Q And this one also carbon copies Donald J. Trump as</p> <p>17 guarantor, yes?</p> <p>18 A Yes.</p> <p>19 MR. GABER: I would ask this be admitted into</p> <p>20 evidence.</p> <p>21 MR. SUAREZ: Your Honor, again, our objection to</p> <p>22 testifying or eliciting testimony about this, and I</p> <p>23 understand he is a current bank employee, but he wasn't</p> <p>24 copied on the letter; and it is referring to agreements</p> <p>25 that aren't before him today. And he is being asked to</p>	

<p>Williams - by Defendant - Cross (Gaber) Page 5412</p> <p>1 give answers about what rights or responsibilities would 2 be triggered under certain legal documents that also 3 aren't before him. So on that basis, we would object to 4 the admission of this document. 5 MR. GABER: He gave foundation. He said that 6 this is the letter that was referenced in the credit 7 report that he prepared and signed. 8 THE COURT: So he is obviously aware of it. 9 Overruled. 10 (Whereupon, the document referred to was deemed 11 marked for evidence as Plaintiff's Exhibit 521 by the 12 Court.) 13 Q So I am going to hand you, Mr. Williams, what has 14 been marked as PX-522. 15 This is the same as the previous two exhibits. 16 In this case the mailing receipts are at the 17 beginning of the exhibit. The letters begin on page six of the 18 document, if that's helpful. 19 Again, this letter is dated June 21, 2019. This one 20 is addressed to Trump Old Post Office LLC. Is this the notice 21 of DSCR breach for the Old Post Office loan that is referenced 22 in the credit report we were just looking at? 23 A It appears to be, yes. 24 Q And this letter, likewise, is copied to Donald J. 25 Trump as guarantor?</p>	<p>Williams - by Defendant - Cross (Gaber) Page 5414</p> <p>1 in this with the witness on the stand. 2 The defendants have made representations 3 relevant to their defenses that these loans were 4 performing, never had any problems, were paid off. I 5 think this is just going to the performance and the life 6 of the loans, which they have tracked through many 7 different iterations, including with this witness, when 8 various guaranties are written down. I think this is part 9 and parcel of what happened over the course of these 10 loans, which defendants have introduced as relevant to 11 their defense. 12 MR. KISE: So we are debating whether or not 13 something was self-cured within the documents? Again, I 14 don't see the relevance to the cause of action. 15 MR. WALLACE: We are presenting facts and we can 16 debate at the end of the case when we make closing 17 statements and put in our briefs. 18 MR. KISE: I guess I shouldn't object because 19 these facts are helpful, but what are we wasting time for 20 because they don't seem to have relevance. If there is an 21 internal mechanism within the documents where there is 22 some default and it is automatically cured by some other 23 provision in the documents, then the net effect of all of 24 it is zero, none. There is no -- just like it said in the 25 Exhibit PX-498, it says that the breach was cured,</p>
<p>Williams - by Defendant - Cross (Gaber) Page 5413</p> <p>1 A Yes. 2 MR. GABER: I ask that this letter or this 3 exhibit PX-522 be admitted into evidence. 4 MR. KISE: Your Honor, one additional objection. 5 I know you are going to overrule the other objection, but 6 I'll make the same objection that Mr. Suarez made. 7 But, what is the relevance of these DSCR breach 8 letters? I mean, it is not an issue in the case. And by 9 the very documents that Mr. Gaber has put up, it was cured 10 automatically by the loan-to-value ratio being acceptable. 11 So the breach itself was cured by the very documents. So 12 I am not sure what is the point of all of this. 13 THE COURT: Well -- 14 MR. KISE: Is it academic? 15 THE COURT: That a breach was cured doesn't mean 16 there wasn't a breach. 17 MR. KISE: What does that have to do with their 18 case is the question. Not that there was a breach, what 19 does that have to do with the underlying case is the 20 question, respectfully. 21 THE COURT: I think it went to credibility of 22 the witness somewhat. Maybe I missed something there. 23 But anyway, Mr. Wallace, let's give the official 24 explanation. 25 MR. WALLACE: I'll try to avoid going too deep</p>	<p>Williams - by Defendant - Cross (Gaber) Page 5415</p> <p>1 whatever DSCR breach may or may not have occurred, was 2 cured by the low loan-to-value ratio. So again, I just 3 don't see the relevance of this to any fact at actual 4 issue in the case. It doesn't go to the Statements of 5 Financial Condition. It doesn't have anything to do with 6 the Statements of Financial Condition. Yes, it has 7 something loosely to do with the loans, but there is not a 8 problem with the loans based on the PX-498. 9 MR. WALLACE: How about I try to shorten the 10 back and forth on this. The defendants opened the door by 11 asking the witness to testify that, no, there were no 12 covenant breaches. We are exploring that testimony now. 13 THE COURT: Overruled. 14 MR. KISE: If that's the reason, okay. 15 MR. GABER: Judge, can I get a ruling on 16 admission into evidence of this document? 17 THE COURT: It is in evidence. 18 MR. GABER: Thank you, Judge. 19 (Whereupon, the document referred to was deemed 20 marked for evidence as Plaintiff's Exhibit 522 by the 21 Court.) 22 Q Mr. Williams, can I now hand you an exhibit that has 23 been marked as Plaintiff's PX-519? 24 (Handing) 25 Q So there is a cover e-mail here from Gaston Allegre</p>

<p>Williams - by Defendant - Cross (Gaber) Page 5416</p> <p>1 to James Baldino: Please find attached the annual report for 2 the cc which we need to sign off by tomorrow, month end. The 3 credit report sets out current position of the customer and 4 requires your approval, by e-mail would be fine. And then the 5 attachment. 6 If you can take a look at that attachment and tell me 7 if you recognize it. 8 A Yes. 9 (The following proceedings were stenographically 10 recorded by Senior Court Reporter Michael Ranita.) 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>D. Williams - by Defense - Cross (Mr. Gaber) Page 5418</p> <p>1 Q So, Mr. Williams, if I could direct your attention to 2 page four of the document. The bottom block there under 3 Recommendations. 4 (Whereupon, the exhibit was displayed on the 5 screen.) 6 Q It stays, "Approval of the annual review for Facility 7 A, Doral; Facility B, Chicago and Facility C, OPO," and then 8 under "all facilities", like we saw the on the last one, 9 "Financial strength of the guarantor. The financial profile of 10 the guarantor includes a stated net worth of 6.1 billion, which 11 remains above the \$2.5 billion minimum requirement even on an 12 adjusted basis, the guarantor maintains a strong stated 13 unencumbered liquidity position of 87 million, an increase of 14 about 10 million from the previous year." 15 And Mr. Williams, am I correct that that \$6.1 billion 16 came from Donald J. Trump's Statement of Financial Condition? 17 A Yes. I believe that's what is meant by "stated net 18 worth." 19 Q Okay. 20 And the unencumbered liquidity position of \$87 million, 21 that also came from financial statements and documentation from 22 the guarantor? 23 A I believe that's correct, yes. 24 Q Okay. 25 And so on page three, Mr. Williams, if I could direct</p>
<p>D. Williams - by Defense - Cross (Mr. Gaber) Page 5417</p> <p>1 Q Can you describe what this document is? 2 A Credit Approval Report and end review of the entire 3 Trump credit relationship. 4 Q And this is dated June 30th, 2020; right? 5 A It appears to be July. 6 Q July. Excuse me. 7 A Of 2020. 8 Q The dates all run together sometimes in this room. 9 So, Mr. Williams, this was produced by Deutsche Bank as 10 the final version of the credit memo for 2020. I'll represent 11 to you that this document doesn't have the signature block that 12 we've seen in previous memos. Is it consistent with your 13 experience of Deutsche Bank during 2020 that documents could be 14 approved without physical signature? 15 A Yes. 16 Q Is that because people were working remotely or in 17 different conditions due to the pandemic? 18 A I think that was a factor, yes. 19 Q So -- but you've got no reason to believe this version 20 isn't the final version of the credit report for 2020? 21 A No reason to believe it's not the final version, no. 22 MR. GABER: I would ask that this document be 23 admitted in evidence. 24 THE COURT: Granted. It's in. 25 (Plaintiff's Exhibit 519 was admitted in evidence.)</p>	<p>D. Williams - by Defense - Cross (Mr. Gaber) Page 5419</p> <p>1 your attention there. 2 (Whereupon, the exhibit was displayed on the 3 screen.) 4 Q That "Relationship facility, highlights, changes since 5 last review", that paragraph. The first bullet point there for 6 Doral, "The Doral resort in Florida recently concluded it's 7 fourth year as a full-service operation following its 8 redevelopment. The property continues to produce positive 9 numbers. The most recent appraisal resulted in a 34.7 percent 10 loan-to-value which was deemed acceptable and resulted in no 11 other changes. The guarantor continues to maintain a ten 12 percent guaranty level." 13 So that's indicating that there's no change in status 14 from the previous year, and the guarantor decided to continue to 15 maintain that ten percent guaranty as an optional level for the 16 financial benefit; correct? 17 A I believe that's an accurate statement, yes. 18 Q So, the second bullet point there, "The Old Post Office 19 completed it's third full year of operation in 2019 and the loan 20 remains in the post development period, see below. And updated 21 appraisal was obtained last year. While the hotel reported 22 negative operating income and a DSCR below the required 1.25x, a 23 supporting \$8.6 million operating contribution to the hotel was 24 made by DJT Holdings, LLC." 25 So that means for 2020 there was another DSCR breach</p>

<p>D. Williams - by Defense - Cross (Mr. Gaber) Page 5420</p> <p>1 for the OPO loan; correct?</p> <p>2 A That sounds correct, yes.</p> <p>3 Q In this case, it was cured by an \$8.6 million operating</p> <p>4 contribution from DJT Holdings, LLC; correct?</p> <p>5 A Yes.</p> <p>6 Q So moving down to Chicago, the next bullet point, "The</p> <p>7 Wabash Facility also required a new appraisal last year based on</p> <p>8 a DSCR breach. As the year end 2019 financial statements showed</p> <p>9 another breach, WM has advised the borrower that the breach may</p> <p>10 be cured by the guarantor's agreement to increase guaranty level</p> <p>11 from zero to 10 percent based on the presumed increase in</p> <p>12 loan-to-value to a level greater than 35 percent, but less than</p> <p>13 65 percent without the need to obtain an appraisal to determine</p> <p>14 the actual specific LTV. This was deemed an acceptable approach</p> <p>15 given the challenges surrounding new appraisals during the COVID</p> <p>16 pandemic."</p> <p>17 So just to make sure I understand correctly, there was</p> <p>18 another DSCR breach for the Chicago Facility in 2020 as well;</p> <p>19 correct?</p> <p>20 A Yes, that's correct.</p> <p>21 Q And the cure in this case was increasing the guaranty</p> <p>22 level from zero percent to 10 percent based on the presumed</p> <p>23 loan-to-value; correct?</p> <p>24 A Yes, that appears to be correct.</p> <p>25 Q Okay.</p>	<p>D. Williams - by Defense - Cross (Mr. Gaber) Page 5422</p> <p>1 credit relationship dated July 30th, 2021.</p> <p>2 Q And Mr. Williams, you had a role in preparing this</p> <p>3 report; correct?</p> <p>4 A I think my role was predominantly as a reviewer for</p> <p>5 this credit report.</p> <p>6 Q Okay.</p> <p>7 Mr. Williams, I also say that Deutsche Bank produced</p> <p>8 this as a final version of the 2021 credit report. This one</p> <p>9 doesn't have a signature block on it.</p> <p>10 Is it consistent with your experience of how things</p> <p>11 continued to operate after 2020 at Deutsche Bank, that you</p> <p>12 aren't requiring physical signatures for approval of some credit</p> <p>13 reports?</p> <p>14 A Correct. I would say, um, the majority if not all</p> <p>15 credit reports.</p> <p>16 Q And you are welcome to review this, but do you have any</p> <p>17 reason to believe this isn't the final version of the 2021</p> <p>18 credit report?</p> <p>19 A I don't have any reason to believe it's not the final</p> <p>20 version.</p> <p>21 Q So Mr. Williams, can I direct your attention to page</p> <p>22 four of this document.</p> <p>23 (Whereupon, the exhibit was displayed on the</p> <p>24 screen.)</p> <p>25 Q Under "Recommendation."</p>
<p>D. Williams - by Defense - Cross (Mr. Gaber) Page 5421</p> <p>1 Quickly, before we move to the next point, the next</p> <p>2 bullet point says "The guarantor's personal net worth has</p> <p>3 decreased about \$500 million year-over-year due to small</p> <p>4 fluctuations in real estate, equity, liquidity and the values of</p> <p>5 some his joint real estate -- some of his real estate joint</p> <p>6 ventures", excuse me.</p> <p>7 So is it fair to conclude from this bullet point that</p> <p>8 Deutsche Bank is still tracking the net worth of Donald J. Trump</p> <p>9 as guarantor over the life of these loans at this point?</p> <p>10 A I believe that's correct, though I will add 500M would</p> <p>11 indicate --</p> <p>12 Q 500,000?</p> <p>13 A Yes, 500,000.</p> <p>14 Q I'm still learning the nomenclature.</p> <p>15 Mr. Williams, I'm going to hand you, now, a document</p> <p>16 that's been marked as Plaintiff's Exhibit 561 for</p> <p>17 identification.</p> <p>18 (The witness was handed the exhibit.)</p> <p>19 (Whereupon, the exhibit was displayed on the</p> <p>20 screen.)</p> <p>21 Q If you could just take a look at this and let me know</p> <p>22 if you are familiar with this document?</p> <p>23 A Yes, this is familiar.</p> <p>24 Q Can you tell me what this document is?</p> <p>25 A It's a credit report and end review for the Trump</p>	<p>D. Williams - by Defense - Cross (Mr. Gaber) Page 5423</p> <p>1 MR. GABER: First, I ask that this be admitted into</p> <p>2 evidence.</p> <p>3 THE COURT: Granted. It's in.</p> <p>4 (Plaintiff's Exhibit 561 was deemed marked and</p> <p>5 admitted in evidence.)</p> <p>6 Q Again, we see the language, "Approval of the annual</p> <p>7 review for Facility A, Doral; Facility B, Chicago and Facility C</p> <p>8 OPO" under all facilities. The first bullet point is "Financial</p> <p>9 strength of the guarantor."</p> <p>10 Here, again, it says there is a stated net worth of</p> <p>11 \$4.7 billion. That number came from the Statement of Financial</p> <p>12 Condition of Donald J. Trump; correct?</p> <p>13 A That's the implication of stated net worth, yes.</p> <p>14 Q Thank you.</p> <p>15 And then further down it says, "The guarantor maintains</p> <p>16 a strong stated unencumbered liquidity position of \$92 million."</p> <p>17 Again, it says, "Stated."</p> <p>18 So is it the case that that number comes from</p> <p>19 information provided by the guarantor?</p> <p>20 A Yes.</p> <p>21 Q Thank you.</p> <p>22 Okay. So I'm going to move on to page two of this</p> <p>23 document, Mr. Williams.</p> <p>24 (Whereupon, the exhibit was displayed on the</p> <p>25 screen.)</p>

<p>D. Williams - by Defense - Cross (Mr. Gaber) Page 5424</p> <p>1 Q So under the heading, "Relationship, facility 2 highlights, changes since last review", the first bullet point 3 says, "All required monthly loan payments have been made in a 4 timely manner." 5 So you would expect a borrower would make all of their 6 loan payments in a timely manner? 7 A Yes. 8 Q Okay. 9 The next bullet point -- sorry, not the next one. The 10 fourth bullet point says, "Metrics surrounding the performance 11 of the collateral properties are discussed below. The financial 12 performance of each property resulted in DSCR levels deemed to 13 be below the required thresholds, resulting in updated 14 appraisals being required at all three properties, the specifics 15 of which are discussed herein." 16 So am I to understand from this that in 2021, in 17 addition to the breaches that we had seen in prior years of the 18 DSCR covenant, each of these three loans breached the DSCR 19 covenants in 2021? 20 A Yes. That appears to be the case. 21 Q Okay. 22 And then in this case, updated appraisals were 23 commissioned to test the loan-to-value to those properties? 24 A Correct, because there was this built-in mechanism in 25 which we would order updated appraisals should the debt service</p>	<p>D. Williams - by Defense - Cross (Mr. Gaber) Page 5426</p> <p>1 measures that were put in place around the time Mr. Trump was 2 elected to office of the presidency in order to maintain 3 confidentiality. 4 Q Now, moving -- sorry, I'm jumping around in the section 5 here, but moving to the second bullet point, it says, "Delivery 6 of all required reporting concerning the collateral properties 7 and guarantor have been supplied in a timely manner. However, 8 additional clarifications that have been requested from the 9 client related to legal cases the client is facing have gone 10 unanswered, and at present the client is tagged as an orderly 11 exit." 12 What does it mean that "the client was tagged as an 13 orderly exit"? 14 A So the decision was made internally by senior levels of 15 bank management to exit the client's relationship on an orderly 16 basis. 17 Q To the extent it says "There are additional 18 clarifications that had been requested", were you involved in 19 that process of trying to obtain updated information from the 20 client? 21 A No, I was not. 22 Q Okay. 23 Can you tell me what it means to have "an orderly exit" 24 in terms of the bank's policy or practice? 25 A So I would describe that in a context of a credit</p>
<p>D. Williams - by Defense - Cross (Mr. Gaber) Page 5425</p> <p>1 coverage levels drop below the requirements. 2 Q And the appraisals, I think in this year, cleared the 3 DSCR breaches; is that correct? 4 A Um, I would have to review this document a little 5 further to confirm that. It doesn't state that specifically 6 here. 7 Q Do you remember if they do or not? 8 A I believe so, yes. 9 Q Okay. That's fine. Thank you. 10 Can I ask you to now look at the same page here, last 11 bullet point there 12 "Protocol surrounding the relationship remains 13 supervised by the covered client policy, business Risk 14 Management, RM, and the ASC Group. A variety of precautionary 15 measures are in place to maintain confidentiality and any 16 business decisions surrounding the relationship are handled by 17 the Reputational Risk Committee and senior bank management given 18 the guarantor's status as former President of the United States. 19 This population would also be responsible for advising of any 20 additional measures to be taken as a result of any criminal 21 charges regarding guarantor's company and related business 22 entities." 23 Can you explain the protocols here described in this 24 paragraph? 25 A So as described here is a variety of precautionary</p>	<p>D. Williams - by Defense - Cross (Mr. Gaber) Page 5427</p> <p>1 facility. As the loan matures, we would be opting not to renew 2 or extend that credit facility, and we would advise the client 3 with some advanced notice of that. 4 Q A single facility or all facilities related to that 5 client? 6 A So in this case it says the client is to act as an 7 orderly exit, so that would apply to all credit facilities as 8 they matured. 9 Q Okay. Thank you? 10 MR. GABER: We could take that down. 11 (Whereupon, the exhibit displayed on the screen was 12 taken down.) 13 Q Mr. Williams, you testified in speaking with Mr. Suarez 14 that you would expect a client would provide you with truthful 15 and accurate information; is that correct? 16 A Yes. 17 Q Okay. 18 Not just in a financial statement, but in all documents 19 and information that a client submits to the bank; correct? 20 A Yes. 21 Q And as a lending officer, you have a regulatory 22 obligation to make a report in circumstances where you believe 23 counterparty has engaged in fraudulent conduct; correct? 24 A Um, there are internal procedures, steps that we would 25 take if we ever determined that that was the case.</p>

<p>D. Williams - by Defense - Cross (Mr. Gaber) Page 5428</p> <p>1 Q Can you describe your understanding of those 2 procedures?</p> <p>3 A Um, honestly, I can't recall in my entire career that 4 that's ever happened. So it would probably just start with my 5 manager or senior management within my division, and we would 6 elevate as necessary.</p> <p>7 Q Okay.</p> <p>8 So in any case, what you are telling me is that a 9 transaction couldn't just continue undisturbed, business as 10 usual, if the counterparty had engaged in fraudulent conduct 11 towards the bank; correct?</p> <p>12 MR. KISE: Objection. Mischaracterizes the 13 testimony.</p> <p>14 THE COURT: That question depends on testimony? 15 MR. GABER: Withdrawn.</p> <p>16 MR. KISE: He said you were with.</p> <p>17 MR. GABER: Mr. Kise, I withdrew the question. 18 Thank you.</p> <p>19 THE COURT: Withdrawn.</p> <p>20 MR. GABER: I just want to save you the speech.</p> <p>21 Q Mr. Williams, you testified that the net worth of 22 Mr. Trump was a significant factor in the underwriting process 23 of these loans; correct?</p> <p>24 A Yes. It was definitely a factor.</p> <p>25 Q And you also testified that you would have recommended</p>	<p>D. Williams - by Defense - Cross (Mr. Gaber) Page 5430</p> <p>1 (Whereupon, the exhibit was displayed on the 2 screen.)</p> <p>3 Q And if we look at line 15: 4 "QUESTION: Would you have recommended that the 5 Private Wealth Management Division declare an event of 6 default if you had determined that President Trump's net 7 worth fell below the 2.5 billion at any time? 8 "ANSWER: Yes." 9 That was your testimony; correct?</p> <p>10 A It appears to be, yes. 11 MR. GABER: We could take that down. 12 (Whereupon, the exhibit displayed on the screen was 13 taken down.)</p> <p>14 Q Mr. Williams, during your time at Deutsche Bank, did 15 you ever underwrite a loan where a guarantor submitted a 16 financial statement that was determined by a court to be false 17 and misleading?</p> <p>18 A Can you restate the question, please.</p> <p>19 Q Yeah, during your time at Deutsche Bank, did you ever 20 underwrite a loan where a guarantor submitted a financial 21 statement in support of that loan that was determined by a court 22 to be false and misleading?</p> <p>23 A No. 24 MR. GABER: Nothing further. 25 THE COURT: Any redirect?</p>
<p>D. Williams - by Defense - Cross (Mr. Gaber) Page 5429</p> <p>1 that Private Wealth Management declare and event of default if 2 you had determined Mr. Trump's net worth fell below the 3 \$2.5 million minimum net worth in the loan covenants; correct?</p> <p>4 MR. SUAREZ: Objection. Mischaracterizes the prior 5 testimony.</p> <p>6 Q Billion, \$2.5 billion.</p> <p>7 THE COURT: Was that the discrepancy?</p> <p>8 MR. GABER: He testified at his deposition. I 9 could pull it up.</p> <p>10 MR. SUAREZ: I thought you were referring to 11 earlier today.</p> <p>12 THE COURT: I thought so, too.</p> <p>13 MR. GABER: I said he has testified. You have 14 testified.</p> <p>15 THE COURT: Let's start from scratch.</p> <p>16 Q Mr. Williams, is it correct that you would have 17 recommended that Private Wealth Management declare an event of 18 default if you had determined at any time that Mr. Trump's net 19 worth fell below the \$2.5 billion net worth covenant in the loan 20 agreements?</p> <p>21 A So I think consistent with my testimony earlier today, 22 a covenant breach gives you an opportunity to come to the table 23 with the client and consider a course of action from there.</p> <p>24 Q I'm just going to pull up your deposition testimony 25 really quickly, page 190.</p>	<p>D. Williams - by Defense - Redirect (Mr. Suarez) Page 5431</p> <p>1 MR. SUAREZ: Yes. 2 REDIRECT EXAMINATION 3 BY MR. SUAREZ: 4 Q Mr. Williams, good afternoon. 5 A Welcome back. 6 THE COURT REPORTER: I Don't think your microphone 7 is on. 8 Q Mr. Williams, good afternoon. 9 A Good afternoon. 10 Q What does it mean when a loan fails a DSCR test? 11 A That the loan is in breach of that particular covenant. 12 Q Were DSCR test failures common during COVID? 13 A Yes. 14 Q With respect to the loans that we've discussed today, 15 the Trump Old Post Office, Trump Chicago and Trump Doral, was 16 Deutsche Bank ultimately satisfied with the resolution of any 17 failures in the debt service coverage ratio, the DSCR? 18 A Yes, the bank was satisfied with the resolution. 19 Q Why is that? 20 A So I believe in most cases there was a built-in 21 mechanism that called for a reappraisal of property if the 22 appraisal came in at an acceptable level, then that was 23 determined to be an acceptable outcome. 24 In other instances, the client provided a capital 25 infusion to the borrowers that otherwise enabled them to remain</p>

<p>D. Williams - by Defense - Redirect (Mr. Suarez) Page 5432</p> <p>1 current on their payments and otherwise current with the loan.</p> <p>2 Q And in your experience at Deutsche Bank, was there</p> <p>3 anything uncommon about how those issues were resolved?</p> <p>4 A No.</p> <p>5 MR. SUAREZ: If we could turn to Plaintiff's</p> <p>6 Exhibit 498.</p> <p>7 (Whereupon, the exhibit was displayed on the</p> <p>8 screen.)</p> <p>9 MR. SUAREZ: At page two of the exhibit.</p> <p>10 (Whereupon, the exhibit was displayed on the</p> <p>11 screen.)</p> <p>12 Q Do you see where it says, "Financial strength of the</p> <p>13 guarantor. The financial profile of the guarantor includes a</p> <p>14 stated net worth of 6.12 billion which remains above the</p> <p>15 2.5 billion minimum requirement, even on an adjusted basis"?</p> <p>16 A Yeah, I think it's at the bottom of this page. Yes, I</p> <p>17 see that.</p> <p>18 Q What does "even on an adjusted basis" mean?</p> <p>19 A After allowing for bank adjustments to the clients</p> <p>20 provided financial statement.</p> <p>21 MR. SUAREZ: And if we could turn to page 11. And</p> <p>22 focus in on the two columns furthest to the right.</p> <p>23 (Whereupon, the exhibit was displayed on the</p> <p>24 screen.)</p> <p>25 Q Do you see where it says, "DJT June 30, 2018, client</p>	<p>D. Williams - by Defense - Redirect (Mr. Suarez) Page 5434</p> <p>1 MR. SUAREZ: And if we could turn to page 13 of the</p> <p>2 exhibit, which is page 11 of the credit report, and focus in</p> <p>3 on the net cash flow at the bottom of this page.</p> <p>4 Q Do you see it says, "Net cash flow, the guarantor</p> <p>5 demonstrates a diversified stream of cash flows which is</p> <p>6 generally recurring by nature. The following table summarizes</p> <p>7 the sources and uses of cash for the period of 2010 to 2018."</p> <p>8 What does this credit report reflect with respect to</p> <p>9 the guarantor's cash flow for the period reviewed?</p> <p>10 A So it demonstrates a history of the client's,</p> <p>11 guarantor's net cash flow over the period of which we had our</p> <p>12 credit relationship with the client.</p> <p>13 Q Was the -- were the credit decisions reflected in this</p> <p>14 credit report based on Deutsche Bank's own analysis of the</p> <p>15 client reported figures?</p> <p>16 MR. WALLACE: Objection. Leading.</p> <p>17 THE COURT: Sustained.</p> <p>18 MR. SUAREZ: If we could turn to page 14.</p> <p>19 (Whereupon, the exhibit was displayed on the</p> <p>20 screen.)</p> <p>21 MR. SUAREZ: And zoom in where it says "unpledged</p> <p>22 adjusted liquid assets."</p> <p>23 (Whereupon, the exhibit was displayed on the</p> <p>24 screen.)</p> <p>25 Q What does the term "unpledged adjusted liquid assets"</p>
<p>D. Williams - by Defense - Redirect (Mr. Suarez) Page 5433</p> <p>1 reported"?</p> <p>2 A Yes.</p> <p>3 Q And "DJT June 30, 2018, DB adjusted."</p> <p>4 A I think I'm looking at the wrong page.</p> <p>5 Q Page 11 of the exhibit, page nine of the report.</p> <p>6 A Okay. Yes, I see that.</p> <p>7 Q And in -- for purposes of this credit report, what was</p> <p>8 the adjusted net worth that Deutsche Bank considered in</p> <p>9 connection with its credit recommendations and credit decisions?</p> <p>10 A It looks like it was 2.515 billion.</p> <p>11 Q Going back to the prior page two.</p> <p>12 (Whereupon, the exhibit was displayed on the</p> <p>13 screen.)</p> <p>14 Q Is it correct that the approval of the facility was</p> <p>15 once again based on Deutsche Bank's own analysis as to the</p> <p>16 adjusted net worth of the guarantor?</p> <p>17 A Yes. This was another credit report that served as an</p> <p>18 annual review of the relationship, and upon receipt of updated</p> <p>19 financial information, we did our own due diligence and analysis</p> <p>20 and determined that his unadjusted basis --</p> <p>21 THE COURT REPORTER: I'm sorry, that his --</p> <p>22 (Whereupon, the answer was read back by the court</p> <p>23 reporter.)</p> <p>24 A That his adjusted net worth exceeded the minimum</p> <p>25 requirement.</p>	<p>D. Williams - by Defense - Redirect (Mr. Suarez) Page 5435</p> <p>1 mean?</p> <p>2 A That would represent the liquid assets that the</p> <p>3 guarantor had on hand that were not pledged in support of any</p> <p>4 loans, and then after any bank adjustments.</p> <p>5 Q Were the bank adjustments -- withdrawn.</p> <p>6 How did the bank adjust the liquid assets reported by</p> <p>7 the guarantor?</p> <p>8 A It doesn't appear that there were any adjustments that</p> <p>9 year.</p> <p>10 Q Does the -- what of it all is the effect of the</p> <p>11 unpledged adjusted liquid assets used here in the key ratios</p> <p>12 section of the credit report higher than the client reported</p> <p>13 liquidity of \$78.2 million?</p> <p>14 MR. WALLACE: Objection, your Honor. At this point</p> <p>15 I think we are beyond the scope of cross.</p> <p>16 THE COURT: Well, the rule is redirect is limited</p> <p>17 to the scope of cross. Was this covered in cross</p> <p>18 examination?</p> <p>19 MR. KISE: The liquidity certainly was, yes, your</p> <p>20 Honor. And this goes directly to the liquidity.</p> <p>21 Mr. Gaber pointed out -- attempted to point out</p> <p>22 that the bank relied on the reported cash flow without doing</p> <p>23 any of its own analysis, and Mr. Suarez is simply exploring</p> <p>24 that with documentary evidence, the same exhibit that they</p> <p>25 introduced.</p>

<p style="text-align: right;">Page 5436</p> <p>1 THE COURT: Overruled. 2 (Continued on the next page.) 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 5438</p> <p>1 Q Does that mean you didn't check? 2 A No. I feel certain we checked. 3 MR. SUAREZ: If we could turn our attention to 4 Plaintiff's Exhibit 519. 5 (Handing) 6 MR. SUAREZ: And again, if we could turn to page 7 four of 35. 8 Q It states: For all facilities in the section, 9 financial strength of guarantor in the financial profile of the 10 guarantor include, as stated, net worth of 6.1 billion, which 11 remains above the 2.5 billion minimum requirement, even on an 12 adjusted basis. 13 What does the statement, "even on an adjusted basis" 14 mean? 15 A Again, after we make our, typically, our standard 16 adjustments to the client's stated net worth, the two and a 17 half billion is the minimum amount that is required for the 18 client to meet. 19 Q And if you look at page 11 of this memorandum -- 20 excuse me, ten of the memorandum, page 11 of the exhibit. Page 21 11 of the exhibit. In the lower right-hand corner under the 22 column DJT 6/30/2019 (DB adjusted) it lists a net worth of 23 2.549 billion; is that correct? 24 A Yes. 25 Q And what does that number reflect?</p>
<p style="text-align: right;">Page 5437</p> <p>1 A So looking back to exhibit page 11, 98.9, would 2 appear to be the total of cash and marketable securities plus 3 escrow and deposits 76.2 plus 22.7. 4 Q And was that number adjusted by Deutsche Bank to 5 reach the unpledged check liquid assets figure? 6 A It doesn't appear there were any adjustments. 7 Q What analysis, if any, did Deutsche Bank conduct to 8 assess the available net cash flow of the guarantor during this 9 period? 10 A I don't see on page 13 of the document that there 11 were any, necessarily, any adjustments to cash flow in this 12 particular year. 13 Q What analysis, if any, was conducted with respect to 14 the guarantor's cash flow by Deutsche Bank? 15 A I suspect some -- there were -- there was some review 16 of the cash flow in terms of the recurring and non-recurring 17 sources and uses. If we had determined any of the sources were 18 non-recurring, we might have excluded those. 19 Q What, if anything, is -- withdrawn. 20 How, if at all, does the credit report reflect an 21 inconsistency between the client reported liquidity and what 22 Deutsche Bank thought the adjusted liquidity ought to be? 23 A Well, so in this particular year we determined no 24 adjustments to the client's reported or stated liquidity were 25 necessary.</p>	<p style="text-align: right;">Page 5439</p> <p>1 A Client's net worth after taking into account bank 2 adjustments to his financial statement. 3 Q And is that number consistent with the statement that 4 the client's -- excuse me, the guarantor's net worth remains 5 above the 2.5 billion minimum requirement, even on an adjusted 6 basis? 7 A Yes. 8 Q Would the adjustment of the client's net worth in 9 this credit report reflect Deutsche Bank's own analysis of the 10 guarantor's financial strength? 11 A Yes. 12 Q Was the fact that Deutsche Bank did not adjust the 13 reported cash and marketable securities mean that Deutsche Bank 14 didn't conduct its own analysis? 15 MR. WALLACE: Objection, leading. 16 THE COURT: Sustained. 17 Q What does it mean that the cash and marketable 18 securities reported by the client at 87 million and the cash 19 and marketable securities adjusted by Deutsche Bank of 20 87 million are the same number? 21 A We determined no adjustments were necessary. 22 Q Was that determination made after conducting your own 23 analysis? 24 A Yes. 25 MR. KISE: Your Honor, can we take our break</p>

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<p>1 now? And that way we can see if we can -- we are going</p> <p>2 to -- it would truncate perhaps?</p> <p>3 THE COURT: It worked before.</p> <p>4 MR. KISE: It worked. It did.</p> <p>5 THE COURT: I would have given the five minute</p> <p>6 warning. All right, 15 minute break.</p> <p>7 I will direct the witness not to discuss the</p> <p>8 case or his testimony.</p> <p>9 (Pause in the proceedings.)</p> <p>10 COURT OFFICER: All rise. Part 37 is back in</p> <p>11 session. Please be seated and come to order.</p> <p>12 THE COURT: Well, Mr. Suarez, did Mr. Kise</p> <p>13 deliver on his promise to condense?</p> <p>14 MR. KISE: I believe so, Your Honor. It won't</p> <p>15 be long.</p> <p>16 THE COURT: We need a witness.</p> <p>17 (Whereupon, the witness resumed the stand.)</p> <p>18 THE COURT: Okay. Let's continue.</p> <p>19 Q Mr. Williams, I would like to show you Defendant's</p> <p>20 Exhibit 387, which is already in evidence.</p> <p>21 MR. ROBERT: Your Honor, I think the witness</p> <p>22 needs water.</p> <p>23 THE COURT: We don't want him to dehydrate.</p> <p>24 (Handing)</p> <p>25 Q Mr. Williams, do you see this document, the second</p>		<p>1 MR. WALLACE: No.</p> <p>2 THE COURT: Okay. The witness is excused.</p> <p>3 Thank you.</p> <p>4 (Whereupon the witness exited the courtroom).</p> <p>5 THE COURT: Defendants' next witness.</p> <p>6 MR. KISE: Before we call the next witness, just</p> <p>7 briefly. I am just going to renew, based on the testimony</p> <p>8 we just heard today, renew our motion for directed</p> <p>9 verdict. The evidence before the defense began was clear,</p> <p>10 there is no -- the government had not introduced enough</p> <p>11 evidence of intent, materiality, reliance or damages for</p> <p>12 disgorgement with this witness. And I don't know how many</p> <p>13 more witnesses we need to call to confirm this. But this</p> <p>14 witness has again testified the bank conducted its own due</p> <p>15 diligence; the bank had no problem with a \$2 billion</p> <p>16 difference, a \$3 billion difference; large changes to net</p> <p>17 worth were not unusual. They didn't say there was any</p> <p>18 issue between what the bank viewed and the client reported</p> <p>19 numbers.</p> <p>20 So, there has been no demonstration of any</p> <p>21 materiality issue here at all. There is no reliance. The</p> <p>22 bank made, just as this witness testified, just like</p> <p>23 Mr. Haigh testified, the bank made decisions based on its</p> <p>24 own analysis. There is no damage or disgorgement possible</p> <p>25 because there was no change in position by the bank based</p>	
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<p>1 amendment to the term loan agreement with Trump Endeavor 12 as</p> <p>2 borrower and Deutsche Bank Trust Company Americas as lender?</p> <p>3 A Yes.</p> <p>4 MR. SUAREZ: Could you turn to page six of the</p> <p>5 exhibit? And if we could focus in on the section that</p> <p>6 says: If borrower is not in compliance.</p> <p>7 Q And if you could please read the section that says:</p> <p>8 If borrower is not in compliance on such DSCR test date.</p> <p>9 A If borrower is not in compliance on such DSCR test</p> <p>10 date with the applicable required debt service coverage ratio</p> <p>11 and the step-down percentage is 40 percent, 20 percent or</p> <p>12 10 percent, such failure shall not constitute an event of</p> <p>13 default, but rather lender shall only have the right to conduct</p> <p>14 an appraisal at borrower's expense, in order to test the</p> <p>15 loan-to-value ratio in accordance with section 4.6(B).</p> <p>16 Q Is this section of the loan agreement consistent with</p> <p>17 what actually happened?</p> <p>18 A I believe so, yes.</p> <p>19 Q To the best of your knowledge, was an event of</p> <p>20 default ever declared by Deutsche Bank on the loans made to the</p> <p>21 Trump Organization?</p> <p>22 A No.</p> <p>23 MR. SUAREZ: I have no further questions, Your</p> <p>24 Honor?</p> <p>25 THE COURT: Any cross?</p>		<p>1 on what President Trump submitted.</p> <p>2 Again, as this witness testified, as I said in</p> <p>3 my opening, President Trump was overqualified for the</p> <p>4 loan. To be a private wealth customer, as you heard this</p> <p>5 witness testify, \$10 million in liquidity, \$100 million in</p> <p>6 net worth. At no time were either of those thresholds</p> <p>7 ever in danger of breach. In most years President Trump's</p> <p>8 liquidity exceeded \$100 million, perhaps not every year,</p> <p>9 but most years. So there could be no ill gotten gain.</p> <p>10 Even the DSCR breach that we went round and</p> <p>11 round about is yet another red herring by the government.</p> <p>12 Number one, it was self cured. But number two is, as you</p> <p>13 just heard the witness testify and as evinced by the</p> <p>14 documentary evidence, the loan documents which govern this</p> <p>15 relationship, it is not an event of default. It simply</p> <p>16 gives rise to rights under the agreement for the lender to</p> <p>17 take certain actions. So, there is no establishment of</p> <p>18 intent, no establishment of materiality, no reliance, no</p> <p>19 ill gotten gain.</p> <p>20 This is now the second bank witness who signed</p> <p>21 off on these loans to testify that there was no problem at</p> <p>22 any point with these loans and these wide disparities</p> <p>23 which the Attorney General labels as fraud. The bank, who</p> <p>24 is in the relationship, whose job it is to make these</p> <p>25 determinations, it is not the Attorney General's job to</p>	

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<p>1 make these determinations post hoc, and say ten years</p> <p>2 later, insert herself into a commercial transaction that</p> <p>3 was successfully consummated.</p> <p>4 So, they haven't met any of the requisite</p> <p>5 elements. And so we would, again, renew our motion for</p> <p>6 directed verdict.</p> <p>7 Thank you, Judge.</p> <p>8 THE COURT: Plaintiff, would you like to</p> <p>9 respond?</p> <p>10 MR. WALLACE: No. This is not -- I don't know</p> <p>11 what the point of this motion is. The witness did not say</p> <p>12 that none of this matters. The witness said that actually</p> <p>13 they expect their clients to tell them the truth and not</p> <p>14 lie and not submit fraudulent statements. The idea that</p> <p>15 this witness somehow exonerates defense --</p> <p>16 I'll also note that to the extent we are talking</p> <p>17 about claims two through seven, they do not involve fraud</p> <p>18 directed at Deutsche Bank. They involve fraud directed at</p> <p>19 creating false financial records, false financial</p> <p>20 statements and insurance fraud. So, testimony from a</p> <p>21 Deutsche Bank witness would not be a basis for directing a</p> <p>22 verdict under any circumstances.</p> <p>23 I think the idea that you can't lie to a bank,</p> <p>24 is pretty well established. And that we do not -- there</p> <p>25 is no failure of proof in any event.</p>		<p>1 question is, in the course of a sophisticated commercial</p> <p>2 transaction, was a bank like Deutsche Bank, conducting</p> <p>3 their own due diligence, satisfied with the information</p> <p>4 they received. Answer: yes, based on the evidence of</p> <p>5 record.</p> <p>6 And so we can't just make up what we think</p> <p>7 should have happened. The Attorney General isn't free to</p> <p>8 just say, well, I don't care what that evidence says. I</p> <p>9 don't care what the bank thinks. I am here to be the</p> <p>10 protector. That's not our Capitalist system. That is not</p> <p>11 a free market system that we have in the United States of</p> <p>12 America, where an Attorney General --</p> <p>13 MR. WALLACE: Your Honor, we have a witness</p> <p>14 waiting.</p> <p>15 MR. KISE: I am just going to make my record.</p> <p>16 MR. WALLACE: You made this record 100 times.</p> <p>17 MR. KISE: I haven't made it 100 times.</p> <p>18 MR. WALLACE: You made it at least 100 times.</p> <p>19 MR. KISE: This is the third time. You are</p> <p>20 making it longer.</p> <p>21 If everyone is of the view that evidence doesn't</p> <p>22 matter, fine. I guess I am wasting my time. I guess I am</p> <p>23 wasting my time and wasting my breath. Clearly the</p> <p>24 Attorney General thinks that actual witnesses who are</p> <p>25 actually involved in the transaction who signed the</p>	
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<p>1 THE COURT: Very quick reply.</p> <p>2 MR. KISE: Just briefly, Your Honor.</p> <p>3 The question of whether or not the bank was lied</p> <p>4 to is not an abstract question. It is a question of</p> <p>5 whether the bank itself determined that the information</p> <p>6 submitted was satisfactory. None of us here, including</p> <p>7 respectfully, Your Honor, are here to supplant your own</p> <p>8 judgment, insert your own judgment as to what is accurate</p> <p>9 and what isn't for the parties to the transaction. This</p> <p>10 is not a situation where you have a complainant who is</p> <p>11 saying, I was defrauded, that there is an issue here.</p> <p>12 This is a highly sophisticated international financial</p> <p>13 institution which conducted significant due diligence. It</p> <p>14 is fully satisfied with the deal it struck. You have not</p> <p>15 heard anyone say to the contrary. We are just basically</p> <p>16 guessing and the Attorney General is substituting her own</p> <p>17 judgment for the parties'. There cannot be materiality if</p> <p>18 the party to the transaction, whose role it is to</p> <p>19 determine what is material to them and what isn't, this</p> <p>20 witness and Mr. Haigh have testified that the fluctuations</p> <p>21 in the numbers are not unusual. They are anticipated.</p> <p>22 Because, as you heard Dr. Laposa testify, as you heard me</p> <p>23 say, I am sure more times than you care to hear, this is a</p> <p>24 subjective exercise. There isn't a right answer. There</p> <p>25 isn't an, ah-ha, you picked the wrong number. The</p>		<p>1 documents, none of that matters. We have heard witness</p> <p>2 after witness come in and say that, and no one cares. If</p> <p>3 that is where we are, then I don't know what country we</p> <p>4 have landed in here in the State of New York.</p> <p>5 But all I say is, I renew our motion for</p> <p>6 directed verdict. Thank you.</p> <p>7 THE COURT: Mr. Wallace, would you like a</p> <p>8 surreply or a witness?</p> <p>9 MR. WALLACE: I will just rest on the extensive</p> <p>10 record, on the summary judgment decision, and the entire</p> <p>11 proceedings on this case. And ask that we actually bring</p> <p>12 in the witness who will testify as to the facts.</p> <p>13 THE COURT: And I am not prepared to give a</p> <p>14 whole speech on this. I would just basically point out</p> <p>15 that the mere fact that the lenders were happy, doesn't</p> <p>16 mean that the statute wasn't violated. It doesn't mean</p> <p>17 other statutes weren't violated.</p> <p>18 I'll take it under advisement.</p> <p>19 Let's get the witness.</p> <p>20 COURT OFFICER: Witness entering.</p> <p>21 (Whereupon the witness entered the courtroom and</p> <p>22 took the stand.)</p> <p>23 COURT OFFICER: Raise your right hand for me.</p> <p>24 E M I L Y P E R E L E S S, after having</p> <p>25 first been duly sworn was examined and testified as</p>	

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1 follows:

2 COURT OFFICER: Please state your name, and

3 either home or business address for the record.

4 THE WITNESS: Emily Pereless, One New York

5 Plaza, New York City.

6 THE COURT: I'll ask you right at the start,

7 talk loudly, right into the microphone, close as possible.

8 THE WITNESS: Thank you.

9 THE COURT: Let's go ahead with the direct

10 examination.

11 DIRECT EXAMINATION

12 BY MR. SUAREZ:

13 Q Good afternoon. My name is Jesus Suarez. I

14 represent certain of the defendants in this case.

15 Ms. Pereless, have you ever been employed by Deutsche

16 Bank?

17 A Yes.

18 Q While you were employed by Deutsche Bank, were you

19 known under any other name?

20 A Yes.

21 Q What name?

22 A Emily Schroder.

23 Q What positions did you hold during your time at

24 Deutsche Bank?

25 A Can you -- can you explain the question? Like

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1 corporate positions or?

2 Q Sure. When were you employed at Deutsche Bank?

3 A 2007, I think, until 2015.

4 Q What position did you hold when you were first

5 employed at Deutsche Bank?

6 A Analyst.

7 Q Were you an analyst in any particular division?

8 A Structured lending.

9 Q And at any point in time were you promoted from the

10 position of analyst?

11 A Yes.

12 Q When were you promoted from the position of analyst?

13 A I do not recall.

14 Q To what position were you promoted from the position

15 of analyst?

16 A Vice President.

17 Q And what were your responsibilities as a Vice

18 President at Deutsche Bank?

19 A I was -- I worked in the structured lending group

20 doing loans for high-net-worth clients.

21 Q During the time that you were employed by Deutsche

22 Bank, were you ever employed within the Private Wealth

23 Management group?

24 A Yes.

25 Q Were you employed with the Private Wealth Management

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1 group for the entirety of your time at Deutsche Bank?

2 A Yes.

3 Q How long did you retain the title of vice president?

4 A I do not recall.

5 Q Were you promoted from the position of vice

6 president?

7 A Yes.

8 Q When were you promoted from the position of vice

9 president?

10 A I do not recall.

11 Q What were your responsibilities as vice president --

12 withdrawn.

13 To what position were you promoted from vice

14 president?

15 A Executive director.

16 Q What was your -- what were your responsibilities as

17 executive director at Deutsche Bank?

18 A Working on loans for the structured lending group.

19 Q And were those loans extended through the Private

20 Wealth Management group?

21 A Yes.

22 Q And were you promoted from the position of executive

23 director?

24 A No.

25 Q When did you leave Deutsche Bank?

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1 A March of 2015.

2 Q What role, if any, did you have in the lending group

3 of the Private Wealth Division of Deutsche Bank?

4 A I was an analyst and I worked on loans for the

5 structured lending group.

6 Q Okay.

7 MR. SUAREZ: If we could pull up -- during your

8 time employed with the Deutsche Bank Private Wealth

9 Management Group were you familiar with its policies and

10 procedures?

11 A At the time was I familiar with them or am I now?

12 Q At the time.

13 A I think so.

14 MR. SUAREZ: Okay. Let's pull up what has been

15 previously marked as Defendant's Exhibit 62.

16 (Handing)

17 Q Do you recognize this document?

18 A I do not.

19 Q Have you ever seen this document before?

20 A I think I was shown it during a deposition.

21 Q Are you familiar with the contents of this document?

22 A I am not.

23 Q Did this document ever inform your work at Deutsche

24 Bank?

25 A Not that I recall.

<p>Pereless - by Defendant - Direct (Suarez) Page 5452</p> <p>1 MR. SUAREZ: We will set this document aside</p> <p>2 then.</p> <p>3 If we could please turn to what has previously</p> <p>4 been marked as Plaintiff's Exhibit 293 and previously</p> <p>5 admitted into evidence.</p> <p>6 (Hanging.)</p> <p>7 Q Do you recognize this document?</p> <p>8 A I do.</p> <p>9 Q Do you see on the upper right-hand page where it</p> <p>10 says: Lenders, supporting lenders Stafford/Schroder?</p> <p>11 A I do.</p> <p>12 Q Is Schroder a reference to you?</p> <p>13 A Yes.</p> <p>14 Q What would it mean for you to be identified as a</p> <p>15 supporting lender in this document?</p> <p>16 A It means that I was one of the analysts who worked on</p> <p>17 a loan.</p> <p>18 Q And what responsibilities would you have as one of</p> <p>19 the analysts that worked on the loan?</p> <p>20 A To analyze the information provided.</p> <p>21 Q And what would you do, if anything, with the analysis</p> <p>22 that you performed on information that was provided to you?</p> <p>23 A The analysis would be put in the memo.</p> <p>24 Q And does the memo contain an accurate recitation of</p> <p>25 the results of your analysis?</p>	<p>E. Pereless - by Defense - Direct (Mr. Suarez) Page 5454</p> <p>1 Q And what does it mean when you append your signature to</p> <p>2 a credit report?</p> <p>3 A I prepared it.</p> <p>4 Q Would that mean that you are responsible for the text</p> <p>5 that is in this document?</p> <p>6 MR. WALLACE: Objection. Leading.</p> <p>7 THE COURT: Sustained. It's leading.</p> <p>8 MR. SUAREZ: If we could turn to the lower section</p> <p>9 of this document.</p> <p>10 (Whereupon, the exhibit was displayed on the</p> <p>11 screen.)</p> <p>12 Q Do you see where it says "liquidity" on December 20,</p> <p>13 2011? "A structured lending team of Dave Williams and Emily</p> <p>14 Schroeder visited the offices of the guarantor and reviewed bank</p> <p>15 and brokerage statements that confirmed \$178 million in cash</p> <p>16 balances and 51.8 million marketable securities, totalling 229</p> <p>17 million held in the name of the guarantor."</p> <p>18 What, if anything, do you recall about the meeting</p> <p>19 identified in this credit report.</p> <p>20 A That Dave and I went to the offices and reviewed the</p> <p>21 statements as noted.</p> <p>22 Q Was that consistent with your practice in -- was that</p> <p>23 consistent with your general practice?</p> <p>24 A I don't understand the question. Sorry.</p> <p>25 Q Was that consistent with the manner in which you would</p>
<p>Pereless - by Defendant - Direct (Suarez) Page 5453</p> <p>1 A Specifically I do not recall.</p> <p>2 MR. SUAREZ: You can turn to page five of this</p> <p>3 document.</p> <p>4 Q Do you see there at the top on the upper left-hand</p> <p>5 corner, do you recognize your name on the upper left-hand</p> <p>6 corner?</p> <p>7 A Yes.</p> <p>8 Q And is -- I know it is a little blurry, but do you</p> <p>9 recognize -- this is a document that you would have signed?</p> <p>10 A Yes.</p> <p>11 (Whereupon the following proceedings were</p> <p>12 stenographically recorded by Senior Court Reporter Michael</p> <p>13 Ranita.)</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>E. Pereless - by Defense - Direct (Mr. Suarez) Page 5455</p> <p>1 memorialize underwriting activities in the credit report?</p> <p>2 A Yes.</p> <p>3 Q And why would you have gone to the office of the</p> <p>4 guarantor to view bank and brokerage statements?</p> <p>5 A At the request of the client.</p> <p>6 Q Excuse me?</p> <p>7 A At the request of the client.</p> <p>8 Q And is that an action that -- withdrawn.</p> <p>9 What is generally contained in a credit memo?</p> <p>10 A The analysis of the collateral and the supporting</p> <p>11 sponsors.</p> <p>12 Q Who drafts the credit memo?</p> <p>13 A It's a compilation of a number of people.</p> <p>14 Q What is the purpose of drafting the credit memo?</p> <p>15 A To present it to credit risk for approval.</p> <p>16 Q Are you familiar with an entity named DB Valuation</p> <p>17 Services Group?</p> <p>18 A Yes.</p> <p>19 Q What is the DB Valuation Services Group?</p> <p>20 A It was the group at Deutsche Bank that was responsible</p> <p>21 for ordering and reviewing appraisal reports.</p> <p>22 Q What, if any role, did the DB Valuation Services Group</p> <p>23 play in your preparation of this credit report?</p> <p>24 A They were consulted with regards to some of the</p> <p>25 information.</p>

<p>E. Pereless - by Defense - Direct (Mr. Suarez) Page 5456</p> <p>1 Q Can you describe, generally, the ways that you would</p> <p>2 consult with the DB Valuation Services Group with respect to</p> <p>3 your analysis of commercial real estate assets?</p> <p>4 A They would be consulted with regards to market</p> <p>5 information that they would provide.</p> <p>6 Q What type of information would the Valuation Group</p> <p>7 review?</p> <p>8 A I don't recall specifically.</p> <p>9 Q What is your general understanding of how the Private</p> <p>10 Wealth Management Group verified guarantor's stated net worth</p> <p>11 during the time that you were at Deutsche Bank?</p> <p>12 A Can you ask that again.</p> <p>13 Q What is your understanding of how the Private Wealth</p> <p>14 Management Group verified a guarantor's stated net worth?</p> <p>15 A It was based on statements provided by a client.</p> <p>16 Q And what, if any, steps did you undertake to review</p> <p>17 information provided by a client?</p> <p>18 A I don't recall.</p> <p>19 MR. SUAREZ: If we could pull up Defendant's</p> <p>20 Exhibit 185.</p> <p>21 (Whereupon, the exhibit was displayed on the</p> <p>22 screen.)</p> <p>23 (The witness was handed the exhibit.)</p> <p>24 Q Do you see the two fields at the top of this e-mail?</p> <p>25 A I do.</p>	<p>E. Pereless - by Defense - Direct (Mr. Suarez) Page 5458</p> <p>1 diligence items list was prepared?</p> <p>2 A I don't recall.</p> <p>3 Q Why would it be necessary for the bank to conduct due</p> <p>4 diligence on personal tax returns and cash flow?</p> <p>5 A In general?</p> <p>6 Q In general.</p> <p>7 A Or in this case?</p> <p>8 Q In general.</p> <p>9 A Um, it may be used if they are looking for some sort of</p> <p>10 a loan.</p> <p>11 Q And in this case, why was it necessary to review</p> <p>12 personal tax returns and cash flow?</p> <p>13 A I don't recall.</p> <p>14 Q What does "DT" mean there at the top?</p> <p>15 A I'm assuming it means Donald Trump, but I don't recall</p> <p>16 specifically.</p> <p>17 Q What would it mean -- what would the purpose be of</p> <p>18 "reviewing the deposit membership agreements" as indicated in</p> <p>19 line five?</p> <p>20 A I don't recall.</p> <p>21 Q What would the purpose of "reviewing an appraisal on</p> <p>22 the Doral Resort" be as it appears in line six?</p> <p>23 A I don't recall specifically, unless it was in relation</p> <p>24 to the Doral Facility.</p> <p>25 MR. SUAREZ: Your Honor, we move to admit</p>
<p>E. Pereless - by Defense - Direct (Mr. Suarez) Page 5457</p> <p>1 Q Do you recognize this as an e-mail sent to you?</p> <p>2 A Yes.</p> <p>3 Q Do you see the date is December 13, 2011?</p> <p>4 A Yes.</p> <p>5 MR. SUAREZ: If you could turn to the attachment</p> <p>6 which appears on the backside?</p> <p>7 (Whereupon, the exhibit was displayed on the</p> <p>8 screen.)</p> <p>9 Q And these are -- do you recognize this attachment?</p> <p>10 A Not specifically, but I assume it's the attachment from</p> <p>11 the e-mail.</p> <p>12 Q What are the significance of the items listed on this</p> <p>13 page?</p> <p>14 A I don't understand the question.</p> <p>15 Q Okay. What items are listed here for due diligence</p> <p>16 items?</p> <p>17 A "Tax returns and cash flow. A listing of financial</p> <p>18 contingents. Commitments on ongoing construction projects.</p> <p>19 Understanding of ownership structure in major assets. Review of</p> <p>20 deposit membership agreement, 30-year noninterest bearing term.</p> <p>21 Appraisal on Doral Resort, valuation prepared by Predictiv on</p> <p>22 Trump brand value."</p> <p>23 Q What was the purpose of these due diligence items?</p> <p>24 A I don't recall specifically.</p> <p>25 Q What do you recall concerning the reason that this due</p>	<p>E. Pereless - by Defense - Direct (Mr. Suarez) Page 5459</p> <p>1 Defendant's Exhibit 185.</p> <p>2 THE COURT: Granted. It's in.</p> <p>3 (Defendant's Exhibit 185 was deemed marked and</p> <p>4 admitted in evidence.)</p> <p>5 MR. SUAREZ: Could we please pull up Plaintiff's</p> <p>6 Exhibit 293.</p> <p>7 (Whereupon, the exhibit was displayed on the</p> <p>8 screen.)</p> <p>9 (The witness was handed the exhibit.)</p> <p>10 MR. SUAREZ: I'm sorry, I misspoke. Plaintiff's</p> <p>11 Exhibit 291.</p> <p>12 (Whereupon, the exhibit was displayed on the</p> <p>13 screen.)</p> <p>14 (The witness was handed the exhibit.)</p> <p>15 Q Do you recognize this document?</p> <p>16 A I do.</p> <p>17 Q What does it mean -- do you see where it says that you</p> <p>18 are identified as the lender, Schroeder?</p> <p>19 A I do.</p> <p>20 Q Is that a reference to you?</p> <p>21 A Yes.</p> <p>22 Q What responsibilities did you have as the lender in</p> <p>23 connection with preparing this credit report?</p> <p>24 A Analyzing the information provided, and compiling the</p> <p>25 report.</p>

<p>E. Pereless - by Defense - Direct (Mr. Suarez) Page 5460</p> <p>1 MR. SUAREZ: And if you could turn to page six of 2 this document. 3 (Whereupon, the exhibit was displayed on the 4 screen.) 5 Q Is that your signature? 6 A Yes. 7 Q What does the fact that this document contains your 8 signature mean? 9 A That I was part of the group that compiled it. 10 MR. SUAREZ: And if we turn to page seven in the 11 bottom paragraph of page seven? 12 (Whereupon, the exhibit was displayed on the 13 screen.) 14 Q It says "Liquidity. On October 19, 2012, Tom Sullivan 15 and Emily Schroeder visited the offices of the guarantor and 16 reviewed bank and brokerage statements that confirmed 17 146.3 million in cash balances and marketable securities 18 representing 86 percent of the client reported amount, and of 19 which 118.4 million was held in the name of the guarantor and 20 27.9 million" -- excuse me, "27.9 is held in operating accounts 21 of entities that are wholly-owned by the guarantor. The client 22 reported balance has decreased by 89.2 million from the prior 23 year primarily due to the client's investment in property 24 development, retirement of debt and asset acquisition." 25 What was the purpose of analyzing the client's</p>	<p>E. Pereless - by Defense - Direct (Mr. Suarez) Page 5462</p> <p>1 THE COURT: Sustained. 2 Q Was your role in preparing this credit report 3 consistent with the bank's policies and procedures? 4 MR. WALLACE: Objection. Leading. 5 THE COURT: Sustained. 6 Q What, if any, inconsistencies were there in the 7 preparation of this credit report with respect to the bank's 8 internal policies and procedures? 9 A I do not recall. 10 Q If you see page six of this document, do you see your 11 signature on the bottom left-hand corner of this page? 12 A Yes. 13 Q What does your signature mean on this document? 14 A That I was part of the group that compiled the report. 15 Q And what role would you have had in preparing the text 16 contained in this report, if any? 17 A I probably did the first draft of it. 18 Q And does the report, to your knowledge, accurately 19 reflect the work that was done in evaluating the guarantor's 20 financial strength? 21 A I do not recall. 22 MR. SUAREZ: If we could turn to Plaintiff's 23 Exhibit 294. 24 (Whereupon, the exhibit was displayed on the 25 screen.)</p>
<p>E. Pereless - by Defense - Direct (Mr. Suarez) Page 5461</p> <p>1 liquidity in this credit report? 2 A I don't recall, specifically. 3 Q Does the credit report accurately reflect the work that 4 you did to verify the client's -- excuse me, the guarantor's 5 stated liquidity? 6 A To my knowledge, yes. 7 MR. SUAREZ: If we could turn to Plaintiff's 8 Exhibit 290. 9 (Whereupon, the exhibit was displayed on the 10 screen.) 11 (The witness was handed the exhibit.) 12 MR. SUAREZ: Which is already in evidence. 13 Q Do you recognize this document? 14 A Yes. 15 Q Do you see the date of this document is July 24, 2013? 16 A Yes. 17 Q And are you the lender that's identified in the upper 18 -- the box in the upper right-hand corner of this page? 19 A Yes. 20 Q What role did you have, if any, in preparing this 21 credit report? 22 A Analyzing compiling the information provided. 23 Q And in doing so, did you comply with the bank's 24 policies and procedures? 25 MR. WALLACE: Objection leading.</p>	<p>E. Pereless - by Defense - Direct (Mr. Suarez) Page 5463</p> <p>1 (The witness was handed the exhibit.) 2 Q Do you recognize this document? 3 A Yes. 4 Q What is the date of this document? 5 A May 2nd, 2014. 6 Q And what role did you have in preparing this document, 7 if any? 8 A I analyzed and compiled the information provided. 9 Q What do you mean by "analyzed"? 10 A I mean, to review and -- review and, and compile it 11 inside the memo. 12 Q What role did you have as a lender in connection with 13 the credit decisions memorialized by this credit report? 14 A We did not make credit decisions. Credit decisions 15 were made by Credit Risk Management. 16 Q What role did you have in supporting, or not 17 supporting, decisions made by the bank in connection with this 18 credit report, if any? 19 A I do not recall. 20 Q Do you see on page 11 of the this document. 21 (Whereupon, the exhibit was displayed on the 22 screen.) 23 Q On the left-hand corner in the middle of the page, do 24 you recognize your signature? 25 A Yes.</p>

<p>E. Pereless - by Defense - Direct (Mr. Suarez) Page 5464</p> <p>1 Q Why would your signature appear on this document?</p> <p>2 A Because I was part of the group that compiled the memo.</p> <p>3 Q Why would your signature -- withdrawn.</p> <p>4 What does it mean that your signature is on that</p> <p>5 document?</p> <p>6 A I was part of the group that compiled the memo.</p> <p>7 Q Does it mean anything else?</p> <p>8 A No.</p> <p>9 MR. SUAREZ: If we could pull up Plaintiff's</p> <p>10 Exhibit 2960.</p> <p>11 (Whereupon, the exhibit was displayed on the</p> <p>12 screen.)</p> <p>13 (The witness was handed the exhibit.)</p> <p>14 Q On the upper right-hand corner, do you see the date of</p> <p>15 this memo?</p> <p>16 A August 3rd, 2015.</p> <p>17 Q And do you appear on the upper right-hand corner of</p> <p>18 this memo?</p> <p>19 A Do I?</p> <p>20 Q Yes.</p> <p>21 A No, I do not.</p> <p>22 Q What date did you leave the bank?</p> <p>23 MR. WALLACE: Objection. Asked and answered.</p> <p>24 THE COURT: I don't know if she gave an exact date.</p> <p>25 MR. SUAREZ: I was trying to figure out, this would</p>	<p>E. Pereless - by Defense - Direct (Mr. Suarez) Page 5466</p> <p>1 A I was not.</p> <p>2 Q How is it that you recognize this document?</p> <p>3 A Because I saw this in a deposition.</p> <p>4 Q Prior to being shown this document in a deposition, had</p> <p>5 you done anything to make yourself familiar with the contents of</p> <p>6 this document?</p> <p>7 A No.</p> <p>8 MR. SUAREZ: Okay. If we could pull up Plaintiff's</p> <p>9 Exhibit 378.</p> <p>10 (Whereupon, the exhibit was displayed on the</p> <p>11 screen.)</p> <p>12 (The witness was handed the exhibit.)</p> <p>13 MR. SUAREZ: I'm sorry, defendant's 378.</p> <p>14 (Whereupon, the exhibit was displayed on the</p> <p>15 screen.)</p> <p>16 (The witness was handed the exhibit.)</p> <p>17 Q Do you recognize this document?</p> <p>18 A The same thing, only from the deposition.</p> <p>19 Q When you joined Deutsche Bank, what, if any, training</p> <p>20 did you receive on its policies and procedures?</p> <p>21 A I do not recall.</p> <p>22 Q While you were employed at Deutsche Bank, what, if any,</p> <p>23 continuing education did you receive concerning its internal</p> <p>24 policies and procedures?</p> <p>25 A I do not recall.</p>
<p>E. Pereless - by Defense - Direct (Mr. Suarez) Page 5465</p> <p>1 refresh her recollection as to what --</p> <p>2 MR. WALLACE: I believe her testimony was</p> <p>3 March 2015.</p> <p>4 THE COURT: Okay. Thank you. I stand corrected.</p> <p>5 So she wasn't there. We all agree?</p> <p>6 MR. SUAREZ: No, she wasn't there, I will withdraw</p> <p>7 this document.</p> <p>8 May I have a moment to confer with my colleagues?</p> <p>9 THE COURT: Of course.</p> <p>10 (Whereupon, there is a brief pause in the</p> <p>11 testimony.)</p> <p>12 MR. SUAREZ: If we could pull up the document</p> <p>13 previously marked as Defendant's Exhibit 66.</p> <p>14 (Whereupon, the exhibit was displayed on the</p> <p>15 screen.)</p> <p>16 (The witness was handed the exhibit.)</p> <p>17 Q Do you recognize this document?</p> <p>18 A I do.</p> <p>19 Q What is this document?</p> <p>20 A It appears to be the Credit Risk Management Credit</p> <p>21 Guidelines, Private Wealth Management Americas.</p> <p>22 Q And how -- are you familiar with this document?</p> <p>23 A I'm not.</p> <p>24 Q Were you familiar with this document at the time that</p> <p>25 you worked at Deutsche Bank?</p>	<p>E. Pereless - by Defense - Direct (Mr. Suarez) Page 5467</p> <p>1 Q Earlier we looked at Plaintiff's Exhibit 293.</p> <p>2 (Whereupon, the exhibit was displayed on the</p> <p>3 screen.)</p> <p>4 Q And we identified your -- that that was you as a lender</p> <p>5 on the upper right-hand corner.</p> <p>6 A Mm-hmm.</p> <p>7 Q Can you walk me through the mechanics of how this</p> <p>8 document would have been created?</p> <p>9 A We would have been provided with financial statements</p> <p>10 regarding whatever the collateral is, and the sponsor, or the</p> <p>11 guarantor, and it would have been analyzed and presented in the</p> <p>12 memo form.</p> <p>13 Q What role would you have had in that process?</p> <p>14 A I would have taken the information and probably filled</p> <p>15 out some of the boxes and worked with the senior person to put</p> <p>16 together the terms and put them in the memo.</p> <p>17 Q And in preparing the memo, would you have any reason to</p> <p>18 be inaccurate?</p> <p>19 A Not that I recall.</p> <p>20 Q How is the information -- withdrawn.</p> <p>21 How would you receive the information that went into</p> <p>22 this memorandum?</p> <p>23 A I do not recall specifically.</p> <p>24 Q What interaction, if any, would you have with the</p> <p>25 individuals identified as relationship manager?</p>

E. Pereless - by Defense - Direct (Mr. Suarez) Page 5468

1 A I don't recall specifically.
2 Q Who is Rosemary Vrablic?
3 A She is a banker. She was a banker.
4 Q What role did Rosemary Vrablic have in connection with
5 the credit facility identified by this credit report?
6 A She was the banker for the client.
7 Q Who is the client?
8 A Donald Trump.
9 Q Is that the beneficial owner that you pointed to up
10 there, Donald J. Trump?
11 A Yes.

12 THE COURT: Mr. Suarez, how much longer?
13 Obviously, we are reaching the end of the day.

14 MR. KISE: Your Honor, maybe if we break now we
15 will truncate what we have. Once again, we may be able,
16 tomorrow morning, to make this very brief.

17 THE COURT: No way to finish?

18 MR. KISE: I don't think he is going to finish
19 today.

20 THE COURT: Okay.

21 MR. KISE: But I'm just thinking --

22 THE COURT: So we'll break now.

23 MR. WALLACE: Your Honor, if this is going to
24 continue, I will note our objection at this point. This
25 testimony is cumulative. This is the third witness that's

Page 5469

1 been asked about these documents. There's no new
2 information coming in. We are getting the same questions
3 that we've gotten from Mr. Haigh and from Mr. Williams. So
4 if it could be truncated to new information, I think that
5 would be appropriate.

6 MR. KISE: We are certainly going to do that. And
7 I appreciate Mr. Wallace recognizing that yet another bank
8 employee is coming in and being asked the same questions, so
9 back to my directed verdict motion. We'll leave it there.

10 Thank you, Judge.

11 THE COURT: All right. 10:00 tomorrow, everyone.
12 I'll direct the witness not to discuss the testimony or the
13 case overnight, because you'll be a witness tomorrow.

14 THE WITNESS: Okay.

15 (Whereupon, the case on trial was adjourned to
16 Wednesday, November 29, 2023, at 10:00 a.m.)
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Attorney General of the State of New York v.
Donald J. Trump, et. al.

November 28, 2023

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\$1 (2)	absent (1)	5329:25;5379:1; 5404:23;5415:3; 5420:14;5446:24	adjustments (31)	
5366:5,13	absolutely (1)	Actually (7)	5328:6,7,25;5329:2; 5341:18;5365:14; 5366:2,9,10;5374:16; 5375:2,8;5376:16,17, 18,22;5377:18;5380:7, 15;5385:5;5402:4; 5432:19;5435:4,5,8; 5437:6,11,24;5438:16; 5439:2,21	
\$1.4 (1)	5380:13	5357:22;5403:14; 5408:13;5441:17; 5444:12;5446:25; 5447:11		
\$10 (1)	abstract (1)	add (4)	administration (1)	
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\$100 (3)	academic (1)	added (1)	admissible (1)	
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\$2 (2)	acceptable (7)	additional (8)	admit (1)	
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\$2,645,000,000 (1)	accepting (1)	address (2)	admitted (14)	
5383:5	5381:23	5323:5;5448:3	5333:12;5336:24; 5353:16;5389:16; 5401:2;5410:6; 5411:19;5413:3; 5417:23,25;5423:1,5; 5452:5;5459:4	
\$2.5 (5)	accessible (1)	addressed (3)	admonish (1)	
5350:3;5418:11; 5429:3,6,19	5327:14	5410:1;5411:11; 5412:20	5362:21	
\$2.6 (2)	accompany (1)	adequately (1)	advance (1)	
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\$4.7 (1)	accordance (8)	adhered (3)	advice (1)	
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5373:14	5325:19	5378:15;5435:6; 5439:12	5447:18	
\$45 (1)	accounting (1)	adjusted (59)	advising (1)	
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<p style="text-align: right;">Page 5470</p> <p>1 SUPREME COURT OF THE STATE OF NEW YORK 2 COUNTY OF NEW YORK: CIVIL TERM: PART 37 3 -----X 4 PEOPLE OF THE STATE OF NEW YORK, BY LETITIA 5 JAMES, ATTORNEY GENERAL OF THE STATE OF NEW 6 YORK, 7 Plaintiff, 8 - against - 9 INDEX # 10 452564/2022 11 DONALD J. TRUMP; DONALD TRUMP JR.; ERIC TRUMP; 12 IVANKA TRUMP; ALLEN WEISSELBERG; JEFFREY 13 McCONNEY; THE DONALD J. TRUMP REVOCABLE TRUST; 14 THE TRUMP ORGANIZATION, INC.; TRUMP ORGANIZATION 15 LLC; DJT HOLDINGS, LLC; DJT HOLDINGS MANAGING 16 MEMBER; TRUMP ENDEAVOR 12, LLC; 401 NORTH WABASH 17 STREET, LLC; TRUMP OLD POST OFFICE, LLC; 40 WALL 18 STREET, LLC; and SEVEN SPRINGS, LLC, 19 Defendants. 20 -----X 21 Bench Trial 22 November 29, 2023 23 60 Centre Street 24 New York, New York 10007 25 B E F O R E: THE HONORABLE ARTHUR S. ENGORON, Justice of the Supreme Court A P P E A R A N C E S: OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF NEW YORK - LETITIA JAMES Attorneys for the Plaintiff 28 Liberty Street New York, NY 10005 By: KEVIN WALLACE, ESQ. COLLEEN K. FAHERTY, ESQ. ANDREW AMER, ESQ. ERIC HAREN, ESQ. LOUIS SOLOMON, ESQ.</p>	<p style="text-align: right;">Page 5472</p> <p>Proceedings</p> <p>1 COURT OFFICER: All rise. 2 Part 37 is now in session. The Honorable Judge 3 Arthur Engoron presiding. 4 Make sure all cell phones are on silent. 5 Laptops and cell phones will be permitted, but only to 6 members of the press. There is absolutely no recording or 7 photography of any kind allowed in the courtroom. 8 Now please be seated and come to order. 9 THE COURT: Good morning, everyone. 10 And we are going to continue with Ms. Pereless, 11 correct? 12 MR. KISE: Well Judge, three in a row now. As I 13 told you yesterday on the break, we might be able to 14 truncate it. So I think at this point to avoid cumulative 15 testimony and prolong the proceedings, we are going to 16 forego asking Ms. Pereless anymore questions. I don't 17 know if the government has any questions. But, given that 18 they said it was very cumulative, I am not sure they do. 19 But we don't have -- in the interest of moving things 20 along, we are prepared to proceed with Ms. Vrablic. 21 THE COURT: Well, we have a mutual interest. 22 Okay. Plaintiff, would you like to? 23 MR. WALLACE: If Ms. Pereless is here we might 24 have five to ten minutes of questions for her and we could 25 get those out of the way.</p>
<p>Proceedings</p> <p style="text-align: right;">Page 5471</p> <p>1 A P P E A R A N C E S: (Cont'd) 2 3 CONTINENTAL PLLC 4 Attorneys for Defendants 5 101 North Monroe Street, Suite 750 6 Tallahassee, FL 32302 7 By: CHRISTOPHER KISE, ESQ. 8 LAZARO FIELDS, ESQ. 9 JESUS SUAREZ, ESQ. 10 11 ROBERT & ROBERT, PLLC 12 Attorneys for Defendants 13 526 RXR Plaza 14 Uniondale, NY 11556 15 By: CLIFFORD ROBERT, ESQ. 16 17 HABBA MADAIO & ASSOCIATES, LLP 18 Attorneys for Defendants 19 1430 US Highway 296, Suite 240 20 Bedminster, NJ 07921 21 By: ALINA HABBA, ESQ. 22 23 MORIAN LAW, PLLC 24 Attorneys for Defendants 25 60 East 42nd Street, Suite 4600 New York, NY 10165 By: ARMEN MORIAN, ESQ. THE TRUMP ORGANIZATION Attorneys for the Defendant 725 Fifth Avenue New York, NY 10022 By: ALAN GARTEN, ESQ. MICHELE PANTELOUKAS MICHAEL RANITA Senior Court Reporters</p>	<p>Proceedings</p> <p style="text-align: right;">Page 5473</p> <p>1 THE COURT: Let's do it. 2 MR. ROBERT: Your Honor, while we are waiting 3 for the witness, to try to streamline things more. 4 I have Jack Weisselberg ready to come in this 5 afternoon. In going through things last night, he was 6 coming in as a custodian to introduce the Trump Tower loan 7 agreement. So if the Attorney General would stipulate to 8 these three documents, we don't need to bring Jack 9 Weisselberg in this afternoon and can dispense with that 10 as well. 11 MR. WALLACE: If you want to hand them to us we 12 can take a look, and I think we can resolve it by the 13 break. 14 MR. ROBERT: Sure. Just for the record, I am 15 handing the Attorney General and I will hand up a copy to 16 the Court Defendant's Exhibit 1058, which is the loan 17 agreement between Trump Tower Commercial and Ladder 18 Capital, dated August 30, 2012. 19 D-1059, which is the guaranty of property 20 expenses for that loan. 21 And D-1060, which is the guaranty of recourse 22 obligations. 23 I'll give one copy to the Attorney General and 24 one to the Court. And if they could let us know during 25 the first break so I can let Mr. Weisselberg and his</p>

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<p>1 lawyer know they don't have to come this afternoon.</p> <p>2 MR. WALLACE: Your Honor, I will note we have a</p> <p>3 document we would have put in through Mr. Weisselberg as</p> <p>4 well, so we will grab that and give it to the defendants.</p> <p>5 MR. ROBERT: I always like the goosey/gander</p> <p>6 rule. Your Honor has a different phrase than I do.</p> <p>7 THE COURT: What is good for the goose is good</p> <p>8 for the gander.</p> <p>9 MR. ROBERT: I will hand that up and whenever</p> <p>10 you have that for us, Kevin.</p> <p>11 MS. FAHERTY: Our document is PX-1275. I'll</p> <p>12 hand it up to the Court and over to Counsel, and we can</p> <p>13 confer and then come back and confirm with the Court that</p> <p>14 these are okay, Judge.</p> <p>15 THE COURT: Such collegiality; am I in the right</p> <p>16 courtroom?</p> <p>17 Are we ready?</p> <p>18 COURT OFFICER: Ready for the witness?</p> <p>19 THE COURT: Yes, ready.</p> <p>20 COURT OFFICER: Witness entering.</p> <p>21 (Whereupon the witness resumed the stand.)</p> <p>22 THE COURT: I'll remind the witness, good</p> <p>23 morning, that she is still under oath.</p> <p>24 And let's get to the cross examination.</p> <p>25</p>		<p>1 that was marked as Exhibit -- Plaintiff's Exhibit 378.</p> <p>2 (Handing)</p> <p>3 Q And Ms. Pereless, if you could take a moment to look</p> <p>4 at that document. Do you recognize this?</p> <p>5 A Yes.</p> <p>6 Q And at a very high level, can you just explain what</p> <p>7 you are looking at?</p> <p>8 A This is an e-mail from Tom Sullivan to Marc Mitchell.</p> <p>9 THE COURT: If you can look and talk into the</p> <p>10 microphone.</p> <p>11 THE WITNESS: Look and talk.</p> <p>12 A An e-mail from Tom Sullivan to Marc Mitchell asking</p> <p>13 him to focus on the conclusion in the last two paragraphs. I</p> <p>14 guess regarding the appraisal of the Doral Resort.</p> <p>15 MR. LADOV: Your Honor, I move this document</p> <p>16 into evidence.</p> <p>17 THE COURT: Granted, it is in.</p> <p>18 MR. KISE: Statute of limitations objection.</p> <p>19 THE COURT: Objection acknowledged and</p> <p>20 overruled.</p> <p>21 Q If you can look at the second page of the document?</p> <p>22 MR. LADOV: And we can scroll down on the</p> <p>23 screen.</p> <p>24 Q You will see an e-mail from Mr. Phil Ribolow at</p> <p>25 Deutsche Bank to yourself, and the subject is CBRE Appraisal of</p>	
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<p>1 CROSS-EXAMINATION</p> <p>2 BY MR. LADOV:</p> <p>3 Q Good morning, Ms. Pereless.</p> <p>4 My name is Mark Ladov. I represent the People of the</p> <p>5 State of New York. We met briefly at your deposition a few</p> <p>6 months ago. It is good to see you again.</p> <p>7 A You as well.</p> <p>8 Q I want to ask a few minutes worth of questions to</p> <p>9 follow up on a couple of questions Mr. Suarez asked yesterday.</p> <p>10 So you were shown a list of due diligence items on</p> <p>11 the Doral loan. Actually I'll bring it up. It was marked as</p> <p>12 Defendant's Exhibit 185. And you will see on the second page,</p> <p>13 we can look at it on the screen I think. On the second page of</p> <p>14 the list of due diligence items --</p> <p>15 MR. LADOV: You know what, it is D-185</p> <p>16 corrected.</p> <p>17 Q Well, just to move things along I'll represent to you</p> <p>18 that one of the items on that list was an appraisal on Doral</p> <p>19 Resort. I know you testified yesterday that you did not have a</p> <p>20 specific recollection about that appraisal. But I wanted to</p> <p>21 walk you through a couple of documents to see if we can refresh</p> <p>22 your recollection and ask some follow-up questions about</p> <p>23 Deutsche Bank's review of that appraisal and how it related to</p> <p>24 the Doral underwriting.</p> <p>25 So I would like to ask to show you a -- a document</p>		<p>1 the Marriott Doral Golf Resort and Spa.</p> <p>2 Do you recall who Phil Ribolow is?</p> <p>3 A Yes.</p> <p>4 Q And who is he?</p> <p>5 A He worked in Evaluation Services Group.</p> <p>6 Q And at the beginning of the e-mail it says: Dear</p> <p>7 Emily "At your request, 1) I am detailing the areas of</p> <p>8 objection with the CBRE appraisal below. 2) Providing my</p> <p>9 estimate of value. And also 3) A guide to what range of value</p> <p>10 might be obtained if this property were to be appraised by a</p> <p>11 knowledgeable appraiser who is well-versed in the South Florida</p> <p>12 Golf Resort Market."</p> <p>13 Does this refresh your recollection at all about</p> <p>14 what, if anything, you had done with regard to an appraisal on</p> <p>15 Doral?</p> <p>16 A No, just that we provided it to the Appraisal</p> <p>17 Services Group to review.</p> <p>18 Q And do you recall why you would have done that?</p> <p>19 A I think it was due diligence when we were looking to</p> <p>20 do the loan.</p> <p>21 Q And so in the next sentence Mr. Ribolow writes: "The</p> <p>22 objections have been written in the order presented within the</p> <p>23 report. In the interest of saving busy readers some time, the</p> <p>24 areas of objection with the greatest impact are items number 1,</p> <p>25 3, 7, 11, 13, 15, and 16.</p>	

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<p>Pereless - by Defendant - Cross (Ladov) Page 5478</p> <p>1 And I am not going to go through the whole e-mail, 2 but in paragraph one Mr. Ribolow objects that, quote -- that 3 the, quote, "appraiser states that his value includes a buyer's 4 assumption of the cash liability of the refundable memberships, 5 but presents no data or analysis as to how much that liability 6 might actually cost." 7 If you look down to paragraph three, he talks a bit 8 about the land use analysis in the appraisal. And he objects 9 that the, quote, "area surrounding the subject is a new area of 10 development, consisting primarily of industrial uses." 11 And then at the end of that paragraph he says that 12 this is, quote, "hardly conducive to the appraiser's utilizing 13 trophy hotel property return parameters to value Doral. 14 Resorts located in industrial zones alongside airport flight 15 paths rarely achieve premium pricing. 16 And then it goes on. 17 MR. LADOV: Actually, if we can just scroll 18 down. 19 Q There are about three pages worth of objections to 20 the appraisal. 21 MR. LADOV: And then if you scroll all the way 22 down to the end. 23 Q After about 16 paragraphs Mr. Ribolow writes to you 24 that: Based on his objections and adjustments that he is, 25 quote, "comfortable with concluding a value for the property in</p>	<p>Pereless - by Defendant - Cross (Ladov) Page 5480</p> <p>1 A He was the head of the group. 2 Q And which group was that? 3 A The structured lending group. 4 Q And so what was his role in regard to the Doral 5 facility? 6 A He was a just a senior member of the group. 7 Q And do you have any recollection of what happened as 8 a result of this analysis of the appraisal on Doral? 9 A I do not recall. 10 Q Okay. So I want to show you one other document which 11 was previously marked as Plaintiff's Exhibit 1836. 12 And Ms. Pereless, do you recognize this document? 13 A I do. 14 Q And what is it? 15 A It looks like it is a -- it is a credit memo. I am 16 not totally sure what for. 17 Q Okay. 18 MR. LADOV: Your Honor, I ask to move this into 19 evidence as well. 20 MR. KISE: Objection, foundation. 21 THE COURT: We don't know what it is yet. 22 Q Ms. Pereless, I will note it is dated February 6, 23 2012. And if you look down in that box, you are listed as one 24 of the lenders. And on the far left side there is a box 25 checked off that says, "other amendment." Do you have an</p>
<p>Pereless - by Defendant - Cross (Ladov) Page 5479</p> <p>1 the range of 110 to \$115 million. 2 And then he also says in that last paragraph: "a DB 3 commissioned appraisal might conclude to a value somewhere in 4 the range of 120 to \$130 million. I could conceivably support 5 that value if the analyses and assumptions were 6 well-researched, market-oriented and appropriately supported. 7 MR. LADOV: And then actually scrolling down for 8 a second to look at Mr. Ribolow's signature. 9 Q It says that he is in CIB/Credit Risk Management. Do 10 you have an understanding of what that refers to? 11 A I think CIB stood for Corporate Investment Bank, but 12 I am not positive. And Credit Risk Management is Credit Risk 13 Management. 14 Q Okay. And then scrolling back up to the first page 15 of the document. And you forwarded this e-mail from 16 Mr. Ribolow to Tom Sullivan. Correct? 17 A Yes. 18 Q And who was Tom Sullivan? 19 A Tom Sullivan was my boss. 20 Q And what was his role in the underwriting process for 21 the Doral facility? 22 A He was the senior lender. 23 Q And then again, I think you mentioned this before, 24 but at the very top Mr. Sullivan forwarded this conversation to 25 Marcus Mitchell. Who is Marcus Mitchell?</p>	<p>Pereless - by Defendant - Cross (Ladov) Page 5481</p> <p>1 understanding of what that might refer to? 2 A Not specifically what this was. But it just would 3 have been another amendment to the facility. 4 MR. LADOV: Okay. And if we can scroll down a 5 little bit just to look at the top line. 6 Q Actually, do you know what facility this document 7 refers to looking at it now, based on the date and any of the 8 other information there? 9 A I don't, because it doesn't say. 10 Q If I represented to you that this was for the Doral 11 facility, would that sound correct? 12 A It would make sense. But it doesn't say what the 13 property was. 14 Q And so if we look at the top line there where it 15 says: Existing terms, Revised terms and Reason. 16 In the far left column it says: Existing terms. 17 Facility amount \$125 million secured note. 18 Under revised terms it says: Facility amount 19 \$125 million as evidenced by (i) a secured tranche A note in 20 the principal amount of \$106 million. And (ii) an unsecured 21 tranche B note in the principal amount of \$19 million. 22 Do you have any recollection of whether the Doral 23 facility was split into two tranches like this? 24 A I don't recall. 25 Q Okay. And under reason it says that: The</p>

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<p>1 reallocation is due to valuation service's review of the</p> <p>2 appraisal report provided by the borrower.</p> <p>3 Do you recall whether that reason is reflective of</p> <p>4 the correspondence that we just reviewed between you and</p> <p>5 Mr. Ribolow?</p> <p>6 A I don't recall.</p> <p>7 MR. LADOV: Okay. And if you go down to page</p> <p>8 ten in this document? And if you go up a little bit?</p> <p>9 Yes.</p> <p>10 Q So this is a document that was attached to the</p> <p>11 amendment report we were looking at. And if you look there</p> <p>12 under collateral it says: First mortgage lien and a first</p> <p>13 priority security interest in the Doral Golf Resort and Spa</p> <p>14 located in Miami, Florida.</p> <p>15 So would you agree based on the fact that this was</p> <p>16 attached to the document we were just looking at, that it is a</p> <p>17 credit memo for an amendment of the Doral facility?</p> <p>18 A Yes.</p> <p>19 MR. LADOV: Okay. So Your Honor, I ask to move</p> <p>20 that in evidence.</p> <p>21 THE COURT: Granted.</p> <p>22 Just to comment, the strangest thing about this</p> <p>23 whole trial is we keep seeing credit memos that don't say</p> <p>24 for what property.</p> <p>25 MR. KISE: Statute of limitations objection.</p>		<p>1 COURT OFFICER: Please have a seat.</p> <p>2 Please state your name and either home or</p> <p>3 business address for the record.</p> <p>4 THE WITNESS: Rosemary Vrablik, 720 Davenport</p> <p>5 Avenue, New Rochelle, New York.</p> <p>6 THE COURT: Okay Mr. Suarez, please proceed.</p> <p>7 DIRECT EXAMINATION</p> <p>8 BY MR. SUAREZ:</p> <p>9 Q Ms. Vrablik, good morning. My name is Jesus Suarez.</p> <p>10 I represent certain of the defendants in this case.</p> <p>11 Ms. Vrablik, what is your educational background?</p> <p>12 A I went to Fordham University for my undergraduate</p> <p>13 degree. And Ursulin in New Rochelle for my high school.</p> <p>14 Q And what did you study in college?</p> <p>15 A Economics and political science.</p> <p>16 Q What training, if any, have you received in</p> <p>17 commercial banking?</p> <p>18 A As a person -- as a banker at Bank Leumi I had credit</p> <p>19 training and I also had a Series 7 license.</p> <p>20 Q At a certain point in your career, were you employed</p> <p>21 by Deutsche Bank?</p> <p>22 A Yes.</p> <p>23 Q When were you employed by Deutsche Bank?</p> <p>24 A From 2006 to 2020.</p> <p>25 Q In what capacity were you employed at Deutsche Bank?</p>	
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<p>1 THE COURT: Overruled, but understood.</p> <p>2 So it is in evidence.</p> <p>3 (Whereupon, the document referred to was deemed</p> <p>4 marked for evidence as Plaintiff's Exhibit 1836 by</p> <p>5 the Court.)</p> <p>6 MR. LADOV: Thank you, Your Honor. We have no</p> <p>7 further questions for Ms. Pereless.</p> <p>8 THE COURT: Okay. Anything for redirect?</p> <p>9 MR. SUAREZ: Nothing further on redirect, Your</p> <p>10 Honor.</p> <p>11 THE COURT: Okay. The witness is excused.</p> <p>12 Thank you.</p> <p>13 (Whereupon the witness stepped down from the</p> <p>14 stand and exited the courtroom).</p> <p>15 THE COURT: Defense, would you like to call your</p> <p>16 next witness?</p> <p>17 MR. SUAREZ: The defense calls Rosemary Vrablik.</p> <p>18 COURT OFFICER: All set, Judge?</p> <p>19 THE COURT: Yes, all ready.</p> <p>20 COURT OFFICER: Witness entering.</p> <p>21 (Whereupon the witness took the stand.)</p> <p>22 COURT OFFICER: Please raise your right hand.</p> <p>23 ROSEMARY VRABLIK, after</p> <p>24 having first been duly sworn was examined and</p> <p>25 testified as follows:</p>		<p>1 A I held several positions. I was a relationship</p> <p>2 manager. I was a team leader. And I was an office manager.</p> <p>3 Q What were your job responsibilities as a relationship</p> <p>4 manager?</p> <p>5 A Primary responsibility was servicing high-net-worth</p> <p>6 individuals. Bringing the customers in and meeting all of</p> <p>7 their banking needs.</p> <p>8 Q What division of Deutsche Bank were you employed by?</p> <p>9 A Private Wealth Management.</p> <p>10 Q What is the Private Wealth Management Division at</p> <p>11 Deutsche Bank?</p> <p>12 A It is a division that caters to high-net-worth</p> <p>13 individuals, domestic, in terms of banking investment services,</p> <p>14 depository lending and trust services.</p> <p>15 Q What were your responsibilities as a team leader at</p> <p>16 Deutsche Bank?</p> <p>17 A I had a team of four or five bankers that reported to</p> <p>18 me doing the same type of business.</p> <p>19 Q And how did your responsibilities change, if at all,</p> <p>20 when you became an office manager?</p> <p>21 A I had more budgetary responsibilities. There was</p> <p>22 some mentoring and training of the staff.</p> <p>23 Q What is the business of the Private Wealth Management</p> <p>24 Division at Deutsche Bank?</p> <p>25 A Again, to service high-net-worth individuals for the</p>	

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<p>Vrablik - by Defendant - Direct (Suarez) Page 5486</p> <p>1 various banking services.</p> <p>2 Q How, if at all, did your responsibilities with the</p> <p>3 Private Wealth Management Division involve loan origination?</p> <p>4 A That was one of the core products.</p> <p>5 Q And what responsibility, if any, did you have in</p> <p>6 negotiating the terms of loans?</p> <p>7 A I was an intermediary between the customer and/or</p> <p>8 prospect and the credit and lending parts of the bank.</p> <p>9 Q What, if any, professional relationship did you have</p> <p>10 while at Deutsche Bank with President Donald Trump?</p> <p>11 A He was a customer of the bank.</p> <p>12 Q And to be clear, there are a number of parties in</p> <p>13 this case with the last name Trump, so I refer to Donald J.</p> <p>14 Trump as President Trump, as an honorary. I understand your</p> <p>15 relationship, your professional relationship with him began</p> <p>16 before he was elected as president.</p> <p>17 A That's correct.</p> <p>18 Q How did President Trump become a client of the bank?</p> <p>19 A I received a phone call from Jared Kushner saying</p> <p>20 that the Trump Organization was bidding on an auction for a</p> <p>21 piece of property in Florida, and they might be in need of</p> <p>22 financing to acquire that property.</p> <p>23 Q As part of your relationship with President Trump as</p> <p>24 a Deutsche Bank employee, what loans did you originate for him?</p> <p>25 A There were three: There was one loan for Doral in</p>	<p>Vrablik - by Defendant - Direct (Suarez) Page 5488</p> <p>1 Q What does that mean?</p> <p>2 A It is a term used when there is a very high-net-worth</p> <p>3 individual that's a potential prospect.</p> <p>4 Q Was President Trump a potential prospect of the bank</p> <p>5 at this time?</p> <p>6 A Yes.</p> <p>7 Q Why?</p> <p>8 A There was the request for financing for the Doral</p> <p>9 property.</p> <p>10 MR. SUAREZ: Your Honor, I move Exhibit D-291</p> <p>11 into evidence.</p> <p>12 THE COURT: Granted, it is in.</p> <p>13 (Whereupon, the document referred to was deemed</p> <p>14 marked for evidence as Defendant's Exhibit 291 by the</p> <p>15 Court.)</p> <p>16 MR. SUAREZ: If we could please pull up</p> <p>17 Defendant's Exhibit 62 and turn to page two.</p> <p>18 Q Ms. Vrablik, were you employed by the Private Wealth</p> <p>19 Management Division of Deutsche Bank on June 11, 2007?</p> <p>20 A Yes.</p> <p>21 Q And were you familiar with the commercial real estate</p> <p>22 financing practices of that division?</p> <p>23 A Yes.</p> <p>24 Q Could I draw your attention to the middle of the</p> <p>25 first paragraph where it says: After the successful</p>
<p>Vrablik - by Defendant - Direct (Suarez) Page 5487</p> <p>1 Florida. There was a loan for a property in Chicago. And the</p> <p>2 last one was the Old Post Office in Washington DC.</p> <p>3 MR. SUAREZ: If we could please pull up</p> <p>4 premarked Defendant's Exhibit 291 for identification.</p> <p>5 (Handing)</p> <p>6 THE WITNESS: Thank you.</p> <p>7 Q Ms. Vrablik, do you recognize your e-mail at the top</p> <p>8 of this page?</p> <p>9 A Yes.</p> <p>10 Q Do you recognize the date of November 29, 2011 at the</p> <p>11 top of the page?</p> <p>12 A Yes.</p> <p>13 Q Is this an e-mail that you sent to Marcus Mitchell</p> <p>14 and copied to Dominic Scalzi?</p> <p>15 A It appears so.</p> <p>16 Q Who was the reference, DT? Was that a reference to</p> <p>17 President Trump?</p> <p>18 MR. WALLACE: Objection, leading.</p> <p>19 A Yes.</p> <p>20 THE COURT: Sustained.</p> <p>21 THE WITNESS: Sorry.</p> <p>22 Q What was the reference to DT?</p> <p>23 A Donald Trump.</p> <p>24 Q Do you see where you wrote: "We are whale hunting"?</p> <p>25 A Yes.</p>	<p>Vrablik - by Defendant - Direct (Suarez) Page 5489</p> <p>1 introduction of the subscription finance lending capability for</p> <p>2 financial sponsors in the U.S. in 2006, the focus of this</p> <p>3 initiative is to develop a broader real estate lending</p> <p>4 capability for PWM clients.</p> <p>5 Do you see that?</p> <p>6 A Yes.</p> <p>7 Q Were you familiar with the Wealth Management</p> <p>8 Division's initiative to develop a broader real estate lending</p> <p>9 capability for PWM clients?</p> <p>10 A Yes.</p> <p>11 Q Then it goes on to say: Real estate entrepreneurs</p> <p>12 and investors represent an important component of our client</p> <p>13 base and U.S. wealth creation capacity.</p> <p>14 Do you see that?</p> <p>15 A Yes.</p> <p>16 Q What, if anything, was the Private Wealth Management</p> <p>17 division encouraging with this initiative for commercial real</p> <p>18 estate loans?</p> <p>19 A I am sorry, I don't understand the question.</p> <p>20 Q We can keep going.</p> <p>21 MR. SUAREZ: Let's to turn page two in the</p> <p>22 second paragraph.</p> <p>23 Q It says in the middle of the second paragraph, we</p> <p>24 will focus on clients for whom PWM U.S. will be a primary</p> <p>25 financier with the intention of developing lasting broad</p>

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<p>Vrablik - by Defendant - Direct (Suarez) Page 5490</p> <p>1 private banking relationships --</p> <p>2 MR. SUAREZ: I am sorry. That's on page three.</p> <p>3 A Yes.</p> <p>4 (The following proceedings were stenographically</p> <p>5 recorded by Senior Court Reporter Michael Ranita.)</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>R. Vrablic - by Defendant - Direct (Mr. Suarez) Page 5492</p> <p>1 successful track records in this sector. As a Private Wealth</p> <p>2 Management business, we will review the principals and their</p> <p>3 families as our primary clients" -- excuse me. I said "we will</p> <p>4 review." It says, "We will view the principals and their</p> <p>5 families as our primary clients."</p> <p>6 Do you see that?</p> <p>7 A Yes.</p> <p>8 Q How, if at all, did developing a relationship with</p> <p>9 President Trump advance this directive?</p> <p>10 A Again, he was in the US commercial real estate market</p> <p>11 and had a successful track record.</p> <p>12 Q And then it goes on "The target clients will have a net</p> <p>13 worth of over \$50 million, and we expect most will have family</p> <p>14 net worth of over \$100 million. Their consolidated financial</p> <p>15 position will demonstrate existing liquidity and/or cash flow</p> <p>16 and an effective strategy towards managing their personal</p> <p>17 liabilities and real estate debt."</p> <p>18 How, if at all, did President Trump fit within the</p> <p>19 directive identified there?</p> <p>20 A He had a net worth in excess of a hundred million</p> <p>21 dollars.</p> <p>22 Q And then it says, "The client's objective in working</p> <p>23 with PWM US lending is to finance active investing strategies,</p> <p>24 including the acquisition of new properties, repositioning</p> <p>25 properties and/or diversification into other asset classes."</p>
<p>R. Vrablic - by Defendant - Direct (Mr. Suarez) Page 5491</p> <p>1 Q How, if at all, did President Trump fit into that</p> <p>2 description?</p> <p>3 A He would have been one.</p> <p>4 MR. SUAREZ: Can we turn to page five.</p> <p>5 (Whereupon, the exhibit was displayed on the</p> <p>6 screen.)</p> <p>7 Q Do you see the section that says "client segmentation</p> <p>8 and coverage"?</p> <p>9 A Yes.</p> <p>10 Q And it says, "PWM US will target well-established real</p> <p>11 estate entrepreneurs and investors with a proven, successful</p> <p>12 track record in the primary US commercial real estate markets.</p> <p>13 In addition to their capital raising and financing requirements,</p> <p>14 these entrepreneurs represent tremendous potential for broad</p> <p>15 Wealth Management relationships with the firm."</p> <p>16 Do you see that?</p> <p>17 A Yes.</p> <p>18 Q How would developing a relationship with President</p> <p>19 Trump, if at all, fit into this -- into this directive?</p> <p>20 A Yes, he would have fit the category of entrepreneur and</p> <p>21 the investor with the successful track record.</p> <p>22 Q And then it goes on, "Our target client base", one</p> <p>23 paragraph down, "for this initiative will have the following</p> <p>24 general characteristics: Individuals or families actively</p> <p>25 investing in US commercial real estate properties, with proven,</p>	<p>R. Vrablic - by Defendant - Direct (Mr. Suarez) Page 5493</p> <p>1 How did the transactions that you described earlier fit</p> <p>2 into the directives set forth here?</p> <p>3 A The first loan that was done was for the acquisition of</p> <p>4 the property in Florida, in addition, there were cross selling</p> <p>5 opportunities into the other products, deposits, investments as</p> <p>6 well.</p> <p>7 MR. SUAREZ: Your Honor, I move defense Exhibit 62</p> <p>8 into evidence.</p> <p>9 THE COURT: Granted. It's in.</p> <p>10 (Defendant's Exhibit 62 was deemed marked and</p> <p>11 admitted in evidence.)</p> <p>12 MR. SUAREZ: I would like to pull up pre-marked</p> <p>13 Defendant's Exhibit 296 for identification.</p> <p>14 (Whereupon, the exhibit was displayed on the</p> <p>15 screen.)</p> <p>16 (The witness was handed the exhibit.)</p> <p>17 THE WITNESS: Thank you.</p> <p>18 Q Ms. Vrablic, do you recognize this document?</p> <p>19 A Yes.</p> <p>20 Q What is this document?</p> <p>21 A It's an e-mail from myself to Richard Byrne.</p> <p>22 Q What is the date of this document?</p> <p>23 A I'm sorry, the name?</p> <p>24 Q The date, date.</p> <p>25 A Date. I'm sorry, February 12, 2013.</p>

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<p>R. Vrablic - by Defendant - Direct (Mr. Suarez) Page 5494</p> <p>1 Q Do you see where it says "The Chicago condos are 2 selling like hotcakes"?</p> <p>3 A Yes.</p> <p>4 Q What did you mean by that?</p> <p>5 A The loan that we had done was secured by condos that 6 were up for sale, and the condos were selling at a faster pace 7 than we had expected.</p> <p>8 Q And you go on to write "The condo loan was 53 million 9 and is down to 23 million already."</p> <p>10 Why is that something that you would have communicated 11 to Richard Byrne?</p> <p>12 A He was the real estate private banker or banker for 13 Mr. Trump, and he would always want to know what the existing 14 facilities were like and outstanding.</p> <p>15 Q And then you go on to write, "Doral is looking quite 16 nice... the entry has been redone and their website shows the 17 rooms being renovated. Quite nice. We are going down the first 18 week of March to visit."</p> <p>19 Do you see that?</p> <p>20 A Yes.</p> <p>21 Q What did you mean by that?</p> <p>22 A The -- in keeping with the update, I was giving him an 23 update of the renovations and construction that was being done 24 at Doral. And my e-mail just gives him an outline of that. And 25 that we were going to go down and make a site visit.</p>	<p>R. Vrablic - by Defendant - Direct (Mr. Suarez) Page 5496</p> <p>1 Q What was the meeting with Anshu Jain and President 2 Trump about?</p> <p>3 A It was to be introductory meeting for them to meet each 4 other and to have lunch.</p> <p>5 Q Was there a business agenda for the meeting?</p> <p>6 A Nothing specific.</p> <p>7 Q Why would the cochairman of Deutsche Bank want to meet 8 with President Trump?</p> <p>9 MR. WALLACE: Objection to the "would" again, as 10 opposed to did.</p> <p>11 THE COURT: Sustained.</p> <p>12 Q Why did you want to set up a meeting between President 13 Trump and Anshu Jain?</p> <p>14 A It was requested, at the time, for me to do that.</p> <p>15 Q Who made that request of you?</p> <p>16 A Mr. Jain's office.</p> <p>17 Q And why would Mr. Jain's office make that request of 18 you?</p> <p>19 A Periodically I would get calls from his office and 20 other chairmans' offices to meet clients.</p> <p>21 Q How, if at all, did the performance of the Chicago and 22 Doral loans impact the decision to set up a meeting between 23 President Trump and Mr. Jain?</p> <p>24 A Um, it would have been a standard type of, um, meeting 25 to be set up with a successful project like that.</p>
<p>R. Vrablic - by Defendant - Direct (Mr. Suarez) Page 5495</p> <p>1 MR. SUAREZ: If we could turn to page three of this 2 e-mail.</p> <p>3 (Whereupon, the exhibit was displayed on the 4 screen.)</p> <p>5 Q Do you see where it says "Subject: The Donald"?</p> <p>6 A Yes.</p> <p>7 Q May I assume that Mr. Byrne was referring to Donald J. 8 Trump?</p> <p>9 A Yes.</p> <p>10 Q He goes on to write "Hi Rosemary, I hope you are well. 11 I hear that Anshu is scheduled to meet with Trump in two weeks. 12 Did you set this up? Are you taking him?"</p> <p>13 Who is Anshu?</p> <p>14 A That was Anshu Jain. He was of the CEO, Chairman of 15 Deutsche Bank at the time.</p> <p>16 Q And then on page two, if we could scroll up?</p> <p>17 (Whereupon, the exhibit displayed on the screen was 18 scrolled through.)</p> <p>19 Q It says "Anshu asked for a briefing of our banking 20 activity with DJT. I will write up something and give it to 21 him. Do you have any business agenda for the meeting, or is it 22 just a meet and greet?"</p> <p>23 And that was an e-mail from Mr. Byrne to you on 24 February 12, 2013. Do you see that?</p> <p>25 A Yes.</p>	<p>R. Vrablic - by Defendant - Direct (Mr. Suarez) Page 5497</p> <p>1 MR. SUAREZ: Your Honor, I move Defendant's 2 Exhibit 296 into evidence.</p> <p>3 THE COURT: Granted. It's in.</p> <p>4 (Defendant's Exhibit 296 was deemed marked and 5 admitted in evidence.)</p> <p>6 MR. SUAREZ: We'll move onto Defendant's Exhibit, 7 pre-marked for identification, Exhibit D-297.</p> <p>8 (Whereupon, the exhibit was displayed on the 9 screen.)</p> <p>10 (The witness was handed the exhibit.)</p> <p>11 THE WITNESS: Thank you.</p> <p>12 Q Do you see at the top, Ms. Vrablic, that you were 13 copied on this e-mail on February 19, 2013?</p> <p>14 A Yes.</p> <p>15 Q What is this e-mail enclosing?</p> <p>16 A From reading it, it looks as if it's a briefing for -- 17 on Mr. Trump.</p> <p>18 Q Do you see where it says, "Subject: Briefing for 19 Anshu"?</p> <p>20 A Yes.</p> <p>21 Q Why would Mr. Jain had been provided a briefing on 22 Mr. Trump before the meeting?</p> <p>23 A It was pretty standard for all meetings with the 24 chairman that briefings like this would be done.</p> <p>25 MR. SUAREZ: If we could please pull up pre-marked</p>

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<p>R. Vrablic - by Defendant - Direct (Mr. Suarez) Page 5498</p> <p>1 for identification Defendant's Exhibit 298.</p> <p>2 (Whereupon, the exhibit was displayed on the</p> <p>3 screen.)</p> <p>4 Q Do you recognize this document?</p> <p>5 (The witness was handed the exhibit.)</p> <p>6 A Yes.</p> <p>7 Q What is this document?</p> <p>8 A This would have been the briefing that would have been</p> <p>9 provided to Mr. Jain.</p> <p>10 Q If you see on the bottom of this second page of this</p> <p>11 document.</p> <p>12 (Whereupon, the exhibit was displayed on the</p> <p>13 screen.)</p> <p>14 Q Do you see where it says, "Mr. Trump's personal</p> <p>15 financial statement reflects a net worth in excess of</p> <p>16 2.5 billion as adjusted by DB Lending with liquidity of 100</p> <p>17 million plus, and limited liabilities. He is risk rated A"?</p> <p>18 A Yes.</p> <p>19 Q Why would that have been relevant to include in a</p> <p>20 briefing for your meeting with President Trump and Mr. Jain?</p> <p>21 A Again, I think it was standard practice for the</p> <p>22 financial listing to be there.</p> <p>23 Q And do you see in "Background" it says, "The Trump</p> <p>24 relationship with AWM began in 2011 when Donald Trump, Jr. was</p> <p>25 introduced to Rosemary Vrablic by Jared Kushner, husband of</p>	<p>R. Vrablic - by Defendant - Direct (Mr. Suarez) Page 5500</p> <p>1 A Yes.</p> <p>2 Q How did the revenue change in year end 2012?</p> <p>3 A Primarily, from the loan increase there would be</p> <p>4 interest income plus the capital markets income.</p> <p>5 Q What does pro forma 2013 mean?</p> <p>6 A Based upon loans that had been closed in 2013, that</p> <p>7 would be the projected revenue that would be generated by all of</p> <p>8 the facilities.</p> <p>9 Q What was the projected revenue in 2013 from the</p> <p>10 relationship with President Trump?</p> <p>11 A Six million.</p> <p>12 Q How did the relationship grow from 2011 to 2013?</p> <p>13 A We had done three loans, Doral, Chicago and OPO, plus</p> <p>14 the depository and the capital markets business.</p> <p>15 Q What does "loans AUM" mean?</p> <p>16 A Assets under management.</p> <p>17 Q And how do loans AUM affect the revenue generated by</p> <p>18 the bank?</p> <p>19 A There is interest income earned on loans.</p> <p>20 Q And how did the loans assets under management change</p> <p>21 from 2011 to 2012?</p> <p>22 A As I said, we closed on Doral, um, Chicago, and then</p> <p>23 OPO would have been closed subsequently.</p> <p>24 Q And what do deposits/IA AUM mean?</p> <p>25 A They were deposits maintained at the bank, plus</p>
<p>R. Vrablic - by Defendant - Direct (Mr. Suarez) Page 5499</p> <p>1 Ivanka Trump." And then it goes on to describe the relationship</p> <p>2 and it lists a small loan and deposit relationship was started</p> <p>3 with Donald, Jr., and we were introduced to the Trump family.</p> <p>4 Donald Trump opened up a deposit IA accounts with us in</p> <p>5 December 2011."</p> <p>6 What is the import of President Trump opening a deposit</p> <p>7 and IA account with Deutsche Bank in December of 2011, if any?</p> <p>8 A Just that he was a customer.</p> <p>9 Q And then towards the end of that paragraph it says, "As</p> <p>10 can be seen on the below chart, we have in excess of 200 million</p> <p>11 in loans, 30 million in investable assets, and closed on an</p> <p>12 asset interest rate swap generating capital markets income."</p> <p>13 What does that mean?</p> <p>14 A Just that it was a broad-based relationship of various</p> <p>15 products that were being used by the Trump family.</p> <p>16 Q Was this consistent with the goal of developing a</p> <p>17 relationship with President Trump?</p> <p>18 A Yes.</p> <p>19 Q And you see a chart that appears in the following, um,</p> <p>20 below the paragraph that we were just discussing?</p> <p>21 What does the chart reference when it says "revenue"?</p> <p>22 A It would be revenue to the bank.</p> <p>23 Q Revenue to the bank.</p> <p>24 And in year end 2011 it showed revenue of 13,447; is</p> <p>25 that correct?</p>	<p>R. Vrablic - by Defendant - Direct (Mr. Suarez) Page 5501</p> <p>1 investment management accounts.</p> <p>2 Q How, if at all, is that a source of revenue for the</p> <p>3 bank?</p> <p>4 A The bank is earning money or deposits, plus investment</p> <p>5 management fees.</p> <p>6 Q Was it an objective of the bank to increase assets and</p> <p>7 deposits under management from President Trump?</p> <p>8 A Yes.</p> <p>9 Q Was the bank successful in doing that?</p> <p>10 A Yes.</p> <p>11 Q And then it says, "asterisk, top five relationships in</p> <p>12 terms of revenue for Rosemary Vrablic and her team."</p> <p>13 Do you see that?</p> <p>14 A Yes.</p> <p>15 Q What did that mean?</p> <p>16 A In terms of my client base, he would have been a top</p> <p>17 five name in terms of profitability.</p> <p>18 Q And then it -- the bottom, it says, "Going forward we</p> <p>19 expect to continue to grow the relationship in all asset</p> <p>20 categories."</p> <p>21 Do you see that?</p> <p>22 A Yes.</p> <p>23 Q What, if anything, would that indicate about the bank's</p> <p>24 interest in further developing a relationship with President</p> <p>25 Trump?</p>

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<p>R. Vrablic - by Defendant - Direct (Mr. Suarez) Page 5502</p> <p>1 A That we would have liked to have increased all the</p> <p>2 categories.</p> <p>3 MR. SUAREZ: Your Honor, we move Defendant's</p> <p>4 Exhibits 297 and 298 into evidence.</p> <p>5 THE COURT: Granted. It's in, or they're in.</p> <p>6 (Defendant's Exhibits 297 and 298 were deemed</p> <p>7 marked and admitted in evidence.)</p> <p>8 Q If I could turn your attention to the "key asks." Do</p> <p>9 you see key ask number one, "Obtain more deposits and investment</p> <p>10 management assets."</p> <p>11 What does that mean?</p> <p>12 A To obtain more deposits and investment accounts.</p> <p>13 Q What does it mean that it was a key ask?</p> <p>14 A Usually the chairman would like to know things to ask</p> <p>15 the customers, and so that was one of the number one asks.</p> <p>16 Q What was the second ask?</p> <p>17 A That would be referrals from Mr. Trump.</p> <p>18 Q Is that where it says "Strategically discuss leveraging</p> <p>19 Mr. Trump's personal and professional network within the real</p> <p>20 estate industry in New York for the benefit of DB and AWM"?</p> <p>21 A Yes.</p> <p>22 Q Why would that have been a key ask for the bank?</p> <p>23 A The primary source of customers usually is referrals</p> <p>24 from existing customers.</p> <p>25 Q And how could Mr. Trump, President Trump assist the</p>	<p>R. Vrablic - by Defendant - Direct (Mr. Suarez) Page 5504</p> <p>1 taken to further the relationship with President Trump?</p> <p>2 A I don't remember anything specifically.</p> <p>3 Q Did Mr. Jain express that President Trump was under</p> <p>4 leveraged?</p> <p>5 MR. WALLACE: Objection. Leading.</p> <p>6 THE COURT: Sustained.</p> <p>7 Q What, if any view, did Mr. Jain share concerning</p> <p>8 Mr. Trump's leverage around the time of this meeting?</p> <p>9 A Um, Mr. Jain, um, thought that, um, if Mr. Trump wanted</p> <p>10 to, that there could be additional leverage provided among his</p> <p>11 world.</p> <p>12 MR. SUAREZ: If we could please pull up pre-marked</p> <p>13 for identification Defendant's Exhibit 299.</p> <p>14 (Whereupon, the exhibit was displayed on the</p> <p>15 screen.)</p> <p>16 (The witness was handed the exhibit.)</p> <p>17 Q What, if any, professional relationship did you</p> <p>18 maintain with Ms. Ivanka Trump prior it -- excuse me, while you</p> <p>19 were employed at Deutsche Bank?</p> <p>20 A Ivanka was my main liaison on the deal at specific</p> <p>21 points in this transaction.</p> <p>22 Q Who was Michele Fassiola?</p> <p>23 A Michele Fassiola was my boss and head of Asset Wealth</p> <p>24 Management.</p> <p>25 Q Do you recognize this e-mail?</p>
<p>R. Vrablic - by Defendant - Direct (Mr. Suarez) Page 5503</p> <p>1 bank in developing referrals?</p> <p>2 A He would know other people who would be potentially</p> <p>3 fitting in the high net worth category, or DB's real estate</p> <p>4 department.</p> <p>5 Q What, if any, benefit did Deutsche Bank have to gain</p> <p>6 from leveraging President Trump's personal and professional</p> <p>7 network?</p> <p>8 A As I said, existing customers were the best source of</p> <p>9 additional customers.</p> <p>10 Q Was this consistent with the bank's approved business</p> <p>11 strategies?</p> <p>12 A Yes.</p> <p>13 Q What, if anything, was communicated to President Trump</p> <p>14 concerning the bank's desire to continue doing business with him</p> <p>15 at the meeting with Mr. Jain?</p> <p>16 A Just that we were -- again, the introduction to</p> <p>17 Mr. Jain, and to see if there was any other additional business</p> <p>18 to be done together.</p> <p>19 Q How did Mr. Jain react to the meeting with President</p> <p>20 Trump?</p> <p>21 A The meeting went very well.</p> <p>22 Q Why would you say it "went very well"?</p> <p>23 A Well, they got along, um, and it was a very, very nice</p> <p>24 productive lunch.</p> <p>25 Q As a result of the meeting, what, if any actions, were</p>	<p>R. Vrablic - by Defendant - Direct (Mr. Suarez) Page 5505</p> <p>1 A No.</p> <p>2 Q Is that your e-mail address up top?</p> <p>3 A Yes.</p> <p>4 Q Were you employed by Deutsche Bank on August 7th, 2014?</p> <p>5 A Yes.</p> <p>6 Q Do you have any reason to doubt that you sent this</p> <p>7 e-mail to Ms. Trump?</p> <p>8 A No.</p> <p>9 Q Do you see where it says, "Ivanka hi! My direct boss,</p> <p>10 Michele Fassiola, he's Italian -- "Michele", I'm sorry,</p> <p>11 "Fassiola (he's Italian) would like to call you and your dad to</p> <p>12 thank you for being such great clients and for all the business</p> <p>13 we have been doing together. Your family is in the top ten</p> <p>14 revenue generating names of Asset and Wealth Management now, and</p> <p>15 he is thrilled with how it's grown."</p> <p>16 Do you see that?</p> <p>17 A Yes.</p> <p>18 Q Is that statement accurate?</p> <p>19 MR. WALLACE: Objection.</p> <p>20 A Yes.</p> <p>21 THE COURT: What's the grounds of the objection?</p> <p>22 MR. WALLACE: I'm not sure which aspect of the</p> <p>23 statement she's being asked about.</p> <p>24 THE COURT: I assume it was the last sentence that</p> <p>25 was highlighted. "Thrilled" and "how it's grown."</p>

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R. Vrablic - by Defendant - Direct (Mr. Suarez)	Page 5506	R. Vrablic - by Defendant - Direct (Mr. Suarez)	Page 5508
1 Q At the time you wrote that e-mail, do you have any		1 MR. SUAREZ: If we take a look at page three of	
2 reason to believe that wouldn't be accurate?		2 this document.	
3 A No.		3 (Whereupon, the exhibit was displayed on the	
4 Q What would it mean "for your family to be in the top		4 screen.)	
5 ten revenue generating names of Asset Wealth Management" in		5 Q It says "This meeting is a lunch with Donald Trump, to	
6 terms of the bank's view on the relationship?		6 which he invited you during your phone call on August 8th. He	
7 A Just that it was a top ten name within the business.		7 would like -- he would first like to visit with you in his	
8 Q What does it mean to be a "top ten revenue generating		8 office and then head downstairs for lunch in the Trump Tower	
9 name"?		9 Grill." Do you see that?	
10 A Nothing other than being top ten.		10 A Yes.	
11 Q I understand. My -- I'm -- the question was -- was,		11 Q And then the third bullet point says, "Rosemary Vrablic	
12 perhaps, a little more specific. What does the term "revenue		12 has covered Donald, Ivanka and redacted, since 2011. Since	
13 generating names" mean? How are revenue generating names		13 then, our relationship has grown significantly with 2013	
14 considered?		14 revenues of about \$6 million."	
15 A I'm not following the question. I'm sorry.		15 Do you see that?	
16 Q How is the group being developed to determine what is a		16 A Yes.	
17 revenue generating name?		17 Q And the "key asks and discussion points" below say,	
18 A Um, as per the previous chart that was on the screen,		18 "Please ask whether we can work on other opportunities with	
19 that would be the revenue generating.		19 him."	
20 Q Would it have been the relationship with President		20 Why was that a key ask and discussion point for this	
21 Trump and his related entities?		21 meeting?	
22 A Yes.		22 A The obtaining of additional business was one of the key	
23 Q Why did your boss want to call Ivanka and President		23 jobs.	
24 Trump to thank them for being such great clients?		24 Q Whose key jobs?	
25 A It was standard practice for those type of calls to be		25 A Mine.	
R. Vrablic - by Defendant - Direct (Mr. Suarez)	Page 5507		Page 5509
1 made.		1 Q Were you successful in doing your job?	
2 MR. SUAREZ: Your Honor, we move Defendant's		2 A In general?	
3 Exhibit 299 into evidence.		3 Q Sure.	
4 THE COURT: Granted. It's in.		4 A Yes.	
5 (Defendant's Exhibit 299 was admitted in evidence.)		5 Q Were you successful in developing the bank's	
6 MR. SUAREZ: If we could please pull up pre-marked		6 relationship with President Trump?	
7 for identification Defendant's Exhibit 300.		7 A Yes.	
8 (Whereupon, the exhibit was displayed on the		8 (Continued on the next page.)	
9 screen.)		9	
10 (The witness was handed the exhibit.)		10	
11 THE WITNESS: Thank you.		11	
12 Q Ms. Vrablic, do you recognize this document?		12	
13 A Yes.		13	
14 Q What is this document?		14	
15 A It is a briefing memo on Mr. Trump for a meeting with		15	
16 Michele Fassiola.		16	
17 MR. SUAREZ: Can we please turn to page two of this		17	
18 document.		18	
19 (Whereupon, the exhibit was displayed on the		19	
20 screen.)		20	
21 Q Was there a meeting on October 6th, 2014, between		21	
22 President Trump and Mr. Fassiola?		22	
23 A Based upon this, yes.		23	
24 Q Were you present at that meeting?		24	
25 A I don't remember.		25	

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Vrablok - by Defendant - Direct (Suarez)	Page 5510	Vrablok - by Defendant - Direct (Suarez)	Page 5512
<p>1 MR. SUAREZ: Your Honor, we move Defendant's</p> <p>2 Exhibit 300 into evidence.</p> <p>3 THE COURT: Granted, it is in.</p> <p>4 (Whereupon, the document referred to was deemed</p> <p>5 marked for evidence as Defendant's Exhibit 300 by the</p> <p>6 Court.)</p> <p>7 MR. SUAREZ: I would like to pull up premarked</p> <p>8 for identification Defendant's Exhibit 302.</p> <p>9 (Handing)</p> <p>10 THE WITNESS: Thank you.</p> <p>11 Q And I would like to turn your attention to an e-mail</p> <p>12 dated February 27, 2013. On page three of this document at the</p> <p>13 top of the page, do you see -- do you recognize this as an</p> <p>14 e-mail you sent to Tom Sullivan?</p> <p>15 A Yes.</p> <p>16 Q And do you see where it says: He said we would be</p> <p>17 paid off shortly on the condos and I thought he was nuts. Marc</p> <p>18 told me we will be five weeks. Wow.</p> <p>19 Do you see that?</p> <p>20 A Yes.</p> <p>21 Q What did you mean by that?</p> <p>22 A Again, I think the sale of the condos were far</p> <p>23 quicker than they and we had projected.</p> <p>24 Q And was the performance of the relationship with</p> <p>25 President Trump and how it was developing for the bank,</p>		<p>1 Kushner saying that they were going to be bidding on the Doral</p> <p>2 Golf Course and were looking for financing.</p> <p>3 Q How, if at all, did you participate in the</p> <p>4 negotiation of that loan?</p> <p>5 A I would be the intermediary between the credit and</p> <p>6 lending department and the customer.</p> <p>7 MR. SUAREZ: If we could pull up Defendant's</p> <p>8 Exhibit 311 and start with page three of the document.</p> <p>9 Q Do you recognize this e-mail?</p> <p>10 A Yes.</p> <p>11 Q What does subject "Eagle" mean?</p> <p>12 A That was the code name given for the deal.</p> <p>13 Q And who is Thomas Bowers?</p> <p>14 A He was my boss at the time.</p> <p>15 Q And then he writes: Didn't realize LTV is</p> <p>16 83 percent. Realize strength of the guarantor, but this</p> <p>17 definitely needs to be shown to PDW and BP. Can you give me an</p> <p>18 e-mail that discusses opportunity for additional business, both</p> <p>19 related to the deal and otherwise? Important to have PDW and</p> <p>20 BP on board.</p> <p>21 Why would an e-mail discussing opportunities for</p> <p>22 additional business be relevant to this transaction?</p> <p>23 A The intent was to cross sell all of our customers, so</p> <p>24 the additional other business is also an important category.</p> <p>25 Q And then if we scroll up to the e-mail on page two.</p>	
Vrablok - by Defendant - Direct (Suarez)	Page 5511	Vrablok - by Defendant - Direct (Suarez)	Page 5513
<p>1 consistent with the bank's approved business strategy?</p> <p>2 MR. WALLACE: Objection, leading.</p> <p>3 THE COURT: Sustained.</p> <p>4 Q What about the performance of the relationship with</p> <p>5 President Trump, if anything, was consistent with the bank's</p> <p>6 approved business strategies?</p> <p>7 A The loans were performing as agreed, if not faster.</p> <p>8 MR. SUAREZ: Your Honor, I move Defendant's 302</p> <p>9 into evidence.</p> <p>10 THE COURT: Granted, it is in.</p> <p>11 (Whereupon, the document referred to was deemed</p> <p>12 marked for evidence as Defendant's Exhibit 301 by the</p> <p>13 Court.)</p> <p>14 MR. SUAREZ: Pull up Defendant's, premarked,</p> <p>15 Exhibit 306 -- I am sorry, 311.</p> <p>16 Q What, if any, involvement did you have in the loan</p> <p>17 made by Deutsche Bank Private Wealth Management Division on the</p> <p>18 Trump Doral?</p> <p>19 MR. WALLACE: Objection, asked and answered.</p> <p>20 THE COURT: Can you read back the question</p> <p>21 again?</p> <p>22 (Whereupon, the record was read back by the</p> <p>23 court reporter.)</p> <p>24 THE COURT: Overruled.</p> <p>25 A As I said earlier, I received a phone call from Jared</p>		<p>1 Do you recognize this as your response to Mr. Bowers e-mail?</p> <p>2 A Yes.</p> <p>3 Q And you write: Tom, it is 83 percent of purchase</p> <p>4 price of 150mmm, what does mmm mean?</p> <p>5 A 150 million.</p> <p>6 Q The CBRE appraisal -- which was done for another</p> <p>7 bank -- that we will review -- is at 180 million, which could</p> <p>8 result in an LTV of 69. We expect this report right after</p> <p>9 Christmas. The environmental was clean.</p> <p>10 Why would the bank consider an appraisal prepared for</p> <p>11 another bank?</p> <p>12 A You would have to talk to credit and lending on that.</p> <p>13 Q And then you respond: The other business is</p> <p>14 significant deposit business. DJT has already moved in</p> <p>15 20 million to us. He has another 200 million at a variety of</p> <p>16 other banks.</p> <p>17 How is that relevant to this transaction?</p> <p>18 A Again for cross selling purposes.</p> <p>19 Q And then: Charlie Burrows is putting together the</p> <p>20 DBAG options to present to them in January.</p> <p>21 What is DBAG?</p> <p>22 A That's the parent name of Deutsche Bank.</p> <p>23 Q And what did it mean that Charlie Burrows was putting</p> <p>24 together other options to present for them?</p> <p>25 A He provided products for cash management.</p>	

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<p>Vrablik - by Defendant - Direct (Suarez) Page 5514</p> <p>1 Q Was that another opportunity to cross sell to</p> <p>2 President Trump?</p> <p>3 A Yes.</p> <p>4 Q And then it says: Kevin Carey at RCM are also key</p> <p>5 for RCM since DJT has another 60 million in treasuries and</p> <p>6 bonds.</p> <p>7 Why was that relevant to this transaction?</p> <p>8 A Another source of cross selling.</p> <p>9 Q And then B says: Estate planning. DJT has done very</p> <p>10 little. We will show them dynasty trusts as well as other</p> <p>11 capabilities.</p> <p>12 Do you see that?</p> <p>13 A Yes.</p> <p>14 Q Why was that relevant to this transaction?</p> <p>15 A Cross selling.</p> <p>16 Q Why would the bank be interested in cross selling to</p> <p>17 President Trump?</p> <p>18 MR. WALLACE: Objection, asked and answered.</p> <p>19 THE COURT: They are trying to make money. Why</p> <p>20 wouldn't they want to do more business with someone that</p> <p>21 they are already making money with?</p> <p>22 MR. SUAREZ: I realize some of my questions</p> <p>23 sound a little obvious. I have to ask them this way</p> <p>24 because Your Honor wants me to not ask anything that is in</p> <p>25 the ballpark of a leading question. But I would be happy</p>	<p>Vrablik - by Defendant - Direct (Suarez) Page 5516</p> <p>1 responsibilities at the bank at that time?</p> <p>2 A It was consistent.</p> <p>3 Q And then if we scroll to the top of the document,</p> <p>4 which I believe is another e-mail, you wrote to Mr. Bowers in</p> <p>5 response to an e-mail from him. It says: Tom, they are</p> <p>6 ecstatic with your performance, so I think we will get</p> <p>7 tremendous business from them. I think we can become the lead</p> <p>8 bank in short order.</p> <p>9 What did this statement to Mr. Bowers mean?</p> <p>10 A That the Trumps were happy with how the bank had</p> <p>11 performed and that we could become their lead bank.</p> <p>12 Q Why -- let me rephrase that.</p> <p>13 Would the bank -- would it have been an objective of</p> <p>14 the bank to become their lead bank?</p> <p>15 A Yes.</p> <p>16 Q Why is that?</p> <p>17 A In terms of private banking, if you are the</p> <p>18 customer's lead bank you tend to get the first look at any type</p> <p>19 of transactions, products, things along that nature.</p> <p>20 Q And how, if at all, would that impact the bank's</p> <p>21 ability to generate additional revenue from this relationship?</p> <p>22 A If you did get a first look at different</p> <p>23 opportunities, you had the opportunity to turn down, do them.</p> <p>24 And again, that would generate more business, which would</p> <p>25 generate more revenues.</p>
<p>Vrablik - by Defendant - Direct (Suarez) Page 5515</p> <p>1 to move this along if the Court would grant me a little</p> <p>2 leeway.</p> <p>3 THE COURT: How about we do this. I'll sustain</p> <p>4 the objection to this question because it has been asked</p> <p>5 and answered several times, and it is obvious. But I</p> <p>6 won't restrict you at all, ask whatever you want.</p> <p>7 Q Do you see where it says: New clients/referrals?</p> <p>8 A Yes.</p> <p>9 Q Why, if at all, were new clients and referrals</p> <p>10 relevant to this transaction?</p> <p>11 A Again, we like referrals coming from existing</p> <p>12 customers.</p> <p>13 Q How, if at all, does that affect the bank's</p> <p>14 profitability?</p> <p>15 A They would buy and use some of our services which</p> <p>16 would generate profitability for the bank.</p> <p>17 Q And then it says: Given the circles this family</p> <p>18 travels in, we expect to be introduced to the wealthiest people</p> <p>19 on the planet.</p> <p>20 Was that consistent with -- withdrawn.</p> <p>21 How, if at all, was that consistent with the bank's</p> <p>22 objective to develop additional business through its</p> <p>23 relationship with President Trump?</p> <p>24 A To get, you know, referrals to become new clients.</p> <p>25 Q And how, if at all, was this consistent with your job</p>	<p>Vrablik - by Defendant - Direct (Suarez) Page 5517</p> <p>1 MR. SUAREZ: Your Honor, I move Defendant's</p> <p>2 Exhibit 311 into evidence.</p> <p>3 THE COURT: Granted, it is in.</p> <p>4 (Whereupon, the document referred to was deemed</p> <p>5 marked for evidence as Defendant's Exhibit 311 by the</p> <p>6 Court.)</p> <p>7 MR. SUAREZ: If we could pull up premarked</p> <p>8 Defendant's Exhibit 312.</p> <p>9 (Handing)</p> <p>10 THE WITNESS: Thank you.</p> <p>11 MR. SUAREZ: And if we could scroll down to the</p> <p>12 e-mail at the bottom of this page.</p> <p>13 Q Do you see where it says: I would conclude first</p> <p>14 paragraph by saying, we recommend on the basis that it is a</p> <p>15 sound credit and even in the absence of a personal guaranty,</p> <p>16 but that the PG makes it a remarkably safe deal given the</p> <p>17 strength of the g-tor.</p> <p>18 What does that mean?</p> <p>19 A G-tor is guarantor.</p> <p>20 Q And what was the import, if any, of Mr. Bowers</p> <p>21 concluding that it was a sound -- that he would recommend it on</p> <p>22 the basis of sound credit, even in the absence of a personal</p> <p>23 guarantee?</p> <p>24 A I think Tom's intent would have been that the</p> <p>25 transaction itself was a very sound credit deal.</p>

<p>Vrablok - by Defendant - Direct (Suarez) Page 5518</p> <p>1 Q And then it says: Not to micromanage but I have to</p> <p>2 escalate such risks to PDW and we could miss a great franchise</p> <p>3 opportunity (of which this is undoubtedly one) by not</p> <p>4 highlighting deal strengths.</p> <p>5 What did you understand a great franchise opportunity</p> <p>6 to be?</p> <p>7 A The ability to cross sell to the family.</p> <p>8 Q The family being the Trump family?</p> <p>9 A Yes.</p> <p>10 Q And then you see there it says: Subject. Project</p> <p>11 Eagle?</p> <p>12 A Yes.</p> <p>13 Q That's a reference to the Doral transaction, correct?</p> <p>14 A That's correct.</p> <p>15 Q Would that be because an Eagle is a hole-in-one on a</p> <p>16 golf course? I am not a golfer.</p> <p>17 A I don't know. I didn't name it.</p> <p>18 MR. WALLACE: Objection. An Eagle is not a</p> <p>19 hole-in-one, although a hole-in-one is an Eagle. But I</p> <p>20 don't think an Eagle is a hole-in-one.</p> <p>21 MR. ROBERT: We can't even agree on that.</p> <p>22 THE COURT: Is it two under par or something?</p> <p>23 MR. SOLOMON: Exactly.</p> <p>24 THE COURT: Two under par.</p> <p>25 MR. SUAREZ: If we could scroll up?</p>	<p>Vrablok - by Defendant - Direct (Suarez) Page 5520</p> <p>1 A Yes.</p> <p>2 Q That is a reference to the Doral loan?</p> <p>3 A Yes.</p> <p>4 Q And you were copied on or rather this is an e-mail</p> <p>5 that you sent in response to a chain of e-mails.</p> <p>6 MR. SUAREZ: And we can turn to page three of</p> <p>7 that document.</p> <p>8 Q Do you see where Mr. McAvoy summarizes the deal</p> <p>9 strengths?</p> <p>10 MR. SUAREZ: And if we could turn to the third</p> <p>11 bullet point all the way at the bottom?</p> <p>12 Q It says: Significant relationship opportunities with</p> <p>13 the family. Mr. Trump has already moved in 20 million in</p> <p>14 deposits to DB. His son Donald Jr. is an existing client and</p> <p>15 his daughter, Ivanka, will also become a client. We expect</p> <p>16 that Mr. Trump will serve as an excellent referral source with</p> <p>17 his worldwide contacts with ultra-high-net-worth clients.</p> <p>18 Do you see that?</p> <p>19 A Yes.</p> <p>20 Q Was that a reason why the bank wanted to engage in</p> <p>21 this transaction?</p> <p>22 A Yes.</p> <p>23 Q And ultimately if you scroll up there is an e-mail</p> <p>24 from Pierre De-Weck. Who is Pierre De-Weck?</p> <p>25 A He was the head of asset management globally.</p>
<p>Vrablok - by Defendant - Direct (Suarez) Page 5519</p> <p>1 Q Do you recognize this as your response to Mr. Bowers?</p> <p>2 A Yes.</p> <p>3 Q And it says: As told MM to discuss the DJT's</p> <p>4 expertise in successfully running world class assets like -- as</p> <p>5 demonstrated by his extensive hotel, condos, clubs, golf</p> <p>6 courses -- makes this asset purchase and repositioning a</p> <p>7 realistic and high probable success story.</p> <p>8 What did you mean by that?</p> <p>9 A The Doral asset was a combination of all of those</p> <p>10 things hotel, condo, golf course, spa. And so it took a unique</p> <p>11 person or individual to be able to manage that kind of</p> <p>12 extensive property. And I thought that with Mr. Trump's</p> <p>13 expertise in all of those categories that it would be a</p> <p>14 realistic story for him to be able to do that.</p> <p>15 Q And was he able to do that?</p> <p>16 A Yes.</p> <p>17 MR. SUAREZ: Your Honor, I move Defendant's</p> <p>18 Exhibit 312 into evidence.</p> <p>19 THE COURT: Granted, it is in.</p> <p>20 (Whereupon, the document referred to was deemed</p> <p>21 marked for evidence as Defendant's Exhibit 312 by the</p> <p>22 Court.)</p> <p>23 MR. SUAREZ: And we will pull up premarked</p> <p>24 Exhibit D-313.</p> <p>25 Q And again, do you see where it says Project Eagle?</p>	<p>Vrablok - by Defendant - Direct (Suarez) Page 5521</p> <p>1 Q And do you see where he says: I support the</p> <p>2 transaction, but we need ironclad full recourse under all</p> <p>3 circumstances?</p> <p>4 A Yes.</p> <p>5 Q Did President Trump provide the recourse that</p> <p>6 Mr. De-Weck requested?</p> <p>7 A Yes.</p> <p>8 MR. SUAREZ: Your Honor, I move Defendant's</p> <p>9 Exhibit 313 into evidence.</p> <p>10 THE COURT: Granted, it is in.</p> <p>11 (Whereupon, the document referred to was deemed</p> <p>12 marked for evidence as Defendant's Exhibit 313 by the</p> <p>13 Court.)</p> <p>14 MR. SUAREZ: And we will move to Defendant's</p> <p>15 Exhibit 66.</p> <p>16 (Handing)</p> <p>17 THE WITNESS: Thank you.</p> <p>18 Q Are you familiar with this document?</p> <p>19 A Yes.</p> <p>20 Q What is this document?</p> <p>21 A The credit guidelines from Credit Risk Management.</p> <p>22 Q And if I could direct your attention to page 17 of</p> <p>23 the exhibit -- page 16 of the document. Towards the bottom of</p> <p>24 the page. It says: Commercial real estate. The commercial</p> <p>25 real estate lending team with PWM will consider commercial</p>

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<p>Vrablik - by Defendant - Direct (Suarez) Page 5522</p> <p>1 properties as collateral for borrowers with short-term bridge 2 financing needs, as well as longer term financing for up to ten 3 years. In both cases loans will have recourse to one or more 4 guarantors. 5 Do you see that? 6 A Yes. 7 Q Were the three loans that you were involved with that 8 we discussed earlier consistent with this definition? 9 A Yes. 10 Q And the client's eligibility criteria for those loans 11 it says: Typical borrowers will have net worth of over 50 12 million and borrowers must have proven successful track records 13 in the U.S. commercial real estate markets. 14 Was President Trump a client who satisfied that 15 eligibility criteria? 16 A Yes. 17 MR. SUAREZ: And if we could move on to point 4 18 under this additional criteria on the following page. 19 THE COURT: Five-minute warning. 20 Q If acquired through a special purpose vehicle, some 21 element of recourse to the owner of the vehicle is expected. 22 Was that criteria satisfied in the three loans that 23 you participated in with the Trump Organization? 24 A Yes. 25 MR. SUAREZ: I am at a good breaking point in my</p>	<p>R. Vrablic - by Defendant - Direct (Mr. Suarez) Page 5524</p> <p>1 THE COURT OFFICER: All rise. Part 37 is back in 2 session. Be seated and come to order. 3 MR. ROBERT: Your Honor, if I may. 4 THE COURT: Go ahead, Mr. Robert. 5 MR. ROBERT: I'm proud to say that the congeniality 6 is continuing to work, and the agreements are. The 7 plaintiffs and defendants agree that D-1058, D-1059, D-1060 8 and Plaintiff's 1275 are all in evidence, and therefore we 9 do not need to call Mr. Jack Weisselberg this afternoon. 10 THE COURT: That's great. Just a scheduling 11 question posed by the person who sits alongside me. 12 MS. GREENFIELD: Okay. So is it possible, then, in 13 the event that we finish with Ms. Vrablic today, can we get 14 Mr. Birney today for this afternoon? 15 MR. ROBERT: Mr. Birney is scheduled to be here 16 this afternoon. We are waiting for the confirmation of that 17 his attorney will be here. She had a matter in the Southern 18 District and should be here by 2:15. 19 MS. GREENFIELD: Is it possible to start moving any 20 of next week's witnesses up. 21 MR. ROBERT: As soon as we start with the witness, 22 I'm going to walk outside and start getting on the telephone 23 and report as soon as we can. 24 MS. GREENFIELD: Okay. 25 MR. ROBERT: Great. Thank you.</p>
<p>Vrablik - by Defendant - Direct (Suarez) Page 5523</p> <p>1 outline. 2 THE COURT: You are going to break now but 3 continue? 4 MR. SUAREZ: Yes, continue after the break. 5 THE COURT: Okay. Let's just say we will be 6 back at a quarter to 12:00. 7 And I'll direct the witness, as I always do, not 8 to discuss this case or your testimony or anything related 9 to it during the break. 10 THE WITNESS: Okay. 11 (Pause in the proceedings.) 12 (The following proceedings were stenographically 13 recorded by Senior Court Reporter Michael Ranita.) 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>R. Vrablic - by Defendant - Direct (Mr. Suarez) Page 5525</p> <p>1 THE COURT: All right. Let's get the witness back. 2 THE COURT OFFICER: Witness entering. 3 THE COURT: Thank you. 4 (Whereupon, the witness stepped into the witness 5 stand.) 6 THE COURT: All right. Let's continue. 7 Q Ms. Vrablic, I would like to show you an e-mail that's 8 been previously marked as Defendant's Exhibit 324 for 9 identification. 10 (Whereupon, the exhibit was displayed on the 11 screen.) 12 (The witness was handed the exhibit.) 13 Q Do you recognize your e-mail address at the top of the 14 page? 15 A Yes. 16 Q Do you see where it says, "Ivanka, I am so glad we got 17 to see you and have you show us the new rooms." 18 What rooms were you referring to in this e-mail? 19 A The rooms that were redone at The Doral. 20 Q And then you write "They look amazing! I have had a 21 wonderful time here and it is really impressive to see what you 22 have accomplished here so quickly." 23 Is this consistent with the visit that you made to The 24 Trump Doral? 25 A Yes.</p>

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<p>R. Vrablic - by Defendant - Direct (Mr. Suarez) Page 5526</p> <p>1 Q And what were your impressions after visiting The Trump 2 Doral?</p> <p>3 A That the work had been done quite well, and that it was 4 moving along so quickly.</p> <p>5 Q And what was the purpose of sending this e-mail to 6 Ivanka?</p> <p>7 A Just a thank you.</p> <p>8 MR. SUAREZ: Your Honor, I would move defendant's 9 324 into evidence.</p> <p>10 THE COURT: Granted. It's in. 11 (Defendant's Exhibit 324 was deemed marked and 12 admitted in evidence.)</p> <p>13 Q I would like to next show you an e-mail pre-marked for 14 identification as Plaintiff's Exhibit 325?</p> <p>15 (Whereupon, the exhibit was displayed on the 16 screen.)</p> <p>17 (The witness was handed the exhibit.)</p> <p>18 MR. SUAREZ: If we could turn to the bottom of the 19 first page.</p> <p>20 Q Who is Emily Schroeder?</p> <p>21 A She was an employee of the lending group at Deutsche 22 Bank.</p> <p>23 Q What, if any, role did she play in the Doral 24 transaction?</p> <p>25 A She was one of the underwriters.</p>	<p>R. Vrablic - by Defendant - Direct (Mr. Suarez) Page 5528</p> <p>1 Was the performance of the credit facilities consistent 2 with the bank's expectations?</p> <p>3 A Yes.</p> <p>4 MR. SUAREZ: We move Defendant's Exhibit 325 into 5 evidence.</p> <p>6 THE COURT: Granted. It's in. 7 (Defendant's Exhibit 325 was deemed marked and 8 admitted in evidence.)</p> <p>9 MR. SUAREZ: I would next like to show the witness 10 what's been marked for identification purposes as 11 Defendant's Exhibit 326.</p> <p>12 (Whereupon, the exhibit was displayed on the 13 screen.)</p> <p>14 (The witness was handed the exhibit.)</p> <p>15 Q Do you recognize this document?</p> <p>16 A Yes.</p> <p>17 MR. SUAREZ: And if we scroll to the bottom of the 18 page. 19 (Whereupon, the exhibit displayed on the screen was 20 scrolled through.)</p> <p>21 Q It appears to start with an e-mail from Ivanka Trump to 22 you, and it says, "Hi Rosemary, I just wanted to give you the 23 heads up that I sent the attached Trump Chicago investment memo 24 to Dave Goodman. I think it would be a great loan for DB and 25 appreciate all your support in trying to make it happen."</p>
<p>R. Vrablic - by Defendant - Direct (Mr. Suarez) Page 5527</p> <p>1 Q Do you see in the middle of page you forwarded an 2 e-mail of Ms. Schroeder to Ivanka Trump on June 12, 2013?</p> <p>3 A Yes.</p> <p>4 Q And if I could direct your attention to paragraph two, 5 labeled two. It says, "We had a great meeting today with Credit 6 Risk, and they are very open to the extension and the burn off 7 of your dad's guarantee. It was quite remarkable and a 8 testament to you and your family in what you have achieved with 9 us so quickly."</p> <p>10 What is the reference to the "burn off of your dad's 11 guarantee" referring to?</p> <p>12 A There had been a request by Ivanka for her dad's full 13 recourse guarantee to be either limited, or none, at some point.</p> <p>14 Q And how does the bank evaluate those requests?</p> <p>15 A The credit and underwriting team would do a full 16 analysis and come up with a conclusion.</p> <p>17 Q And what did you mean, "It was quite remarkable and a 18 testament to you and your family in what you have achieved with 19 us so quickly on our projects"?</p> <p>20 A It was -- the request for something like that to be 21 considered by the bank is somewhat unique, and so it was a 22 testament to how fast they had progressed with all the 23 properties.</p> <p>24 Q Was it consistent with -- withdrawn.</p> <p>25 Was the progression of the -- withdrawn.</p>	<p>R. Vrablic - by Defendant - Direct (Mr. Suarez) Page 5529</p> <p>1 What was Ms. Trump referring to?</p> <p>2 A It was a financing opportunity on the Chicago property 3 that she was sending to Dave Goodman.</p> <p>4 Q Who is Dave Goodman?</p> <p>5 A He was a real estate banker.</p> <p>6 Q And what, if anything, ultimately happened with that 7 financing opportunity?</p> <p>8 A Um, the loan was done in PWM.</p> <p>9 Q Why was the loan done in PWM?</p> <p>10 A Mr. Trump was willing to personally guarantee it.</p> <p>11 Q And did the bank receive the personal guaranty that it 12 requested?</p> <p>13 A Yes.</p> <p>14 Q And at the top it says "Ivanka, I will reach out to 15 Dave today and make sure he is aware of the expansive PWM 16 relationship and how important you and your family's business 17 have become to the bank."</p> <p>18 Do you see that?</p> <p>19 A Yes.</p> <p>20 Q What was the purpose of reaching out to Dave Goodman 21 with that information?</p> <p>22 A Well, the -- Ivanka wanted to have, um, a potential 23 deal, loan from both us and the real estate bank. And so it was 24 important for him to see the full breadth of what was going on 25 with the Trump family and the bank.</p>

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<p>R. Vrablic - by Defendant - Direct (Mr. Suarez) Page 5530</p> <p>1 Q And what was the full breadth of was what was going on</p> <p>2 with the Trump family and the bank at this time?</p> <p>3 A I don't know exactly.</p> <p>4 Q And it says, "I will tell Dave that he has our full</p> <p>5 support behind this deal. It looks sensational, by the way.</p> <p>6 And to call me if I can be of any help."</p> <p>7 Do you see that?</p> <p>8 A Yes.</p> <p>9 Q Were you ultimately of help on this deal?</p> <p>10 A It ultimately got done in the private bank.</p> <p>11 Q What role, if any, did you have in facilitating that</p> <p>12 deal getting done in the private bank?</p> <p>13 A I was the intermediary between customer and lending and</p> <p>14 credit.</p> <p>15 MR. SUAREZ: Your Honor, we move Defendant's</p> <p>16 Exhibit 326 into evidence.</p> <p>17 THE COURT: Granted. It's in.</p> <p>18 (Defendant's Exhibit 326 was deemed marked and</p> <p>19 admitted in evidence.)</p> <p>20 MR. SUAREZ: I would like to show the witness</p> <p>21 what's been pre-marked as Defendant's Exhibit 331.</p> <p>22 (Whereupon, the exhibit was displayed on the</p> <p>23 screen.)</p> <p>24 (The witness was handed the exhibit.)</p> <p>25 Q I would like to draw your attention to an e-mail that</p>	<p>R. Vrablic - by Defendant - Direct (Mr. Suarez) Page 5532</p> <p>1 In general terms, what is your role in facilitating</p> <p>2 discussions on terms between your client and the bank?</p> <p>3 A The process usually works that credit and lending will</p> <p>4 review all the material. They will come back with a term sheet.</p> <p>5 They, or I, will send that to the customer or prospect. The</p> <p>6 customer or prospect will come back with things that they like</p> <p>7 or don't like, um, and then a dialogue is taking place between</p> <p>8 the two groups, three groups. And it's my job to sort of</p> <p>9 mediate, if, in fact, there is a big gap between the two</p> <p>10 positions.</p> <p>11 Q And in general terms, what is the objective of the bank</p> <p>12 when setting an interest rate on a loan transaction?</p> <p>13 A The entire structure is set by the bank to, A, protect</p> <p>14 the assets of the bank. And then to generate appropriate</p> <p>15 revenue of such transaction.</p> <p>16 Q And generally, trying to negotiate the interest rate on</p> <p>17 the client's perspective, what is the objective of the client?</p> <p>18 A The client likes the lowest rate possible.</p> <p>19 Q And what role, if any, do you play in bridging those</p> <p>20 two objectives?</p> <p>21 A I try to see if there is a deal that can be done that</p> <p>22 will bridge both of their objectives.</p> <p>23 Q And with respect to the three loans that you were</p> <p>24 involved with with The Trump Organization that we've discussed</p> <p>25 today, were you successful in meeting that objective?</p>
<p>R. Vrablic - by Defendant - Direct (Mr. Suarez) Page 5531</p> <p>1 you sent to Balaji Prasanna. Who is Balaji Prasanna?</p> <p>2 A Balaji was the head of lending at that time.</p> <p>3 Q And at the bottom it says, "Subject: Re: Trump</p> <p>4 Chicago revised terms." Do you see that?</p> <p>5 A Yes.</p> <p>6 Q Is this the same transaction that you were discussing</p> <p>7 earlier with Dave Goodman?</p> <p>8 A Yes.</p> <p>9 Q And you write, "Balaji, you seem to ignore that we now</p> <p>10 have 36 percent LTV where we -- where we were willing to go up</p> <p>11 to 60 percent on the hotel and you have shortened her term on</p> <p>12 the condos from five years to five years. The pricing is</p> <p>13 appropriate for the risk. I will ask for the additional AUMs."</p> <p>14 What did you mean by that?</p> <p>15 A I think this was just my response to the new terms and</p> <p>16 conditions that lending and credit risk wanted.</p> <p>17 Q And then it says "This is the deal she wants and will</p> <p>18 take. If you are not comfortable, we need to pass."</p> <p>19 Do you see that?</p> <p>20 A Yes.</p> <p>21 Q And was the bank ultimately comfortable with making</p> <p>22 this deal?</p> <p>23 A Yes.</p> <p>24 Q And in general terms, how does the negotiation between</p> <p>25 the credit side -- let me withdraw that.</p>	<p>R. Vrablic - by Defendant - Direct (Mr. Suarez) Page 5533</p> <p>1 A Yes.</p> <p>2 MR. SUAREZ: Your Honor, we move Defendant's</p> <p>3 Exhibit 331 into evidence.</p> <p>4 THE COURT: Granted. It's in.</p> <p>5 (Defendant's Exhibit 331 was deemed marked and</p> <p>6 admitted in evidence.)</p> <p>7 Q Do you see at the top where it says "No need" -- it's</p> <p>8 an e-mail from Tom Bowers to you. It says, "No need to get</p> <p>9 adversarial at this stage. Balaji, I'm just reflecting MF's</p> <p>10 desire to get an appropriate spread."</p> <p>11 Do you see that?</p> <p>12 A Yes.</p> <p>13 Q If the bank had not -- did not achieve an appropriate</p> <p>14 spread, would it have closed on the transaction?</p> <p>15 A No.</p> <p>16 Q Do you see where it says "this is a superb deal."</p> <p>17 A Yes.</p> <p>18 Q Was Mr. Bowers' assessment of the deal consistent with</p> <p>19 the bank's approved business strategies?</p> <p>20 A I'm not sure I understand that.</p> <p>21 Q I'll withdraw it. Was there -- would you agree with</p> <p>22 Mr. Bowers' assessment of the deal?</p> <p>23 MR. WALLACE: Objection. Again, the "would" versus</p> <p>24 did, do.</p> <p>25 THE COURT: Sustained.</p>

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<p>R. Vrablic - by Defendant - Direct (Mr. Suarez) Page 5534</p> <p>1 Q Did you agree at the time with Mr. Bowers' assessment 2 of the deal?</p> <p>3 A I thought it was a good deal, yes.</p> <p>4 Q Was that from the perspective of the bank?</p> <p>5 A Yes.</p> <p>6 MR. SUAREZ: I would like to show the witness what 7 has been pre-marked as Defendant's Exhibit 335. 8 (Whereupon, the exhibit was displayed on the 9 screen.) 10 (The witness was handed the exhibit.) 11 MR. SUAREZ: If we could turn to the e-mail dated 12 October 15th, 2012, from you to Ivanka Trump. 13 (Whereupon, the exhibit was displayed on the 14 screen.) 15 MR. SUAREZ: On the second page. 16 (Whereupon, the exhibit was displayed on the 17 screen.) 18 MR. SUAREZ: I apologize, the e-mail dated 19 October 15th, 2012. 20 (Whereupon, the exhibit was displayed on the 21 screen.) 22 Q Do you recognize this as an e-mail you sent to Ivanka 23 Trump? 24 A Yes. 25 Q What is the subject matter of the e-mail?</p>	<p>R. Vrablic - by Defendant - Direct (Mr. Suarez) Page 5536</p> <p>1 A I think back to me mediating between the customer and 2 the bank, that both of them were happy and that it's a fair deal 3 for both.</p> <p>4 Q Was this consistent with your objective to develop 5 business for the bank?</p> <p>6 A Yes.</p> <p>7 MR. SUAREZ: Your Honor, we move Defendant's 8 Exhibit 335 into evidence. 9 THE COURT: Granted. It's in. 10 (Defendant's Exhibit 335 was deemed marked and 11 admitted in evidence.) 12 MR. SUAREZ: I would like to show the witness a 13 document that's been marked Defendant's Exhibit 338 for 14 identification. 15 (Whereupon, the exhibit was displayed on the 16 screen.) 17 (The witness was handed the exhibit.) 18 Q Who is Dominic Scalzi? 19 A He was a banker at Deutsche Bank. 20 Q What role, if any, did Mr. Scalzi have on your team? 21 A We were both bankers on the same team. 22 Q What role, if any, did Mr. Scalzi have in connection 23 with the loans made by the Private Wealth Management Group to 24 the Trump Organization? 25 A He would be involved. We had -- the two of us would be</p>
<p>R. Vrablic - by Defendant - Direct (Mr. Suarez) Page 5535</p> <p>1 A Pricing update.</p> <p>2 Q Is the discussion you had with Ms. Trump consistent 3 with your general practice in negotiating deal terms for the 4 bank?</p> <p>5 A Yes.</p> <p>6 Q And then you go on to provide pricing on a loan, and at 7 the bottom you write, "Please review this revised pricing offer. 8 I hope this is acceptable to you. And we look forward to 9 closing this on Halloween." 10 Do you see that?</p> <p>11 A Yes.</p> <p>12 Q Was this e-mail consistent with the manner in which you 13 helped the bank and clients bridge loans, loan terms in your 14 capacity at the bank?</p> <p>15 A Yes.</p> <p>16 MR. SUAREZ: And then if we scroll up to the e-mail 17 that you wrote Ms. Trump on October 15th. 18 (Whereupon, the exhibit was displayed on the 19 screen.) 20 Q The subject matter regarding pricing update, it says, 21 "I try to be fair and I think in this case both you and the bank 22 are happy." 23 Do you see that?</p> <p>24 A Yes.</p> <p>25 Q What did you mean by that?</p>	<p>R. Vrablic - by Defendant - Direct (Mr. Suarez) Page 5537</p> <p>1 on all loans of -- and either I was the lead and he was the 2 backup on it, or he would be a lead and I would be a backup. So 3 he was technically my backup on this.</p> <p>4 Q Do you see this e-mail was sent on Friday, 5 November 9th, 2012, to Ivanka Trump?</p> <p>6 A Yes.</p> <p>7 Q And with respect to Ms. Trump, you were copied on this 8 e-mail. Do you see this?</p> <p>9 A Yes.</p> <p>10 Q You see where it says, "Hi Ivanka. I want to thank you 11 and your dad for once again giving us the opportunities to meet 12 your financing needs. The professionalism and efficiency of 13 both organizations has made for a smooth and timely closing of 14 this transaction. Your organization is great to work with. 15 Thanks again for the confidence you have in us, and we are very 16 appreciative of receiving this additional business. Have a 17 great weekend." 18 Was this e-mail sent in reference to the Chicago 19 transaction that we've discussed?</p> <p>20 A I would think so.</p> <p>21 Q And was this e-mail consistent with your own opinions 22 of that transaction?</p> <p>23 A Yes.</p> <p>24 MR. SUAREZ: Your Honor, I move Defendant's Exhibit 25 338 into evidence.</p>

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<p>1 THE COURT: Granted. It's in.</p> <p>2 (Defendant's Exhibit 338 was deemed marked and</p> <p>3 admitted in evidence.)</p> <p>4 Q Ms. Vrablic, what role, if any, did you have in the</p> <p>5 loan transaction made in connection with the Old Post Office</p> <p>6 property?</p> <p>7 A I had received a phone call from The Trump Organization</p> <p>8 that they were potentially one of the bidders for that property,</p> <p>9 and potentially would need financing for that.</p> <p>10 Q What interest did the bank have in participating in</p> <p>11 that project?</p> <p>12 A It was a potential financing facility.</p> <p>13 MR. SUAREZ: I would like to show the witness</p> <p>14 what's been marked for identification as Defendant's</p> <p>15 Exhibit 340.</p> <p>16 (Whereupon, the exhibit was displayed on the</p> <p>17 screen.)</p> <p>18 (The witness was handed the exhibit.)</p> <p>19 Q If you see the e-mail all the way at the beginning of</p> <p>20 this page, which is the bottom of the document.</p> <p>21 (Whereupon, the exhibit was displayed on the</p> <p>22 screen.)</p> <p>23 Q On page two.</p> <p>24 (Whereupon, the exhibit was displayed on the</p> <p>25 screen.)</p>		<p>1 Q And it says: Subject Matter. Forward final THC OPO</p> <p>2 release?</p> <p>3 A Yes.</p> <p>4 Q And she writes, Ms. Trump writes to you: We won! We</p> <p>5 are very excited!</p> <p>6 Did you know what she was referring to?</p> <p>7 A Yes.</p> <p>8 Q How did you know what she was referring to?</p> <p>9 A We had known that they were in the bidding process</p> <p>10 for the OPO. So by her statement of this it just meant they</p> <p>11 won.</p> <p>12 Q So you see Mr. Sullivan responds to an e-mail that</p> <p>13 you appear to have sent him a little further up the page on</p> <p>14 February 8. And he writes: You beat me to the punch. Was</p> <p>15 covered in WSJ this morning. Sounds like she was also very</p> <p>16 active in this project.</p> <p>17 Why had you forwarded that e-mail to Mr. Sullivan?</p> <p>18 A Just to tell them that they had won.</p> <p>19 Q Was that indicative of the bank's interest in</p> <p>20 participating in the financing?</p> <p>21 A Yes. If they hadn't won the bid there would have</p> <p>22 been no financing.</p> <p>23 Q Do you see your response -- you respond to</p> <p>24 Mr. Sullivan: Yes, she was. I guess they can pass the</p> <p>25 government's KYC too.</p>	
	Page 5539	Vrablik - by Defendant - Direct (Suarez)	Page 5541
<p>1 Q Do you recognize this e-mail sent from Ivanka Trump to</p> <p>2 you on February 8th, 2012?</p> <p>3 A Yes.</p> <p>4 (Continued on the next page.)</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>		<p>1 Do you see that?</p> <p>2 A Yes.</p> <p>3 Q What did you mean by that?</p> <p>4 A The deal had a long-term lease with the Post Office</p> <p>5 or some governmental agency. So, I was being funny that they</p> <p>6 had a KYC process like ours.</p> <p>7 MR. SUAREZ: Your Honor, I move Defendant's</p> <p>8 Exhibit 340 into evidence.</p> <p>9 THE COURT: Granted it is in.</p> <p>10 (Whereupon, the document referred to was deemed</p> <p>11 marked for evidence as Defendant's Exhibit 340 by the</p> <p>12 Court.)</p> <p>13 Q I would like to show the witness what has been</p> <p>14 previously marked as Defendant's Exhibit 779 for</p> <p>15 identification.</p> <p>16 (Hanging)</p> <p>17 Q Who is Darrell Gustafson?</p> <p>18 A I don't remember.</p> <p>19 Q Do you see your e-mail address at the top?</p> <p>20 A Yes.</p> <p>21 Q Do you see an e-mail that you sent Darrell Gustafson</p> <p>22 on July 16, 2013?</p> <p>23 A Yes.</p> <p>24 Q And it is: Subject OPO.</p> <p>25 Do you see that?</p>	

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<p>Vrablik - by Defendant - Direct (Suarez) Page 5542</p> <p>1 A Yes.</p> <p>2 Q And you write: Hi. I just spoke with Ivanka Trump</p> <p>3 re your group taking a look at the above transaction. We have</p> <p>4 quite a robust and great relationship with the family in the</p> <p>5 private bank and can provide you with a good amount of</p> <p>6 background and exposure to senior management for your</p> <p>7 underwriting.</p> <p>8 Do you know what you would have meant by "exposure to</p> <p>9 senior management"?</p> <p>10 A Yes. It would have been the type of meetings with</p> <p>11 Michiel and/or Anshu Jain.</p> <p>12 Q That would be Michiel Fassiola?</p> <p>13 A That's correct.</p> <p>14 Q And then you write: I know this is a highly</p> <p>15 competitive and time sensitive situation, so I am in the office</p> <p>16 tomorrow to discuss.</p> <p>17 Do you know what you meant by that?</p> <p>18 A Well, after reading this they would have been another</p> <p>19 part of the bank potentially looking at this transaction, and I</p> <p>20 just would want to have been as helpful as I could.</p> <p>21 Q Why would another part of the bank be looking at the</p> <p>22 transaction?</p> <p>23 A There are different avenues within the bank that</p> <p>24 could potentially provide real estate financing. So, based</p> <p>25 upon this Ivanka would have reached out to Mr. Gustafson.</p>	<p>Vrablik - by Defendant - Direct (Suarez) Page 5544</p> <p>1 Meetings with credit on both your deals went well. Yeah.</p> <p>2 Can we set some times later -- excuse me. Can we set</p> <p>3 some times late morning to go over each individually? Let me</p> <p>4 know.</p> <p>5 With respect to Ms. Trump, what was this e-mail</p> <p>6 about?</p> <p>7 A It probably would have been about OPO.</p> <p>8 Q And what, if anything, do you recall about the</p> <p>9 discussions you had with Ms. Trump concerning credit meetings</p> <p>10 on that deal?</p> <p>11 A I don't recall.</p> <p>12 MR. SUAREZ: Scroll up to another part -- to a</p> <p>13 later part of the e-mail. I am sorry. Further up the</p> <p>14 exhibit on page one.</p> <p>15 Q You write back to Ms. Trump: Ivanka, good morning.</p> <p>16 Tom and Emily have a few questions for Dave (they sent him an</p> <p>17 e-mail last night) and they will have a full term sheet for</p> <p>18 us -- maybe today if we are lucky -- or Monday the latest.</p> <p>19 Credit has given us the green light, so I see absolutely no</p> <p>20 issues.</p> <p>21 What did you mean by "credit has given us the green</p> <p>22 light so I see absolutely no issues"?</p> <p>23 A For a term sheet to be given out to a customer,</p> <p>24 credit had to approve the transaction. So they would have</p> <p>25 given us a green light to go forward.</p>
<p>Vrablik - by Defendant - Direct (Suarez) Page 5543</p> <p>1 Q And what, if any, interest would Private Wealth</p> <p>2 Management have had to obtain the business as opposed to</p> <p>3 another division of the bank?</p> <p>4 A Well certainly from our profitability it would be</p> <p>5 better for it to be booked in the Private Wealth Management.</p> <p>6 But ultimately we would just want to see a happy customer. So</p> <p>7 if it was done in another part of the bank that would be fine</p> <p>8 as well.</p> <p>9 MR. SUAREZ: Your Honor, I move Defendant's</p> <p>10 Exhibit 779 into evidence.</p> <p>11 THE COURT: Granted, it is in.</p> <p>12 (Whereupon, the document referred to was deemed</p> <p>13 marked for evidence as Defendant's Exhibit 779 by the</p> <p>14 Court.)</p> <p>15 MR. SUAREZ: I would like to show the witness</p> <p>16 what has been marked as Defendant's Exhibit 342.</p> <p>17 (Handing)</p> <p>18 MR. SUAREZ: And if you could turn to the second</p> <p>19 page of the e-mail. At the bottom.</p> <p>20 Q Do you recognize this as an e-mail that you sent on</p> <p>21 November 26, 2013 to Ivanka Trump and Jared Kushner?</p> <p>22 A Yes.</p> <p>23 Q Do you see where it says: Subject Credit Meetings?</p> <p>24 A Yes.</p> <p>25 Q And you write: Hi. Hope you had a good flight.</p>	<p>Vrablik - by Defendant - Direct (Suarez) Page 5545</p> <p>1 Q Is the issuance -- let me rephrase that.</p> <p>2 What point of the loan transaction is the issuance of</p> <p>3 a term sheet?</p> <p>4 A Preliminary underwriting has been done. There has</p> <p>5 been a discussion of terms and conditions, plus items that were</p> <p>6 still needed to be considered for it to go from a term sheet to</p> <p>7 an actual commitment.</p> <p>8 Q And generally speaking, what does the process to go</p> <p>9 from a term sheet to an actual commitment look like at the</p> <p>10 bank?</p> <p>11 A Again, it would depend upon what credit and lending</p> <p>12 would need. The customers would come back with their requests</p> <p>13 and what they would like to see in there. And then credit and</p> <p>14 lending would come back with a final term sheet that would be</p> <p>15 approved by a customer. And then it would go to commitment.</p> <p>16 Q Does the issuance of a term sheet obligate the</p> <p>17 bank -- withdrawn.</p> <p>18 Is the bank obligated to close on a deal when it is</p> <p>19 issued a term sheet?</p> <p>20 A No.</p> <p>21 Q Is, in your experience generally speaking at Deutsche</p> <p>22 Bank, the client required to close on a deal when it is issued</p> <p>23 a term sheet?</p> <p>24 A I am sorry, if you can rephrase that?</p> <p>25 Q Sure.</p>

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<p>Vrablik - by Defendant - Direct (Suarez) Page 5546</p> <p>1 When the bank issues a client a term sheet, is the</p> <p>2 client required to consummate that deal?</p> <p>3 A No.</p> <p>4 Q And what, if anything, can occur between the issuance</p> <p>5 of the term sheet and the ultimate -- and ultimately a</p> <p>6 transaction being consummated or not consummated?</p> <p>7 A From a client's side they may find the transaction</p> <p>8 being done at another institution, if they find another deal</p> <p>9 somewhere else. From the bank's standpoint they may or may not</p> <p>10 like the additional information they get. Or the bank and the</p> <p>11 customer can't come to an agreement on terms and conditions.</p> <p>12 Q Is that an ordinary description of a banking</p> <p>13 relationship between a client and the bank?</p> <p>14 MR. WALLACE: Objection.</p> <p>15 THE COURT: I am not sure what "that" was. Was</p> <p>16 that your objection?</p> <p>17 MR. WALLACE: Yes.</p> <p>18 THE COURT: It doesn't have to be.</p> <p>19 Q Is your description of the process to go from loan to</p> <p>20 term sheet, generally speaking, consistent with banking</p> <p>21 practices between a bank and a client?</p> <p>22 A Yes.</p> <p>23 Q Then the e-mail goes on to state: One question that</p> <p>24 was raised was on disclosure -- since the GSA/or some</p> <p>25 government entity is involved -- will our terms and conditions</p>	<p>Vrablik - by Defendant - Direct (Suarez) Page 5548</p> <p>1 Court.)</p> <p>2 Q Earlier -- withdrawn.</p> <p>3 I would like to show the witness an e-mail that's</p> <p>4 been marked as Defendant's Exhibit 343 for identification</p> <p>5 purposes.</p> <p>6 (Handing)</p> <p>7 Q Do you recognize your e-mail at the top of the page?</p> <p>8 A Yes.</p> <p>9 Q Who is Daniel Eisenberg?</p> <p>10 A He was a junior banker on our team.</p> <p>11 Q Do you see here where you write: Hi --</p> <p>12 This is an e-mail directed to Tom Sullivan and Emily</p> <p>13 Schroeder; is that correct?</p> <p>14 A Yes.</p> <p>15 Q It says: Hi.</p> <p>16 Revenues 2011 - 13,477.</p> <p>17 2012 - 2.6 million.</p> <p>18 2013 - 3.1 million through October -- 3.5 million for</p> <p>19 full year -- Note: This is after the 50 BP liquidity fee for</p> <p>20 2013 (not in prior years).</p> <p>21 What was the 50 BP liquidity fee?</p> <p>22 A The bank had a 50 basis point capital charge from the</p> <p>23 funding desk that was passed on to all loans.</p> <p>24 Q And what does this revenue represent for the --</p> <p>25 withdrawn.</p>
<p>Vrablik - by Defendant - Direct (Suarez) Page 5547</p> <p>1 with you be made public? Not a credit issue, but we want to be</p> <p>2 prepared if "other clients" see it and ask for the same deal.</p> <p>3 What concern were you conveying to Ms. Trump in that</p> <p>4 sentence?</p> <p>5 A Because most of the deals that are done with our</p> <p>6 private banking customers are private, they are not in the</p> <p>7 public domain, so our concern was that if other customers saw</p> <p>8 rates that were given, which are typically not known by other</p> <p>9 customers or prospects, that everybody would think they should</p> <p>10 get the same rates, same deals, same conditions, since it is a</p> <p>11 competitive situation. And other banks would also know.</p> <p>12 Q And how, if at all, was that concern addressed?</p> <p>13 A I don't remember.</p> <p>14 Q Was there any follow-up discussion with respect to</p> <p>15 this concern?</p> <p>16 A I don't remember.</p> <p>17 Q Was this concern unique to this transaction?</p> <p>18 A No. We always would keep the spreads and terms and</p> <p>19 conditions private from other customers. We would not talk</p> <p>20 about that.</p> <p>21 MR. SUAREZ: Your Honor, I move Defendant's</p> <p>22 Exhibit 342 into evidence.</p> <p>23 THE COURT: Granted, it is in.</p> <p>24 (Whereupon, the document referred to was deemed</p> <p>25 marked for evidence as Defendant's Exhibit 342 by the</p>	<p>Vrablik - by Defendant - Direct (Suarez) Page 5549</p> <p>1 What does this revenue represent?</p> <p>2 A It would be the revenue generated from all of the</p> <p>3 products used by the Trump Organization.</p> <p>4 Q Would those be the products used from the Private</p> <p>5 Wealth Management group?</p> <p>6 A Yes.</p> <p>7 Q And would these revenues be booked on the Private</p> <p>8 Wealth Management group's balance sheet?</p> <p>9 A I would think so.</p> <p>10 Q And then in 2014 it says: Proforma.</p> <p>11 Do you see that?</p> <p>12 A Yes.</p> <p>13 Q Existing approximate run rate is 210K per month,</p> <p>14 equals 2.520M.</p> <p>15 What does that mean?</p> <p>16 A I assume whatever loan that was going to be booked</p> <p>17 that would be the anticipated revenue generated for it in 2014.</p> <p>18 Q What is an approximate run rate? How does that</p> <p>19 factor into the bank's analysis of revenue?</p> <p>20 A It is just what is earned every month.</p> <p>21 Q And then OPO. It says: Fee. 170 million@50</p> <p>22 basis -- 50BP.</p> <p>23 BP means basis point?</p> <p>24 A Yes.</p> <p>25 Q Equals 850K.</p>

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<p>Vrablik - by Defendant - Direct (Suarez) Page 5550</p> <p>1 Do you see that?</p> <p>2 A Yes.</p> <p>3 Q What does that 850,000 represent?</p> <p>4 A That would be the -- excuse me, the loan fee.</p> <p>5 Q Would that be -- excuse me, would that be revenue</p> <p>6 generated from the closing of the OPO transaction?</p> <p>7 A Yes.</p> <p>8 Q And then it says: Spread of 225 for eight months --</p> <p>9 2.5 million equals 3.3 million.</p> <p>10 What does the spread of 225 for eight months 2.5</p> <p>11 million mean?</p> <p>12 A That would be the spread that is on the loan that is</p> <p>13 paid, the profitability that's generated to the bank for the</p> <p>14 eight-month period that the loan would have been outstanding in</p> <p>15 2014.</p> <p>16 Q And then do you see where it says 3.3 million? Is</p> <p>17 that just adding up the math of the 850 and the 2.5?</p> <p>18 A Yes.</p> <p>19 Q And then it goes on to say: Total 2014 revenue</p> <p>20 should exceed 6.8 million.</p> <p>21 What does that mean?</p> <p>22 A That would be the addition of the 2.5 million and the</p> <p>23 3.3 for total revenue for 2014.</p> <p>24 Q Would that reflect revenue generated by the Deutsche</p> <p>25 Bank Wealth Management Division from the Trump Organization in</p>	<p>Vrablik - by Defendant - Direct (Suarez) Page 5552</p> <p>1 is" condition before they did all of the work. There was</p> <p>2 another visit midway when the work was being done. And I</p> <p>3 believe there was a third for the ground breaking, something of</p> <p>4 that nature. And then I was there during the inauguration.</p> <p>5 Q And what view, if any, do you have -- withdrawn.</p> <p>6 What was your opinion at the time concerning the</p> <p>7 repositioning of the hotel project?</p> <p>8 A Well, it was an empty shell, so it was neglected for</p> <p>9 a period of time. And it needed a wholesale redoing of the</p> <p>10 whole thing for it to become the vision that the Trumps had for</p> <p>11 it.</p> <p>12 Q Was the performance of the OPO project consistent</p> <p>13 with your expectation for that project when the loan was</p> <p>14 originated?</p> <p>15 A Yes. They took it from a shell to a fully</p> <p>16 operational hotel and event space.</p> <p>17 MR. SUAREZ: I would like to turn your attention</p> <p>18 to what has been previously marked as Plaintiff's Exhibit</p> <p>19 298.</p> <p>20 (Handing)</p> <p>21 Q Do you see the date at the top right-hand corner of</p> <p>22 this document?</p> <p>23 A Yes.</p> <p>24 Q And were you employed at the bank on July 20, 2015?</p> <p>25 A Yes.</p>
<p>Vrablik - by Defendant - Direct (Suarez) Page 5551</p> <p>1 2014?</p> <p>2 A Yes.</p> <p>3 Q And what would be the purpose of sending this</p> <p>4 information to Mr. Sullivan and Ms. Schroeder?</p> <p>5 A This sort of information would be available to the</p> <p>6 private banking side of the organization. And so Tom and Emily</p> <p>7 probably would have put that in their credit write-up or annual</p> <p>8 review. But that would be something they would need for their</p> <p>9 report.</p> <p>10 Q And how would this information, if at all, inform the</p> <p>11 bank's decision-making on how it wanted to develop a</p> <p>12 relationship with the Trump Organization?</p> <p>13 A It would just be a fact of what was generated from</p> <p>14 the business.</p> <p>15 MR. SUAREZ: Your Honor, we move Defendant's</p> <p>16 Exhibit 343 into evidence.</p> <p>17 THE COURT: Granted, it is in.</p> <p>18 (Whereupon, the document referred to was deemed</p> <p>19 marked for evidence as Defendant's Exhibit 343 by the</p> <p>20 Court.)</p> <p>21 Q What, if any, knowledge do you have concerning the</p> <p>22 performance of the OPO loan?</p> <p>23 A When I was working at the bank it was current.</p> <p>24 Q When, if at all, did you visit the OPO property?</p> <p>25 A I was there for the first time to see it in its "as</p>	<p>Vrablik - by Defendant - Direct (Suarez) Page 5553</p> <p>1 Q Do you see at the bottom there below the date it</p> <p>2 says: Relationship manager Vrablic/Scalzi?</p> <p>3 A Yes.</p> <p>4 Q What does that mean?</p> <p>5 A We were both involved from the relationship</p> <p>6 management side on this transaction.</p> <p>7 Q And do you see: Lender Williams/Frank?</p> <p>8 Does that mean anything to you?</p> <p>9 A Yes.</p> <p>10 Q What does that mean?</p> <p>11 A The two lenders were Dave Williams and Josh Frank.</p> <p>12 Q And what is the role of the lender in the client</p> <p>13 relationship?</p> <p>14 A They would be responsible for the underwriting of the</p> <p>15 transaction and working with the credit risk to get it</p> <p>16 approved.</p> <p>17 Q And if you look at: Group. The Trump Family in the</p> <p>18 box to the left. Do you know what that grouping refers to?</p> <p>19 A I would assume all of the deals that were done for</p> <p>20 the Trump family.</p> <p>21 Q And then it identifies: Borrowers A, Trump Endeavor</p> <p>22 12 LLC. B, 401 North Wabash Venture LLC. C, Trump Old Post</p> <p>23 Office LLC.</p> <p>24 Do you see that?</p> <p>25 A Yes.</p>

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<p>Vrablik - by Defendant - Direct (Suarez) Page 5554</p> <p>1 Q Are those the three loans that we have been</p> <p>2 discussing today?</p> <p>3 A Yes.</p> <p>4 Q Do you -- then there is a -- it goes on to be a</p> <p>5 reason for presentation. Are you aware that the loans were</p> <p>6 reviewed by the bank on an annual basis?</p> <p>7 A Yes.</p> <p>8 Q What role, if any, did you have in the annual review</p> <p>9 of these three loans?</p> <p>10 A I would not be involved in the preparation of or</p> <p>11 doing of the annual review. The only thing would be is if</p> <p>12 credit or lending needed something that they would like me to</p> <p>13 get from the customer, I would be the intermediary to get it</p> <p>14 for them potentially.</p> <p>15 Q And if we could turn to the second page of this</p> <p>16 document. Do you see where it says: Assets Under Management?</p> <p>17 A Yes.</p> <p>18 Q And this reflects assets under management by Donald</p> <p>19 J. Trump of 31.295 million in cash deposits. Do you see that?</p> <p>20 A Yes.</p> <p>21 Q Was this consistent with your objective to develop</p> <p>22 the bank's relationship with President Trump?</p> <p>23 A Yes.</p> <p>24 Q Why is the bank interested in developing assets under</p> <p>25 management?</p>	<p>Vrablik - by Defendant - Direct (Suarez) Page 5556</p> <p>1 introduced to each of DJT's three adult children and two have</p> <p>2 established relationships with the firm.</p> <p>3 What role, if any, would you have been involved with</p> <p>4 in developing the relationship in this matter?</p> <p>5 A I would have brought the banking teams to the</p> <p>6 customer to see if it was a good match for them to do business</p> <p>7 with them.</p> <p>8 Q And then it says: In addition the CB and S real</p> <p>9 estate team has had a successful history with the family.</p> <p>10 Do you see that?</p> <p>11 A Yes.</p> <p>12 Q And what role, if any, would you have had to develop</p> <p>13 the relationship for the AW and banking team, as opposed to the</p> <p>14 CB and S real estate team?</p> <p>15 A The CBS would be a separate division. The only</p> <p>16 thing, as I had written earlier on some of the memos, would be</p> <p>17 to provide them any information if they needed it from the</p> <p>18 private bank.</p> <p>19 Q Were there other credit facilities that you worked</p> <p>20 with the Trump Organization in developing that didn't close?</p> <p>21 A I am sorry, could you say that again?</p> <p>22 Q Sure. Were you involved with proposing other credit</p> <p>23 facilities to the Trump Organization that ultimately did not</p> <p>24 close?</p> <p>25 A Yes.</p>
<p>Vrablik - by Defendant - Direct (Suarez) Page 5555</p> <p>1 A It would generate more revenue and profitability for</p> <p>2 the bank.</p> <p>3 Q Was that revenue captured in the prior analysis that</p> <p>4 we reviewed concerning revenue generated by the relationship</p> <p>5 with President Trump?</p> <p>6 A I would think so.</p> <p>7 Q Do you see where it says Associated Entities?</p> <p>8 A Yes.</p> <p>9 Q 86.49 million in cash deposits?</p> <p>10 A Yes.</p> <p>11 Q Were those additional deposits generated from your</p> <p>12 development of the relationship with President Trump?</p> <p>13 A I would assume so.</p> <p>14 Q Are you aware if those cash deposits were in excess</p> <p>15 of the cash deposits required of President Trump under the loan</p> <p>16 documents?</p> <p>17 A That I don't know.</p> <p>18 MR. SUAREZ: If you could turn to page six of</p> <p>19 this document.</p> <p>20 Q And see the section that says, Recommendation.</p> <p>21 At the bottom, under All Facilities, it says: DB</p> <p>22 relationship. In connection with the addition of Facility C</p> <p>23 DJT transferred 40 million in liquidity to DB. He has also</p> <p>24 indicated he is interested in continued to grow his non-credit</p> <p>25 relationship with the firm. The AWM banking team has been</p>	<p>Vrablik - by Defendant - Direct (Suarez) Page 5557</p> <p>1 Q What were those facilities?</p> <p>2 A The -- they had requested a loan for the Turnberry</p> <p>3 golf course in Scotland, which was declined by the bank.</p> <p>4 Q Why was the Turnberry facility declined by the bank?</p> <p>5 A The -- at that time he was President of the United</p> <p>6 States or going to become President of the United States and</p> <p>7 the bank's position was that they did not want to increase the</p> <p>8 exposure at that time.</p> <p>9 (The following proceedings were stenographically</p> <p>10 recorded by Senior Court Reporter Michael Ranita.)</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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<p>R. Vrablic - by Defendant - Direct (Mr. Suarez) Page 5558</p> <p>1 Q Are you aware as to why the bank did not want to</p> <p>2 increase his exposure to then president-elect Trump at that</p> <p>3 time?</p> <p>4 A Yes.</p> <p>5 Q What was that reason?</p> <p>6 A At that time, because he was president-elect and/or</p> <p>7 candidate, at that time I don't recall which one, but the bank</p> <p>8 felt that the increased exposure, scrutiny, it was an</p> <p>9 unprecedented situation to have a customer who was going to</p> <p>10 become President of the United States. And the bank's position</p> <p>11 was that it was not appropriate to go up in exposure, given the</p> <p>12 circumstances.</p> <p>13 MR. SUAREZ: And if we could turn back to</p> <p>14 Plaintiff's Exhibit D-298.</p> <p>15 (Whereupon, the exhibit was displayed on the</p> <p>16 screen.)</p> <p>17 Q This document, would you agree, Ms. Vrablic, is dated</p> <p>18 February 27, 2012, -- or was prepared in advance of a meeting</p> <p>19 with Donald Trump on February 27, 2012?</p> <p>20 A Yes.</p> <p>21 Q And that was before President Trump entered the</p> <p>22 political arena?</p> <p>23 A For president, yes.</p> <p>24 Q And at that time, if we turn to the second page.</p> <p>25 (Whereupon, the exhibit was displayed on the</p>	<p>R. Vrablic - by Defendant - Direct (Mr. Suarez) Page 5560</p> <p>1 longer do you have on direct? I know you don't know.</p> <p>2 MR. KISE: I know, maybe if we have the time now to</p> <p>3 consult, maybe 30 minutes or so. No more than an hour. So</p> <p>4 we could substantially -- I think we could substantially --</p> <p>5 THE COURT REPORTER: I'm sorry, you just turned the</p> <p>6 mic off.</p> <p>7 MR. KISE: I think we can reduce it substantially</p> <p>8 based on what I've heard.</p> <p>9 By the way, for the record, a hole-in-one might be</p> <p>10 an eagle, but it also can be an albatross. It could also be</p> <p>11 an albatross. I heard that before, there was a discussion</p> <p>12 when I was out of the courtroom.</p> <p>13 THE COURT: I'm going to have to Google this.</p> <p>14 Okay. See you all at 2:15. I'll direct the witness not to</p> <p>15 talk to anybody.</p> <p>16 (Whereupon, the witness stepped down from the</p> <p>17 witness stand.)</p> <p>18 (Whereupon, the case on trial was adjourned until</p> <p>19 2:15 for the luncheon recess.)</p> <p>20 * * * * *</p> <p>21 A F T E R N O O N S E S S I O N</p> <p>22 * * * * *</p> <p>23 THE COURT OFFICER: All rise. Part 37 is back in</p> <p>24 session. The Honorable Judge Arthur Engoron presiding.</p> <p>25 Please be seated and come to order.</p>
<p>R. Vrablic - by Defendant - Direct (Mr. Suarez) Page 5559</p> <p>1 screen.)</p> <p>2 Q One of the purposes of the meeting was "To continue to</p> <p>3 build out the existing AWM relationship of loans, deposits and</p> <p>4 investment management."</p> <p>5 Do you see that?</p> <p>6 A Yes.</p> <p>7 Q And then in the background section it says, "Rosemary</p> <p>8 Vrablic, WM" -- "WM" means Wealth Management -- "developed over</p> <p>9 the last 12 months a very strong relationship with Donald Trump,</p> <p>10 Donald Trump, Jr., Ivanka Trump, and Jared Kushner."</p> <p>11 Do you see that?</p> <p>12 A Yes.</p> <p>13 Q Was that consistent with how the relationship</p> <p>14 ultimately played out with President Trump and his family until</p> <p>15 such time as he was elected president?</p> <p>16 A Yes.</p> <p>17 MR. SUAREZ: Your Honor, I know we are nearing the</p> <p>18 lunch break. I think if we could take the lunch break now,</p> <p>19 I would be in a position to greatly reduce the amount of</p> <p>20 time that I have left.</p> <p>21 MR. KISE: I was going to suggest that we do that</p> <p>22 because maybe --</p> <p>23 THE COURT REPORTER: I'm sorry, because? I can't</p> <p>24 hear you.</p> <p>25 THE COURT: Sure. We could do that. How much</p>	<p>R. Vrablic - by Defendant - Direct (Mr. Suarez) Page 5561</p> <p>1 THE COURT: I believe the witness is on her way.</p> <p>2 MR. KISE: Judge, I'm going to take credit for four</p> <p>3 for four. We are going to keep this pretty short.</p> <p>4 THE COURT OFFICER: Witness entering.</p> <p>5 THE COURT: Great.</p> <p>6 (Whereupon, the witness stepped into the witness</p> <p>7 stand.)</p> <p>8 Q Ms. Vrablic, good afternoon.</p> <p>9 I would like to show you a document that's been</p> <p>10 previously admitted into evidence as Defendant's Exhibit 212?</p> <p>11 (Whereupon, the exhibit was displayed on the</p> <p>12 screen.)</p> <p>13 (The witness was handed the exhibit.)</p> <p>14 Q Are you aware, approximately, when the loan to Trump</p> <p>15 Endeavor 12, LLC closed?</p> <p>16 A Based upon this, I would say June 11th, 2012.</p> <p>17 Q And that's The Trump Doral loan; right?</p> <p>18 A Yes.</p> <p>19 Q And that was the first loan Deutsche Bank made to an</p> <p>20 entity that was personally guaranteed by President Trump and the</p> <p>21 Wealth Management Division?</p> <p>22 A Yes.</p> <p>23 MR. SUAREZ: I would like to go back to Defendant's</p> <p>24 Exhibit 312.</p> <p>25 (Whereupon, the exhibit was displayed on the</p>

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<p>R. Vrablic - by Defendant - Direct (Mr. Suarez) Page 5562</p> <p>1 screen.)</p> <p>2 (The witness was handed the exhibit.)</p> <p>3 Q And again, I direct your attention to the e-mail from</p> <p>4 Marcus Mitchell to Thomas Bowers. Do you see that e-mail in --</p> <p>5 beginning in the second page of the exhibit?</p> <p>6 A Yes.</p> <p>7 Q What is the date of this e-mail?</p> <p>8 A December 23rd, 2011.</p> <p>9 Q Was this e-mail sent to Mr. Bowers before the Doral</p> <p>10 loan closed?</p> <p>11 A Based upon the dates, yes.</p> <p>12 Q Who is Mr. Bowers?</p> <p>13 A He was my boss and head of Private Wealth Management</p> <p>14 domestic.</p> <p>15 Q I would like to draw your attention to the middle of</p> <p>16 this paragraph, which says "The facility will be supported by a</p> <p>17 full and unconditional guarantee (the PG) provided by DJT."</p> <p>18 Do you see that?</p> <p>19 A Yes.</p> <p>20 Q And is that a reference to the guarantee that was</p> <p>21 ultimately provided by President Trump?</p> <p>22 A Yes.</p> <p>23 Q And then it says "Through our due diligence, we have</p> <p>24 concluded that DJT has an exceptionally strong financial profile</p> <p>25 consisting of a reported net worth of \$4.2 billion, which we</p>	<p>R. Vrablic - by Defendant - Direct (Mr. Suarez) Page 5564</p> <p>1 A This would have been based upon the analysis of the</p> <p>2 credit and lending team.</p> <p>3 Q And what, if any, reaction did the bank have to the</p> <p>4 adjustment in President Trump's net worth from 4.2 billion to</p> <p>5 2.4 billion, by the bank's own analysis?</p> <p>6 MR. WALLACE: Objection, in terms of the reaction</p> <p>7 of a bank. Is he asking about the reaction of a person?</p> <p>8 MR. SUAREZ: Happy to rephrase it.</p> <p>9 Q What reaction did you have to the adjustment of</p> <p>10 President Trump's net worth by the bank from 4.2 billion to</p> <p>11 2.4 billion?</p> <p>12 A Well, the lending and credit departments would always</p> <p>13 adjust people's net worths, so whatever they would conclude was</p> <p>14 the adjusted number would be the adjusted number to me.</p> <p>15 Q And what concern, if any, did you have that the</p> <p>16 \$2.4 billion adjusted net worth was less than the 2.5 billion</p> <p>17 net worth covenant in this loan?</p> <p>18 A You would have to talk to credit about that. I'm</p> <p>19 sorry.</p> <p>20 Q What concern, if any, did you have?</p> <p>21 A I wouldn't. If they were comfortable with it, I would</p> <p>22 be comfortable with it.</p> <p>23 Q And if we continue on it says, "We have calculated</p> <p>24 DJT's annual net recurring cash flow after personal expenses and</p> <p>25 other disbursements to be approximately \$48 million, and it is</p>
<p>R. Vrablic - by Defendant - Direct (Mr. Suarez) Page 5563</p> <p>1 have adjusted to \$2.4 billion, including 230 million in</p> <p>2 unencumbered liquidity, an extensive real estate portfolio</p> <p>3 including one billion in adjusted net equity held in four</p> <p>4 wholly-owned low leveraged class A New York City properties,</p> <p>5 only 2 million in personal debt and 114 million in secured</p> <p>6 contingents."</p> <p>7 Do you see that?</p> <p>8 A Yes.</p> <p>9 Q What basis, if any, do you have to disagree with the</p> <p>10 characterization of President Trump's financial condition in</p> <p>11 this e-mail?</p> <p>12 A This would have been written by Marc Mitchell. I would</p> <p>13 have no reason to think differently.</p> <p>14 Q Who is Marc Mitchell?</p> <p>15 A He was the head of lending.</p> <p>16 Q Was this information aware to the bank before it</p> <p>17 accepted a guarantee from President Trump?</p> <p>18 MR. WALLACE: Objection. The formulation of the</p> <p>19 question.</p> <p>20 Q I'm sorry. Was the bank aware of this information</p> <p>21 before it accepted a guarantee from President Trump?</p> <p>22 A Yes.</p> <p>23 Q And what does it mean, to your knowledge, the</p> <p>24 statement, "Through our due diligence, we have concluded that</p> <p>25 DJT has an exceptionally strong financial profile"?</p>	<p>R. Vrablic - by Defendant - Direct (Mr. Suarez) Page 5565</p> <p>1 well diversified across his interests in real estate, licensing,</p> <p>2 entertainment, golf clubs, speaking, and several other forms of</p> <p>3 miscellaneous revenues."</p> <p>4 Do you see that?</p> <p>5 A Yes.</p> <p>6 Q And what basis, if any, do you have to disagree with</p> <p>7 Mr. Mitchell's analysis of that?</p> <p>8 A Again, I would not -- I would assume he did his work.</p> <p>9 Q And then it says, "We are recommending the facility</p> <p>10 based on the strength of DJT's PG."</p> <p>11 Do you see that?</p> <p>12 A Yes.</p> <p>13 Q And would that have been the strength -- withdrawn.</p> <p>14 Would your -- the strength of the facility was</p> <p>15 recommended based on the strength of Donald's PG reflected in</p> <p>16 this document; is that your understanding?</p> <p>17 A I'm sorry. I don't follow that.</p> <p>18 Q It says, "We are recommending the facility based on the</p> <p>19 strength of DJT's PG." Is that a personal guarantee?</p> <p>20 A Yes.</p> <p>21 Q And would that follow based on the analysis that the</p> <p>22 bank conducted of President Trump's financial condition?</p> <p>23 A Yes.</p> <p>24 Q And then if you keep going it says --</p> <p>25 MR. SUAREZ: Scroll down.</p>

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<p>R. Vrablic - by Defendant - Direct (Mr. Suarez) Page 5566</p> <p>1 (Whereupon, the exhibit displayed on the screen was 2 scrolled through.) 3 Q "To one DJT financial profile." 4 MR. SUAREZ: Scroll down. 5 (Whereupon, the exhibit displayed on the screen was 6 scrolled through.) 7 Q Do you see where it says, "PWM SL team confirmed all 8 amounts via account statement review on 12/20"? 9 A Yes. 10 Q What does that mean? 11 A The sales and lending team confirmed all amounts via a 12 review of the account statements on December 20th. 13 Q And do you see "real estate"? It says, "Adjusted net 14 equity value of approximately \$1.7 billion", and then "(SL 15 worked with DB Valuation Services team to derive adjusted 16 value)." 17 Do you see that? 18 A Yes. 19 Q What consideration, if any, did the bank give to this 20 analysis before accepting President Trump's guarantee? 21 A I don't know. That would be sales and lending that 22 would have done that with Marc Mitchell. 23 Q What, if any, basis do you have to disagree with the 24 bank's analysis of the adjusted net equity and -- of President 25 Trump's real estate?</p>	<p>R. Vrablic - by Defendant - Direct (Mr. Suarez) Page 5568</p> <p>1 it have been acceptable to you? 2 A Yes. 3 Q And then if we scroll up to page one, you see an e-mail 4 on December 23rd, 2011, from Mr. Bowers to Marcus Mitchell, that 5 you, Dominic Scalzi and Thomas Sullivan are copied on? 6 (Whereupon, the exhibit was displayed on the 7 screen.) 8 Q And Mr. Bowers, you could see, is responding to 9 Mr. Mitchell, with a copy to you, and it says, "I would 10 conclude", first paragraph, "by saying we recommend on the basis 11 that it is a sound credit, and even in the absence of a personal 12 guarantee, but that the PG makes it remarkably -- makes it a 13 remarkably safe deal given the strength of the guarantor." 14 Then he goes on to write, "Mentioned that it is among 15 the strongest personal balance sheets we have seen and totally 16 unlike any of our major real estate developer clients in that we 17 observe an absence of personal debt, with huge asset base and 18 diversified CF." 19 Do you see that? 20 A Yes. 21 Q What does "CF" mean? 22 A Cash flow. 23 Q And do you have any -- at the time, withdrawn. 24 Do you have any reason to disagree with Mr. Bowers 25 assessment of President Trump's personal balance sheet?</p>
<p>R. Vrablic - by Defendant - Direct (Mr. Suarez) Page 5567</p> <p>1 A I would have no basis to disagree. 2 Q And then a few lines down, do you see it says, "Total 3 real estate debt of 302 million resulting in approximately 4 18 percent leverage on RE portfolio." 5 Do you see that? 6 A Yes. 7 Q What basis, if any, do you have to dispute that the 8 bank had that knowledge in its possession before accepting 9 President Trump's guarantee? 10 A I would have no reason to dispute it. 11 Q And if we turn to page three of this document. 12 (Whereupon, the exhibit was displayed on the 13 screen.) 14 Q Do you see at the top it says, "Reported 4.2 billion 15 and adjusted based on DB due diligence to 2.4 billion." And 16 that's under the section "Net Worth", which appears just a 17 little bit above. 18 Do you see that? 19 A Yes. 20 Q And what, if any, basis do you have to dispute that the 21 bank was -- that the bank had adjusted President Trump's net 22 worth from 4.2 billion to 2.4 billion prior to accepting his 23 guarantee? 24 A I would have no basis to dispute it. 25 Q And if this analysis was acceptable to Mr. Bowers would</p>	<p>R. Vrablic - by Defendant - Direct (Mr. Suarez) Page 5569</p> <p>1 MR. WALLACE: I'm just going to raise an objection. 2 We had, now, a series of questions about whether she has any 3 reason to disagree. I don't know if that even generates 4 admissible testimony. She has no basis to disagree with 5 something that isn't her statement, so I'm going to object, 6 I guess, on relevance grounds. 7 THE COURT: It's an unusual approach, do you have 8 any reason to disagree with a certain statement. I mean, I 9 didn't stop it. And -- 10 Q Do you agree with Mr. Bowers' assessment? 11 THE COURT: Did she agree. 12 Q Did she agree. 13 A Yes. 14 Q And, in fact, at the top. 15 (Whereupon, the exhibit displayed on the screen was 16 scrolled through.) 17 Q You responded to Mr. Bowers and said, "Also told MM to 18 discuss that DJT's expertise in successfully running world-class 19 assets like as demonstrated by his extensive hotel, condos, golf 20 clubs -- sorry, clubs, golf courses, make this asset purchase 21 and repositioning a realistic and high probable success story." 22 Do you see that? 23 A Yes. 24 Q Was that, in fact, what happened? 25 A Yes.</p>

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<p>R. Vrablic - by Defendant - Cross (Mr. Wallace) Page 5570</p> <p>1 Q And was this information contained in this e-mail</p> <p>2 available to the bank before it accepted President Trump's</p> <p>3 guarantee?</p> <p>4 A Yes.</p> <p>5 MR. SUAREZ: I have no further questions.</p> <p>6 THE COURT: Will there be any cross examination?</p> <p>7 MR. WALLACE: A brief bit of cross examination.</p> <p>8 CROSS EXAMINATION</p> <p>9 BY MR. WALLACE:</p> <p>10 Q Good afternoon, Ms. Vrablic. I'm Kevin Wallace from</p> <p>11 the Attorney General's Office. We met at your deposition.</p> <p>12 MR. WALLACE: If we could put back up on the screen</p> <p>13 Defendant's 312, which we were just looking at, I believe,</p> <p>14 and if we could put next to it Defendant's Exhibit 313.</p> <p>15 (Whereupon, the exhibit was displayed on the</p> <p>16 screen.)</p> <p>17 Q Obviously you just discussed Defendant's 312 with</p> <p>18 Mr. Suarez. Do you recall that testimony? And you earlier,</p> <p>19 with him, discussed Defendant's Exhibit 313.</p> <p>20 If I could just direct your attention on the first</p> <p>21 page. You had talked about the e-mail dated December 23rd,</p> <p>22 2011, at 9:10, from Mr. Bowers to Mr. Mitchell, that had the</p> <p>23 language about, "we recommend this on the basis that it is a</p> <p>24 sound credit, and even in the absence of a personal</p> <p>25 guarantee..."</p>	<p>R. Vrablic - by Defendant - Cross (Mr. Wallace) Page 5572</p> <p>1 A I believe so.</p> <p>2 Q Now, when we looked at this language from Mr. Bowers</p> <p>3 about, I would -- about recommending the loan -- I'll</p> <p>4 double-check to make sure. "It is a sound credit, and even in</p> <p>5 the absence of a personal guarantee", do you know if that made</p> <p>6 it into the final presentation that went to Mr. De-Weck?</p> <p>7 A I don't know.</p> <p>8 Q If we look at the first bullet point after the</p> <p>9 introductory paragraph from Mr. McAvoy, the first bullet says,</p> <p>10 "The strength of Trump's full and unconditional personal</p> <p>11 guarantee, which includes significant liquidity, \$230 million,</p> <p>12 low leverage on diverse real estate holdings, diversified and</p> <p>13 consistent cash flow, and an absence of personal debt. As</p> <p>14 detailed further below, based on our due diligence, we have</p> <p>15 calculated an adjusted net worth of 2.4 billion."</p> <p>16 So, in fact, the first bullet point of the</p> <p>17 recommendation to Mr. De-Weck is highlighting the personal</p> <p>18 guarantee that Donald Trump is going to provide on this</p> <p>19 facility; correct?</p> <p>20 A Yes.</p> <p>21 Q And if we look back at the response from Mr. De-Weck,</p> <p>22 you looked at this with Mr. Suarez as well. It's on the prior</p> <p>23 page, page three.</p> <p>24 Mr. De-Weck writes, "I support the transaction, but we</p> <p>25 need ironclad, full recourse under all circumstances. PDW." So</p>
<p>R. Vrablic - by Defendant - Cross (Mr. Wallace) Page 5571</p> <p>1 Do you remember that testimony?</p> <p>2 A Yes.</p> <p>3 Q I just want to focus on the next paragraph, which</p> <p>4 states, "Not to micromanage, but I have to escalate such risks</p> <p>5 to PDW, and we could miss a great franchise opportunity, of</p> <p>6 which this is undoubtedly one, by not highlighting deal</p> <p>7 strengths."</p> <p>8 Who is PDW?</p> <p>9 A Pierre De-Weck was the global head of private banking</p> <p>10 at that time.</p> <p>11 Q And why did Mr. Bowers have to escalate these risks to</p> <p>12 PDW -- to Mr. De-Weck, sorry?</p> <p>13 A I don't know which risks Tom would have been mentioning</p> <p>14 or thinking at that time.</p> <p>15 MR. WALLACE: If we could turn to page three of</p> <p>16 Defendant's 313.</p> <p>17 (Whereupon, the exhibit was displayed on the</p> <p>18 screen.)</p> <p>19 Q And if we look down here -- actually, if we go down a</p> <p>20 little lower, there is a message from Dan McAvoy to Pierre</p> <p>21 De-Weck, copies Mr. Bowers among others.</p> <p>22 Am I to understand, then, that the e-mail in</p> <p>23 Defendant's 312 is a team of people working on the presentation</p> <p>24 of what's going to be sent to Mr. De-Weck here in Defendant's</p> <p>25 313?</p>	<p>R. Vrablic - by Defendant - Cross (Mr. Wallace) Page 5573</p> <p>1 Mr. De-Weck is making it clear that the bank needs an ironclad</p> <p>2 guarantee in order to extend this facility; correct?</p> <p>3 A Correct.</p> <p>4 Q Do you know if the credit approval for this transaction</p> <p>5 was on the basis of a guarantee, or just on the strength of the</p> <p>6 facility on its own?</p> <p>7 A I don't recall which one, but in -- I would assume both</p> <p>8 would be important.</p> <p>9 Q But in the basis here, the loan was, in fact, not</p> <p>10 recommended on the basis that it was a sound credit in the</p> <p>11 absence of a personal guarantee; correct?</p> <p>12 MR. KISE: Objection. Is he asking her to read</p> <p>13 what's written there or is he asking her what her</p> <p>14 understanding is?</p> <p>15 THE COURT: I'll ask for a clarification.</p> <p>16 Q Based on the e-mail to Mr. De-Weck and his response,</p> <p>17 the loan was, in fact, not recommended on basis that it was a</p> <p>18 sound credit independent of a guarantee; is that correct?</p> <p>19 A That's correct.</p> <p>20 MR. WALLACE: Can we give the witness Plaintiff's</p> <p>21 Exhibit 1129.</p> <p>22 (Whereupon, the exhibit was displayed on the</p> <p>23 screen.)</p> <p>24 (The witness was handed the exhibit.)</p> <p>25 Q Ms. Vrablic, you've been handed a document that's been</p>

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<p>R. Vrablic - by Defendant - Cross (Mr. Wallace) Page 5574</p> <p>1 marked as Plaintiff's Exhibit 1129. It's an e-mail thread from</p> <p>2 September 2011. You are not on the top e-mails on the thread,</p> <p>3 but I would like to direct your attention to a message you wrote</p> <p>4 that appears on page three of the document.</p> <p>5 MR. WALLACE: If we could flip there.</p> <p>6 (Whereupon, the exhibit was displayed on the</p> <p>7 screen.)</p> <p>8 Q And if you want to flip through the e-mails that come</p> <p>9 below that one, just in the order of the thread, I'm happy for</p> <p>10 you to take a moment to just familiarize yourself with that.</p> <p>11 (Whereupon, there is a brief pause in the</p> <p>12 testimony.)</p> <p>13 A Okay.</p> <p>14 Q You are all set. So directing your attention to the</p> <p>15 top message here, the one sent at 7:17 a.m. on September 29th,</p> <p>16 2011, this is a response from you, after an introductory e-mail</p> <p>17 from Jared Kushner, in response from Donald Trump, Jr.</p> <p>18 But my question is going to be about your note. You</p> <p>19 write that it would be a pleasure to meet with Don Trump, Jr.</p> <p>20 and write, "Sorry about the recourse issue. A dirty word, I</p> <p>21 know, but it is a requirement for private banking."</p> <p>22 First, why did you describe "recourse" as a "dirty</p> <p>23 word"?</p> <p>24 A Most real estate owner, developer, operators don't</p> <p>25 particularly like giving recourse to their lenders, so they</p>	<p>R. Vrablic - by Defendant - Cross (Mr. Wallace) Page 5576</p> <p>1 screen.)</p> <p>2 Q And Mr. Kushner is addressing the message to Don Trump,</p> <p>3 Jr. And he writes, "While Rosemary only lends with recourse,</p> <p>4 the flexibility rates and service you get is unparalleled, so I</p> <p>5 would recommend you consider this highly."</p> <p>6 First of all, can I ask, do you agree with that</p> <p>7 statement from Mr. Kushner?</p> <p>8 A Yes.</p> <p>9 Q And so why was the flexibility that you offered</p> <p>10 unparalleled?</p> <p>11 A The -- I think based upon because people would give</p> <p>12 recourse, that we do have the flexibility on terms and</p> <p>13 conditions where if somebody is doing a nonrecourse loan, they</p> <p>14 are really just looking at the property or the business</p> <p>15 themselves. So it does give -- gives us the flexibility to be</p> <p>16 creative on some conclusions, because the person is standing</p> <p>17 behind it.</p> <p>18 Q I think you kind of touched on this a little bit in</p> <p>19 your last answer, but why is the rate also unparalleled?</p> <p>20 A Usually because, again, they are putting something up</p> <p>21 that is a little bit different than a nonrecourse loan. You do</p> <p>22 have the guarantee and the assets of the individual behind it,</p> <p>23 so that, um, the rate usually does reflect that.</p> <p>24 MR. WALLACE: If we go up to the response from</p> <p>25 Donald Trump, Jr.</p>
<p>R. Vrablic - by Defendant - Cross (Mr. Wallace) Page 5575</p> <p>1 usually prefer to have nonrecourse type of financing.</p> <p>2 Q And these are your clients are the kinds of developers</p> <p>3 you are talking about?</p> <p>4 A Yes.</p> <p>5 Q Do you have a sense of why your clients don't like</p> <p>6 recourse?</p> <p>7 A I think most clients done like recourse.</p> <p>8 Q What is the reason for not liking recourse?</p> <p>9 A At the end of the day their personal assets are also</p> <p>10 basically standing behind the credit facility, so should a</p> <p>11 project or a real estate project not work out, the bank could</p> <p>12 sue each person individually as well.</p> <p>13 Q And their individual assets beyond the project could be</p> <p>14 at risk?</p> <p>15 A That's correct.</p> <p>16 Q So why is recourse a requirement for private banking?</p> <p>17 A Usually because we are financing an asset that requires</p> <p>18 a personal guaranty, meaning it's a transitional type of asset,</p> <p>19 or because we are the private bank, we deal with people and we</p> <p>20 prefer them to have recourse for their facilities.</p> <p>21 Q Okay.</p> <p>22 MR. WALLACE: If we could go down to the</p> <p>23 introductory note from Mr. Kushner. I believe it's on the</p> <p>24 next page, actually.</p> <p>25 (Whereupon, the exhibit was displayed on the</p>	<p>R. Vrablic - by Defendant - Cross (Mr. Wallace) Page 5577</p> <p>1 (Whereupon, the exhibit was displayed on the</p> <p>2 screen.)</p> <p>3 Q He writes to you, "I fully understand the recourse</p> <p>4 position and don't have an issue with that."</p> <p>5 May I ask, did any of the Trump family members you</p> <p>6 dealt with -- let me withdraw that question and I'll restate the</p> <p>7 question.</p> <p>8 In your experience, did all of the Trump family members</p> <p>9 that you dealt with understand the recourse position of your</p> <p>10 lending from the Private Wealth Group at Deutsche Bank?</p> <p>11 A Yes.</p> <p>12 Q And what Trump family members did you deal with?</p> <p>13 A Um, Don, Jr. directly, in terms of his loan. And then</p> <p>14 I would work with Ivanka and Mr. Trump.</p> <p>15 Q Donald Trump, Sr?</p> <p>16 A Yes.</p> <p>17 Q Did you ever have to explain to any of those</p> <p>18 individuals why recourse was necessary for a Private Wealth</p> <p>19 loan?</p> <p>20 A No.</p> <p>21 MR. WALLACE: We could take that document down.</p> <p>22 (Whereupon, the exhibit displayed on the screen was</p> <p>23 taken down.)</p> <p>24 Q Ms. Vrablic, I just want to make sure that I understand</p> <p>25 your role in the origination process correctly.</p>

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<p style="text-align: right;">Page 5578</p> <p>1 At the time of origination of a loan, your role was</p> <p>2 limited to recommending a transaction to lending; is that</p> <p>3 correct?</p> <p>4 A Yes.</p> <p>5 Q And you had no role in trying to persuade the bank to</p> <p>6 make a loan; is that fair?</p> <p>7 A I had my opinion, but I had no authority.</p> <p>8 Q And you would stay involved in the deal and try to make</p> <p>9 sure that it got done; is that fair?</p> <p>10 A Yes.</p> <p>11 Q But if lending made a decision that they did not want</p> <p>12 to proceed with a loan, you would honor the bank's decision at</p> <p>13 that point; is that correct?</p> <p>14 A Yes.</p> <p>15 Q And as part of the underwriting of a loan, it was not</p> <p>16 your responsibility to review the financial statement of any of</p> <p>17 your borrowers; is that correct?</p> <p>18 A That's correct.</p> <p>19 Q So you never saw Mr. Trump's Statement of Financial</p> <p>20 Condition during the course of your entire banking relationship</p> <p>21 with Mr. Trump; is that correct?</p> <p>22 A I saw it as a document, but I did not review it.</p> <p>23 (Continued on next page.)</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 5580</p> <p>Vrablik - by Defendant - Cross (Wallace)</p> <p>1 But I failed to move in Plaintiff's Exhibit</p> <p>2 1129, so I ask that be moved into evidence.</p> <p>3 MR. ROBERT: Exhibit what?</p> <p>4 MR. WALLACE: 1129, the only one we introduced</p> <p>5 with this witness.</p> <p>6 MR. ROBERT: It is in.</p> <p>7 MR. WALLACE: I didn't think it was in. No</p> <p>8 objection?</p> <p>9 MR. ROBERT: Objection, statute of limitations.</p> <p>10 THE COURT: Overruled.</p> <p>11 (Whereupon, the document referred to was deemed</p> <p>12 marked for evidence as Plaintiff's Exhibit 1129 by</p> <p>13 the Court.)</p> <p>14 THE COURT: I have one quick question for the</p> <p>15 witness. Is there a difference between a loan and</p> <p>16 facility? If there isn't, why do they call loans</p> <p>17 facilities?</p> <p>18 THE WITNESS: A facility can be a line of credit</p> <p>19 or a loan. And so a line would go up and down like your</p> <p>20 credit card; and the loan would be a one-time loan.</p> <p>21 THE COURT: Thank you. I have been wondering</p> <p>22 for weeks now.</p> <p>23 Any redirect?</p> <p>24 MR. ROBERT: Just a second, Your Honor, please.</p> <p>25 THE COURT: And I am curious, where do you work</p>
<p>Vrablik - by Defendant - Cross (Wallace)</p> <p style="text-align: right;">Page 5579</p> <p>1 Q I believe you testified during your investigative</p> <p>2 examination that the first time you saw his Statement of</p> <p>3 Financial Condition was when you were preparing to testify in</p> <p>4 front of the Attorney General during the investigation that led</p> <p>5 to this action; is that correct?</p> <p>6 A Correct.</p> <p>7 Q It is in general not your practice to look at the</p> <p>8 annual financial updates of your clients; is that correct?</p> <p>9 A That's correct.</p> <p>10 Q So during your time at Deutsche Bank, you were not</p> <p>11 specifically aware that Mr. Trump was required to assert the</p> <p>12 accuracy of his Statement of Financial Condition; is that</p> <p>13 correct?</p> <p>14 A Well, I know customers had to do that. All customers</p> <p>15 had to do that.</p> <p>16 Q Okay. And you have had an expectation that a</p> <p>17 borrower like Mr. Trump would represent their financial</p> <p>18 position fairly to the bank; is that correct?</p> <p>19 A That's correct.</p> <p>20 Q And that they would not include false or misleading</p> <p>21 information in their presentations to the bank; is that</p> <p>22 correct?</p> <p>23 A That's correct.</p> <p>24 MR. WALLACE: I have no more questions, Your</p> <p>25 Honor.</p>	<p>Vrablik - by Defendant - Cross (Wallace)</p> <p style="text-align: right;">Page 5581</p> <p>1 now, if you work?</p> <p>2 THE WITNESS: I am retired. Happily.</p> <p>3 THE COURT: Well, you won't have to face anymore</p> <p>4 of these, I guess.</p> <p>5 MR. SUAREZ: Your Honor, I failed to move in</p> <p>6 Defendant's Exhibit 297. I would like to move that in.</p> <p>7 MR. WALLACE: No objection.</p> <p>8 THE COURT: Granted, it is in evidence.</p> <p>9 (Whereupon, the document referred to was deemed</p> <p>10 marked for evidence as Defendant's Exhibit 297 by the</p> <p>11 Court.)</p> <p>12 MR. SUAREZ: With that we have no further</p> <p>13 questions.</p> <p>14 THE COURT: Anything else by anybody?</p> <p>15 You are free to go.</p> <p>16 THE WITNESS: Thank you, sir.</p> <p>17 (Whereupon the witness stepped down from the</p> <p>18 stand and exited the courtroom.</p> <p>19 THE COURT: Is Mr. Birney here?</p> <p>20 MR. ROBERT: He should be coming in.</p> <p>21 THE COURT: I meant in the building.</p> <p>22 MR. ROBERT: He is, Your Honor.</p> <p>23 COURT OFFICER: Witness entering.</p> <p>24 (Whereupon the witness resumed the stand.)</p> <p>25 THE COURT: Okay. Let's continue with the</p>

<p>Birney - by Defendant - Direct (Hernandez) Page 5582</p> <p>1 cross -- the direct examination of Patrick Birney.</p> <p>2 THE COURT: Please proceed.</p> <p>3 MS. HERNANDEZ: Thank you, Your Honor.</p> <p>4 CONTINUED DIRECT EXAMINATION</p> <p>5 BY MS. HERNANDEZ:</p> <p>6 Q Welcome back, Mr. Birney.</p> <p>7 MS. HERNANDEZ: Nate, can we pull up PX-758,</p> <p>8 please? And go to row 137.</p> <p>9 Q And Mr. Birney, this is the same 2017 supporting data</p> <p>10 we were walking through on -- Monday, I believe?</p> <p>11 THE COURT: That sounds good.</p> <p>12 I'll remind the witness he is still under oath.</p> <p>13 I am sure he realizes that.</p> <p>14 Q Mr. Birney, can you tell us a little bit about the 40</p> <p>15 Wall Street property?</p> <p>16 A It is an office and retail commercial real estate</p> <p>17 building.</p> <p>18 THE COURT: A little louder.</p> <p>19 THE WITNESS: Sorry.</p> <p>20 A Office and retail commercial real estate building in</p> <p>21 downtown Manhattan.</p> <p>22 Q And how did -- how was 40 Wall Street valued in 2017?</p> <p>23 A Square footage was multiplied by a price per square</p> <p>24 foot.</p> <p>25 Q And where would you have obtained the information of</p>	<p>Birney - by Defendant - Direct (Hernandez) Page 5584</p> <p>1 Q And what do the highlights indicate on this page?</p> <p>2 A The highlights indicate figures that were used in the</p> <p>3 calculation of the 40 Wall supporting data spreadsheet</p> <p>4 valuation.</p> <p>5 Q And how were these figured used?</p> <p>6 A An average price per square feet was calculated. And</p> <p>7 then --</p> <p>8 THE WITNESS: Can you pull up the spreadsheet?</p> <p>9 MS. HERNANDEZ: Nate, can we pull them up side</p> <p>10 by side, PX-758 and this document?</p> <p>11 A The square footage was multiplied by the average</p> <p>12 square foot -- sorry, average price per square foot.</p> <p>13 Q And is that what is reflected on the side of the</p> <p>14 exhibit on the left there in the adding?</p> <p>15 A I don't understand the question. Sorry.</p> <p>16 Q What is reflected on --</p> <p>17 MS. HERNANDEZ: Could you scroll little bit to</p> <p>18 the right on PX-762? Yeah.</p> <p>19 Q What is reflected on the adding tape there?</p> <p>20 A That calculation is reflected in the average price</p> <p>21 per square foot.</p> <p>22 Q And what is the second page of PX-762?</p> <p>23 A It is where the square footage is coming from.</p> <p>24 Q Where is the square footage coming from?</p> <p>25 A The note says it is from the 40 Wall rent-roll.</p>
<p>Birney - by Defendant - Direct (Hernandez) Page 5583</p> <p>1 the square footage to value this property?</p> <p>2 A In 2017?</p> <p>3 Q Sure.</p> <p>4 A Are you able to show me the backup for that year?</p> <p>5 Q Sure I can.</p> <p>6 MS. HERNANDEZ: Can we pull up PX-762?</p> <p>7 I think we have copies over there.</p> <p>8 (Handing)</p> <p>9 Q Mr. Birney, do you recognize this document?</p> <p>10 A Yes.</p> <p>11 Q And what is this document?</p> <p>12 A It is the backup to the supporting data spreadsheet</p> <p>13 figures for 40 Wall Street.</p> <p>14 Q And would you have sent this document to Mazars in</p> <p>15 connection with the Statement of Financial Condition?</p> <p>16 A Probably.</p> <p>17 Q And what is the first -- excuse me.</p> <p>18 MS. HERNANDEZ: Your Honor, I would like to move</p> <p>19 in Plaintiff's Exhibit 762 into evidence.</p> <p>20 THE COURT: It is in. Granted.</p> <p>21 (Whereupon, the document referred to was deemed</p> <p>22 marked for evidence as Plaintiff's Exhibit 762 by the</p> <p>23 Court.)</p> <p>24 Q What is the first page of this document, Mr. Birney?</p> <p>25 A It is a list of recent downtown sales at this time.</p>	<p>Birney - by Defendant - Direct (Hernandez) Page 5585</p> <p>1 Q And that's in your -- is that in your handwriting?</p> <p>2 A Yes.</p> <p>3 MS. HERNANDEZ: Okay. And so we are going to</p> <p>4 now move to the Vornado Partnership on row 781 of the 758</p> <p>5 native.</p> <p>6 Q Could you briefly describe the Vornado Partnership</p> <p>7 for us, Mr. Birney?</p> <p>8 A Mr. Trump owns a 30 percent limited partnership</p> <p>9 interest in two office buildings in New York and San Francisco:</p> <p>10 One at 555 California Street and one at 1290 Sixth Avenue.</p> <p>11 Q And how was the Vornado Partnership valued in 2017?</p> <p>12 A In 2017?</p> <p>13 Q Correct.</p> <p>14 A Net operating income divided by cap rate, less debt,</p> <p>15 and then multiplied by 30 percent.</p> <p>16 MS. HERNANDEZ: And Nate, can we pull up PX-764</p> <p>17 side by side with this document?</p> <p>18 (Handing)</p> <p>19 Q Mr. Birney, do you recognize PX-764?</p> <p>20 A Yes.</p> <p>21 Q What is that document?</p> <p>22 A It is the backup to the 555 California Street section</p> <p>23 of the supporting data spreadsheet.</p> <p>24 Q And was that sent to Mazars?</p> <p>25 A Yes.</p>

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<p>Birney - by Defendant - Direct (Hernandez) Page 5586</p> <p>1 MS. HERNANDEZ: Your Honor, I would like to move</p> <p>2 Plaintiff's Exhibit 764 into evidence.</p> <p>3 THE COURT: Granted, it is in.</p> <p>4 (Whereupon, the document referred to was deemed</p> <p>5 marked for evidence as Plaintiff's Exhibit 764 by the</p> <p>6 Court.)</p> <p>7 Q What does the star in the middle of the first page</p> <p>8 indicate, Mr. Birney?</p> <p>9 A It indicates that figure was used in the supporting</p> <p>10 data spreadsheet for the calculation of the valuation for 555</p> <p>11 California Street.</p> <p>12 Q And what figure is being indicated with the star?</p> <p>13 A 62,482,000.</p> <p>14 Q And what is that figure?</p> <p>15 A The operating income in -- for the year ending</p> <p>16 December 31, 2016.</p> <p>17 Q And was -- was that used in the valuation for 555</p> <p>18 California Street in 2017?</p> <p>19 A Yes.</p> <p>20 Q And looking to page three and four of PX-764, what --</p> <p>21 let's start with page three, what is page three of this</p> <p>22 document?</p> <p>23 A One of the sales that were used for the cap rate for</p> <p>24 the valuation of 555 California Street.</p> <p>25 Q And what is page four?</p>	<p>Birney - by Defendant - Direct (Hernandez) Page 5588</p> <p>1 Q And was PX-765 sent to Mazars in connection with the</p> <p>2 Statement of Financial Condition?</p> <p>3 A Yes.</p> <p>4 MS. HERNANDEZ: Your Honor, I would like to move</p> <p>5 Plaintiff's Exhibit 765 into evidence.</p> <p>6 THE COURT: Granted, it is in.</p> <p>7 MS. HERNANDEZ: Thank you.</p> <p>8 (Whereupon, the document referred to was deemed</p> <p>9 marked for evidence as Plaintiff's Exhibit 765 by the</p> <p>10 Court.)</p> <p>11 Q So what do the stars and highlights indicate there on</p> <p>12 PX-765?</p> <p>13 A They indicate those figures were used in the</p> <p>14 calculation of the net operating income.</p> <p>15 Q And what -- where did this document come from?</p> <p>16 A I think it came from Vornado.</p> <p>17 Q Sorry, I didn't hear your answer.</p> <p>18 A From Vornado.</p> <p>19 Q And what is it?</p> <p>20 A What is what?</p> <p>21 Q What is this from Vornado?</p> <p>22 A It is a cash flow report or an income statement for</p> <p>23 1290 Avenue of the Americas 4/20/16.</p> <p>24 Q And so why would you have sent this to Mazars?</p> <p>25 A Because it was used in the valuation of 1290 Avenue</p>
<p>Birney - by Defendant - Direct (Hernandez) Page 5587</p> <p>1 A The other sale that was used for the cap rate for the</p> <p>2 valuation of 555 California Street.</p> <p>3 MS. HERNANDEZ: And so if we can look at the</p> <p>4 note on row 808 of PX-758?</p> <p>5 Q What is being reflected by that note?</p> <p>6 A Do you want me to just read the note?</p> <p>7 Q You can read it or summarize what it is saying.</p> <p>8 A 555 cap rate based on information provided by Brian</p> <p>9 Hegarty and Michael Papagianopoulos of Cushman & Wakefield in</p> <p>10 San Francisco, which contained comps for Class A office</p> <p>11 buildings. Cap rates for these buildings were 3.7 percent and</p> <p>12 3.9 percent for an average of 3.8 percent.</p> <p>13 Q And that's reflected in the backup of the two pages</p> <p>14 we just looked at of PX-764? Right?</p> <p>15 A Yes.</p> <p>16 MS. HERNANDEZ: Nate, if you could replace</p> <p>17 PX-764 with PX-765?</p> <p>18 (Handing)</p> <p>19 Q Mr. Birney, have you seen PX-765 before?</p> <p>20 THE WITNESS: Can you scroll out on the</p> <p>21 spreadsheet a little bit, or up?</p> <p>22 A Yes.</p> <p>23 Q What is PX-765?</p> <p>24 A The backup to the supporting data spreadsheet for</p> <p>25 1290 Avenue of the Americas.</p>	<p>Birney - by Defendant - Direct (Hernandez) Page 5589</p> <p>1 of the Americas in 2017.</p> <p>2 MS. HERNANDEZ: Okay. So, we are going to move</p> <p>3 to the Las Vegas property now on the spreadsheet, which is</p> <p>4 row 821.</p> <p>5 Q How was the Las Vegas property in general valued in</p> <p>6 2017?</p> <p>7 A There were a few components. There was a value of</p> <p>8 the remaining unsold units. There was a development of fee.</p> <p>9 And there was distributable income that were added up for the</p> <p>10 ultimate value.</p> <p>11 MS. HERNANDEZ: Okay. And then looking to</p> <p>12 PX-766.</p> <p>13 (Handing)</p> <p>14 Q Have you seen Plaintiff's Exhibit 766 before?</p> <p>15 A Yes.</p> <p>16 Q What is Plaintiff's Exhibit 766?</p> <p>17 A It is the backup to the value of remaining unsold</p> <p>18 units that was used in the valuation of TIHT, Las Vegas in</p> <p>19 2017.</p> <p>20 Q And was this document sent to Mazars?</p> <p>21 A Yes.</p> <p>22 MS. HERNANDEZ: Your Honor, I would like to move</p> <p>23 Plaintiff's Exhibit 766 in evidence.</p> <p>24 THE COURT: Granted, it is in.</p> <p>25 (Whereupon, the document referred to was deemed</p>

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<p>Birney - by Defendant - Direct (Hernandez) Page 5590</p> <p>1 marked for evidence as Plaintiff's Exhibit 766 by the</p> <p>2 Court.)</p> <p>3 Q So what does the red box on that first page indicate?</p> <p>4 A It reads: This work paper is based on the sales</p> <p>5 units as of October 1, 2017. Since the proceeds of the sales</p> <p>6 of each unit are used to pay down the outstanding loan, the</p> <p>7 client value as of this date is deemed to be un-- deemed to be</p> <p>8 reasonable.</p> <p>9 Q And who would have written that note?</p> <p>10 A I don't know who wrote that note.</p> <p>11 Q Did you write that note?</p> <p>12 A I did not write that note.</p> <p>13 Q In your experience, would Mazars have added notes to</p> <p>14 the supporting data as they reviewed them?</p> <p>15 A Can you repeat the question, please?</p> <p>16 Q In your experience, would Mazars have added notes to</p> <p>17 the backup to the supporting data when reviewing them?</p> <p>18 A It is possible.</p> <p>19 Q Do you have any reason to think this wasn't a note by</p> <p>20 Mazars?</p> <p>21 A To me it seems like it was a note from Mazars.</p> <p>22 Q And why do you say that?</p> <p>23 A Because it refers to the client value, and Trump was</p> <p>24 a client of Mazars.</p> <p>25 Q So moving on from the note now. Why would you have</p>	<p>Birney - by Defendant - Direct (Hernandez) Page 5592</p> <p>1 MS. HERNANDEZ: Scroll up to where you see the</p> <p>2 year.</p> <p>3 THE WITNESS: Just down a couple of rows,</p> <p>4 please. Up a couple of rows, please.</p> <p>5 A Can you repeat the question?</p> <p>6 Q Sure. How was the triplex valued in 2017?</p> <p>7 A Square footage times price per square foot.</p> <p>8 Q And how does the valuation in 2017 differ from the</p> <p>9 valuation in 2016?</p> <p>10 A It is a lot less.</p> <p>11 Q Why is that?</p> <p>12 A Because the inputs are different, specifically the</p> <p>13 square feet.</p> <p>14 Q And why was the square footage different in 2017?</p> <p>15 A Because there was an article written that said</p> <p>16 Mr. Trump's triplex is less than he is saying it is. And we</p> <p>17 looked into that and confirmed that it was actually 11,000</p> <p>18 square feet.</p> <p>19 THE COURT: Five minutes.</p> <p>20 I am sorry. Go ahead.</p> <p>21 A So we -- and so we updated the square footage on the</p> <p>22 supporting data spreadsheet.</p> <p>23 Q Who looked into verify the accurate square footage?</p> <p>24 A It was either Jeff McConney or Allen Weisselberg who,</p> <p>25 I think, asked Stephanie Lennig to look into the square footage</p>
<p>Birney - by Defendant - Direct (Hernandez) Page 5591</p> <p>1 sent Mazars the remaining units and inventory for the Las Vegas</p> <p>2 property?</p> <p>3 A Because it was used in the valuation of Las Vegas in</p> <p>4 2017.</p> <p>5 MS. HERNANDEZ: And going to page three of</p> <p>6 PX-766.</p> <p>7 Q What is this e-mail chain?</p> <p>8 A It is an e-mail chain that begins with me asking</p> <p>9 Jennifer Cook to send a current list of unsold units, including</p> <p>10 individual unit prices at that time.</p> <p>11 Q Who is Jennifer Cook?</p> <p>12 A The operations manager and sales executive of Trump</p> <p>13 International Realty and Trump Las Vegas.</p> <p>14 Q Why did you have to ask Ms. Cook for this</p> <p>15 information?</p> <p>16 A Because I didn't have it.</p> <p>17 Q Why would you have had it?</p> <p>18 A Because I would have asked Jeff if he had it. And</p> <p>19 Jeff would have probably said no, and reach out to Jennifer</p> <p>20 Cook, who does have it.</p> <p>21 MS. HERNANDEZ: Okay. So now we are going to</p> <p>22 look at the triplex property, which is row 969.</p> <p>23 Q Mr. Birney, can you describe how the triplex was</p> <p>24 valued in 2017?</p> <p>25 A Can you scroll up, please?</p>	<p>Birney - by Defendant - Direct (Hernandez) Page 5593</p> <p>1 of the condo owned by Mr. Trump. And there is a piece of paper</p> <p>2 used in the backup that verifies the square footage is 10,996.</p> <p>3 Q We will get to that, the backup.</p> <p>4 Was that article and those conversations the first</p> <p>5 time you became aware that the square footage was 10,996 square</p> <p>6 feet?</p> <p>7 MR. WALLACE: Objection, leading.</p> <p>8 THE COURT: Sustained.</p> <p>9 Q When was the first time you became aware of the</p> <p>10 10,996 square footage being the right square footage?</p> <p>11 A When Stephanie Lennig confirmed it.</p> <p>12 (The following proceedings were stenographically</p> <p>13 recorded by Senior Court Reporter Michael Ranita.)</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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P. Birney - by Defense - Direct (Ms. Hernandez)	Page 5594	P. Birney - by Defense - Direct (Ms. Hernandez)	Page 5596
1 MS. HERNANDEZ: And so, we are just going to pull 2 up Plaintiff's Exhibit 767. And this is already in 3 evidence. 4 (Whereupon, the exhibit was displayed on the 5 screen.) 6 Q You mentioned Stephanie Lennig confirmed it. What does 7 that note on the first page of 767 reflect? 8 A It shows the square footage is, for the units added up, 9 for a combined square footage of 10996.39. 10 Q And who -- I guess, who made this note? 11 A I really don't know. I think it was Stephanie Lennig. 12 Q And was this note sent to Mazars? 13 A Yes. 14 MS. HERNANDEZ: I think that's a good place for a 15 break. 16 THE COURT: Okay. It's time. All right. 17 MR. WALLACE: Your Honor, if we are about to break. 18 I just want to say, no objection to the lines of 19 questioning, but we are happy to stipulate to the entry of 20 the supporting information for the spreadsheets, to the 21 extent, you know, not trying to cut off any lines of 22 questioning, but we are happy to stipulate to the entries of 23 some of these documents, if part of what this witness is 24 testifying to is just to, you know, get documents in 25 evidence. We are happy to do stipulations.		1 THE COURT: Is this the Christmas spirit or 2 something? 3 MR. ROBERT: Let's use that momentum and keep it 4 going forward. 5 MR. WALLACE: As Mr. Robert described, that is 6 acceptable to the Attorney General. 7 I did have one other housekeeping item that I 8 wanted to raise apart from that, but I don't want to cut 9 off -- 10 MR. ROBERT: No, please. 11 THE COURT: Go ahead. 12 MR. WALLACE: The last part is, I failed to object. 13 We wanted to move to strike the second half of one of 14 Mr. Birney's answers when he was asked about who made the 15 notes on Plaintiff's 767. He said, "I really don't know." 16 And then said, "I think it was Stephanie Lennig." And so we 17 wanted to strike the answer that came after -- after "I 18 don't know." 19 THE COURT: I'm tempted to do that. Mr. Robert, we 20 don't allow speculation. If you don't know, you don't know. 21 MR. ROBERT: Let's have Ms. Hernandez ask one more 22 time, and if it's any confusion, the answer is the same way, 23 I can't fight with Mr. Wallace's objection. 24 THE COURT: Let's get the witness. 25 MR. ROBERT: Please, sir.	
P. Birney - by Defense - Direct (Ms. Hernandez)	Page 5595	P. Birney - by Defense - Direct (Ms. Hernandez)	Page 5597
1 MS. HERNANDEZ: Thanks, Mr. Wallace, we'll take 2 that into consideration at the break. 3 THE COURT: Ten-minute break. See you all at 3:35. 4 THE COURT OFFICER: All rise. 5 (Whereupon, the witness stepped down from the 6 witness stand.) 7 (Whereupon, a 10-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: Witness. 12 MR. ROBERT: I think this a record. We can agree 13 on a total of three things today, which is good. 14 I think the deal that we've made, and I'll let 15 Mr. Wallace confirm it, is that we will -- later tonight 16 Ms. Hernandez will send a list of the documents that we 17 believe constitutes the backup that this witness would have 18 authenticated to put into evidence. The Attorney General 19 will then review it. If they have anything else that they 20 want to add, there may be some discussion. We may have to 21 bring Mr. Birney back for that limited purpose; we are 22 hoping not to. 23 So in exchange for that agreement, Ms. Hernandez 24 has a few more questions to ask Mr. Birney, and we would be 25 done for the day.		1 THE COURT OFFICER: Witness entering. 2 (Whereupon, the witness stepped into the witness 3 stand.) 4 MR. WALLACE: Your Honor, I'm being informed that I 5 believe the testimony that I objected to is already in the 6 record from the previous time that Mr. Birney testified, so 7 I'll just withdraw the objection. 8 MS. HERNANDEZ: You beat me to that. 9 MR. ROBERT: I'll accept that withdrawal in the 10 spirit of cooperation. 11 THE COURT: Anymore questions? How long do you 12 plan to -- 13 MS. HERNANDEZ: Fifteen minutes. 14 THE COURT: Whatever it takes. 15 MS. HERNANDEZ: All right. 16 Q Mr. Birney, do you recall the Attorney General 17 questioning you about a presidential premium a few weeks ago? 18 A Yes. 19 Q What was the "presidential premium"? 20 A It was a percentage being added onto the assets 21 between, I think, 25 and 40 percent, um, to increase the value 22 of the assets. 23 Q And did the presidential premium ever make it into the 24 final Statement of Financial Condition? 25 A No.	

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<p>P. Birney - by Defense - Direct (Ms. Hernandez) Page 5598</p> <p>1 Q What was the internal practice in considering different</p> <p>2 valuation methodologies for the Statements of Financial</p> <p>3 Condition?</p> <p>4 A Can you repeat the question.</p> <p>5 Q Sure. What was the internal practice in considering</p> <p>6 different valuation methodologies in the Statements of Financial</p> <p>7 Condition?</p> <p>8 A It depended on the year. It depended on the asset. I</p> <p>9 would typically start with how we valued something in the</p> <p>10 previous year and pull that information together, and then I</p> <p>11 would discuss that draft of the information with either Jeff</p> <p>12 McConney and/or Allen Weisselberg. We would discuss it. We</p> <p>13 would discuss options. Again, it depended on the year; it</p> <p>14 depended on the asset.</p> <p>15 Q Were there various drafts every year of the Statement</p> <p>16 of Financial Condition support data?</p> <p>17 A Yes.</p> <p>18 Q Okay.</p> <p>19 And so, we walked through some of the support data and</p> <p>20 backup for 2017. How, if at all, did this process of submitting</p> <p>21 support data with accompanying backup change, for the years 2018</p> <p>22 to 2020, that Mazars was compiling the Statement of Financial</p> <p>23 Condition?</p> <p>24 A Can you repeat the question, please.</p> <p>25 MS. HERNANDEZ: Can I get a read back of that one.</p>	<p>P. Birney - by Defense - Direct (Ms. Hernandez) Page 5600</p> <p>1 Foundation as to the whole Trump Organization as</p> <p>2 opposed to this witness.</p> <p>3 MS. HERNANDEZ: It's his recollection and his</p> <p>4 knowledge.</p> <p>5 THE COURT: Overruled.</p> <p>6 A Can you ask the question again, please.</p> <p>7 MS. HERNANDEZ: Can I get a read back?</p> <p>8 THE COURT: It was a simple question, but read</p> <p>9 back, please.</p> <p>10 MS. HERNANDEZ: Thank you.</p> <p>11 (Whereupon, the requested question was read back by</p> <p>12 the court reporter.)</p> <p>13 A No.</p> <p>14 Q And do you recall any instance where The Trump</p> <p>15 Organization did not provide any information or documentation</p> <p>16 that Whitley Penn requested?</p> <p>17 A No.</p> <p>18 Q In general, did you provide Mazars with all of the</p> <p>19 relevant information you used in preparing the Statement of</p> <p>20 Financial Condition?</p> <p>21 A Yes.</p> <p>22 Q And did you provide Whitley Penn with all of the</p> <p>23 relevant information you used in preparing the Statement of</p> <p>24 Financial Condition?</p> <p>25 A Yes.</p>
<p>P. Birney - by Defense - Direct (Ms. Hernandez) Page 5599</p> <p>1 THE COURT: Read back, please.</p> <p>2 (Whereupon, the requested question was read back by</p> <p>3 the court reporter.)</p> <p>4 THE COURT: Is the question, how is 2018 to 2020</p> <p>5 different from 2017?</p> <p>6 MS. HERNANDEZ: If at all.</p> <p>7 THE COURT: Okay.</p> <p>8 A The only major difference I could think of as we</p> <p>9 started sending Mazars information through a portal instead of</p> <p>10 via e-mail.</p> <p>11 Q Okay.</p> <p>12 And did the process change at all with Whitley Penn in</p> <p>13 2021?</p> <p>14 A I don't think so. There was a different portal being</p> <p>15 used.</p> <p>16 Q What was the first year you recall discussing the</p> <p>17 Statement of Financial Condition with Eric Trump?</p> <p>18 A 2021.</p> <p>19 Q And what was the first year you recall discussing the</p> <p>20 Statement of Financial Condition with Donald Trump, Jr?</p> <p>21 A 2021.</p> <p>22 Q And Mr. Birney, do you recall any instance where The</p> <p>23 Trump Organization did not provide any information or</p> <p>24 documentation that Mazars requested?</p> <p>25 MR. WALLACE: Objection.</p>	<p>Proceedings Page 5601</p> <p>1 Q Were you ever directed to increase a number without</p> <p>2 there being a basis to support that increase for the Statement</p> <p>3 of Financial Condition?</p> <p>4 A No.</p> <p>5 MS. HERNANDEZ: No more questions, your Honor.</p> <p>6 THE COURT: Okay. Any cross?</p> <p>7 MR. WALLACE: Nothing further for this witness,</p> <p>8 your Honor.</p> <p>9 THE COURT: Okay. The witness is excused. Thank</p> <p>10 you.</p> <p>11 (Whereupon, the witness stepped down from the</p> <p>12 witness stand.)</p> <p>13 THE COURT: Are defendants able to call their next</p> <p>14 witness?</p> <p>15 MR. ROBERT: No, your Honor. We are going to start</p> <p>16 tomorrow morning, with the court's permission, with our</p> <p>17 expert, Mr. Unell.</p> <p>18 I've already spoken to Mr. Wallace and advised that</p> <p>19 we hope to finish his direct in a full day. It would</p> <p>20 certainly go into what I call "the third quarter" the way we</p> <p>21 have things in our own mind, but it may go the whole day.</p> <p>22 So that way they can plan accordingly for their cross</p> <p>23 examination.</p> <p>24 THE COURT: AG, any issues with that?</p> <p>25 MR. WALLACE: I mean, I don't think there's a</p>

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1 witness. I understand the defendants don't have a witness
2 available, so.

3 THE COURT: So it doesn't matter. We get a break.
4 Okay, class dismissed.

5 MR. ROBERT: I feel like it's a snow day. Thank
6 you, your Honor.

7 THE COURT: See you all at 10:00 tomorrow.

8 MR. ROBERT: Thank you, sir.

9 (Whereupon, the case on trial was adjourned to
10 Thursday, November 30, 2023 at 10:00 a.m.)

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NYSCEF DOC. NO. 1659
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In The Matter Of:

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November 30, 2023

Michael Ranita - Senior Court Reporter

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2 COUNTY OF NEW YORK : CIVIL TERM : Part 37
3 -----x
4 PEOPLE OF THE STATE OF NEW YORK, BY LETITIA
5 JAMES, ATTORNEY GENERAL OF THE STATE OF NEW
6 YORK,
7 Index: 452564/2022
8 Plaintiff,
9
10 -against-
11
12 DONALD J. TRUMP; DONALD TRUMP, JR.; ERIC TRUMP;
13 IVANKA TRUMP; ALLEN WEISSELBERG; JEFFREY
14 MCCONNEY; THE DONALD J. TRUMP REVOCABLE TRUST;
15 THE TRUMP ORGANIZATION, INC; TRUMP ORGANIZATION,
16 LLC; DJT HOLDINGS, LLC; DJT HOLDINGS MANAGING
17 MEMBER; TRUMP ENDEAVOR 12, LLC; 401 NORTH WAGASH
18 VENTURE, LLC; TRUMP OLD POST OFFICE, LLC; 40 WALL
19 STREET, LLC; AND SEVEN SPRINGS, LLC,
20
21 Defendants.
22
23 -----x
24 60 Centre Street
25 New York, New York 10007
November 30, 2023

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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: Would defendants like to call their
8 next witness?
9 MR. WALLACE: Apologies, your Honor, but plaintiffs
10 had a couple of housekeeping issues we wanted to raise.
11 THE COURT: Okay.
12 MR. WALLACE: And we are springing this on the
13 defendants a little bit, but I wanted to talk about the
14 scheduling for the week of December 11th, which is currently
15 scheduled for Mr. Trump's testimony, which I believe will be
16 the last witness for the defendants.
17 I think our view is is that to the extent
18 plaintiffs have any rebuttal case, it could be presented on
19 the 12th. I think it would, at most, be two witnesses, both
20 of whom --
21 THE COURT: Just be one day.
22 MR. WALLACE: One day. Each witness would be an
23 hour or less, would be our expectation, but that depends on
24 a little bit what we here from Mr. Bartov on the seventh and
25 eighth. That would be our expectation. So we could propose

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1 that closing arguments be held on the 13th and that we
2 follow the process we did on openings, with 90 minutes for
3 the government and two hours for the defense, with leave for
4 them to ask for more time, if needed, since they are
5 sharing.
6 THE COURT: Go ahead.
7 MR. KISE: So Mr. Robert, as you know, is the CPLR
8 expert and/or procedural. One thing that we had thought
9 about proposing the Court, which in a case like this seems
10 to make, at least to me, and I'll let Mr. Robert speak.
11 THE COURT: Yes.
12 MR. KISE: It seems to make, at least to me, far
13 more sense is for us to provide our posttrial submissions
14 simultaneously, and then after the Court has a chance to
15 look at those, we would come back for argument on those and
16 you could provide -- Mr. Robert will do a better job on this
17 than me. I'm sure in the interim you could provide us
18 questions that you want us, after you've seen both parties'
19 submissions. In most bench trials, for what it's worth,
20 that I've ever handled have been done that way, where
21 because a closing right after we are done with the evidence
22 on a two-month trial, it's not like there is a jury here.
23 You've got what's going to be probably a 9,000 page record.
24 There's just an awful lot of ground to cover. I mean we can
25 certainly make arguments on the 13th. I just don't know,

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<p>1 frankly, how productive they would be for the Court, because</p> <p>2 we are all just going to be saying things that -- that are</p> <p>3 sort of in brief as opposed to you having the opportunity to</p> <p>4 review everything.</p> <p>5 I'll let Mr. Robert speak to the practice here in</p> <p>6 New York, but that's certainly been my practice.</p> <p>7 MR. ROBERT: My experience has been, I don't think</p> <p>8 I've ever had a closing argument after the close of evidence</p> <p>9 in a bench trial, ever, in New York. Usually what I have</p> <p>10 seen, or probably on almost every instance, if not every</p> <p>11 instance, we prepare conclusions of law and the summary of</p> <p>12 our facts as we see them, usually like a 60-day window after</p> <p>13 the trial we submit it to the Court, both in a word version</p> <p>14 as well as in a PDF, or however the Court wants it.</p> <p>15 And then what I've seen happen in the Commercial</p> <p>16 Division very often is after that submission, let's say the</p> <p>17 Court gives you 60 days to submit that. The Court will then</p> <p>18 analyze it and review it, as Mr. Kise said, since there's</p> <p>19 simultaneous submissions, there's no reply to it, but then</p> <p>20 the Court sets a time for what I'll call slash oral</p> <p>21 argument/closing, at which point sometimes the Court will</p> <p>22 send questions to the parties ahead of time to focus on.</p> <p>23 And also that's an opportunity to respond to the other</p> <p>24 side's submission.</p> <p>25 So I think a closing, per se, like you would have</p>		<p>1 a posttrial briefing. This case has been extensively</p> <p>2 briefed and argued by all sides. Everyone is familiar with</p> <p>3 the record. I think -- we think a two-week period after the</p> <p>4 close of evidence is more than sufficient. I don't know</p> <p>5 that we have an objection to having an argument on -- after</p> <p>6 simultaneous briefing in lieu of closing, but I think</p> <p>7 60 days, so stretching this out into, I guess, February at</p> <p>8 some point doesn't make sense from our perspective, but in</p> <p>9 terms of process, no objection from us to close the</p> <p>10 evidence, submit our findings of fact and conclusions of</p> <p>11 law, and if the Court wants argument, we could do argument.</p> <p>12 MR. KISE: So the only thing I'll add, and I'll let</p> <p>13 Mr. Robert add, if your Honor is not interested in 60 days,</p> <p>14 I would try and maybe find somewhere between two weeks and</p> <p>15 60 days, because the two weeks, as you know, happens to</p> <p>16 fall, most particularly on my birthday, but sort of the end</p> <p>17 of the year where it's going to be pretty compressed for</p> <p>18 everyone, particularly having been for those of us that have</p> <p>19 been a way for quite some time.</p> <p>20 So if you are not interested in 60, which I think</p> <p>21 is a reasonable time period, but I understand the Court may</p> <p>22 have a different view, certainly something beyond the</p> <p>23 two-week period, maybe two weeks into January, maybe 30 or</p> <p>24 45 days as opposed to -- and then the entire process would</p> <p>25 be wrapped up by the last week of January if we did that.</p>	
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<p>1 in a jury trial just wouldn't fit in a trial like this.</p> <p>2 It's certainly not something that we contemplated, because</p> <p>3 we figured it would be the normal route of a bench trial,</p> <p>4 which is findings of fact, conclusions of law, a period of</p> <p>5 time then, after that, and then make a formal presentation</p> <p>6 to the court.</p> <p>7 So I guess at this point, whatever Mr. Wallace is</p> <p>8 saying, what I would ask for is when the close of evidence</p> <p>9 closes, that the Court then give us 60 days or so to submit</p> <p>10 it to the Court, and we could put a date on the calendar at</p> <p>11 that point, or now, as to when the Court would want us to</p> <p>12 come back to argue that. And then obviously, totally up to</p> <p>13 the Court, whether you want to key us to certain issues you</p> <p>14 want us to specifically answer at that argument date.</p> <p>15 MR. KISE: We'll also, of course, have to have time</p> <p>16 for another directed verdict motion.</p> <p>17 THE COURT: Well, good luck with that.</p> <p>18 MR. WALLACE: I'll say, your Honor, I have done</p> <p>19 closings in bench trials in this courthouse in matters where</p> <p>20 there is public interest, and people have a desire to hear</p> <p>21 both sides summarize the case. So I don't know that there's</p> <p>22 a typical process. I do think it is typical, often not, to</p> <p>23 have openings or closings in bench trials, but, you know,</p> <p>24 each judge does as they see fit.</p> <p>25 I certainly don't think we need 60 days to prepare</p>		<p>1 We wouldn't be into February, as Mr. Wallace is saying, and</p> <p>2 I understand what he is saying.</p> <p>3 Keep in mind, also, that we do have, as we've had</p> <p>4 for 14, 15 months now, there's no public exigency because</p> <p>5 there is a monitor in place. Everything is still operating</p> <p>6 pursuant to the Court's direction and supervision.</p> <p>7 THE COURT: Give me one second. Okay. That's a</p> <p>8 second. I like the idea of the briefs then the argument;</p> <p>9 there seems to be an agreement on that. Two weeks seems</p> <p>10 very short and a month seems very long -- two months seems</p> <p>11 very long. I feel like -- what is the -- Goldilocks and the</p> <p>12 Three Bears; too hot, too cold, just right. So we'll come</p> <p>13 up with a just right. Let me sit on this. Obviously we</p> <p>14 have time. I think we'll all come to an accommodation.</p> <p>15 Mr. Wallace.</p> <p>16 MR. WALLACE: So two additional issues. These</p> <p>17 relate to expert testimony. First, tomorrow, in addition to</p> <p>18 our renewing our motion to preclude Mr. Shubin, we are also</p> <p>19 going to renew our applications to Mr. Moens. So these are</p> <p>20 two witnesses who both deal with Mar-a-Lago. We already</p> <p>21 submitted our briefs on this. We are not going to submit</p> <p>22 any new briefing, but we'll just raise it when we make the</p> <p>23 motion tomorrow.</p> <p>24 THE COURT: Okay.</p> <p>25 MR. WALLACE: The other issue we wanted to raise is</p>	

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<p>1 the -- we received a number of updates last night to</p> <p>2 Mr. Unell's opinions in this matter. And we do not think</p> <p>3 that they have been timely disclosed and that they should</p> <p>4 not -- should not be allowed to include these opinions. In</p> <p>5 particular -- can we put up defendant's demonstrative</p> <p>6 Exhibit 5.</p> <p>7 (Whereupon, the exhibit was displayed on the</p> <p>8 screen.)</p> <p>9 MR. WALLACE: So this is a chart that I believe is</p> <p>10 an adjustment that Mr. Unell prepared on the calculations</p> <p>11 prepared by Mr. McCarty. We got this last night around 9:30</p> <p>12 at night -- Mr. Unell is here, maybe he should not --</p> <p>13 THE COURT: Oh.</p> <p>14 MR. WALLACE: -- be in the courtroom while we are</p> <p>15 testifying. Sorry, sir.</p> <p>16 (Mr. Unell exited the courtroom.)</p> <p>17 MR. WALLACE: We'll talk about him behind his back.</p> <p>18 MR. SUAREZ: It was 7:47 p.m.</p> <p>19 MR. WALLACE: Maybe it felt like 9:30.</p> <p>20 MR. SUAREZ: I could see why.</p> <p>21 MR. WALLACE: So I was just going to say that the</p> <p>22 -- well, let me see if I could -- it appears to now</p> <p>23 calculate interest differential based on a 25 basis points</p> <p>24 increase. I assume this is due to a guarantee. It appears</p> <p>25 that this is based on testimony from Mr. Williams about an</p>		<p>1 Two, if you look at Mr. Unell's report, he spends a</p> <p>2 considerable amount of time talking about the pricing of the</p> <p>3 loans and Mr. McCarty's analysis, and so on and so forth.</p> <p>4 So for him to now make observations -- this is a</p> <p>5 demonstrative exhibit. It's not being introduced as</p> <p>6 substantive evidence. It's just a demonstrative. For him</p> <p>7 to now make observations about documents in the record, he's</p> <p>8 reviewed all these documents before. He's not limited to</p> <p>9 the words that are exactly in the page. No expert is. It's</p> <p>10 the subject matter. He's fully covered on the subject</p> <p>11 matter about the pricing of the -- the loans about</p> <p>12 Mr. McCarty's analysis. And every expert is entitled to --</p> <p>13 to adjust based on what is presented at trial and make</p> <p>14 comments on what is presented at trial, and to offer</p> <p>15 rebuttal to what is presented at trial, as long as it's</p> <p>16 within the scope of the initial opinion.</p> <p>17 And so if you look at pages -- I mean, there's so</p> <p>18 many pages here in this report. This would be Mr. Unell's</p> <p>19 June 30th report, just this one. Starting on pages six and</p> <p>20 going through 7, 8, 9, 10, I mean, there's all manner of</p> <p>21 discussion throughout this report about the credit pricing,</p> <p>22 the loan pricing, Mr. McCarty's then analysis, different</p> <p>23 from Mr. McCarty's analysis now, because as you heard me</p> <p>24 say, they changed their theory of the case. So</p> <p>25 Mr. McCarty's analysis is now morphed to fit that theory.</p>	
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<p>1 adjustment on the Doral loan in 2015.</p> <p>2 The testimony simply confirmed what's in the</p> <p>3 documents that the defendants have had the entire time. The</p> <p>4 defendants could've prepared this rebuttal to Mr. McCarty as</p> <p>5 part of Mr. Unell's expert rebuttal report. Those were due</p> <p>6 in June. So for them to now introduce this the night before</p> <p>7 he's going to testify, um, is untimely and inappropriate.</p> <p>8 So we think the demonstrative and the new opinions should be</p> <p>9 struck.</p> <p>10 MR. KISE: So, your Honor, a couple of things, and</p> <p>11 Mr. Robert may have things to add.</p> <p>12 First of all, the supplement --</p> <p>13 THE COURT: Mr. Kise, it might be easier if you sat</p> <p>14 or just --</p> <p>15 MR. KISE: I'll hold it up here. Usually no one</p> <p>16 has a problem. Maybe I'm in a calm mood today. Usually</p> <p>17 they could hear me without the microphone.</p> <p>18 So a couple of items on this. First of all, I</p> <p>19 believe the government, I'm pretty sure 11:00 on a Friday,</p> <p>20 before Mr. McCarty took the stand on Monday, provided a</p> <p>21 supplemental report as well, for Mr. McCarty, which modified</p> <p>22 his opinions to take into account events subsequent to his</p> <p>23 initial opinions. So back to the goose/gander proposition.</p> <p>24 Um, that's one, but I don't think necessarily controls,</p> <p>25 although it's certainly in our favor.</p>		<p>1 His original analysis was based on the loans, and</p> <p>2 now much of it was based on the certifications. And so just</p> <p>3 like they have done in terms of their numbers, we are doing</p> <p>4 the same thing. We are just challenging that analysis, and</p> <p>5 we are challenging his fundamental assumptions.</p> <p>6 We don't -- as long as we've covered the subject</p> <p>7 matter, they were certainly free to ask in his deposition</p> <p>8 about the subject matter and so forth. So I don't know --</p> <p>9 again, I'll let Mr. Robert speak to New York specific</p> <p>10 issues, but all of this is covered, the subject matter and</p> <p>11 the scope, abundantly. The supplemental report wasn't even</p> <p>12 necessary. We did it more as an accommodation to them so</p> <p>13 that they would have a better understanding.</p> <p>14 The demonstrative exhibit is just that. It's a</p> <p>15 demonstrative exhibit, and we are entitled to allow the use</p> <p>16 of demonstrative exhibits. It's not substantive evidence.</p> <p>17 And they could fully explore on cross examination.</p> <p>18 The same documents that were available to us and</p> <p>19 Mr. Unell are also available to the government. So I don't</p> <p>20 see any prejudice, any basis to exclude any testimony in</p> <p>21 that regard.</p> <p>22 MR. ROBERT: Just echoing on what Mr. Kise said,</p> <p>23 the government, as it was the business day before, sent us a</p> <p>24 supplement where they, as Mr. Kise said, changed, in theory,</p> <p>25 of what Mr. McCarty was going to testify about. This is</p>	

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<p>1 just our expert with a demonstrative exhibit commenting on</p> <p>2 the events that have happened in the testimony that came out</p> <p>3 during the trial.</p> <p>4 So, again, we could've very easily just had the</p> <p>5 witness testify with it without incident. Candidly, we have</p> <p>6 this rule where we have to exchange demonstratives the night</p> <p>7 before, which is what we did, just as they did. They did</p> <p>8 more than that. They changed the substance of it the night</p> <p>9 before, and our expert is free to be able to comment on it</p> <p>10 and comment on the testimony that he heard or that he read</p> <p>11 about from Mr. Williams and others during the course of the</p> <p>12 trial. So I truly think this a nonissue.</p> <p>13 THE COURT: A few words.</p> <p>14 MR. WALLACE: So, your Honor, I'll say the change</p> <p>15 in opinion is nothing of the kind. On the left is the</p> <p>16 demonstrative that we produced the night before. On the</p> <p>17 right is the demonstrative that was contained in</p> <p>18 Mr. McCarty's opening report produced on May 30th of this</p> <p>19 year. And what he did is he eliminated interest for 2012</p> <p>20 and 2013, and then extended for the amount of time that it</p> <p>21 continues from his report in May until the time of his</p> <p>22 testimony in November. You'll see this calculations remain</p> <p>23 the same. He is using the same process. He is using the</p> <p>24 same calculation to come up with a disgorgable amount.</p> <p>25 The defendants --</p>		<p>1 experts look at it. We could have spent the last five</p> <p>2 months thinking about it. Instead we get it the night</p> <p>3 before.</p> <p>4 I would say there's nowhere in the reports that</p> <p>5 says the price difference between a guaranteed loan and</p> <p>6 unguaranteed loan is 25 basis points. It's not in there.</p> <p>7 THE COURT: Nevertheless, plaintiff's objection is</p> <p>8 overruled. There's no jury. Let's just hear the evidence.</p> <p>9 You could question him on his conclusions. So --</p> <p>10 MR. WALLACE: I would just note, your Honor, that</p> <p>11 the issue isn't just cross examination, the issue is notice.</p> <p>12 And we agreed to a process where we were supposed to have</p> <p>13 notice of everything the experts thought by the end of June.</p> <p>14 That was -- extra time was provided at the defendant's</p> <p>15 request because they were going to need to build in so much</p> <p>16 in their rebuttal reports, and we would then have a chance</p> <p>17 to examine, in detail, over seven hours, the expert's</p> <p>18 opinions. I guess we'll do it live now. It's not a</p> <p>19 question of do we get to examine the witness. It was a</p> <p>20 matter that we were supposed to have notice of his opinion</p> <p>21 many months ago.</p> <p>22 THE COURT: I understand that. I'm not justifying</p> <p>23 or accepting everything defendants position is, but I'm</p> <p>24 letting it in, so.</p> <p>25 MR. WALLACE: Understood, your Honor.</p>	
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<p>1 THE COURT: I was going to say, I'm more interested</p> <p>2 in what you think they are doing than what they think you</p> <p>3 are doing.</p> <p>4 MR. WALLACE: So let's pull up, if we could, DD5,</p> <p>5 which is their new opinion.</p> <p>6 (Whereupon, the exhibit was displayed on the</p> <p>7 screen.)</p> <p>8 MR. WALLACE: If we could just have DD5 alone. So</p> <p>9 the 25 plus basis points, I assume, is their now opinion</p> <p>10 that this is the pricing difference between a loan with a</p> <p>11 guarantee and a loan without a guarantee. And I challenge</p> <p>12 anyone to find somewhere in their expert reports an opinion</p> <p>13 -- in Mr. Unell's expert reports from May and June, an</p> <p>14 opinion that the pricing difference between a loan with a</p> <p>15 guarantee, and a loan without a guarantee is 25 basis</p> <p>16 points. It's not in there. And I don't think this is</p> <p>17 just -- you know, it's the subject matter. And we need to,</p> <p>18 um, you know, inquire of him if his opinion is -- his</p> <p>19 reports are more than a hundred pages. So to say, well, he</p> <p>20 is discussing the topics and so the topics are fine. They</p> <p>21 had the report from Mr. McCarty. If his opinion was that</p> <p>22 Mr. McCarty had priced the interest difference improperly,</p> <p>23 and that the proper basis was to use 25 basis points, he</p> <p>24 should have disclosed it in the rebuttal report in June. We</p> <p>25 could have deposed him about it. We could've had our own</p>		<p>1 MR. SUAREZ: The defense calls Robert Unell.</p> <p>2 THE COURT OFFICER: Witness entering.</p> <p>3 (Whereupon, the witness stepped into the witness</p> <p>4 stand.)</p> <p>5 THE COURT OFFICER: Please raise your right hand.</p> <p>6 (The witness complied.)</p> <p>7 THE COURT OFFICER: Do you solemnly swear or affirm</p> <p>8 that any testimony you give will be the truth, the whole</p> <p>9 truth and nothing but the truth?</p> <p>10 THE WITNESS: I do.</p> <p>11 THE COURT OFFICER: Please have a seat.</p> <p>12 THE WITNESS: Thank you.</p> <p>13 ROBERT EVAN UNELL, called by and on behalf</p> <p>14 of the Defendant, having been first duly sworn, was examined and</p> <p>15 testified as follows:</p> <p>16 THE COURT OFFICER: State your name and either home</p> <p>17 or business address for the record.</p> <p>18 THE WITNESS: Robert Evan Unell. 5470 East</p> <p>19 Idlewood Lane, Atlanta, Georgia.</p> <p>20 DIRECT EXAMINATION</p> <p>21 BY MR. SUAREZ:</p> <p>22 Q Mr. Unell, good morning.</p> <p>23 A Good morning.</p> <p>24 Q Please describe your educational background after high</p> <p>25 school.</p>	

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<p>1 A Yes. I attended the University of Georgia where I</p> <p>2 majored in real estate, which is part of the Terry College of</p> <p>3 Business. I graduated in 2000, and then subsequently went to go</p> <p>4 into the workforce.</p> <p>5 Q What did you study at the University of Georgia College</p> <p>6 of Business?</p> <p>7 A In the Terry College of Business, I majored in real</p> <p>8 estate, which is a program that combines the risk management</p> <p>9 side as well as finance and practical real life real estate</p> <p>10 experience and development.</p> <p>11 Q Where did you work after you graduated from the</p> <p>12 University of Georgia?</p> <p>13 A I began my career at Wachovia Bank, and was there</p> <p>14 until the merger with First Union. I then went to Bank of</p> <p>15 America, and I spent approximately 12 years there, or so, at</p> <p>16 Bank of America in the Commercial Real Estate Finance Group, as</p> <p>17 well as the Credit Risk Management Group of Special Assets,</p> <p>18 which handled real estate, specifically.</p> <p>19 Q Let's go back to your time at Wachovia. What was your</p> <p>20 title at Wachovia?</p> <p>21 A I started out as analyst, and then eventually rose to</p> <p>22 title of AVP, assistant vice president, but I'm not certainly of</p> <p>23 the exact title.</p> <p>24 Q What was your job function at Wachovia?</p> <p>25 A At Wachovia, I began in the underwriting process of</p>		<p>1 as two and a half million dollars up to large syndicated</p> <p>2 facilities upwards of \$500 million plus, encompassing all</p> <p>3 aspects of real estate collateral.</p> <p>4 Q And what role, specifically, did you have on those</p> <p>5 deals?</p> <p>6 A On those deals, both as a relationship manager and in</p> <p>7 the Credit Risk Management side at Special Assets, I was</p> <p>8 involved in the structuring, underwriting. And then as a Credit</p> <p>9 Risk Management side at Special Assets, I also did have a</p> <p>10 signatory for a small approval authority.</p> <p>11 Q What training, if any, have you received in the private</p> <p>12 sector?</p> <p>13 A In the private sector. So at Wachovia, there was not</p> <p>14 necessarily a formal training program, but I shadowed senior</p> <p>15 lenders. I took classes that were internal as it related to</p> <p>16 risk as is related to financial underwriting. And the same at</p> <p>17 Bank of America with continuing education that was required,</p> <p>18 both from a compliance perspective, as well as continuing to</p> <p>19 refine tools for underwriting and other trends in commercial</p> <p>20 real estate.</p> <p>21 Q After you left Bank of America, where were you</p> <p>22 employed?</p> <p>23 A Alvarez & Marsal.</p> <p>24 Q What responsibilities did you have at Alvarez & Marsal?</p> <p>25 A At Alvarez & Marsal, I was part of the REAS Group,</p>	
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<p>1 commercial real estate loans, and income producing, as well as</p> <p>2 homebuilder. And then eventually moved into the relationship</p> <p>3 management side of it, which would encompass more of the</p> <p>4 structuring of the deals, the client management, and the overall</p> <p>5 relationship with the entire bank.</p> <p>6 Q And how did your responsibilities change when you moved</p> <p>7 over to Bank of America, if at all?</p> <p>8 A The responsibilities when I first moved over to Bank of</p> <p>9 America did not change because I was hired as a relationship</p> <p>10 manager and managed a portfolio of builders, developers and</p> <p>11 commercial real estate developers. And in approximately late</p> <p>12 2007 to early 2008, I was asked to move over to the Real Estate</p> <p>13 Special Assets Group, which was a function of Credit Risk</p> <p>14 Management, and was done in conjunction with the downturn in the</p> <p>15 commercial real estate markets. In that role I performed</p> <p>16 analysis and review and restructuring of deals that were in</p> <p>17 default or were stressed.</p> <p>18 Q And while at Bank of America, what industries did you</p> <p>19 service?</p> <p>20 A I serviced the commercial real estate industry,</p> <p>21 homebuilders -- homebuilders, cash flowing properties, as well</p> <p>22 as construction.</p> <p>23 Q What type of deals did you work on when you were at</p> <p>24 Bank of America?</p> <p>25 A At Bank of America I worked on deals that were as small</p>		<p>1 which is Real Estate -- I don't know what it stood for. It was</p> <p>2 the real estate group at Alvarez & Marsal.</p> <p>3 The practice there consisted of a multitude of things.</p> <p>4 We liked to say we would take a real estate and we were able to</p> <p>5 go from essentially cradle to grave, which means from the</p> <p>6 beginning on the cradle side, um, we assisted multiple national</p> <p>7 lenders, both on the CMBS and the balance sheet side, with their</p> <p>8 underwriting, their valuation management, um, and we also have</p> <p>9 done a lot of advisory work for developers and real estate</p> <p>10 professionals.</p> <p>11 And then also a tremendous amount of restructuring</p> <p>12 work, which involved, both from a lender perspective and a</p> <p>13 developer/borrower perspective of analyzing loans that were in</p> <p>14 distress or already in default.</p> <p>15 Q What is the difference between your experience on CMBS</p> <p>16 loans and balance sheet loans?</p> <p>17 A CMBS loans are nonrecourse loans that are originated</p> <p>18 by, typically, investment banks. They are then bundled up and</p> <p>19 securitized with other similar loans, or sometimes they are done</p> <p>20 what's called a "single asset" or "single borrower." That would</p> <p>21 be for a large asset. And they are a commoditized, very kind of</p> <p>22 fit in the box. If it doesn't fit in the box, move on. And</p> <p>23 that's because when they do bundle them together, they like to</p> <p>24 bundle similar assets so that they have similar cash flows and</p> <p>25 can also minimize risk through a multitude of diversified</p>	

<p>Proceedings Page 5623</p> <p>1 assets.</p> <p>2 Q Please elaborate on your experience working on loan</p> <p>3 restructuring?</p> <p>4 A Loan restructuring can take on a multitude of different</p> <p>5 kind of looks. We worked on primarily assets that were already</p> <p>6 in default. They may not have been noticed of default, but</p> <p>7 there was an inherent risk of loss for the bank.</p> <p>8 At that time those assets are transferred over to the</p> <p>9 Special Assets Group where we are trained and able to</p> <p>10 restructure deals, analyze deals, and assist in trying to come</p> <p>11 to a satisfactory agreement to restructure the loan on terms</p> <p>12 satisfactory, not only to the borrower, but also to the lender.</p> <p>13 And often times that worked out, and often times it did not.</p> <p>14 If it did not, role also included the exercising of</p> <p>15 remedies to include foreclosure, as well as collection on</p> <p>16 guarantees and enforcement of other loan documents.</p> <p>17 Q What industries did you serve at Alvarez & Marsal?</p> <p>18 A Strictly commercial real estate.</p> <p>19 Q What was your title at Alvarez & Marsal?</p> <p>20 A I started as a director, and when I left I was a senior</p> <p>21 director.</p> <p>22 Q And how did your responsibilities change from director</p> <p>23 to senior director, if at all?</p> <p>24 A They did not change.</p> <p>25 Q When did you leave Alvarez & Marsal?</p>	<p>Page 5625</p> <p>1 we can come in and assist where they may not need full time</p> <p>2 personnel for special projects; that could be an acquisition.</p> <p>3 It could be a joint venture. It could be a very large project</p> <p>4 where they just need additional assistance.</p> <p>5 (Continued on the next page.)</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p>Proceedings Page 5624</p> <p>1 A Approximately five years ago or four and a half years</p> <p>2 ago. Myself and several colleagues left and we established the</p> <p>3 real estate practice at Ankura.</p> <p>4 Q And what is your title at Ankura?</p> <p>5 A Managing director.</p> <p>6 Q What are your responsibilities as a managing director</p> <p>7 at Ankura?</p> <p>8 A Very similar to what we did at Alvarez & Marsal. The</p> <p>9 practice was designed to be the exact same. So both front end,</p> <p>10 from what we call "cradle to grave", which is origination</p> <p>11 through advisory, and then ultimately the restructuring</p> <p>12 disposition of commercial real estate finance assets.</p> <p>13 Q Please elaborate on the origination section of your</p> <p>14 experience?</p> <p>15 A So as part of the origination side of it, our team is</p> <p>16 contracted by several large lenders, insurance companies,</p> <p>17 balance sheet and CMBS lenders, to perform either the full</p> <p>18 underwriting and due diligence process, or it could be just a</p> <p>19 subset including the valuation management side of it, which is</p> <p>20 done by my peers, or environmental due diligence and engineering</p> <p>21 due diligence as well.</p> <p>22 Q What does the advisory side consist of?</p> <p>23 A The advisory side consists of helping operating real</p> <p>24 estate businesses become more efficient. We are able to help, I</p> <p>25 would say, in times of where they have large, heavy lifts where</p>	<p>Unell - by Defendant - Direct (Suarez) Page 5626</p> <p>1 Q And then please describe the final stage, the "grave"</p> <p>2 part of your work.</p> <p>3 A The grave part would be the restructuring aspect of</p> <p>4 it, which, as a lot of what we are doing now as you can imagine</p> <p>5 with the current market situation, and we represent both</p> <p>6 borrowers and lenders in various stages, anything from initial</p> <p>7 pre-default where borrowers come to us because they know that</p> <p>8 there could be a looming default that is coming and want to be</p> <p>9 proactive; and we do the same for lenders.</p> <p>10 And then we also are involved in litigation as well</p> <p>11 as, you know, hopefully it doesn't come down to that, but also</p> <p>12 the disposition.</p> <p>13 And also at the end of it perhaps trying to negotiate</p> <p>14 settlements as it would relate to various loan documents and</p> <p>15 guaranties of, you know, the interested parties.</p> <p>16 Q What, if any, experience do you have evaluating</p> <p>17 personal financial statements?</p> <p>18 A I have evaluated personal financial statements</p> <p>19 throughout my career as Wachovia, at Bank of America and at</p> <p>20 Alvarez & Marsal and Ankura.</p> <p>21 Q What experience, if any, do you have working with</p> <p>22 troubled assets?</p> <p>23 A A tremendous amount of experience. Since about 2008</p> <p>24 that has been the majority focus of my career since that time.</p> <p>25 So for approximately 15 years that has been where I have spent</p>

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<p>1 the majority of my time working.</p> <p>2 Q Have you previously testified as an expert witness?</p> <p>3 A Yes, sir.</p> <p>4 Q How many times have you been retained as an expert</p> <p>5 witness?</p> <p>6 A I have been retained, I believe, five or six times;</p> <p>7 but testimony only once.</p> <p>8 Q What area did you testify in?</p> <p>9 A Commercial real estate finance.</p> <p>10 Q Have you ever been qualified as an expert witness at</p> <p>11 trial?</p> <p>12 A Yes, sir.</p> <p>13 Q And what was your expertise in that trial?</p> <p>14 A Commercial real estate finance and loan management</p> <p>15 and dealing with, I would say, course of dealing between a</p> <p>16 borrower and a lender.</p> <p>17 MR. SUAREZ: Your Honor, we tender the witness</p> <p>18 as an expert in the field of commercial real estate</p> <p>19 finance and banking.</p> <p>20 THE COURT: Hearing no objection, granted.</p> <p>21 MR. WALLACE: I am just curious, in describing</p> <p>22 his experience the witness mentioned that at Wachovia and</p> <p>23 later in his career part of his job responsibilities</p> <p>24 included evaluating personal financial statements. So I</p> <p>25 am just curious if the expertise is extending to the</p>		<p>1 Mr. Unell?</p> <p>2 THE WITNESS: Yes, sir. As spending nearly</p> <p>3 approximately 15 years in the banking field, I have worked</p> <p>4 across multiple lines of business and collaborated with</p> <p>5 associates in multiple different fields at various</p> <p>6 institutions that I have worked at.</p> <p>7 THE COURT: Okay. We will call you -- we will</p> <p>8 deem you a banking expert in the -- within the fields that</p> <p>9 you just mentioned.</p> <p>10 So granted, and let's go ahead.</p> <p>11 Q Mr. Unell, what is the scope of your engagement in</p> <p>12 this case?</p> <p>13 A I was retained to provide opinions as it related to</p> <p>14 the loans -- the four subject loans and their process and how</p> <p>15 they were underwritten; and, I guess, the submission and the</p> <p>16 ordinary course of business as to how loans are originated and</p> <p>17 processed.</p> <p>18 Q What do you mean by "the four subject loans"?</p> <p>19 A The four subject loans would be Doral; the Old Post</p> <p>20 Office; 40 Wall Street and Chicago.</p> <p>21 Q And just to be clear, Trump Chicago, Doral, and OPO</p> <p>22 were loans made by Deutsche Bank; and 40 Wall Street was a loan</p> <p>23 made by Ladder Capital, correct?</p> <p>24 A Correct.</p> <p>25 Q Generally, what information did you review to reach</p>	
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<p>1 evaluation of personal financial statements.</p> <p>2 THE COURT: I am assuming not.</p> <p>3 MR. SUAREZ: The witness is certainly prepared</p> <p>4 to testify about the bank's perspective in the evaluation</p> <p>5 of financial statements.</p> <p>6 MR. WALLACE: Sure. I assume that means the</p> <p>7 process a bank might follow when they would receive a</p> <p>8 personal financial statement as part of a lending -- that</p> <p>9 sounds consistent with his testimony. I am not sure if</p> <p>10 evaluating means the witness will go through a personal</p> <p>11 financial statement and offer an opinion as to its</p> <p>12 accuracy, you know, the things we have heard before</p> <p>13 whether it complies with GAAP and evaluation issues.</p> <p>14 MR. SUAREZ: Simply what the bank does with them</p> <p>15 and how they see them.</p> <p>16 MR. WALLACE: That was it.</p> <p>17 THE COURT: And Mr. Suarez, just in as few words</p> <p>18 as you can, what -- let's go over the exact description of</p> <p>19 his expertise.</p> <p>20 MR. SUAREZ: Commercial real estate finance.</p> <p>21 THE COURT: Right. That's it?</p> <p>22 MR. SUAREZ: And banking.</p> <p>23 THE COURT: The banking is a rather broad</p> <p>24 category.</p> <p>25 Do you feel like you are an expert in banking,</p>		<p>1 your opinions in this case?</p> <p>2 A I reviewed a multitude of documents, including</p> <p>3 Statements of Financial Condition, credit reports, appraisal</p> <p>4 reports, underwriting reports, annual reviews, as well as</p> <p>5 internal memos that were prepared by Deutsche Bank and Ladder</p> <p>6 Capital. Along with other correspondence, as well, as it</p> <p>7 related to these four subject loans.</p> <p>8 Q Have you reviewed any of the proceedings in this</p> <p>9 case?</p> <p>10 A Yes, sir.</p> <p>11 Q What have you reviewed from the proceedings in this</p> <p>12 case?</p> <p>13 A I have reviewed the initial complaint as well as some</p> <p>14 of the subsequent filings as well, including the motions for</p> <p>15 summary judgment by both sides.</p> <p>16 Q Have you reviewed any of the testimony given in this</p> <p>17 case?</p> <p>18 A Yes, sir. I have reviewed the deposition -- excuse</p> <p>19 me, not the deposition. I did review the depositions of</p> <p>20 several folks. But at trial I have read the transcript of</p> <p>21 Mr. Haigh. And then I was able to view the testimony of</p> <p>22 Mr. Williams and Ms. Vrablic and Ms. Pereless.</p> <p>23 Q And are you able to offer opinions today to a</p> <p>24 reasonable degree of certainty in the field of commercial real</p> <p>25 estate finance and --</p>	

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<p>1 A Can I say one more thing?</p> <p>2 Q Yes.</p> <p>3 A I also did review the testimony and transcript of</p> <p>4 Mr. McCarty. I wanted to get that in there as well.</p> <p>5 Do you mind repeating the question, please?</p> <p>6 Q Sure.</p> <p>7 Are you able to give opinions today to a reasonable</p> <p>8 degree of certainty in the field of commercial real estate</p> <p>9 finance and banking as described earlier?</p> <p>10 A Yes, sir.</p> <p>11 Q Are you being compensated for your work here?</p> <p>12 A Yes, sir.</p> <p>13 Q At what rate is Ankura being compensated for your</p> <p>14 work here?</p> <p>15 A I believe it is around 900 or 950 an hour, I am not</p> <p>16 certain of the exact number.</p> <p>17 Q Approximately how many hours have you spent on this</p> <p>18 engagement to date?</p> <p>19 A A couple hundred probably, over the life of -- over,</p> <p>20 call it, nine months or so give or take. I am not exactly</p> <p>21 certain of that.</p> <p>22 Q Has anyone asked you to testify in a particular</p> <p>23 manner in this case?</p> <p>24 A Could you please repeat that?</p> <p>25 Q Has anyone asked you to testify in any particular</p>		<p>1 Q What opinions, if any, have you reached after</p> <p>2 reviewing the Statements of Financial Condition?</p> <p>3 A The Statements of Financial Conditions that were</p> <p>4 provided by the defendants are in line or, in my opinion and</p> <p>5 experience, were of better quality than those than what are</p> <p>6 typically received in commercial real estate finance</p> <p>7 transactions.</p> <p>8 Q And what is the -- withdrawn.</p> <p>9 Are you able to elaborate on that opinion?</p> <p>10 A Yes. The level of detail provided allows for a</p> <p>11 roadmap of -- or a -- to figure out exactly how various assets</p> <p>12 were valued. It gives the user ample information in order to</p> <p>13 be able to evaluate a financial statement.</p> <p>14 That information is nice to have in front of you. A</p> <p>15 lot of times you would have to go actually out and ask the</p> <p>16 questions of a borrower to be able to find that information.</p> <p>17 And it is very nice to see that a complete, kind of,</p> <p>18 disclosure, what I would call it, of information was available</p> <p>19 without having to go back and ask, what I would consider to be,</p> <p>20 a lot of questions to be able to properly analyze those</p> <p>21 statements.</p> <p>22 Q In your experience, how do lenders use Statements of</p> <p>23 Financial Condition provided to them by borrowers or</p> <p>24 guarantors?</p> <p>25 A As I just mentioned, the Statement of Financial</p>	
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<p>1 manner in this case?</p> <p>2 A No, sir.</p> <p>3 Q Is your compensation conditioned on the opinions in</p> <p>4 this case that you offer?</p> <p>5 A No, sir.</p> <p>6 Q In your experience in the banking industry, what</p> <p>7 experience have you had with compiled financial statements</p> <p>8 provided by guarantors?</p> <p>9 A Compiled financial statements are typically the norm</p> <p>10 of what I have seen. Either that or they are</p> <p>11 borrower-prepared. So compiled is a step up from that. And it</p> <p>12 is typical for larger relationships, especially on larger</p> <p>13 commercial real estate developers that have a multitude of</p> <p>14 assets of various types.</p> <p>15 Q Have you reviewed President Trump's Statements of</p> <p>16 Financial Condition and compared those to compiled financial</p> <p>17 statements that you have previously reviewed in your career?</p> <p>18 A Yes, I have. And in my opinion and based on my</p> <p>19 experience --</p> <p>20 THE COURT: Wait. The answer is yes, you have</p> <p>21 reviewed it. You should wait until they ask you the next</p> <p>22 question.</p> <p>23 THE WITNESS: I thought it was a compound</p> <p>24 question. Sorry about that.</p> <p>25 Go ahead.</p>		<p>1 Condition in a commercial real estate loan is typically done to</p> <p>2 provide a roadmap for a lender to do their own analysis of the</p> <p>3 assets that are out there. It is truly an estimated opinion of</p> <p>4 the individual that is submitting it. And that it is the guide</p> <p>5 for which the lender can make their appropriate analysis and</p> <p>6 ask questions and form their own opinions.</p> <p>7 MR. SUAREZ: Your Honor, I would like to show</p> <p>8 the witness Plaintiff's Exhibit 729 previously admitted</p> <p>9 into evidence.</p> <p>10 (Handing)</p> <p>11 THE WITNESS: Thank you, sir.</p> <p>12 Q And I would like to draw your attention to page three</p> <p>13 of this exhibit. And specifically to the last paragraph, which</p> <p>14 states:</p> <p>15 Because the significance and pervasiveness of the</p> <p>16 matters discussed above make it difficult to assess their</p> <p>17 impact on the Statement of Financial Condition, users of this</p> <p>18 financial statement should recognize that they might reach</p> <p>19 different conclusions about the financial condition of Donald</p> <p>20 J. Trump if they had access to a revised Statement of Financial</p> <p>21 Condition prepared in conformity with accounting principles</p> <p>22 generally accepted in the United States of America.</p> <p>23 Do you see that?</p> <p>24 A Yes, sir.</p> <p>25 Q Based on your experience in the banking industry, how</p>	

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<p>1 would a lender view that disclosure?</p> <p>2 A A disclosure of that type is typical in financial</p> <p>3 statements, whether it be -- or excuse me, personal financial</p> <p>4 statements, whether it be compiled or if it is even on -- a lot</p> <p>5 of times there will be forms that banks provide. And there is</p> <p>6 typical language in there even on those that would state that</p> <p>7 it is, you know, up to the user to determine exactly what they</p> <p>8 would like to do out of this.</p> <p>9 And it is -- I wouldn't say it is a "beware" but it</p> <p>10 does give notice to the user that it is, as it states, you</p> <p>11 know, that things could change and they may reach different</p> <p>12 conclusions. So it is typical.</p> <p>13 Q And who is the user of a financial statement, of a</p> <p>14 personal financial statement in a lending transaction?</p> <p>15 A In a commercial real estate transaction the user</p> <p>16 would be the financial institution, the lender.</p> <p>17 Q And what affect, if any, does this disclosure have on</p> <p>18 a lender's ability to use a borrower or guarantor-provided</p> <p>19 financial statement?</p> <p>20 A It doesn't change the ability to use it. What it</p> <p>21 does is, as I mentioned earlier, it provides the roadmap and</p> <p>22 the information to a user to be able to conduct their own</p> <p>23 commercial analysis.</p> <p>24 Q And in your analysis of the four loans at issue, in</p> <p>25 your opinion, how, if at all, was the process followed by the</p>		<p>1 how they viewed them. As well as a fairly large writeup</p> <p>2 about President Trump and his financial wherewithal. So,</p> <p>3 in reviewing those documents you are able to see that the</p> <p>4 analysis that went into it, as well as any adjustments</p> <p>5 that were made by the users of those statements.</p> <p>6 THE COURT: Okay. Thank you.</p> <p>7 MR. WALLACE: Your Honor, I wanted to raise a</p> <p>8 belated objection to the witness's response about what the</p> <p>9 intent of the document was. I don't think he is being</p> <p>10 offered as an expert about the intent of Mazars, the Trump</p> <p>11 Organization, or any of the people that prepared the</p> <p>12 document.</p> <p>13 THE COURT: Well, I wish it hadn't been so</p> <p>14 belated.</p> <p>15 MR. WALLACE: Apologies, Your Honor.</p> <p>16 THE COURT: You are objecting to his testimony</p> <p>17 about what the intent was of Mazars and the defendants; is</p> <p>18 that right?</p> <p>19 MR. WALLACE: He testified as to what the intent</p> <p>20 of the document was. That's the piece I object to.</p> <p>21 THE COURT: Overruled. I'll allow it as part of</p> <p>22 what he would understand about these things.</p> <p>23 Q Was the analysis conducted by Deutsche Bank on</p> <p>24 President Trump's Statements of Financial Condition consistent</p> <p>25 with what you have seen in the lending industry?</p>	
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<p>1 lenders different from what is traditionally used in the</p> <p>2 industry?</p> <p>3 A From my review of the documents as well as the</p> <p>4 various items I have also reviewed, it is consistent with how I</p> <p>5 have seen it done throughout my career and in my experience.</p> <p>6 Q Why is that?</p> <p>7 A They, they being Deutsche Bank, as a user, took this</p> <p>8 information and conducted their own analysis, formed their own</p> <p>9 opinions, and utilized those opinions that they conducted and</p> <p>10 analysis themselves, to make a decision. And that is what the</p> <p>11 intent of this document is.</p> <p>12 And they followed that through and did, in my</p> <p>13 opinion, conduct their own analysis and formed their own</p> <p>14 opinion.</p> <p>15 Q How about Ladder Capital?</p> <p>16 A Ladder Capital the same. They were also provided</p> <p>17 this and were able to form their own opinions and conduct their</p> <p>18 own analysis on the contents of this statement.</p> <p>19 THE COURT: I can't help but jump in. Maybe</p> <p>20 this is obvious, but how do you know what you just</p> <p>21 testified to? How do you know what Ladder did and what</p> <p>22 Deutsche Bank did with this information?</p> <p>23 THE WITNESS: I have been able to review the</p> <p>24 credit memos. And in those credit memos there is analysis</p> <p>25 of -- writeup of their review of the various assets and</p>		<p>1 A Yes. It is consistent with what I have seen in my</p> <p>2 experience.</p> <p>3 Q Same with Ladder Capital?</p> <p>4 A Yes, sir.</p> <p>5 Q What is the Office of Comptroller of Currency?</p> <p>6 A The Office of Comptroller of Currency, also known as</p> <p>7 the OCC, is a federal agency that is one of the oversight for</p> <p>8 federally chartered banks.</p> <p>9 Q What guidance, if any, does the OCC provide with the</p> <p>10 respect -- with respect to a lender's analysis of a proposed</p> <p>11 guarantor's financial statement?</p> <p>12 A The OCC provides guidance in -- guidance for lenders,</p> <p>13 and in all aspects of underwriting to include guarantors. So</p> <p>14 there is guidance that they provide, and that guidance is</p> <p>15 expected to be incorporated into the various institutions that</p> <p>16 they regulate into their policies and procedures. And that is</p> <p>17 how it gets filtered down.</p> <p>18 So the OCC guidance is guidance for how the</p> <p>19 institution should handle it. And the institutions are then</p> <p>20 charged with creating their own policies and procedures that</p> <p>21 would be in accordance with OCC guidelines.</p> <p>22 Q And how, if at all, are the policies and procedures</p> <p>23 implemented at Deutsche Bank consistent with the OCC</p> <p>24 guidelines?</p> <p>25 A In my review and experience I believe that the</p>	

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<p>1 Deutsche Bank policies and procedures are consistent with the</p> <p>2 guidance that is provided by the OCC.</p> <p>3 Q And were the Deutsche Bank policies and procedures in</p> <p>4 your evaluation applied with respect to the three loans that</p> <p>5 they made at issue in your report?</p> <p>6 MR. WALLACE: Objection, leading.</p> <p>7 THE COURT: Sustained.</p> <p>8 Q How, if at all, were the Deutsche Bank lending</p> <p>9 procedures applied in connection with the three loans at issue</p> <p>10 in your report that were made by them?</p> <p>11 A In my review and experience I believe they were</p> <p>12 applied correctly and as prescribed in the OCC documents.</p> <p>13 Q And is that opinion -- would your opinion be the same</p> <p>14 for 40 Wall?</p> <p>15 A Yes, sir.</p> <p>16 MR. SUAREZ: Your Honor, I would like to show</p> <p>17 the witness Defendant's Exhibit 390 premarked for</p> <p>18 identification.</p> <p>19 MR. WALLACE: I am just going to note an</p> <p>20 objection. I guess I am unclear as to whether the witness</p> <p>21 is saying that the OCC guidelines applied to Ladder</p> <p>22 Capital's loans? He mentioned Deutsche Bank, I just</p> <p>23 wasn't sure if that also encompassed Ladder Capital.</p> <p>24 THE WITNESS: Ladder Capital, to my knowledge,</p> <p>25 is not under the purview of the OCC.</p>		<p>1 THE COURT: I'll allow a follow-up.</p> <p>2 MR. SUAREZ: Sure.</p> <p>3 Q How was the guidance relevant, if it is dated</p> <p>4 March 2022, to the loans at issue in this case?</p> <p>5 A The guidance would not have changed over the period</p> <p>6 of time. It would be consistent and would still remain the</p> <p>7 same. You know, as the time goes on, one thing that does</p> <p>8 change -- doesn't change is really an underwriting process.</p> <p>9 You know, still the fundamentals and foundation is there from</p> <p>10 the beginning of when you do it. It is, you know, from the</p> <p>11 time I have been involved in my experience, there is nothing</p> <p>12 that has changed from this to, call it, back in 2000 when I</p> <p>13 began my career.</p> <p>14 Q Do you see at the bottom paragraph where it says:</p> <p>15 Underwriting includes determining whether the borrower</p> <p>16 demonstrates the capacity to meet a realistic repayment plan</p> <p>17 from available cash flow and liquidity?</p> <p>18 A Yes, sir.</p> <p>19 Q How did you see that concept applied, if at all, in</p> <p>20 the underwriting of the Deutsche Bank loans?</p> <p>21 A Well, I mean, it follows, in my opinion, what they</p> <p>22 had done is they looked to see whether or not how the sources</p> <p>23 of repayment would be made and how a loan gets repaid. And a</p> <p>24 loan typically gets repaid through cash flow or the liquidation</p> <p>25 of the asset to repay the debt, whether it be a sale of the</p>	
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<p>1 MR. SUAREZ: My question was a little different.</p> <p>2 It was whether the process was consistent.</p> <p>3 Q Mr. Unell, do you recognize this document?</p> <p>4 A Yes, sir.</p> <p>5 Q What is this document?</p> <p>6 A This is the Safety and Soundness Commercial Real</p> <p>7 Estate Lending Handbook that is issued by the OCC dated</p> <p>8 March 2022.</p> <p>9 Q How, if at all, did you rely on this document in</p> <p>10 recommending your expert opinions in this case.</p> <p>11 A I reviewed it and took it into consideration when</p> <p>12 forming my opinions in my reports.</p> <p>13 Q If you turn to page 34 of the exhibit, which is the</p> <p>14 number on the lower left-hand corner, I would like to turn your</p> <p>15 attention to the section titled: Analysis of Borrowers' and</p> <p>16 Guarantors' Financial Condition.</p> <p>17 A Mm-Hm.</p> <p>18 Q How, if at all, does this guidance affect Deutsche</p> <p>19 Bank's underwriting of the three loans at issue in this case?</p> <p>20 A This is the guidance that they would have followed in</p> <p>21 putting together their own policies and procedures. And in my</p> <p>22 review, it is my opinion that it was followed correctly.</p> <p>23 MR. WALLACE: Again, note an objection to</p> <p>24 foundation. If we are talking about guidance from 2022,</p> <p>25 how it applies to loans that were made earlier than 2014.</p>		<p>1 asset to retire the debt, or the cash flow generated in order</p> <p>2 to service the debt on a monthly or annual basis.</p> <p>3 Q Is that consistent with the following sentence? It</p> <p>4 says: Cash flow from the underlying property or other</p> <p>5 indicators of borrower capacity is evaluated to determine</p> <p>6 whether and to what extent the borrower can adequately service</p> <p>7 interest and principal on a prospective loan?</p> <p>8 A Yes, sir. And I think that it is key to note that</p> <p>9 this is the borrower here that is -- so you are not looking at</p> <p>10 the guarantor here, you are looking at the borrower, which is</p> <p>11 the owner of the subject collateral, which is able to provide</p> <p>12 that itself.</p> <p>13 Q How does that distinction apply with respect to the</p> <p>14 three Deutsche Bank loans?</p> <p>15 A There was an independent analysis conducted on the</p> <p>16 assets that were taken as collateral for those three loans, and</p> <p>17 it was determined by Deutsche Bank that they wanted to make the</p> <p>18 loans.</p> <p>19 And the first thing that you do when you are looking</p> <p>20 at a deal is you would look at whether or not you want to do</p> <p>21 the deal based only the actual collateral in a real estate</p> <p>22 loan. If you don't like the collateral, you are not going to</p> <p>23 go beyond that. You are not going to go beyond what the loan</p> <p>24 or the collateral itself can service. So if, for example,</p> <p>25 Deutsche Bank did not like the Doral loan and the ability to</p>	

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<p>1 service itself, it would never have taken the next steps</p> <p>2 because it would have been a waste of everybody's time. If you</p> <p>3 don't like the collateral, that's the first step. And then you</p> <p>4 move on to looking at the other supports of credit such as a</p> <p>5 guaranty or other items that may support the credit in a time</p> <p>6 of need.</p> <p>7 Q And how, if at all, did this concept apply to the</p> <p>8 loan made by Ladder Capital on 40 Wall?</p> <p>9 A The same exact thing. It would look to the</p> <p>10 underlying collateral first to make sure they were comfortable</p> <p>11 with that, and make sure that they were comfortable with that</p> <p>12 as their collateral, because that's the primary source of</p> <p>13 repayment. And then from there they would look for other</p> <p>14 credit support items, anything from a personal guaranty, as it</p> <p>15 was in this case, or some of these loans, to letters of credit</p> <p>16 are sometimes posted; and sometimes cash escrow. There are</p> <p>17 multiple forms of credit support that can be provided out</p> <p>18 there.</p> <p>19 Q Was the credit support provided to the collateral in</p> <p>20 the 40 Wall loan different than the credit support provided in</p> <p>21 the Deutsche Bank loans?</p> <p>22 A Yes. The guaranties were different in that there was</p> <p>23 a full guaranty on the Deutsche Bank loans.</p> <p>24 Q And how was that different in the 40 Wall loan?</p> <p>25 A The 40 Wall had a limited guaranty.</p>		<p>1 So, despite whether or not the guaranty is a full</p> <p>2 guaranty or a partial guaranty, the engagement of a borrower is</p> <p>3 vital to a lender in their underwriting. And it could be, as</p> <p>4 it says, the willingness is very key there. Because if you</p> <p>5 have somebody that is willing to provide a guaranty, but they</p> <p>6 are not going to be willing to utilize it to support the</p> <p>7 credit, then you may as well not have it because of the</p> <p>8 prolonged litigation that could take, in my experience it has</p> <p>9 been years of litigation, in order to be able to act on that</p> <p>10 guaranty, if they are not willing.</p> <p>11 Q In your experience, how are guaranties typically</p> <p>12 enforced in troubled loan situations?</p> <p>13 A Guaranties are typically enforced in a troubled loan</p> <p>14 situation in order to promote, I guess, cooperation. They are,</p> <p>15 typically, the last thing that you would file or go after.</p> <p>16 Obviously every state is different in that there are</p> <p>17 judicial and non-judicial Foreclosure Laws, and that can play</p> <p>18 into the strategy. But ultimately what matters most is that</p> <p>19 the guaranty is there and that you have that engagement behind</p> <p>20 them which will allow the lender to know that there is</p> <p>21 something standing behind the asset. As well as the potential</p> <p>22 for there to be collection on guaranty if needed.</p> <p>23 THE COURT: I think the question was how, not</p> <p>24 why.</p> <p>25 MR. SUAREZ: Why would have been the next</p>	
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<p>1 MR. SUAREZ: If you can turn to the next page of</p> <p>2 the document?</p> <p>3 Q Looking to the second paragraph, it says: When</p> <p>4 evaluating guarantor support, examiners should consider whether</p> <p>5 the guarantor has both the willingness and ability to provide</p> <p>6 support for the credit, and whether the guaranty is legally</p> <p>7 enforceable.</p> <p>8 Do you see that?</p> <p>9 A Yes, sir.</p> <p>10 Q How was this concept -- withdrawn.</p> <p>11 Was this concept consistent with your analysis of the</p> <p>12 Deutsche Bank underwriting process?</p> <p>13 A Yes, sir.</p> <p>14 Q How so?</p> <p>15 A They received -- they being Deutsche Bank, received</p> <p>16 the Statements of Financial Condition. They conducted their</p> <p>17 own analysis. They had conversations with the borrower and</p> <p>18 guarantor, which would indicate the willingness and the ability</p> <p>19 to do so. You know, the guaranty is beyond just the actual</p> <p>20 numbers behind it. It provides a level of engagement for the</p> <p>21 lender. And that level of engagement keeps them where, in a</p> <p>22 time like today, where we have office buildings all over that</p> <p>23 are going back on non-recourse loans. It is very easy for</p> <p>24 somebody without any personal recourse just to hand the keys</p> <p>25 back. And banks do not want that.</p>		<p>1 question.</p> <p>2 THE COURT: Well, but no, you don't have to ask</p> <p>3 him why. He just answered why.</p> <p>4 How are these guaranties enforced normally in</p> <p>5 your experience?</p> <p>6 THE WITNESS: Guaranties are typically</p> <p>7 enforced -- to kind of step back. If there is a default</p> <p>8 under a loan, it depends whether it is a payment default</p> <p>9 or if it is a covenant default or a foot fault.</p> <p>10 A foot fault would be a minor default. A</p> <p>11 non-payment default.</p> <p>12 MR. WALLACE: He is from the south, Judge. I am</p> <p>13 probably one of the few people who understood what he</p> <p>14 meant.</p> <p>15 THE COURT: I didn't get it. But I am not from</p> <p>16 the south.</p> <p>17 MR. WALLACE: I got it. I am not from the</p> <p>18 south.</p> <p>19 MR. SUAREZ: I am from Miami, I had no idea what</p> <p>20 he meant.</p> <p>21 THE WITNESS: So, you know, it would trigger a</p> <p>22 conversation with the borrower and the guarantor. And</p> <p>23 that's what opens up the conversation for a restructuring.</p> <p>24 Typically enforcement and exercising of remedies is a last</p> <p>25 resort that any lender wants to go through.</p>	

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<p>1 So when you look at a guaranty, and that is</p> <p>2 typically a tertiary or beyond, sort of, repayment, but it</p> <p>3 is mainly there for engagement, you know.</p> <p>4 The term "comfort guaranty" is there because the</p> <p>5 lender has comfort that there is somebody standing behind</p> <p>6 it. And it necessarily -- doesn't necessarily mean how</p> <p>7 much they have behind it. I mean, we have had guarantors</p> <p>8 that sign on the deals that have minimal net worth. But</p> <p>9 at the end of the day their engagement and their expertise</p> <p>10 and their ability to complete the project and keep the</p> <p>11 project generating cash flow, and cash flow is what</p> <p>12 services the debt, is what is important. And without that</p> <p>13 individual, the asset is not as valuable to the lender.</p> <p>14 So, that level of engagement and comfort is</p> <p>15 almost, in my opinion, as important as the actual</p> <p>16 financials behind the guaranty.</p> <p>17 THE COURT: I still don't think that answers the</p> <p>18 question. How do you enforce it if there is</p> <p>19 non-cooperation?</p> <p>20 THE WITNESS: You would enforce it through</p> <p>21 litigation.</p> <p>22 THE COURT: That answers the question. Thank</p> <p>23 you.</p> <p>24 THE WITNESS: And I would say as a last resort.</p> <p>25 In my experience as a lender, litigation is not something</p>		<p>1 Organization in repositioning assets, and was highlighted</p> <p>2 throughout their credit memos.</p> <p>3 (The following proceedings were stenographically</p> <p>4 recorded by Senior Court Reporter Michael Ranita.)</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	
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<p>1 that you lead with. It would come after multiple attempts</p> <p>2 at negotiating a non-litigious outcome.</p> <p>3 THE COURT: I think all of the lawyers in this</p> <p>4 room understand that it is a last resort.</p> <p>5 Q When the collateral is being repositioned, what</p> <p>6 value, if any, does the guaranty have?</p> <p>7 A Well, in underwriting any deals, as I mentioned</p> <p>8 earlier, you have to feel comfortable with the actual project.</p> <p>9 And the project not only includes what it is doing, but who is</p> <p>10 doing it and their experience and their view of the market.</p> <p>11 And what the market view of them is.</p> <p>12 And also just an overall vision that real estate</p> <p>13 developers have. Lenders do not have the vision of a real</p> <p>14 estate developer. So that real estate developer, for lack of a</p> <p>15 better term, becomes their partner in the deal. It is not a</p> <p>16 financial partner but it is their completion partner. And</p> <p>17 without that partner, or a guarantor -- who is most of the time</p> <p>18 a guarantor, they need them in order to complete a very complex</p> <p>19 repositioning project from a construction standpoint, from a</p> <p>20 marketing standpoint and from a PR perspective.</p> <p>21 Q How, if at all, did you observe that concept with</p> <p>22 respect to the Deutsche Bank location?</p> <p>23 A It was very clear in my review of the various</p> <p>24 Deutsche Bank credit memos that the -- it was a high reliance</p> <p>25 upon the experience of President Trump and the Trump</p>		<p>1 Q Then is goes on to say, "A presumption of willingness</p> <p>2 to provide borrower, open parenthesis, close parenthesis,</p> <p>3 project -- (project) security, when the guarantor has an</p> <p>4 economic incentive, is usually appropriate unless there is</p> <p>5 evidence to the contrary."</p> <p>6 How is that factor implemented, if at all, in Deutsche</p> <p>7 Bank's underwriting of the loans?</p> <p>8 A In the subject loans with Deutsche Bank there was a</p> <p>9 tremendous amount of equity placed into these deals. And the</p> <p>10 equity would be the economic incentive. So the borrower and</p> <p>11 guarantor would have the incentive to perform on the loan in</p> <p>12 order to protect their equity.</p> <p>13 In the event that the asset was returned to the bank</p> <p>14 for litigation, that equity, which is in this case the economic</p> <p>15 incentive is wiped out, so if you do have the economic</p> <p>16 incentive, it does keep, once again, the engagement of that</p> <p>17 guarantor, because they do have the incentive to try to at least</p> <p>18 to recoup or try to garner back as much of their equity as they</p> <p>19 could in a distressed project. Or if it is something as a cost</p> <p>20 overrun that would provide a creative down the line, that it</p> <p>21 would provide them an economic incentive to perhaps place</p> <p>22 additional equity into a deal if needed for cost overruns or</p> <p>23 other items.</p> <p>24 Q And with respect to the Deutsche Bank loans, was that</p> <p>25 concept -- was that concept in play, in your analysis of the</p>	

<p>R. Unell - by Defendant - Direct (Mr. Suarez) Page 5651</p> <p>1 credit memos?</p> <p>2 A Yes, sir.</p> <p>3 Q How so?</p> <p>4 A If there was a focus and highlight of the amount of</p> <p>5 equity that was placed in the deals, the loan-to-value of those</p> <p>6 deals as well, and the structuring of those deals where there</p> <p>7 were various changes and loan terms based off of loan-to-value</p> <p>8 would really show how that economic incentive is tied to a</p> <p>9 guarantor.</p> <p>10 Q Then it goes on to say "Examiners should consider</p> <p>11 whether a guarantor has demonstrated a willingness to fulfill</p> <p>12 previous obligations, has sufficient economic incentive, and has</p> <p>13 a significant investment in the project."</p> <p>14 Do you see that?</p> <p>15 A Yes, sir.</p> <p>16 Q Was that factor evaluated in Deutsche Bank's</p> <p>17 underwriting of President Trump's guarantee?</p> <p>18 A Yes. In my review, I did see that the willingness to</p> <p>19 fulfill the economic incentive and the investment was all</p> <p>20 acknowledged in the various credit memos.</p> <p>21 Q Then the following sentence says, "Analysis should</p> <p>22 consider the liquidity of any assets that collateralize the</p> <p>23 guarantee."</p> <p>24 A Yes, sir.</p> <p>25 Q Was that analysis conducted by Deutsche Bank in its</p>	<p>R. Unell - by Defendant - Direct (Mr. Suarez) Page 5653</p> <p>1 A In my review of the credit memos, Deutsche Bank took a</p> <p>2 fairly deep dive into various assets. They engaged their</p> <p>3 valuation services group to look at four very large assets, and</p> <p>4 conducted their own analysis on those assets.</p> <p>5 In my experience, that is, you know, typical with very</p> <p>6 complex real estate assets, to engage experts within your own</p> <p>7 organization to do so, but it would not be something where we</p> <p>8 would require, in my experience, to provide any sort of</p> <p>9 appraisals for non-collateral assets.</p> <p>10 Q The following says "Guarantor liquidity should be</p> <p>11 verified by the bank."</p> <p>12 What does that mean?</p> <p>13 A "Liquidity" is one of the most important items of a</p> <p>14 balance sheet. It's cash, it's readily available. And in order</p> <p>15 to be able to make sure that that is true and correct, typically</p> <p>16 bank statements, or brokerage statements, or other backup is</p> <p>17 provided to the lender to support that liquidity on the</p> <p>18 Statement of Financial Condition.</p> <p>19 Q And how, if at all, was this concept implemented by</p> <p>20 Deutsche Bank in its review of President Trump's financial</p> <p>21 condition?</p> <p>22 A In my review of the credit memos, on several occasions</p> <p>23 there were members of the Deutsche Bank team that, in person,</p> <p>24 per the credit memos, met at the guarantor and borrower's office</p> <p>25 to verify the liquidity.</p>
<p>R. Unell - by Defendant - Direct (Mr. Suarez) Page 5652</p> <p>1 underwriting of President Trump's guarantee?</p> <p>2 MR. WALLACE: Objection. Leading.</p> <p>3 THE COURT: Sustained.</p> <p>4 Q How, if at all, was that analysis conducted by Deutsche</p> <p>5 Bank in its analysis of President Trump's guarantee?</p> <p>6 A Deutsche Bank completed, in their credit memos, a full</p> <p>7 analysis of the guarantor's liquidity, all of their assets, and</p> <p>8 went above and beyond additional kind of diligence on various</p> <p>9 items, including the verification of liquidity, which is</p> <p>10 extremely important, amongst other things.</p> <p>11 Q Then it goes on to say "guarantor's unpledged assets</p> <p>12 should not be considered a substitute for project equity."</p> <p>13 What does that mean?</p> <p>14 A It means that assets that are on the guarantor's</p> <p>15 Statement of Financial Condition balance sheet that do not have</p> <p>16 a liability assigned to them, or tied to them, that that is not</p> <p>17 a substitute for the collateral. The collateral stands on its</p> <p>18 own, which would be what the project is; that those</p> <p>19 non-collateral assets are -- should not -- they go on, but not</p> <p>20 tied to this particular loan or asset, but they are part of the</p> <p>21 whole guarantor's financial picture as -- and would be analyzed</p> <p>22 as such.</p> <p>23 Q And how, if at all, was that concept implemented by</p> <p>24 Deutsche Bank in its underwriting of President Trump's</p> <p>25 financial condition?</p>	<p>R. Unell - by Defendant - Direct (Mr. Suarez) Page 5654</p> <p>1 Q And how, if at all, were these concepts that we just</p> <p>2 discussed implemented by Ladder Capital in its underwriting of</p> <p>3 the limited guarantee provided in that transaction?</p> <p>4 A In similar fashion.</p> <p>5 Q In the real world, Mr. Unell, how are these factors</p> <p>6 implemented in underwriting guarantees and the Statements of</p> <p>7 Financial Condition of guarantors?</p> <p>8 A In the real kind of concept here is, is that if, as I</p> <p>9 said earlier, it provides a road map, the Statement of Financial</p> <p>10 Condition does. And allows for a lender or a user, in this case</p> <p>11 being Ladder Capital and Deutsche Bank, to make their own</p> <p>12 determination, whether it is the willingness, the sufficient</p> <p>13 economic incentive, or the investment in the project.</p> <p>14 The Statement of Financial Condition allows for those</p> <p>15 various items to be analyzed on a deal-by-deal basis as it</p> <p>16 relates to the investment in the project, as well as the history</p> <p>17 of the borrower, um, to be able to know about their ability to</p> <p>18 fulfill previous obligations. And the liquidity, as I mentioned</p> <p>19 earlier, being one of the most important factors of analyzing a</p> <p>20 Statement of Financial Condition.</p> <p>21 Q What, if anything, did you observe in connection with</p> <p>22 the underwriting of the Deutsche Bank loans was inconsistent</p> <p>23 with the way that it normally works in the real world?</p> <p>24 A In my experience and my review, I believe that Deutsche</p> <p>25 Bank acted consistently with how I have seen it done at various</p>

<p>R. Unell - by Defendant - Direct (Mr. Suarez) Page 5655</p> <p>1 lending institutions that I have worked at and worked with over 2 the years. 3 Q Same question about Ladder Capital. 4 A The same answer. Would be the exact same, acted in a 5 similar fashion. 6 MR. SUAREZ: Your Honor, I move Defendant's Exhibit 7 D390 into evidence. 8 THE COURT: Granted. It's in. 9 (Defendant's Exhibit D390 was deemed marked and 10 admitted in evidence.) 11 MR. SUAREZ: I would like to show the witness 12 what's been previously admitted into evidence as Defendant's 13 Exhibit 62. 14 (Whereupon, the exhibit was displayed on the 15 screen.) 16 (The witness was handed the exhibit.) 17 MR. SUAREZ: May I take the opportunity to commend 18 the court officers for the fantastic job in keeping track of 19 all of our exhibits? 20 THE COURT: You may. And I'm sure we all agree 21 with you. 22 MR. SUAREZ: With your Honor's permission, I could 23 start moving through the document that's on the screen. 24 THE COURT: I think that's perfectly reasonable. 25 (The witness was handed the exhibit.)</p>	<p>R. Unell - by Defendant - Direct (Mr. Suarez) Page 5657</p> <p>1 A It's very similar to banks that I've worked at and 2 their private wealth groups. There is a very good relationship 3 with the institutions I worked at between the commercial real 4 estate bank and the private wealth bank. And the same 5 guidelines that apply from a regulatory standpoint that apply to 6 a commercial real estate group, would also apply to the Private 7 Wealth Group, if real estate is the main form of collateral. 8 Q Then it goes on to say "The offering of this product on 9 competitive terms is a central aspect of PWM's initiative to 10 expand our business with selected, proven and successful real 11 estate entrepreneurs and investors." 12 Do you see that? 13 A Yes, sir. 14 Q Were the loans extended by Deutsche Bank, in your 15 experience, those at issue here in the report, consistent with 16 the objectives set forth in this memo? 17 MR. WALLACE: Objection. Leading. 18 THE COURT: Sustained. 19 Q How, if at all, in your experience were the loans 20 extended by Deutsche Bank consistent with the objectives set 21 forth in this report? 22 A Very consistent. In with -- in my experience of 23 dealing with high net wealth and ultrahigh net wealth 24 developers, that credit is one of very -- it was one of -- is a 25 leading item. And in order to expand the share of wallet, is</p>
<p>R. Unell - by Defendant - Direct (Mr. Suarez) Page 5656</p> <p>1 THE WITNESS: Thank you sir. 2 Q Mr. Unell, do you recognize this document? 3 A Yes, sir. 4 Q What is this document? 5 A This is titled, "The New Private Wealth Management US, 6 Lending Product, Commercial Real Estate Finance." Reviewed 7 April 23rd, 2014, in Private Wealth Management, Deutsche Bank. 8 Q And how, if at all, was this document relevant to the 9 formulation of your opinions in this case? 10 A I reviewed this document and I took what was in it and 11 applied it to kind of the underwriting and standards that were 12 put forth in the credit memos by Deutsche Bank. 13 MR. SUAREZ: Let's take a look at the second page 14 of this document. 15 (Whereupon, the exhibit was displayed on the 16 screen.) 17 MR. SUAREZ: In the middle of the first paragraph. 18 Q It says, "Real estate entrepreneurs and investors 19 represent an important component of our client base and US 20 wealth creation capacity." 21 A Yes, sir. 22 Q Is that consistent with your experience in banking? 23 A Yes, sir. 24 Q And how, if at all, is the contents of this memo 25 reflective of your experience in -- in banking?</p>	<p>R. Unell - by Defendant - Direct (Mr. Suarez) Page 5658</p> <p>1 what it would be referred to, and create other income 2 opportunities for the bank, that this would be something that 3 would bring them in. Real estate developers love the credit 4 side of things, but with that comes the open relationship and 5 cross selling which is a vital part of a large banking 6 institution. And that cross selling would allow a bank to 7 create additional revenue opportunities in the form of whether 8 it be trust and estates, deposits, other items. It could be 9 brokerage accounts, et cetera, that also provide what -- would 10 be a total relationship value. 11 And the to the AI relationship value is something that 12 is looked at at the highest levels of a bank. And while certain 13 items may be, as I said, more competitive, other items are more 14 commodities, and it is those commodities that lenders like to 15 get their hands on -- I should say banks like to get their hands 16 on, but they typically have to lead with credit, because credit 17 is what is most important to those real estate developers. And 18 that ultimately leads to a relationship where depository, trusts 19 and other relationships are established within the bank. 20 Q What, if any, evidence have you observed in this trial 21 that is consistent with that opinion? 22 A You know, hearing Ms. Vrablic's testimony, it was clear 23 that she was driving the kind of the relationship, and was 24 leading with credit, but also referenced multiple other 25 opportunities for revenue from the bank to include, also,</p>

<p>R. Unell - by Defendant - Direct (Mr. Suarez) Page 5659</p> <p>1 introduction to other high net worth individuals. I believe she</p> <p>2 testified, or she did testify that there were, you know, that</p> <p>3 referrals were their main source of new business, and that they</p> <p>4 felt that this was a very good client to -- in order to be able</p> <p>5 to grow the share of wallet, and also to bring in new business</p> <p>6 from other family members and friends.</p> <p>7 THE COURT: Five-minute warning.</p> <p>8 MR. SUAREZ: Let's go to page ten of this document.</p> <p>9 (Whereupon, the exhibit was displayed on the</p> <p>10 screen.)</p> <p>11 Q Do you see the section that says "Guarantees"?</p> <p>12 A Yes, sir.</p> <p>13 Q Then it says, "Although it is not standard in the</p> <p>14 industry, PWM will require personal guarantees, or a guarantee,</p> <p>15 from an acceptable creditworthy entity."</p> <p>16 A Yes, sir.</p> <p>17 Q How is the use of guarantees by the Private Wealth</p> <p>18 Management Group different than the standard in the industry, if</p> <p>19 at all?</p> <p>20 A Private Wealth Management is -- it's a relationship</p> <p>21 business, and the private individual is typically where that</p> <p>22 relationship is driven.</p> <p>23 And so as Ms. Vrablic also said, that is one of the</p> <p>24 factors that's in there, that the relationship is with that</p> <p>25 individual, which is why the guarantee is there.</p>	<p>R. Unell - by Defendant - Direct (Mr. Suarez) Page 5661</p> <p>1 guarantor, or an entity that is standing behind it, in the event</p> <p>2 of cost overruns, cash flow short falls.</p> <p>3 You can use COVID as an example, where there was</p> <p>4 massive cash flow short falls of office and retail because</p> <p>5 tenants were not paying. That is something where you would</p> <p>6 then, even under at a 25 percent guarantee, you would have the</p> <p>7 comfort of going back to the guarantor to say, "Okay, we need</p> <p>8 some level here. How are you going to fill the gap or bridge</p> <p>9 the gap between the cash flow and the debt service needs, or the</p> <p>10 capital needs?"</p> <p>11 Q How, if at all, was this concept reflected in the</p> <p>12 underwriting of the loans extended -- the facilities extended by</p> <p>13 Deutsche Bank in this case?</p> <p>14 A Deutsche Bank had mechanisms in several of the loans</p> <p>15 that would allow for the guarantee to stepdown from a full</p> <p>16 guarantee to various levels based off of, whether it be debt</p> <p>17 service coverage or LTV's.</p> <p>18 Q In your experience in the industry, how, if at all, is</p> <p>19 that consistent with the use of guarantees in commercial real</p> <p>20 estate transactions?</p> <p>21 A It's very consistent. Guarantor's, you know, they are</p> <p>22 -- would like to reduce their liability and contingent</p> <p>23 liabilities as much as possible. So a reduction from a hundred</p> <p>24 percent to 75 percent to 50 percent or 25 percent gives them</p> <p>25 that comfort. But on the flip side, a ten percent or 25 percent</p>
<p>R. Unell - by Defendant - Direct (Mr. Suarez) Page 5660</p> <p>1 It also is, as I said, it provides that comfort level.</p> <p>2 The comfort guarantee that the individual or the entity will</p> <p>3 stand behind the project and be there in the event of it's need</p> <p>4 for additional capital, or that there are cash flow short falls</p> <p>5 during that period of time.</p> <p>6 Q Then is goes on to say "The amount of guarantee can</p> <p>7 range from 25 to 100 percent depending on the deal structure and</p> <p>8 embedded risk."</p> <p>9 A Yes, sir.</p> <p>10 Q What do you understand that to mean?</p> <p>11 A That the underwriting team and the deal structuring can</p> <p>12 range from, as it says 25 to a hundred percent, so either a</p> <p>13 limited to a full guarantee.</p> <p>14 In my experience, it has usually started off as a full</p> <p>15 guarantee and then burn off, as it did in the case of several of</p> <p>16 the subject ones.</p> <p>17 Q And how is accepting a guarantee for less than the full</p> <p>18 amount of the facility consistent with the bank's lending</p> <p>19 obligations, if at all?</p> <p>20 A Banks are in the business of evaluating risk, and if a</p> <p>21 loan-to-value is extremely low, call it below 60 percent, and in</p> <p>22 some cases even lower than that, that the guarantee, whether it</p> <p>23 be at 25 percent, would probably, highly unlikely, if ever need</p> <p>24 to be utilized to fund a short fall. However, as I mentioned,</p> <p>25 it does provide that comfort and the ability to go back to a</p>	<p>R. Unell - by Defendant - Direct (Mr. Suarez) Page 5662</p> <p>1 guarantee for the lender also provides them the comfort that</p> <p>2 they have engagement and a tertiary or beyond source of --</p> <p>3 additional source of repayment.</p> <p>4 THE COURT: Before we break, which we are about to,</p> <p>5 I want to -- I'll admonish the witness not to discuss this</p> <p>6 case, or his testimony, or anything related to it during the</p> <p>7 break. We usually take ten minute breaks, but they take</p> <p>8 15 minutes.</p> <p>9 I want to make sure Counsel, all Counsel are aware,</p> <p>10 and they probably already are, that this morning the</p> <p>11 Appellate Division, First Department issued a decision</p> <p>12 vacating the stay on the two gag orders that I imposed</p> <p>13 earlier on this case. So I intend to enforce the gag orders</p> <p>14 rigorously and vigorously, and I want to make sure that</p> <p>15 Counsel inform their clients of the fact that the stay was</p> <p>16 vacated.</p> <p>17 MR. KISE: We are aware, your Honor. It's a tragic</p> <p>18 day for the rule of law, but we are aware.</p> <p>19 MR. WALLACE: Objection.</p> <p>20 THE COURT: It is what it is to a state of</p> <p>21 tautology. See you all at 11:35.</p> <p>22 (Whereupon, a 15-minute break was agreed upon and</p> <p>23 taken by all parties.)</p> <p>24 THE COURT OFFICER: All rise. Part 37 is back in</p> <p>25 session. Please be seated and come to order.</p>

<p>R. Unell - by Defendant - Direct (Mr. Suarez) Page 5663</p> <p>1 THE COURT: Just before we resume, I've considered</p> <p>2 the request for the scheduling of the posttrial briefs and</p> <p>3 the oral argument, and I'll let the person sitting alongside</p> <p>4 of me announce what I've decided.</p> <p>5 MS. GREENFIELD: Okay. Given both parties seem to</p> <p>6 be comfortable with doing closing arguments after the briefs</p> <p>7 being due, so we are going to adopt that strategy.</p> <p>8 The briefs are going to be due by noon on</p> <p>9 January 5th, and then we'll hold oral argument, or closing</p> <p>10 arguments, whatever you want to call it, January 9th at</p> <p>11 10:00 a.m. We will no longer have access to this courtroom,</p> <p>12 so that will be in our normal courtroom, 418, and the space</p> <p>13 will just be limited.</p> <p>14 THE COURT: And I will issue a decision a few weeks</p> <p>15 after the ninth. I would hope this month, but no</p> <p>16 guarantees.</p> <p>17 Mr. Kise.</p> <p>18 MR. KISE: Your Honor, is there --</p> <p>19 THE COURT: January. Sorry.</p> <p>20 MR. KISE: I have conflicts on other cases. Is</p> <p>21 there any way we could have until the 8th, and then have the</p> <p>22 hearing the following week, the 15th, sometime that</p> <p>23 following week? I just have -- everything, as you might</p> <p>24 imagine, in my professional life has been on hold for</p> <p>25 months, and I have those weeks -- I'll do whatever the Court</p>	<p>R. Unell - by Defendant - Direct (Mr. Suarez) Page 5665</p> <p>1 THE COURT: I'm sorry, Mr. Kise, did you say you</p> <p>2 could do oral argument the 11th?</p> <p>3 MR. KISE: Yeah, January 11th.</p> <p>4 THE COURT: Yeah, we'll do that.</p> <p>5 MR. KISE: All I'm saying is two days. I'm</p> <p>6 proposing the following week, that would be even easier, but</p> <p>7 if the 11th is an option, or the 12th.</p> <p>8 MS. GREENFIELD: Okay. As long as we could still</p> <p>9 have the brief due January 5th at noon, we could move oral</p> <p>10 argument to the 11th. I just have to let parties know on</p> <p>11 another case.</p> <p>12 MR. KISE: Can I have until five on the fifth?</p> <p>13 MS. GREENFIELD: No.</p> <p>14 MR. KISE: All right. Thanks.</p> <p>15 THE COURT: Give me one more moment.</p> <p>16 MR. KISE: Thank you, Judge.</p> <p>17 THE COURT: Attorney General, are you okay with the</p> <p>18 5th and the 11th?</p> <p>19 MR. WALLACE: Moving from the 9th to the 11th seems</p> <p>20 fine, I think, from our perspective.</p> <p>21 THE COURT: Okay. Let's resume the direct</p> <p>22 examination.</p> <p>23 Q Mr. Unell, drawing your attention to the section that</p> <p>24 says, "Covenants on the guarantor may include: Minimum net</p> <p>25 worth after adjusted contingent liabilities, and minimum</p>
<p>R. Unell - by Defendant - Direct (Mr. Suarez) Page 5664</p> <p>1 decides, but is there any way to get until the 8th to file</p> <p>2 something, and then have the hearing sometime the week of</p> <p>3 the 15th? Really, the 16th, because I believe Monday, the</p> <p>4 15th, is a holiday.</p> <p>5 THE COURT: I certainly appreciate we've all put</p> <p>6 things on hold. The schedule I tentatively announced is --</p> <p>7 that was intended, very precisely, to shaving days here and</p> <p>8 there. Give me a moment.</p> <p>9 MR. KISE: Even the end of that week would help,</p> <p>10 like the 11th or 12th would be better than the ninth.</p> <p>11 THE COURT: Mr. Kise, and everyone, is there any</p> <p>12 way to have -- would it help to have oral argument the first</p> <p>13 week in January instead of the second week?</p> <p>14 MR. KISE: No, that would be even worse. I guess</p> <p>15 all I'm really asking is instead of the 9th, like the 11th</p> <p>16 or 12th.</p> <p>17 MS. HABBA: I'm out of state, your Honor.</p> <p>18 THE COURT: Let's do this. Let me think about</p> <p>19 this. We have plenty of time.</p> <p>20 MR. KISE: That's fine.</p> <p>21 THE COURT: Maybe we'll consult again.</p> <p>22 MR. KISE: I'm talking about a two-day shift. The</p> <p>23 submission date is not really the problem; that's not really</p> <p>24 the issue, but the argument date, if there is any way I</p> <p>25 might be able to shift around things later in that week.</p>	<p>R. Unell - by Defendant - Direct (Mr. Suarez) Page 5666</p> <p>1 unencumbered liquidity and/or cash flow."</p> <p>2 How, if at all, are those covenants consistent with</p> <p>3 what you've seen applied in the real world?</p> <p>4 A They are consistent with my experience.</p> <p>5 Q And how, if at all, are those covenants utilized by</p> <p>6 lenders in real estate lending transactions?</p> <p>7 A Covenants are typically utilized by lenders to monitor</p> <p>8 performance and would indicate a -- one way or the other, a</p> <p>9 positive or negative trend as they are required to be tested.</p> <p>10 And it gives a lender an idea of how their loan, or I should say</p> <p>11 not necessarily the loan, um, in this case, a guarantor covenant</p> <p>12 would be how the guarantor may have changed year over year in</p> <p>13 order to be able to assess how strong that guarantee is, and</p> <p>14 provide their own analysis.</p> <p>15 Q And how, if at all, is that consistent with any</p> <p>16 observations that you may have made in Deutsche Bank's</p> <p>17 underwriting of the loans at issue in this case?</p> <p>18 A It is consistent with what I have reviewed in this</p> <p>19 case.</p> <p>20 Q How is that?</p> <p>21 A Um, that the covenants on the subject Deutsche Bank</p> <p>22 loans did include a minimum net worth, as well as a liquidity</p> <p>23 covenant.</p> <p>24 Q And how are the covenants, in your review of the credit</p> <p>25 analysis, applied in the subject loan transactions?</p>

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<p>R. Unell - by Defendant - Direct (Mr. Suarez) Page 5667</p> <p>1 A They were determined, obviously, by the bank in their 2 sole discretion based off of where they believed it would set a 3 threshold to allow them to monitor the performance and the 4 capability of the guarantee, and conduct an analysis thereof. 5 Q Then is goes on to say "Nonrecourse loans would be 6 considered on a very limited exception" -- excuse me, "very 7 limited exception basis only for top tier clients on very low 8 risk transactions." 9 Do you see that? 10 A Yes, sir. 11 Q How, if at all, is that consistent with the burn off of 12 the guarantees in the two Deutsche Bank transactions in this 13 case? 14 A It would be consistent in that it was reviewed and 15 approved, and it was in conjunction with the risk profile of the 16 transaction improving for the lender. 17 Q What, if anything, would Deutsche Bank's agreement to 18 extinguish the guarantee in two of the transactions at issue in 19 this case mean in the real world? 20 A Ideally, it would mean that the guarantor is off the 21 hook, if you wanted to call it that. It would also mean that 22 Deutsche Bank would have lost a tertiary, or beyond, source of 23 repayment, or the ability to have the engagement as the -- what 24 I would go back and say, of the guarantor, in the event that 25 they needed it.</p>	<p>Page 5669</p> <p>1 Q What is this document? 2 A This is a compliance certificate made out to Deutsche 3 Bank Trust Company Americas, dated October 28th, 2021. 4 Q Can I draw your attention to the middle of the first 5 page where it says, "The foregoing presents fairly in all 6 material respects the financial condition of guarantor at the 7 period presented." 8 A Yes, sir. 9 (Continued on the next page.) 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
<p>R. Unell - by Defendant - Direct (Mr. Suarez) Page 5668</p> <p>1 Q And how, at all, is that consistent with the OCC 2 guidelines on underwriting guarantees? 3 A It is consistent, and consistent that as the risk 4 profile changes and becomes improved for the lender, that they 5 would then drop certain restrictions and covenants and 6 guarantees, because they're, as I said earlier, in the business 7 of assessing risk. And if the collateral itself it a low 8 loan-to-value and a positive cash flow is able to carry it on 9 itself, then that would consider -- it would be considered a 10 lower risk profile, and thus eliminate the need for additional 11 support. 12 MR. WALLACE: Not an objection. Can the witness 13 clarify when he says that "they're in the business of 14 assessing risk", who he is referring to? 15 THE WITNESS: Yes, sir. Deutsche Bank. Deutsche 16 Bank, and banks in general. 17 MR. SUAREZ: Your Honor, if I may show the witness 18 what's been previously admitted into evidence as Plaintiff's 19 Exhibit 515. 20 (Whereupon, the exhibit was displayed on the 21 screen.) 22 (The witness was handed the exhibit.) 23 THE WITNESS: Thank you very much. 24 Q Mr. Unell, do you recognize this document? 25 A Yes, sir.</p>	<p>Unell - by Defendant - Direct (Suarez) Page 5670</p> <p>1 Q What does this language mean in the real world, 2 Mr. Unell? 3 A It means it is in the opinion of the person that 4 submitted it, in this case it is the guarantor and the 5 borrower, that the information that is being presented is 6 correct in all material respects. 7 Q And I would like to focus your word -- your attention 8 on the phrase "in all material respects -- "presents fairly in 9 all material respects." How do banks interpret, or lenders 10 more specifically, interpret the concept of presenting fairly 11 in all material respects? 12 A Materiality is in the eye of the user, and that the 13 lender is able to determine what they believe in their own risk 14 rating, their own risk profile and underwriting and analysis, 15 what is material to them. And that the Statements of Financial 16 Condition, as well as this document is -- that it is -- they 17 are the ones to decide what is material and not material, and 18 at what levels those are. 19 Q And in your experience, how is a compliance 20 certificate of this nature used by a lender in the real estate 21 lending industry? 22 A The compliance certificate is kind of a -- I wouldn't 23 say it is a check-the-box; it is a report card or a health 24 check, and is done based on what the terms of the loan are, 25 quarterly, annually. It could be -- obviously it is prescribed</p>

<p>Unell - by Defendant - Direct (Suarez) Page 5671</p> <p>1 in the loan documents. And what this allows a lender to do is</p> <p>2 to see if there have been any significant changes in the</p> <p>3 financial profile of both the borrower and the guarantor</p> <p>4 throughout the period of time. And allow for them to, as I</p> <p>5 said earlier, to see if there has been any positive or negative</p> <p>6 trends over the time period and able to allow them to compare</p> <p>7 them to each other.</p> <p>8 Q And why do banks require this information?</p> <p>9 A Banks require this information so that they can</p> <p>10 perhaps see a leading indicator if there is a decline. Even</p> <p>11 though it may not be a breach or a default of a covenant,</p> <p>12 allows to see if there are potential weaknesses and allow,</p> <p>13 potentially, for conversations.</p> <p>14 On the flip side, it also can show that there has</p> <p>15 been improvement in the condition of a guarantor, whether it be</p> <p>16 liquidity, whether it be a reduction of liabilities, et cetera.</p> <p>17 It gives, as I said, an updated snapshot to make sure that they</p> <p>18 were in compliance.</p> <p>19 Q And in your review of Deutsche Bank's underwriting of</p> <p>20 the loans at issue in this case, how, if at all, were the</p> <p>21 compliance certificates utilized by the bank?</p> <p>22 A They were utilized as I would expect, and throughout</p> <p>23 my experience, in the manner that I just described, to monitor</p> <p>24 the condition of the borrower and the guarantor throughout the</p> <p>25 life of the loan.</p>	<p>Unell - by Defendant - Direct (Suarez) Page 5673</p> <p>1 financial profile of the guarantor. And also, you know, in my</p> <p>2 experience it would be very rare for a lender to try to</p> <p>3 exercise any sort of remedy upon a personal residence.</p> <p>4 Q Are you familiar with the net worth covenants</p> <p>5 contained in the loan documents on the four transactions that</p> <p>6 you have evaluated in this case?</p> <p>7 A Yes, sir.</p> <p>8 Q Can you briefly describe your understanding of the</p> <p>9 net worth covenant in the Deutsche Bank loans?</p> <p>10 A Yes. The net worth covenant was \$2.5 billion and was</p> <p>11 to be determined based off of the guarantor's submission as is</p> <p>12 usual practice.</p> <p>13 Q What does the term adjusted net worth mean in the</p> <p>14 lending context?</p> <p>15 A Adjusted net worth is a calculation that is</p> <p>16 undertaken once a lender has an analysis. And there are</p> <p>17 various adjustments that are made throughout in order to</p> <p>18 provide a conservative view of how the bank looks at a</p> <p>19 Statement of Financial Condition.</p> <p>20 Q And in underwriting a guaranty, what is the purpose</p> <p>21 of the bank utilizing an adjusted net worth, if any?</p> <p>22 A The adjusted net worth provides, as I said, a</p> <p>23 conservative view of what the assets are on there.</p> <p>24 More importantly, it also does not adjust liability,</p> <p>25 so the liabilities remain. However, assets are analyzed</p>
<p>Unell - by Defendant - Direct (Suarez) Page 5672</p> <p>1 Q What factors would you expect a bank to consider in</p> <p>2 determining whether the compliance certificate presents fairly</p> <p>3 in all material respects, the financial condition of the</p> <p>4 guarantor?</p> <p>5 A Would you mind repeating that?</p> <p>6 Q What factors?</p> <p>7 A The factors? Whether the presentation is the same as</p> <p>8 it has been over the years for consistency, the sources, the</p> <p>9 information provided in their Statements of Financial</p> <p>10 Condition, and most importantly whether or not it provides</p> <p>11 ample information for the user to conduct their own analysis.</p> <p>12 Q Are you aware in this case of a discrepancy in the</p> <p>13 reporting of the size of President Trump's triplex?</p> <p>14 A Yes, sir.</p> <p>15 Q And would a change in the reporting of the size of</p> <p>16 the guarantor's triplex, for example, be something that would</p> <p>17 factor into the bank's evaluation as to whether the guarantor's</p> <p>18 financial condition is presented fairly in all material</p> <p>19 respects?</p> <p>20 A In my opinion it would not be material based on the</p> <p>21 other information and the amount of assets and liabilities</p> <p>22 that are included on the Statement of Financial Condition.</p> <p>23 Q Why is that?</p> <p>24 A Because when you look at it, it is a personal</p> <p>25 residence. It is -- was a minor portion of the overall</p>	<p>Unell - by Defendant - Direct (Suarez) Page 5674</p> <p>1 individually and are determined by the lender in their sole</p> <p>2 discretion as to where they would like that from a conservative</p> <p>3 basis. And it is done in order to, as I said, as banks are in</p> <p>4 the business of analyzing risk, and from a conservative</p> <p>5 approach, that is what is done on these sort of statements.</p> <p>6 Q And how is the concept of an adjusted net worth used</p> <p>7 with respect to the determination of a minimum net worth</p> <p>8 covenant by a lender, if at all?</p> <p>9 A They are unrelated.</p> <p>10 Q Why is that?</p> <p>11 A Because the covenant is based on the net worth of the</p> <p>12 guarantor, and is not the adjusted net worth. If the adjusted</p> <p>13 net worth were to be the determinant, because it is done by a</p> <p>14 lender, in their own discretion and under their own analysis,</p> <p>15 it would be unfair to a borrower because a lender could</p> <p>16 manufacture a default. If it is in their sole discretion and</p> <p>17 for whatever reason -- and there have been, I have worked on</p> <p>18 several deals where there have been claims by borrowers that</p> <p>19 defaults were manufactured -- it would result in very dirty</p> <p>20 litigation and lengthy litigation as it results to what is the</p> <p>21 value.</p> <p>22 Q What options are available to a lender if there is a</p> <p>23 violation of a net worth covenant?</p> <p>24 A There are several options. You know, first, it could</p> <p>25 be whether or not you want to issue a default; whether or not</p>

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<p>1 how you approach the client. Typically in my experience, no</p> <p>2 matter what the relationship is with the borrower, whether it</p> <p>3 be adverse or whether it be in the form of a very good bank</p> <p>4 customer Private Wealth, that you would have a conversation</p> <p>5 with them to understand exactly what is going on. And that</p> <p>6 information would inform how the potential breach or covenant</p> <p>7 default would impact the loan and the ability for the loan to</p> <p>8 be repaid. And the ability for the loan to be debt serviced.</p> <p>9 From there, conversations would then also then say,</p> <p>10 okay, well what caused that default. Is there a -- is this a</p> <p>11 long-term situation that will result in the net worth being</p> <p>12 lower than it had been prescribed previously? Or, is it a</p> <p>13 short-term blip because of a cash need for another project or</p> <p>14 waiting for sales, proceeds, et cetera.</p> <p>15 But it opens up the conversation. And typically if</p> <p>16 it does not impact the repayment performance of a loan, it</p> <p>17 would be forbear-ed against or would perhaps even be readjusted</p> <p>18 downward if there was an indication that the net worth was</p> <p>19 going to be lower on an ongoing basis.</p> <p>20 Q And how, if at all, was the use of minimum net worth</p> <p>21 covenants by Deutsche Bank consistent with your experience in</p> <p>22 the real world?</p> <p>23 A In my experience, in my review of the Deutsche Bank</p> <p>24 credit memos, it is consistent with that.</p> <p>25 Q Why is that?</p>		<p>1 risk rating process. And risk rating processes are proprietary</p> <p>2 and, you know, kind of throw everything into a blender and</p> <p>3 algorithms, et cetera, that are created to define that and</p> <p>4 that's how that is done.</p> <p>5 Q Are your observations in this case with respect to</p> <p>6 Ladder Capital's conduct any different from those of Deutsche</p> <p>7 Bank's conduct?</p> <p>8 A No, sir.</p> <p>9 MR. WALLACE: Objection, leading.</p> <p>10 Q How, if at all, are your observations concerning</p> <p>11 Ladder Capital's conduct different from those of Deutsche Bank?</p> <p>12 MR. WALLACE: I am going to object to that as</p> <p>13 well. Saying how and then asking a leading question, how</p> <p>14 if at all, it is still a leading question that suggests</p> <p>15 the answer to the witness.</p> <p>16 I haven't been objecting to it overall, but it</p> <p>17 is still a leading question.</p> <p>18 MR. SUAREZ: It doesn't suggest the answer --</p> <p>19 MR. WALLACE: It does.</p> <p>20 MR. SUAREZ: -- which is the definition of what</p> <p>21 a leading question is.</p> <p>22 THE COURT: Give me a second.</p> <p>23 MR. SUAREZ: I am not saying: Isn't it true</p> <p>24 that the Ladder Capital underwriting isn't any different.</p> <p>25 That would be a leading question because it would suggest</p>	
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<p>1 A Because they -- they relied upon the -- their</p> <p>2 knowledge and their information to set the net worth covenant.</p> <p>3 And then consistent with my experience, the net worth covenant</p> <p>4 was determined by the guarantor submitted statements.</p> <p>5 Q I just want to clarify one point. You said</p> <p>6 "inconsistent with" or "in consistency with"?</p> <p>7 A In consistency with.</p> <p>8 THE COURT: It is an important distinction.</p> <p>9 THE WITNESS: Yes.</p> <p>10 Q Why is that?</p> <p>11 A Are you asking why they are consistent?</p> <p>12 Q Yes.</p> <p>13 A Because that's -- that is how every single loan that</p> <p>14 I have worked on that has a net worth covenant is done. As I</p> <p>15 mentioned earlier, if you were to rely on an adjusted net</p> <p>16 worth, which is out of the control of the borrower or</p> <p>17 guarantor, that would create a multitude of problems down the</p> <p>18 line. But if it is in somebody's sole and absolute discretion,</p> <p>19 typically a borrower and guarantor are not given a peek behind</p> <p>20 the curtain to see what adjustments and analysis are done by a</p> <p>21 lender. Those are proprietary documents that, in this case,</p> <p>22 were obviously produced. But that is a behind the scenes</p> <p>23 approach in what a lender does. You know, every lender kind of</p> <p>24 has their own special sauce, if you will, as to what metrics</p> <p>25 they weigh differently. And that typically comes out in their</p>		<p>1 the answer. Even if I say, how is it different, that's</p> <p>2 not a leading question.</p> <p>3 THE COURT: How was it different is not a</p> <p>4 leading question. Overruled, on the basis of common</p> <p>5 sense.</p> <p>6 A In my review of the documents it is consistent with</p> <p>7 the other loans.</p> <p>8 Q In the event of a violation of a minimum net worth</p> <p>9 covenant, what is the focus of the lender's analysis?</p> <p>10 A What caused that it potential decline in net worth.</p> <p>11 Q And why would that be the focus of that analysis?</p> <p>12 A Because you want to, as I said earlier, figure out</p> <p>13 exactly what is causing it. Is it a one-time deal? Is it</p> <p>14 additional liabilities that came on which would have,</p> <p>15 obviously, decreased it? Is it a lack of liquidity or decline</p> <p>16 in liquidity? Is it a decline in assets? It could be a</p> <p>17 multitude of things. But that is -- it is important to see</p> <p>18 what exactly is causing it to then determine, as I said</p> <p>19 earlier, if it would impact repayment of the loan.</p> <p>20 Q And in the real world what is bank practice when</p> <p>21 there has been a breach of a covenant that is not related to</p> <p>22 payment?</p> <p>23 A That's typically known as what we call, little d,</p> <p>24 default. And would not be something that would really raise</p> <p>25 the eyebrows of the lending institution. It would certainly</p>	

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<p>1 open up a conversation to allow the lender to understand what</p> <p>2 has changes and if the risk profile has changed at all. But it</p> <p>3 would not necessarily and very limitedly, in my experience,</p> <p>4 would result in any sort of default being issued and</p> <p>5 enforcement of remedies and rights.</p> <p>6 Q And how, if at all, did you observe the concepts that</p> <p>7 you described in Deutsche Bank's loan underwriting?</p> <p>8 A It was consistent with my experience.</p> <p>9 Q How so?</p> <p>10 A In that if there was a breach, that they would reach</p> <p>11 out, they would discuss with the client and kind of go through,</p> <p>12 et cetera, what that would be. And then conduct their own</p> <p>13 analysis, as I said, through the annual review, et cetera, to</p> <p>14 assess their risk and the repayment.</p> <p>15 Q Was your analysis any different for Ladder Capital's?</p> <p>16 A No. No, sir.</p> <p>17 Q What are the factors that a bank considers when</p> <p>18 pricing a loan?</p> <p>19 A There are multitude of factors that are considered</p> <p>20 when pricing a loan. Obviously the loan itself, the collateral</p> <p>21 behind it is one. And how well that collateral protects the</p> <p>22 bank from a loan-to-value standpoint. What the debt service</p> <p>23 coverage ratio would be. Liquidity of not only the borrower</p> <p>24 and the guarantor; direct liabilities so that you understand</p> <p>25 what the overall cash flow of an entity and an individual is.</p>		<p>1 Office; Golf Course and Country Clubs; and Lodging Facilities.</p> <p>2 Q And where does the information from this chart --</p> <p>3 withdrawn.</p> <p>4 Did you produce this chart?</p> <p>5 A Yes, sir.</p> <p>6 Q Where did you obtain the information that's contained</p> <p>7 on this chart?</p> <p>8 A Our firm subscribes to Realty Rates and uses them</p> <p>9 frequently in our assignments.</p> <p>10 Q What are Realty Rates?</p> <p>11 A Realty Rates is a service that provides various</p> <p>12 surveys. This one is their investor survey. They have a</p> <p>13 developer survey and I believe they have one more.</p> <p>14 Typically they will survey two to 300 various real</p> <p>15 estate professionals in development and banking and valuation</p> <p>16 and comply those results into a quarterly publication that</p> <p>17 gives an indicative view of rates, loan-to-values and other</p> <p>18 loan terms that are available in the marketplace.</p> <p>19 Q And how does this chart relate to the pricing of the</p> <p>20 Deutsche Bank loans at issue in this case?</p> <p>21 A For this particular chart the loans that were</p> <p>22 originated during this period of time from Q-1, 2011 through</p> <p>23 Q-4, 2012, would show what the spread would be on the various</p> <p>24 asset classes: Office; Golf Course and Country Club; and then</p> <p>25 finally Lodging Facilities full service. Which Doral would</p>	
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<p>1 And then also, even going beyond that, which is also important,</p> <p>2 when you are looking at pricing is, the overall relationship</p> <p>3 that an individual or a relationship has at an institution. As</p> <p>4 discussed earlier, the cross selling is a huge push at all</p> <p>5 banks in my experience at both of the national banks that I</p> <p>6 worked at. And trying to drive non-revenue -- excuse me,</p> <p>7 non-interest income, fee income, is extremely important. And</p> <p>8 that fee income whether it be through Trust and Estates,</p> <p>9 whether it be through Derivatives and Swaps, et cetera, is</p> <p>10 something that weighs heavily as well. So there are a</p> <p>11 multitude of factors. But relationship is extremely important</p> <p>12 in determining that, in what the overall relationship value is.</p> <p>13 As well as risk adjusted return on capital. There are multiple</p> <p>14 metrics that go beyond just an individual debt product to</p> <p>15 determine what that pricing would be.</p> <p>16 MR. SUAREZ: Your Honor, I would like to show</p> <p>17 the witness what has previously been marked as</p> <p>18 demonstrative DD-4.1.</p> <p>19 Q Mr. Unell, do you recognize this chart?</p> <p>20 A Yes, sir.</p> <p>21 Q What is this chart?</p> <p>22 A This chart is a chart of average mortgage terms that</p> <p>23 was sourced from Realty Rates which investor survey. Which</p> <p>24 shows the average spread for loans over the period of Q-1, 2011</p> <p>25 to Q-4, 2012, based on various different asset classes:</p>		<p>1 have been falling under the Lodging Service full service</p> <p>2 facilities as well as Golf Course and Country Clubs; and the</p> <p>3 others would fall under Office as well.</p> <p>4 MR. SUAREZ: And if we could please pull up</p> <p>5 Mr. McCarty's chart? PX-3302.</p> <p>6 Q Mr. Unell, are you familiar with this chart?</p> <p>7 A Yes, sir.</p> <p>8 Q And how have you become familiar with this chart?</p> <p>9 A I received it as part of Mr. McCarty's report, and</p> <p>10 then ultimately this version was updated and I am not sure when</p> <p>11 it was received. But I looked at it.</p> <p>12 Q And what -- what work, if any, have you done to</p> <p>13 review this chart?</p> <p>14 A I have gone through and reviewed to make sure that</p> <p>15 the -- it was accurate from a mathematical standpoint. As well</p> <p>16 as I have gone through and reviewed the -- the hypothetical CRE</p> <p>17 interest percentages that are contained in this document.</p> <p>18 Q And what, if any, opinion do you have concerning the</p> <p>19 use of the hypothetical CRE interest rates?</p> <p>20 A I do not agree with the rates that are the CRE</p> <p>21 interest percentage rates here.</p> <p>22 Q Why is that?</p> <p>23 A They are vastly different than the data that I have</p> <p>24 seen provided by Realty Rates, other data sources has shown</p> <p>25 commercial mortgage, as well as the actual loans and the loan</p>	

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<p>1 pricing grid that was -- that was prescribed and part of the</p> <p>2 Deutsche Bank Private Wealth Management practice.</p> <p>3 Q What was the basis for Mr. McCarty's use of those CRE</p> <p>4 interest rates in his analysis?</p> <p>5 A You know, I believe that on one of them he utilized a</p> <p>6 loan that was originated in 2005; made the assumption that the</p> <p>7 2005 interest rate would still be applicable today. Market</p> <p>8 conditions, time has changed from 2005 during the origination,</p> <p>9 and utilizing a 2005 rate, in my opinion, is not a good measure</p> <p>10 for what should be. That being one.</p> <p>11 And there was also no other support that I was able</p> <p>12 to find in Mr. McCarty's report to support that number. The</p> <p>13 others were -- one was based off of a non-binding term sheet</p> <p>14 that was non-negotiated and took it as it would be done.</p> <p>15 And I am not sure of where the others came from. I</p> <p>16 know there was some discussion about others. But in general, I</p> <p>17 did not see any support for those numbers.</p> <p>18 And also, you know, saying that what the CRE interest</p> <p>19 percentage is, to be able to state what a bank that does their</p> <p>20 own pricing CRE would be, would have to have knowledge of how</p> <p>21 their pricing would work internally to know, okay, this is</p> <p>22 10 percent, it would not be negotiated. And the term sheet for</p> <p>23 the 10 percent was provided to show -- I am not exactly sure</p> <p>24 what it was provided. But it would not be atypical for a</p> <p>25 lender to issue a term sheet at rates or terms that were</p>		<p>1 inconsistent with the spreads suggested by Mr. McCarty, if at</p> <p>2 all?</p> <p>3 A Yes. So, for instance on Doral, we can use that,</p> <p>4 where you came with the 10 percent.</p> <p>5 First, I also think it is important to note that</p> <p>6 these loans were contractually done on an index versus spread.</p> <p>7 And the other problem with Mr. McCarty's analysis is</p> <p>8 Mr. McCarty does not take into account fluctuations in what the</p> <p>9 base rate is. And the base rate in this case is LIBOR. He is</p> <p>10 assuming a fixed rate across the board. These are not</p> <p>11 fixed-rate loans. These loans fluctuate based on LIBOR and the</p> <p>12 spread. The spread remains the same.</p> <p>13 So, without knowing -- without having in front of me</p> <p>14 exactly what LIBOR is, the way that these loans would be priced</p> <p>15 would fall in-between, on Doral, somewhere between the Golf</p> <p>16 Course and Country Club and the Lodging Facility. So it would</p> <p>17 be LIBOR, call it, plus 400 in that range.</p> <p>18 This also does not take into account the other credit</p> <p>19 support. It does not take into account other items that are in</p> <p>20 there. These are just basic as if the loan-to-value was</p> <p>21 70 percent, plain vanilla. But it is also the best indication</p> <p>22 in the market at that time as to what actual rates were and</p> <p>23 what deals were getting done at. This is real life. This</p> <p>24 isn't a non-binding term sheet that threw out a number that was</p> <p>25 never discussed or negotiated.</p>	
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<p>1 obtuse, because they were trying to push business elsewhere or</p> <p>2 trying to contain it in the Private Wealth Group.</p> <p>3 Q How, if at all, is that consistent with the evidence</p> <p>4 that you have heard in this case?</p> <p>5 A It is a -- it is consistent with the evidence that I</p> <p>6 heard from the Deutsche Bank personnel that testified.</p> <p>7 Q How so?</p> <p>8 A They testified that the rate is determined by them.</p> <p>9 That there were a multitude of factors that went into the rate.</p> <p>10 One factor that was never considered was the complete</p> <p>11 elimination of the guaranty. And my understanding of what</p> <p>12 Mr. McCarty did is, is Mr. McCarty is stating that these rates</p> <p>13 are as if there is no guaranty. And there is a guaranty in</p> <p>14 place here. And so it would be very difficult to state that</p> <p>15 you go from a guaranty to no guaranty, and then also apply</p> <p>16 these to them. It also does not indicate whether or not that</p> <p>17 there were other options for financing at that time, that the</p> <p>18 defendants could have gone out and sought on their own. So it</p> <p>19 is a really, in my opinion, a very narrow-minded approach to</p> <p>20 come up with an interest percentage that I did not find any</p> <p>21 support for. As a matter of fact, find actually contrary</p> <p>22 support from Realty Rates and the testimony of Deutsche Bank.</p> <p>23 MR. SUAREZ: If you pull up DD-4.1 next to</p> <p>24 Mr. McCarty's analysis.</p> <p>25 Q Can you explain how the Realty Rates spreads are</p>		<p>1 These are actual deals that are surveyed by people in</p> <p>2 the market across the country that are living and breathing</p> <p>3 these deals daily. And it would indicate that the rate would</p> <p>4 be well below the 10 percent that Mr. McCarty has established</p> <p>5 in his exhibit.</p> <p>6 Q In your answer just now, what did you mean by "credit</p> <p>7 support"?</p> <p>8 A Credit support are other items outside of the</p> <p>9 collateral. So a guaranty could be considered credit support.</p> <p>10 Credit support could be the other assets of the borrower. It</p> <p>11 could be a multitude of items. It could be letters of credit.</p> <p>12 But, you know, it is, like I said, it is an average.</p> <p>13 Unfortunately, because loan terms are by and large</p> <p>14 confidential, and we saw that yesterday in Ms. Vrablic's with</p> <p>15 the OPO thing, that banks are very guarded on giving out their</p> <p>16 terms. This, because it is a survey of two to 300 people on a</p> <p>17 quarterly basis, is the best indication for value. And is used</p> <p>18 across the commercial real estate industry to benchmark rates,</p> <p>19 especially when we are having to go back in time to determine</p> <p>20 whether or not a rate was -- was applicable; whether it was</p> <p>21 within a range of what would be considered acceptable. It is</p> <p>22 nearly impossible to place an exact interest rate on this</p> <p>23 looking back in time, because none of us have worked for</p> <p>24 Deutsche Bank. And the best indication as to what this rate</p> <p>25 would be, would be Deutsche Bank, because Deutsche Bank is the</p>	

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<p>1 evaluator of risk. They are the evaluator of materiality. And</p> <p>2 they are the ultimate user and the one where this matters. And</p> <p>3 it is their sole determination, based on their analysis, as to</p> <p>4 how they want to price the loan.</p> <p>5 This also would not factor in any sort of</p> <p>6 relationship value and other products that the family of</p> <p>7 President Trump may have had with Deutsche Bank. And it is</p> <p>8 important to note that it is not just -- when a bank looks at</p> <p>9 it, they look at it as a relationship like a family. And it</p> <p>10 would consist not only of President Trump but his children as</p> <p>11 well. So any other loans -- that would fall off and we would</p> <p>12 all get credit for that relationship and the other items in</p> <p>13 their total relationship value.</p> <p>14 Q And how is the analysis that you just described for</p> <p>15 the Doral loan -- how does that analysis apply to the Chicago</p> <p>16 loan?</p> <p>17 A The same could be said. So Chicago, when you look at</p> <p>18 Chicago it would fall within on the Office side as well. And</p> <p>19 that would be on the lower spread. Spreads are obviously based</p> <p>20 on risk profile of various assets at various times.</p> <p>21 For instance, during COVID spreads on Hospitality</p> <p>22 went through the roof because everybody thought that</p> <p>23 Hospitality was dying. Spreads on Retail went up dramatically.</p> <p>24 On the flip side, spreads on Industrial went down because of</p> <p>25 the large amount of -- there are a multitude of factors outside</p>		<p>1 business plan for obtaining commercial real estate loans.</p> <p>2 Q Is the use by Mr. McCarty of a 8 percent rate</p> <p>3 appropriate?</p> <p>4 A In my opinion, no, it is not.</p> <p>5 Q Why?</p> <p>6 A It is unsupported. It is based, I am not even sure</p> <p>7 on what at this point. But, it is not -- I have not seen</p> <p>8 anything to indicate that that would be an accurate interest</p> <p>9 rate. And I believe, in my opinion, the Deutsche Bank</p> <p>10 testimony would support that as well.</p> <p>11 (The following proceedings were stenographically</p> <p>12 recorded by Senior Court Reporter Michael Ranita.)</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	
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<p>1 of just what is on the paper and on this loan, that also play</p> <p>2 into the determination of what a rate is. There are macro</p> <p>3 level things. There are also individual items that the bank</p> <p>4 may have.</p> <p>5 And also, banks may want to have a diversification of</p> <p>6 asset classes. Where if they do not want to have 100 percent</p> <p>7 of their commercial real estate in Office; or they want an even</p> <p>8 balance between Hospitality, between Retail, between Office,</p> <p>9 between Multi-family. And so without having the knowledge of</p> <p>10 what the actual business plan was at Deutsche Bank, but hearing</p> <p>11 their testimony, feel that they were within their right, as all</p> <p>12 banks are, to set the pricing based on the multitude of</p> <p>13 factors. Factors that are unknown to any of us, except for</p> <p>14 those at Deutsche Bank because it was their decision.</p> <p>15 Q And how does your analysis of these loans apply to</p> <p>16 the OPO transaction?</p> <p>17 A Same thing. OPO being a lodging facility. The</p> <p>18 closest examples that you would be able to find in the</p> <p>19 marketplace would be the green line on there, which would</p> <p>20 indicate a spread of, you know, approximately 400 basis points</p> <p>21 there. Which would be, you know, while the loan at OPO was</p> <p>22 lower, that also doesn't factor in the 400 basis points here.</p> <p>23 The various other items that would consist of total</p> <p>24 relationship value, which would assist in garnering competitive</p> <p>25 pricing from Deutsche Bank as outlined in their own memo on the</p>		<p>1 MR. SUAREZ: If we could replace DD4.1 with DD4.2.</p> <p>2 (Whereupon, the exhibit was displayed on the</p> <p>3 screen.)</p> <p>4 Q Do you recognize this chart, Mr. Unell?</p> <p>5 A Yes, sir.</p> <p>6 Q Did you prepare this chart?</p> <p>7 A Yes, sir.</p> <p>8 Q What does this chart represent?</p> <p>9 A This is a similar chart. However, the data came from</p> <p>10 the Commercial Mortgage Commitments database. And the</p> <p>11 Commercial Mortgage Commitments database is compiled by the</p> <p>12 Association of Life Insurers, and it is done so -- life insurers</p> <p>13 place a lot of real estate debt. This is how they are able to</p> <p>14 benchmark each other to see how each individual life co is</p> <p>15 pricing various loans, and provides industry data not only for</p> <p>16 those individuals, but for banks to remain competitive with life</p> <p>17 cos, as life cos are typically a very good competitor to banks</p> <p>18 on the real estate lending side.</p> <p>19 Q What, if anything, does this analysis reflect with</p> <p>20 respect to Mr. McCarty's selection of an eight percent rate on</p> <p>21 the OPO transaction?</p> <p>22 A The data on this chart from Commercial Mortgage</p> <p>23 Commitments would refute that and be, um, not support that eight</p> <p>24 percent. It would be the spread plus approximately anywhere</p> <p>25 from 250 to -- at the lowest, um, call it from 300 basis points</p>	

<p>R. Unell - by Defendant - Direct (Mr. Suarez) Page 5691</p> <p>1 to 200 basis points, plus the applicable index.</p> <p>2 Q And how about Doral?</p> <p>3 A Doral would be the same. This would also indicate that</p> <p>4 figures utilized by Mr. McCarty are not supported by this data.</p> <p>5 Q And how about Chicago?</p> <p>6 A The same. It would show that the figures utilized by</p> <p>7 Mr. McCarty are not indicative to actual terms that were</p> <p>8 available in the market at the time.</p> <p>9 MR. SUAREZ: If we could pull up DD4.3.</p> <p>10 (Whereupon, the exhibit was displayed on the</p> <p>11 screen.)</p> <p>12 Q Mr. Unell, do you recognize this chart?</p> <p>13 A Yes, sir. This is a chart of -- of -- from realty</p> <p>14 rates, once again, but this focuses on the average mortgage</p> <p>15 spread from Q1 2013 to Q4 2015, and focuses solely on</p> <p>16 full-service lodging facilities.</p> <p>17 Q How, if at all, does this -- does the analysis</p> <p>18 contained within this chart inform your evaluation of the rates</p> <p>19 selected by Mr. McCarty?</p> <p>20 A It would -- this does not support the rate that was</p> <p>21 utilized by Mr. McCarty.</p> <p>22 Q And with respect to the Chicago transaction, why is</p> <p>23 that?</p> <p>24 A Because the Chicago transaction, Mr. McCarty used a</p> <p>25 fixed 7.5 percent rate. Once again, this was not a fixed rate</p>	<p>R. Unell - by Defendant - Direct (Mr. Suarez) Page 5693</p> <p>1 A As the loan-to-value goes lower, the pricing would</p> <p>2 improve for the side of the borrower, because lower</p> <p>3 loan-to-value equates to better security for the lender, which</p> <p>4 equates to less risk, and if there's less risk, then the</p> <p>5 risk-based pricing would indicate that it would be lower.</p> <p>6 Q And how is your analysis of market rates consistent, if</p> <p>7 at all, with the manner in which Deutsche Bank priced the loans</p> <p>8 at issue in your analysis?</p> <p>9 A It was consistent, but it's also -- these are guidance.</p> <p>10 And once again, the pricing is in the sole discretion of the</p> <p>11 lender. And there are multiple factors that go into that. And</p> <p>12 as I mentioned, the only folks that are able to determine that</p> <p>13 are Deutsche Bank. And they did so, and it went through a lot</p> <p>14 of scrutiny, based off of the e-mails and the discussion I had,</p> <p>15 or discussions that I have seen, as it relates to pricing on</p> <p>16 these various assets.</p> <p>17 MR. SUAREZ: If we could please pull up what's been</p> <p>18 previously admitted into evidence as Defendant's</p> <p>19 Exhibit 205.</p> <p>20 (Whereupon, the exhibit was displayed on the</p> <p>21 screen.)</p> <p>22 (The witness was handed the exhibit.)</p> <p>23 THE WITNESS: Thank you, sir.</p> <p>24 Q Mr. Unell, do you recognize this document?</p> <p>25 A Yes, sir.</p>
<p>R. Unell - by Defendant - Direct (Mr. Suarez) Page 5692</p> <p>1 loan. It did go -- fluctuate based on the index. And not only</p> <p>2 that, the index plus the spread would have been below the</p> <p>3 7.5 percent utilized as a fixed rate by Mr. McCarty.</p> <p>4 Q And how does this analysis apply to the Doral loan?</p> <p>5 A It would be the same. Once again, it would be much</p> <p>6 lower than the ten percent that was utilized by Mr. McCarty</p> <p>7 during this exercise.</p> <p>8 Q And with respect to the Chicago loan?</p> <p>9 A The Chicago loan, it would be the same, you know,</p> <p>10 fallen, and once again, below 7.5 percent.</p> <p>11 MR. SUAREZ: If we could pull up DD4.4.</p> <p>12 (Whereupon, the exhibit was displayed on the</p> <p>13 screen.)</p> <p>14 Q Do you recognize this chart?</p> <p>15 A Yes, sir.</p> <p>16 Q Did you prepare this chart?</p> <p>17 A Yes, sir.</p> <p>18 Q What does this chart represent?</p> <p>19 A This chart represents the loan-to-value ratio for</p> <p>20 lodging facilities from Q1 2013 to Q4 2015, and indicates that</p> <p>21 it remains stable at 70 percent loan-to-value was the average</p> <p>22 loan-to-value for full-service lodging facilities by lenders</p> <p>23 during this time period.</p> <p>24 Q How does this chart relate to the pricing of</p> <p>25 defendant's loans?</p>	<p>R. Unell - by Defendant - Direct (Mr. Suarez) Page 5694</p> <p>1 Q What is this document?</p> <p>2 A This document is the pricing grid that was utilized by</p> <p>3 the Private Wealth Management at Deutsche Bank.</p> <p>4 Q And how was this grid utilized in determining the</p> <p>5 pricing on the three Deutsche Bank loans at issue in your</p> <p>6 analysis?</p> <p>7 A Based on my review of documents and testimony, and the</p> <p>8 depositions I've read, that this was a chart that was used as</p> <p>9 guidance for all clients of the Private Wealth Management bank,</p> <p>10 and the pricing that was provided to the defendants was</p> <p>11 consistent with the 2.0 to 2.5 percent of commercial real estate</p> <p>12 as it states in the Americas line for commercial real estate.</p> <p>13 Q And in the case of Deutsche Bank, how would someone</p> <p>14 qualify for this pricing grid?</p> <p>15 A Based on documents and testimony, um, my understanding</p> <p>16 is that qualification of the Private Wealth Management would be</p> <p>17 a \$50 million net worth.</p> <p>18 Q And was President Trump qualified as a member of the</p> <p>19 Private Wealth Management Group at Deutsche Bank?</p> <p>20 A Yes, sir.</p> <p>21 Q What does the term "high net worth individual" mean in</p> <p>22 the banking industry?</p> <p>23 A The "high net worth individual" typically is somebody</p> <p>24 that has a threshold of assets and/or liquidity, and at times</p> <p>25 there is also the ability for lenders to make exceptions for the</p>

<p>R. Unell - by Defendant - Direct (Mr. Suarez) Page 5695</p> <p>1 Private Wealth Management Group if somebody has a closely held 2 business, maybe expecting a liquidity event. Each institution 3 has what their own definition of what high net worth and ultra 4 high net worth are. And 50 million and a hundred million are 5 typically what you see. At one point, 30 million, but as things 6 have changed over the years and wealth has increased, that 7 number has typically gone up to 50 million.</p> <p>8 Q Why do banks seek out high net worth individuals as 9 clients?</p> <p>10 A High net worth individuals, as clients, provide a 11 multitude of revenue sources for a lender, whether it be credit, 12 whether it be trusts to cross sell opportunities out there. The 13 derivatives for fixing rates, you know, deposits, investments, 14 investment banking, all of that is, as I mentioned earlier, you 15 know, noninterest income. And noninterest income equates to fee 16 income, and banks love fee income.</p> <p>17 A lot of times they will lead with credit and then try 18 to grow the relationship so that they can get some of those more 19 advantageous products with a client, such as the ongoing fee.</p> <p>20 Debt is also typically a commoditized item in that it 21 is not consistent where a borrower is going to come to you every 22 year where the same request.</p> <p>23 So in order to kind of establish that relationship, 24 grow that relationship, you would want to have other tentacles, 25 as I would call it, into there, which provide a multitude of</p>	<p>R. Unell - by Defendant - Direct (Mr. Suarez) Page 5697</p> <p>1 it.</p> <p>2 THE COURT: Anyway sorry for the interruption.</p> <p>3 Let's continue.</p> <p>4 MR. SUAREZ: If we could turn to defendant's 5 demonstrative DD4.7.</p> <p>6 (Whereupon, the exhibit was displayed on the 7 screen.)</p> <p>8 Q Do you recognize this demonstrative?</p> <p>9 A Yes, sir.</p> <p>10 Q What is demonstrative?</p> <p>11 A This is a chart that I prepared utilizing data from 12 Forbes that shows the number of billionaires, worldwide and in 13 the United States, by year.</p> <p>14 Q And in the period of 2010 to 2012, approximately how 15 many billionaires were there in the world?</p> <p>16 A Just over 400.</p> <p>17 Q In the world?</p> <p>18 A In the world? Between a 1,000 and 1,200.</p> <p>19 Q And how many were there in the United States?</p> <p>20 A Between 400 and 424.</p> <p>21 Q According to Deutsche Bank's own analysis, would 22 President Trump qualify as one of those 400 or so billionaires 23 in the United States?</p> <p>24 MR. WALLACE: Objection. Leading.</p> <p>25 THE COURT: Sustained.</p>
<p>R. Unell - by Defendant - Direct (Mr. Suarez) Page 5696</p> <p>1 revenue sources, which are a big factor into the pricing of a 2 loan.</p> <p>3 MR. SUAREZ: I already know, when your Honor looks 4 at me like that, you have a question.</p> <p>5 THE COURT: Can I get a read back of the last 6 question.</p> <p>7 (Whereupon, the requested testimony was read back 8 by the court reporter.)</p> <p>9 THE COURT: Mr. Suarez, do you know who Willie 10 Sutton was?</p> <p>11 MR. SUAREZ: I don't know.</p> <p>12 THE COURT: He was a bank robber, and he was asked 13 why he robbed the banks. And his answer was, "Because 14 that's where the money is."</p> <p>15 Why do they seek out high net worth individuals? 16 That's because they have money. But we received a much more 17 detailed answer, which is fine.</p> <p>18 MR. WALLACE: I think that's been covered by this 19 witness and many others as to why banks like rich people.</p> <p>20 MR. KISE: I thought it was the Attorney General's 21 position that President Trump doesn't have any money and 22 that's why he had to go to the banks.</p> <p>23 MR. WALLACE: If Mr. Kise carefully read our 24 papers, it didn't say he had no money.</p> <p>25 MR. KISE: He only had \$3 billion, not five. I got</p>	<p>R. Unell - by Defendant - Direct (Mr. Suarez) Page 5698</p> <p>1 Q What, if anything, did you see in Deutsche Bank's 2 analysis as to whether President Trump would qualify as 400 or 3 so billionaires in the United States during that time period?</p> <p>4 A Based on my review of the analysis conducted by 5 Deutsche Bank, they firmly believed that he was one of the 400 6 individuals in the United States that qualified as a 7 billionaire.</p> <p>8 Q What capacity does a bank like Deutsche Bank have, if 9 any, to underwrite the financial conditions of a billionaire?</p> <p>10 A Deutsche Bank, as a sophisticated international lender, 11 would have ample ability to underwrite and make their own 12 analysis and decisions onto the financial wherewithal of an 13 individual.</p> <p>14 Q And what, if anything, is different as to how you 15 underwrite the financial condition of one of these very few 16 people in this country that are worth more than one billion 17 dollars?</p> <p>18 A It presents a unique opportunity, and it takes a lot of 19 review work and analysis, which was conducted by the Deutsche 20 Bank team, as evidenced by their review of liquidity, by their 21 engagement of their evaluation services group, as well as the 22 other analysis where they have reviewed and conducted their own 23 adjusted net worth.</p> <p>24 Q And what, if anything, about the fact that President 25 Trump was among these very few number of individuals in this</p>

<p>R. Unell - by Defendant - Direct (Mr. Suarez) Page 5699</p> <p>1 country that are billionaires, would have lent credit support to</p> <p>2 the transactions entered into by Deutsche Bank in this case?</p> <p>3 A It would have carried a lot of weight for their ability</p> <p>4 to grow the relationship and increase the share of wallet.</p> <p>5 Q Why is that?</p> <p>6 A Because of as I mentioned earlier, leading with credit</p> <p>7 is typically a good way to win over the hearts and minds of high</p> <p>8 net worth real estate developers, or any real estate developer</p> <p>9 in that matter, but with that comes, as I mentioned earlier, the</p> <p>10 other opportunities to generate revenue from a high net worth</p> <p>11 individual, or in this case, an ultrahigh net worth individual.</p> <p>12 And I also believe that, as stated by Ms. Vrablic, that</p> <p>13 it also presented an opportunity for introductions, which would</p> <p>14 also help Deutsche Bank grow their Private Wealth business.</p> <p>15 Q What, if anything, about the financial characteristics</p> <p>16 of a billionaire would make them attractive to a bank as a</p> <p>17 guarantor?</p> <p>18 A You know, when there is only 400 or so of them in the</p> <p>19 United States, it really kind of puts them up there in what I</p> <p>20 consider rare air. And when you look at the security and the</p> <p>21 ability to support a credit, it would place them in, you know,</p> <p>22 the top quarter percent of individuals in the United States in</p> <p>23 their ability to support a credit.</p> <p>24 MR. SUAREZ: Going back to your Honor's analogy</p> <p>25 about why banks like billionaires, I think that's where the</p>	<p>R. Unell - by Defendant - Direct (Mr. Suarez) Page 5701</p> <p>1 their testimony is that when you are looking at, it would be the</p> <p>2 blue line versus the purple line and not the green line.</p> <p>3 Q And would Deutsche Bank -- withdrawn.</p> <p>4 How, in your experience, would it be consistent with</p> <p>5 real world banking practices for there to be a difference</p> <p>6 between the stated net worth of the guarantor and the adjusted</p> <p>7 net worth of the lender?</p> <p>8 A It is very typical to have a deviation between the net</p> <p>9 worth reported by a borrower and the adjusted net worth as</p> <p>10 determined by a lender in their sole discretion.</p> <p>11 Q And is that consistent with what you observed in the</p> <p>12 relationship between Deutsche Bank and President Trump, if at</p> <p>13 all?</p> <p>14 A Yes, sir. It would be consistent with all real estate</p> <p>15 loans that I've worked on, whether somebody is worth one hundred</p> <p>16 thousand dollars, a million dollars, one hundred million</p> <p>17 dollars, or several billion dollars, that this would still</p> <p>18 remain the same as to what to look at, which would be the net</p> <p>19 worth versus the requirement, and not the adjusted net worth.</p> <p>20 Q How would you describe the difference between the</p> <p>21 Ladder Capital minimum requirement and President Trump's net</p> <p>22 worth?</p> <p>23 A Close to about -- in 2010 there was about a \$4 billion</p> <p>24 gap, and by 2015, that gap had increased to approximately</p> <p>25 \$6 billion difference.</p>
<p>R. Unell - by Defendant - Direct (Mr. Suarez) Page 5700</p> <p>1 money is.</p> <p>2 THE COURT: If there is one thing we've learned in</p> <p>3 the last eight weeks, or whatever it's been, is that banks</p> <p>4 love billionaires. It could be a motto.</p> <p>5 MR. SUAREZ: If we could pull up defendant's</p> <p>6 demonstrative 4.5.</p> <p>7 (Whereupon, the exhibit was displayed on the</p> <p>8 screen.)</p> <p>9 Q Do you recognize this chart, Mr. Unell?</p> <p>10 A Yes.</p> <p>11 Q Did you prepare this chart?</p> <p>12 A Yes, sir.</p> <p>13 Q What does this chart represent?</p> <p>14 A This chart represents President Trump's net worth as</p> <p>15 shown on the blue line. It also represents what the Deutsche</p> <p>16 Bank minimum requirement was for net worth. It also then has</p> <p>17 the Deutsche Bank adjusted net worth as determined by them.</p> <p>18 And then finally the red line down on the bottom shows</p> <p>19 the Ladder Capital minimum liquidity requirement -- net worth,</p> <p>20 excuse me, requirement, not liquidity.</p> <p>21 Q What, in your experience, does it mean that the DB</p> <p>22 adjusted net worth and the DB minimum requirement on certain of</p> <p>23 the loans are so close together?</p> <p>24 A That's not indicative of it. What would be indicative</p> <p>25 of what Deutsche Bank would look at and also as collaborated by</p>	<p>R. Unell - by Defendant - Direct (Mr. Suarez) Page 5702</p> <p>1 Q And what, if any, conclusions do you draw from that</p> <p>2 gap?</p> <p>3 A That there was a wide margin there. Um, that it was --</p> <p>4 that the -- also that the net worth requirement imposed by</p> <p>5 Ladder was not something that they felt very strongly on. To</p> <p>6 place it at such a low minimum, it was probably put in there, in</p> <p>7 my opinion, as to, "Hey, we've got to have a net worth</p> <p>8 requirement. Let's just put something in there." But it was</p> <p>9 based off of its low -- it's not something that was factored</p> <p>10 into their overall decision.</p> <p>11 MR. SUAREZ: If we could put up D-205 next to this</p> <p>12 chart.</p> <p>13 (Whereupon, the exhibit was displayed on the</p> <p>14 screen.)</p> <p>15 Q What opinion do you have, if any, as to whether</p> <p>16 President Trump's net worth qualified him for the pricing grid</p> <p>17 on D-205?</p> <p>18 A Based on the net worth, the adjusted net worth, the</p> <p>19 Deutsche Bank minimum requirement that the threshold would have</p> <p>20 been met to qualify for the 2 to 2.5 percent, as prescribed in</p> <p>21 this document.</p> <p>22 Q And how, if at all, would a decrease in the</p> <p>23 loan-to-value of the loans, throughout their course, affect the</p> <p>24 pricing?</p> <p>25 A A lower loan-to-value equates to a more secure loan for</p>

<p>R. Unell - by Defendant - Direct (Mr. Suarez) Page 5703</p> <p>1 the lender, and return for that -- as going back to risk-based 2 pricing, and return for that, the lender typically offers a 3 lower interest rate because they are basing their pricing off of 4 risk. And with a lower loan-to-value, the risk profile is 5 diminished. And so with a lower risk profile comes a lower 6 rate. Like I said, risk-based pricing as determined by Deutsche 7 Bank.</p> <p>8 MR. SUAREZ: If we could please pull up Plaintiff's 9 Exhibit 293 at page five. 10 (Whereupon, the exhibit was displayed on the 11 screen.) 12 (The witness was handed the exhibit.) 13 THE WITNESS: Thank you, sir.</p> <p>14 Q Mr. Unell, is this a document that you reviewed in 15 connection with your -- in connection with preparing your 16 opinions in this case? 17 A Yes, sir.</p> <p>18 MR. SUAREZ: Can we turn to the recommendations. 19 (Whereupon, the exhibit was displayed on the 20 screen.) 21 MR. SUAREZ: Which may be at page five of the 22 document, not the exhibit. 23 (Whereupon, the exhibit was displayed on the 24 screen.) 25 MR. SUAREZ: Go forward.</p>	<p>R. Unell - by Defendant - Direct (Mr. Suarez) Page 5705</p> <p>1 was not comfortable with the actual collateral. 2 So I think that this is additional comfort, because 3 there is a whole section on collateral, and I think it's 4 important to note that none of this comes into play if the 5 lender is not satisfied with the actual project that they are 6 lending on as collateral. So beyond that, it would be 7 consistent.</p> <p>8 Q What does the credit memo reflect concerning the 9 strength of the guarantor with respect to Deutsche Bank's own 10 analysis? 11 A It actually, from this it shows that it is on an 12 adjusted basis. That it shows that the unencumbered liquidity, 13 and then it clearly states on adjusted basis the \$2.4 billion of 14 net worth is what the financial strength of the guarantor was, 15 per this document.</p> <p>16 Q Is that consistent with your experience in the real 17 world? 18 A Yes, sir. 19 Q How so? 20 A Once again, going back to what I stated earlier about 21 adjusted net worth, you know, banks have their own internal kind 22 of things, and that's what we are looking at here. But on the 23 outside, borrowers don't know about the adjusted net worth. So 24 this is the conservative of view placed forward by the bank 25 showing how they feel about the financial strength of the</p>
<p>R. Unell - by Defendant - Direct (Mr. Suarez) Page 5704</p> <p>1 (Whereupon, the exhibit displayed on the screen was 2 scrolled through.) 3 MR. SUAREZ: Page three. 4 (Whereupon, the exhibit was displayed on the 5 screen.) 6 MR. SUAREZ: Zoom in on recommendations. 7 (Whereupon, the exhibit displayed on the screen was 8 enlarged.) 9 Q Do you see here the analysis contained in the Deutsche 10 Bank credit memo? 11 A Yes, sir. 12 Q Have you reviewed this credit memo? 13 A Yes, sir. 14 Q Have you seen the recommendations made by Deutsche Bank 15 in this credit memo? 16 A Yes, sir. 17 Q And what was the basis for recommending this facility, 18 according to the credit memo? 19 A The financial strength of the guarantor, the nature of 20 the guarantee, the operating experience, and the expected 21 enhanced value due to Capex. 22 Q Is this consistent with your experience in the real 23 world? 24 A With one exception. I think it goes without saying, 25 the facility would not be recommended at all if Deutsche Bank</p>	<p>R. Unell - by Defendant - Direct (Mr. Suarez) Page 5706</p> <p>1 guarantor on an adjusted basis, based off of their own 2 independent analysis of the Statement of Financial Condition 3 submitted by President Trump. 4 MR. SUAREZ: If we could turn to page four of the 5 exhibit. 6 (Whereupon, the exhibit was displayed on the 7 screen.) 8 Q Do you see the section that says "financial analysis"? 9 A Yes, sir. 10 Q With respect to the guarantee actually provided by 11 President Trump, what does this analysis represent? 12 A This analysis represents Deutsche Bank's independent 13 analysis of the Statement of Financial Condition submitted by 14 President Trump, and it's consistent with transactions and 15 credit memos that I have worked on and reviewed in my 16 experience. 17 Q And what, if anything, in your experience would explain 18 the difference between the client reported net worth of 19 \$4.2 billion, approximately, and the DB adjusted net worth of 20 \$2.365 billion? 21 A You know, if you look at this in detail, the -- you 22 know, the main differential there is the net equity in real 23 estate. There is a change between the adjusted, downward, 24 however, the other assets is adjusted upward by approximately 25 100 million.</p>

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<p>R. Unell - by Defendant - Direct (Mr. Suarez) Page 5707</p> <p>1 So the lenders don't necessarily make adjustments all</p> <p>2 downward. It's their own independent analysis that allows them</p> <p>3 to arrive at their own decision based off of, not only the</p> <p>4 document, but their own experience and various other sorts of</p> <p>5 assets, and also in discussions with the provider of this so</p> <p>6 that they can better understand the statements.</p> <p>7 Q With respect to the guarantee, regardless of whether</p> <p>8 there's a difference in the value of the assets that support the</p> <p>9 guarantee, does that change the nature of the assets that</p> <p>10 support the guarantee?</p> <p>11 A Absolutely not. The guarantee stands on its own,</p> <p>12 despite what is behind it. And that goes whether or not</p> <p>13 somebody loses everything. The guarantee still remains in</p> <p>14 place. It's not necessarily tied to any particular asset.</p> <p>15 There's no portion of the guarantee that says, you have to have</p> <p>16 this, you have to have that. The guarantee remains in place no</p> <p>17 matter what the ultimate financial profile is of the guarantor.</p> <p>18 Q And how, if at all, does the guarantee change depending</p> <p>19 on the adjustments to the value of the assets of the guarantor?</p> <p>20 A It does not change. It still provides the same level</p> <p>21 of guarantee that was -- no matter -- that was submitted. The</p> <p>22 guarantee does not change.</p> <p>23 As I mentioned, it still keeps the engagement of the</p> <p>24 borrower, of the guarantor. Um, it makes them, you know, want</p> <p>25 to be engaged in the event, as I mentioned earlier, that there</p>	<p>R. Unell - by Defendant - Direct (Mr. Suarez) Page 5709</p> <p>1 A It means that the bank got what they wanted and that</p> <p>2 they have a guarantee. They have a warm body that is going to</p> <p>3 stand behind the loan and provide additional credit support, if</p> <p>4 needed.</p> <p>5 Q And how, if at all, is this inconsistent with any of</p> <p>6 the other transactions that you've been involved with in your</p> <p>7 professional career?</p> <p>8 A It is consistent with the transactions that I've worked</p> <p>9 on throughout my career.</p> <p>10 MR. SUAREZ: I'm at good stopping point on my</p> <p>11 outline.</p> <p>12 THE COURT: Okay. I have a quick question for the</p> <p>13 witness.</p> <p>14 In your review of the record in this case, did you</p> <p>15 see the part about how I wrote an opinion, as risk rises,</p> <p>16 interest rates rise?</p> <p>17 THE WITNESS: I believe I have reviewed a portion</p> <p>18 of it, but not in detail, your Honor.</p> <p>19 THE COURT: Just to refresh your recollection, I</p> <p>20 wrote an opinion. As risk rises, interest rates rise. And</p> <p>21 you said that several times yourself today.</p> <p>22 When the witness was asked whether he agreed with</p> <p>23 that statement, you said, well, yes, but I would have used</p> <p>24 slightly different words. And I asked him, "What words</p> <p>25 would you have used", so that I could use that next time I</p>
<p>R. Unell - by Defendant - Direct (Mr. Suarez) Page 5708</p> <p>1 was a COVID situation where there was cash flow light. If you</p> <p>2 don't have the guarantor there, if they've got a dollar or a</p> <p>3 hundred million dollars, they are going to potentially find a</p> <p>4 way to help you if they have a dollar, versus trying to be</p> <p>5 dragged through a legal proceeding to try to enforce a</p> <p>6 guarantee.</p> <p>7 They are going to cooperate. In my experience, it may</p> <p>8 not be an ultimate cooperation, but you will get a seat at the</p> <p>9 table with somebody, where if you do not have that guarantee,</p> <p>10 you are not guaranteed, pun intended, to get a seat at the table</p> <p>11 to restructure a loan.</p> <p>12 THE COURT: Five-minute warning.</p> <p>13 Q And in your experience in the real world, what does it</p> <p>14 mean that Deutsche Bank accepted President Trump's guarantee,</p> <p>15 even after having a different view of his financial condition?</p> <p>16 A That after conducting their own analysis and review,</p> <p>17 that they felt comfortable with the Statement of Financial</p> <p>18 Condition and the strength of the guarantor to support the</p> <p>19 credit as proposed in this document.</p> <p>20 Q And in your review of the Deutsche Bank's analysis of</p> <p>21 these credit facilities during their lifetime, what, if</p> <p>22 anything, changed about those conclusions?</p> <p>23 A None. That the guarantee would still remain in place</p> <p>24 no matter what the adjusted net worth was.</p> <p>25 Q And in the real world, what does that mean?</p>	<p>Page 5710</p> <p>1 have a case like this. So we agree on risk, interest rates</p> <p>2 rising.</p> <p>3 All right, lunchtime. So whatever you are going to</p> <p>4 do for the next hour, see you at 2:15.</p> <p>5 MR. WALLACE: I don't know if you have a sense of</p> <p>6 how long you have left. My point is, I don't think we have</p> <p>7 much, but we could do this later.</p> <p>8 THE COURT: Mr. Suarez, any idea how much longer</p> <p>9 with this witness?</p> <p>10 MR. SUAREZ: I expect to finish in the third</p> <p>11 quarter.</p> <p>12 THE COURT: In the?</p> <p>13 MR. SUAREZ: Of the day. In the later half of the</p> <p>14 afternoon.</p> <p>15 THE COURT: Okay. I'll admonish the witness, order</p> <p>16 the witness not to discuss the case.</p> <p>17 THE WITNESS: Thank you, your Honor.</p> <p>18 THE COURT: This isn't your first rodeo.</p> <p>19 (Whereupon, the case on trial was adjourned until</p> <p>20 2:15 for the luncheon recess.)</p> <p>21 (Continued on the next page.)</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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1 COURT OFFICER: All rise.		1 rate that is utilized is not commiserate with what the market	
2 Part 37 is back in session. Please be seated		2 was at the time.	
3 and come to order.		3 MR. SUAREZ: Now, if we could turn to page four	
4 MR. SUAREZ: Your Honor --		4 of the RUC presentation?	
5 THE COURT: The witness.		5 Q And if I could direct your attention to the occupancy	
6 MR. SUAREZ: -- we recall the witness.		6 rate for the collateral.	
7 (Whereupon, the witness resumed the stand.)		7 How does the collateral -- withdrawn.	
8 THE COURT: As usual I will remind the witness		8 How do the characteristics of the collateral, if at	
9 that he is still under oath.		9 all, affect pricing?	
10 THE WITNESS: Thank you.		10 A Well, collateral in a real estate secured loan is the	
11 THE COURT: Hope you had a good lunch.		11 primary source of repayment, and what lenders look to to not	
12 MR. SUAREZ: If we could please pull up the		12 only service the debt, but ultimately to payoff the note,	
13 McCarty chart, Plaintiff's 3302 at page four. And pull up		13 whether it be through sale, refinance, et cetera.	
14 next to it Plaintiff's Exhibit 552.		14 The occupancy is a direct factor in what cash flow	
15 Defendant's Exhibit 552.		15 is. Occupancy, obviously, has an impact on revenue and is one	
16 Q If I could draw your attention, Mr. Unell, it says:		16 of multiple factors that a lender would look at in determining	
17 All. Attached is the RUC memo for 40 Wall Street?		17 whether or not this asset was stabilized and what other	
18 A Yes, sir.		18 opportunities may arise for a particular asset.	
19 Q Are you familiar with the RUC memo for 40 Wall		19 Q How does an improvement in the quality of the	
20 Street?		20 collateral affect pricing?	
21 A Yes.		21 A The better the collateral, the better the pricing.	
22 Q What is an RUC memo?		22 It is a direct correlation between risk and risk-based pricing.	
23 A It is a credit memo in the term utilized by Ladder		23 You know, the lower the risk, the lower the pricing. The	
24 Capital.		24 higher the risk, the higher the pricing. As a LTV decreases,	
25 MR. SUAREZ: If we could turn to page three of		25 that places a lender in a better position from a collateral	
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1 the exhibit?		1 standpoint, therefore de-risking the loan profile.	
2 Q What is a committee presentation?		2 Q How does a -- how does the occupancy rate in 40 Wall,	
3 A A committee presentation is a formal presentation to		3 at the time this memorandum was prepared, affect pricing?	
4 a credit committee at a lending institution.		4 A Well, it would show that the asset is well occupied	
5 Q How is a committee presentation used, if at all, to		5 and most likely stabilized. Typically when you look at any	
6 determine the price of a loan?		6 office facility above in the mid 90s, that would represent that	
7 A It is part of the overall approval process typically.		7 it is a stabilized asset and is performing as planned.	
8 Typically it would be presented, as it says here, by an		8 Q And how would an LTV of 29.6, how would that factor	
9 originator, which in this case was Jack Weisselberg, and the		9 affect the quality of the collateral in a real estate loan?	
10 underwriters, who present this and recommend it for approval.		10 A That is an extremely good loan-to-value and would	
11 At which time this document, typically, along with the		11 represent that 30 percent, approximately, loan-to-value, so	
12 conversation, would formulate the approval or revision of terms		12 that the loan would be approximately 30 percent of the	
13 or a denial of the credit as presented by the originator and		13 appraised value of their collateral, therefore providing the	
14 his underwriting team.		14 lender with a very large margin for a slippage in value. And	
15 Q Now, on the left, do you see the presentation of 40		15 this would be the primary source of repayment, therefore	
16 Wall in Mr. McCarty's analysis?		16 providing a much larger than normal spread.	
17 A Yes, sir.		17 Q And how would a loan -- a low loan-to-value affect	
18 Q Have you reviewed Mr. McCarty's presentation for 40		18 pricing?	
19 Wall?		19 A The lower the loan-to-value, the more secure the	
20 A Yes, sir.		20 loan. The more secure the loan, the less risky. And the less	
21 Q And have you reached any opinions concerning the		21 risky then equates to lower pricing based off of risk-based	
22 analysis performed by Mr. McCarty?		22 pricing.	
23 A Yes, sir. Yeah.		23 MR. SUAREZ: If we could turn to page six of the	
24 Q What opinions have you reached?		24 exhibit?	
25 A I have reached that, in my opinion, that the interest		25 Q If I could turn your attention to the third full	

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<p>1 paragraph. It says: Loan proceeds will be utilized to</p> <p>2 refinance an existing first mortgage originated by Capital One</p> <p>3 Bank, defined as the prior loan, which featured a principal</p> <p>4 balance of \$160 million (\$137.31 per square foot). In</p> <p>5 connection with the refinance of the prior loan, the borrower</p> <p>6 will pay a swap breakage fee, currently estimated at</p> <p>7 \$6 million, inclusive of closing costs, and upfront reserves,</p> <p>8 the borrower will invest a total of \$8.6 million in cash equity</p> <p>9 at closing in order to effect the refinancing of the prior</p> <p>10 loan.</p> <p>11 What does that mean?</p> <p>12 A It means that prior to the loan at Ladder Capital, in</p> <p>13 order to pay off Capital One Bank, there would be a \$6 million</p> <p>14 fee that would need to be paid to break that swap. In</p> <p>15 addition, it states that the borrower will invest \$8.6 million</p> <p>16 in cash equity, therefore lowering the amount of the balance</p> <p>17 owed. Which is an equity infusion, thereby lowering the loan</p> <p>18 amount that was issued by Ladder Capital.</p> <p>19 Q Is that reflected in Mr. McCarty's analysis?</p> <p>20 A I did not see where it is reflected in Mr. McCarty's</p> <p>21 analysis.</p> <p>22 Q If Mr. McCarty had reflected it in his analysis, how</p> <p>23 would that affect the conclusions that he offers with respect</p> <p>24 to 40 Wall?</p> <p>25 A The dynamics of the loan would certainly change. And</p>		<p>1 metrics of the loan-to-value.</p> <p>2 The dark value is of interest as well. That is</p> <p>3 something that has, over the years, become a more applicable</p> <p>4 metric, as especially when you look at assets that have a -- a</p> <p>5 high, I guess, concentration of occupancy.</p> <p>6 So a large tenant, for example, you would look at</p> <p>7 that analysis and say, well, if the large tenant left.</p> <p>8 The cash in refinance is another thing where the</p> <p>9 sponsor investing \$8.6 million into the transaction in closing</p> <p>10 is providing not only the support of the borrower, but also</p> <p>11 lowering the risk by reducing the principal amount.</p> <p>12 The loan structure, once again, very similar in that</p> <p>13 the low interest -- the -- excuse me, the interest rate of</p> <p>14 3.665 percent and then also the rent-roll, as we talked about</p> <p>15 with the occupancy.</p> <p>16 And then finally, on number six, it looks like they</p> <p>17 are really addressing what the market is, and looking at the</p> <p>18 property and its ability to continue to perform at a high level</p> <p>19 of occupancy. And utilizes its historical occupancy as well as</p> <p>20 talking about where the activity is. And that is important</p> <p>21 because while the occupancy still may be 94.5 percent, strong</p> <p>22 interest in a building shows that when you are looking at,</p> <p>23 obviously, when you are looking at where the future value may</p> <p>24 be, and when it says, kind of, is this thing going to be able</p> <p>25 to maintain where it is at. And all indications are, based off</p>	
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<p>1 the dynamics of the loan with an \$8.6 million cash equity</p> <p>2 infusion would improve the bank's position from a collateral</p> <p>3 and a credit standpoint, which would really make the loan</p> <p>4 features in the terms of the loan very different than the</p> <p>5 existing Capital One loan, because the existing Capital One</p> <p>6 loan had the swap breakage fee and the \$8.6 million is in cash</p> <p>7 equity infusion, which also would make the Ladder Capital loan</p> <p>8 more secure than the Capital One loan, and not make them where</p> <p>9 they can be compared, because the principal balances would be</p> <p>10 different. And the characteristics of the loan at origination,</p> <p>11 despite the fact that they were done approximately ten years</p> <p>12 apart, the actual loan dynamics are different between 20 --</p> <p>13 2005 and the time of origination of the Ladder Capital loan.</p> <p>14 MR. SUAREZ: And if we could turn to page nine</p> <p>15 of Defendant's Exhibit 552?</p> <p>16 Q What is represented in this page, Mr. Unell?</p> <p>17 A This is what I would typically see or you would</p> <p>18 typically see in a credit memo that would outline the strengths</p> <p>19 of a credit -- typically a credit memo would outline the</p> <p>20 strengths, the weaknesses, the opportunities and the threats,</p> <p>21 kind of a squad analysis, as it is typically called. And</p> <p>22 anything that is not mitigated by the strengths would need to</p> <p>23 be also addressed by the lender in this. And this is typical</p> <p>24 deal strengths that looks very familiar to what I have seen</p> <p>25 throughout my experience with highlighting the various loan</p>		<p>1 of this, and in my experience this writeup would indicate that</p> <p>2 this asset was performing strong and had a bright future ahead.</p> <p>3 Q How would these factors affect the evaluation of the</p> <p>4 collateral for purposes of pricing alone?</p> <p>5 A These are all very, very, very important factors of</p> <p>6 pricing when it comes to the collateral. Just as it was the --</p> <p>7 as I said, you would never go down and make a loan if you</p> <p>8 didn't feel comfortable about the asset itself and your</p> <p>9 underlying collateral. That is what this is displaying here,</p> <p>10 and the comfort level that Ladder Capital had with the metrics</p> <p>11 of the collateral.</p> <p>12 Q The seventh item here that we -- that we see on this</p> <p>13 page: High quality landmark collateral. What is the affect of</p> <p>14 this characteristic of 40 Wall on the quality of the collateral</p> <p>15 for purposes of loan pricing?</p> <p>16 A It is -- it does have some historic value to it. It</p> <p>17 is something that cannot be replaced in its current condition.</p> <p>18 And there are users, i.e. tenants, out there that look to be in</p> <p>19 trophy office buildings, to have trophy addresses, et cetera.</p> <p>20 And this asset, in the opinion of Ladder Capital, was a trophy</p> <p>21 asset that was highly desirable in the market for multiple</p> <p>22 reasons.</p> <p>23 Q And in the following page, you see reference to</p> <p>24 experienced and well-capitalized sponsorship?</p> <p>25 A Yes, sir.</p>	

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<p>1 Q How does that affect the collateral for purposes of</p> <p>2 pricing alone?</p> <p>3 A Obviously the experience of an owner/developer in the</p> <p>4 real estate world is extremely important for their ability to</p> <p>5 continue to operate the asset, as the asset is the primary</p> <p>6 source of repayment. Not only of the debt service from the</p> <p>7 cash flow, but also upon sale or refinance. So, it is</p> <p>8 extremely important to have somebody behind it, whether it is</p> <p>9 the organization or individual, that is able to perform on the</p> <p>10 plan that is set forth, and continue to execute the plan to</p> <p>11 make sure that the bank remains secure, and the same position</p> <p>12 as when the loan was originated.</p> <p>13 Q Do you see there it says Mr. Trump reports a net</p> <p>14 worth of nearly 5.8 billion and a liquidity in excess of</p> <p>15 \$300 million?</p> <p>16 A Yes, sir.</p> <p>17 MR. SUAREZ: If we turn to page 12 of this</p> <p>18 exhibit.</p> <p>19 Q And focus in on: Key principal net worth covenant.</p> <p>20 A Yes, sir.</p> <p>21 Q What is the key principal net worth covenant on this</p> <p>22 loan?</p> <p>23 A A net worth of \$160 million, minimum net worth.</p> <p>24 Q And with respect to liquidity?</p> <p>25 A At least 15 million.</p>		<p>1 MR. SUAREZ: Okay. If we could turn to</p> <p>2 Plaintiff's Exhibit 293 on the right.</p> <p>3 (Handing)</p> <p>4 THE WITNESS: Thank you, sir.</p> <p>5 Q If you see here, this is a credit report in</p> <p>6 connection with the first mortgage lien and first priority</p> <p>7 security interest in the Doral Golf Resort by Deutsche Bank?</p> <p>8 A Yes, sir.</p> <p>9 Q It was the initial credit report on the Deutsche Bank</p> <p>10 loan, correct?</p> <p>11 A Yes, sir, dated 12/20/2011.</p> <p>12 Q If you look on the second page of the commitment fee,</p> <p>13 you see a commitment fee. And it says .25 percent of facility</p> <p>14 commitment, which shall be fully earned and payable on the</p> <p>15 execution date of this commitment letter.</p> <p>16 A Yes, sir.</p> <p>17 Q What is the purpose of the commitment fee from the</p> <p>18 bank's perspective?</p> <p>19 A That is really where the loan documentation process</p> <p>20 would begin, where the bank would have to start spending</p> <p>21 dollars for appraisals, engineering, environmental reports, and</p> <p>22 other items. So it is, I don't want to call it a posit, but it</p> <p>23 is the commitment of the borrower to move forward, which</p> <p>24 therefore allows the lender to feel comfortable to go spend</p> <p>25 some of those out-of-pocket expenses. You know, there have</p>	
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<p>1 Q And how is the principal net worth covenant, in your</p> <p>2 experience, for this loan comparable to the net worth of the</p> <p>3 sponsor and liquidity of the sponsor?</p> <p>4 A This was a fraction of the net worth and a fraction</p> <p>5 of the liquidity that the guarantor had.</p> <p>6 Q What affect would any fluctuations in the net worth</p> <p>7 or liquidity of the sponsor with respect to this loan have on</p> <p>8 the pricing of the loan?</p> <p>9 A Going by the materiality side, it would have some,</p> <p>10 but not as much, because Ladder Capital, in my opinion in</p> <p>11 reading this, felt that the security in the form of the</p> <p>12 collateral was sufficient and that the pricing was really</p> <p>13 driven off of that.</p> <p>14 Now, having the covenant here would obviously provide</p> <p>15 a belt and suspenders approach, and also provide for a tertiary</p> <p>16 or beyond additional source of repayment in the event of, you</p> <p>17 know, call it an Armageddon situation. However, based off the</p> <p>18 loan-to-value, the likelihood that either of these would come</p> <p>19 into play is extremely minimal.</p> <p>20 Q And how were the characteristics of this loan</p> <p>21 transaction reflected in Mr. McCarty's analysis, if at all?</p> <p>22 A I don't see how that was done. Because my</p> <p>23 understanding is, is that 5.71 percent that was utilized was</p> <p>24 based off of a 2005 loan that had different loan</p> <p>25 characteristics.</p>		<p>1 been cases where a facility commitment, in my experience, was</p> <p>2 not required, and ultimately a borrower would pull out of a</p> <p>3 transaction, therefore leaving the lender with expenses that</p> <p>4 they have sought to be reimbursed. And in my experience that's</p> <p>5 very difficult, because nobody wants to go litigate over</p> <p>6 \$100,000 on something they would just probably decline to do</p> <p>7 business with that person further.</p> <p>8 Q Do you see a little further down it says: Facility</p> <p>9 fee. 1 percent of facility commitment payable on the closing</p> <p>10 date of the facility?</p> <p>11 A Yes, sir.</p> <p>12 Q How does the payment of the 1 percent facility fee</p> <p>13 affect the pricing of the loan, if at all?</p> <p>14 A It is factored into, as I mentioned in prior</p> <p>15 testimony, that one of the things that is looked at is the</p> <p>16 total relationship value in RAROC, Risk Adjusted Return on</p> <p>17 Capital. So when a lender is looking at the RAROC, one of the</p> <p>18 factors is what the fee is, because that fee is direct income</p> <p>19 to the bottom line of the bank and is factored into the returns</p> <p>20 that they are looking at when measuring what the profitability</p> <p>21 of not only a loan is, but also what the overall relationship</p> <p>22 value is.</p> <p>23 MR. SUAREZ: And if you turn to the next page of</p> <p>24 this document? In the recommendation box. The fourth</p> <p>25 bullet.</p>	

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<p>1 Q Do you see where it says: Expected enhanced value</p> <p>2 due to Capex?</p> <p>3 A Yes, sir.</p> <p>4 Q It says: The resort is a world class location that</p> <p>5 has been home to a PGA event every year since the resort opened</p> <p>6 in 1962. As DJT expects to invest approximately \$50 million on</p> <p>7 capital improvements, it is expected that the value of our</p> <p>8 collateral will increase significantly over the term of the</p> <p>9 loan?</p> <p>10 A Yes, sir.</p> <p>11 Q How would that feature in the transaction affect loan</p> <p>12 pricing, if at all?</p> <p>13 A It would have a factor into the loan pricing. It</p> <p>14 would also have a factor into how the lender would look at the</p> <p>15 additional capital. The additional capital is a commitment.</p> <p>16 As we mentioned, as I mentioned earlier I should say, the</p> <p>17 capital is one of the things that is looked at heavily. And</p> <p>18 what the investment is, the equity investment. The more equity</p> <p>19 investment that an individual or an entity has into a project,</p> <p>20 the more likely they are to continue to spend on that project,</p> <p>21 whether it is to increase the value, or perhaps in a distress</p> <p>22 situation continue to support the project so that they may</p> <p>23 recoup a portion of their previous investment, as opposed to</p> <p>24 just walking away.</p> <p>25 Q And what affect, if at all, does it have on the</p>		<p>1 loan.</p> <p>2 MR. SUAREZ: If we could move on to Plaintiff's</p> <p>3 Exhibit 291?</p> <p>4 (Handing)</p> <p>5 THE WITNESS: A little housekeeping here.</p> <p>6 Thank you.</p> <p>7 Q Do you recognize this document?</p> <p>8 A Yes, sir.</p> <p>9 MR. SUAREZ: If we could turn to page five of</p> <p>10 the exhibit? Which is also page five of the document.</p> <p>11 Q Do you see at the top there are two facility fees?</p> <p>12 A Yes, sir.</p> <p>13 Q A fee of .625 percent of Facility A payable on the</p> <p>14 closing date. And .75 of Facility B payable on the closing</p> <p>15 date of that facility?</p> <p>16 A Yes, sir.</p> <p>17 Q What affect, if any, does the payment of that</p> <p>18 facility fee have on the profitability of this transaction for</p> <p>19 the lender?</p> <p>20 A Similar to the other transactions, it would have an</p> <p>21 impact on the overall return and to the lender and their</p> <p>22 overall pricing strategy.</p> <p>23 Q What affect, if any, does it have on the pricing of</p> <p>24 the transaction?</p> <p>25 A It would have an impact on the pricing because that</p>	
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<p>1 quality of the collateral?</p> <p>2 A It absolutely improves the collateral, to the benefit</p> <p>3 of the lenders, because it is a direct investment made by the</p> <p>4 sponsor into the asset. And that asset serves as collateral</p> <p>5 for the lender. And the more money that is put into that</p> <p>6 asset, improves the value of it, which therefore reduces the</p> <p>7 loan-to-value, which makes the loan more secure to the lender.</p> <p>8 Q And how would that affect the risk of the</p> <p>9 transaction?</p> <p>10 A It de-risks the transaction.</p> <p>11 Q What do you mean what you say de-risks, for us</p> <p>12 non-finance folks?</p> <p>13 A It makes the transaction less risky with that capital</p> <p>14 infusion than it otherwise would.</p> <p>15 MR. SUAREZ: If we could turn to Plaintiff's --</p> <p>16 Q One second, before we move on.</p> <p>17 Is the analysis you just conducted concerning this</p> <p>18 transaction, reflected in Mr. McCarty's selection of a</p> <p>19 10 percent CRE rate for the Doral property in his analysis?</p> <p>20 A I do not believe so.</p> <p>21 Q And what is the result of failing to consider these</p> <p>22 features of that transaction on the analysis performed by</p> <p>23 Mr. McCarty?</p> <p>24 A It would render that analysis flawed without taking</p> <p>25 into account all of the factors that contribute to pricing of a</p>		<p>1 would be factored into the overall returns that the bank would</p> <p>2 be expecting to receive for the risk that they are under taking</p> <p>3 as part of this transaction.</p> <p>4 MR. SUAREZ: And if we turn to Plaintiff's</p> <p>5 Exhibit -- actually before we do that. Yeah, if we turn</p> <p>6 to Plaintiff's Exhibit 294.</p> <p>7 (Handing)</p> <p>8 THE WITNESS: Thank you, sir.</p> <p>9 Q And on the first page can we take a look at the Trump</p> <p>10 International Hotel and Tower Chicago. Do you see that?</p> <p>11 A Yes, sir. Collateral B?</p> <p>12 Q Collateral B.</p> <p>13 A Yes, sir.</p> <p>14 Q And you see at the bottom it has a loan-to-value of</p> <p>15 51 percent?</p> <p>16 A Yes, sir.</p> <p>17 Q How would the -- how would a loan-to-value of</p> <p>18 51 percent on that collateral affect the risk of the loan</p> <p>19 secured by the Trump Chicago?</p> <p>20 A Loan-to-value of 51 percent would be below normal, as</p> <p>21 illustrated, actually, by the Realty Rates data presented</p> <p>22 earlier. And being below the average, which is not only on</p> <p>23 Realty Rates, but in my experience of 50 percent value being</p> <p>24 low, would once again de-risk or make this collateral -- this</p> <p>25 collateral would make the loan less risky based off of that</p>	

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1 loan-to-value.		1 said the non-credit relationship earlier, which would amount to	
2 Q And are any of the factors that we have just analyzed		2 more fee income.	
3 on the Trump Chicago facility reflected in the analysis		3 For real estate developers, typically leading with	
4 performed by Mr. McCarty that we looked at earlier?		4 credit as was done here, is a very common practice in real	
5 A Not that I can tell.		5 estate, because that is what real estate developers care most	
6 Q And what is the affect of his failure to consider		6 about. And then from there if you can gain the trust and the	
7 these factors in that analysis?		7 ability to provide them the debt, they will follow with other	
8 A Without considering all of the factors that go into		8 services, which make the relationship even more profitable.	
9 pricing of a loan, it would render the analysis flawed.		9 MR. SUAREZ: And if we move on to page 12.	
10 MR. SUAREZ: If we could turn to page nine of		10 Facility C.	
11 this exhibit? Actually let's start with page eight so we		11 Q The recommendation for Facility C, which is the Old	
12 can see the heading here.		12 Post Office. It says there: Equity injection of the	
13 Q Do you see at the top it says: Loan C, Trump Old		13 guarantor. While the initial equity injection of the guarantor	
14 Post Office?		14 was estimated at \$42 million plus, we have been told that the	
15 A Yes, sir.		15 estimate has been increased to anywhere from 150 to	
16 Q Okay. And if we see on page nine. Fees. This loan		16 \$160 million with approximately 30 million already invested?	
17 also has a facility fee, this time in the amount of half a		17 A Yes, sir.	
18 percent?		18 Q What affect would that equity injection by the	
19 A Yes, sir.		19 guarantor have on the risk of the collateral?	
20 Q What affect does the payment of a facility fee have		20 A The equity injection would have a direct impact on	
21 on the pricing of the transaction?		21 the value of the collateral, therefore making it more valuable.	
22 A Similar to the other transactions, it would have a		22 Which ultimately results in a loan lower-to-value. The lower	
23 direct impact on the profitability and returns expected by the		23 loan-to-value then results in a lower risk profile for that	
24 lender.		24 particular loan. And that should be reflected into the	
25 MR. SUAREZ: And if we look at page ten?		25 pricing.	
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1 Q Do you see for All Facilities, it lists in the		1 (The following proceedings were stenographically	
2 recommendations --		2 recorded by Senior Court Reporter Michael Ranita.)	
3 MR. SUAREZ: The next box on down.		3	
4 Q Here it is recommending the approval of the annual		4	
5 review for Doral modification to the Trump Chicago and the		5	
6 origination of the Trump Old Post Office. But specifically I		6	
7 would like to draw your attention to the section that says:		7	
8 All Facilities.		8	
9 The third bullet point says DB relationship. And it		9	
10 says: DJT continues to develop his relationship with DB as		10	
11 Facility C will be the fourth credit facility we have		11	
12 originated with him or his family (three with DJT, one with DJT		12	
13 Jr.) DJT has transferred 40 million in liquidity to DB and has		13	
14 indicated he is interested in continued to grow his non-credit		14	
15 relationship with the firm.		15	
16 Do you see that?		16	
17 A Yes, sir.		17	
18 Q How would that affect the pricing on the credit		18	
19 facility for the Old Post Office?		19	
20 A It would have a direct impact on pricing. As stated		20	
21 earlier, the relationship value to a bank is an important		21	
22 factor. And as it states here, and consistent with the		22	
23 testimony that I heard from Ms. Vrablic, that the goal was to		23	
24 continue to increase the share of business with President Trump		24	
25 and his family from deposits and other items, including, as I		25	

<p>R. Unell - by Defendant - Direct (Mr. Suarez) Page 5731</p> <p>1 Q And over the life of the OPO Facility, was the risk to</p> <p>2 the bank increasing or decreasing?</p> <p>3 A Decreasing.</p> <p>4 Q Why is that?</p> <p>5 A Um, the asset was continuing to be repositioned in a</p> <p>6 positive manner. The infusion of capital, as well as the</p> <p>7 operating expertise of the borrower and the entities that are</p> <p>8 running it, improved the overall value, which, once again,</p> <p>9 improved value results in a lower loan-to-value. A lower</p> <p>10 loan-to-value results in a more secure and less risky loan for</p> <p>11 the lender.</p> <p>12 Q And are these characteristics of the OPO Facility</p> <p>13 reflected in Mr. McCarty's analysis?</p> <p>14 A I do not see where they were reflected.</p> <p>15 Q What is the effect of the failure to reflect these</p> <p>16 characteristics in Mr. McCarty's analysis on his analysis?</p> <p>17 A That the assumed interest rate utilized in this chart</p> <p>18 would be incorrect.</p> <p>19 Q With respect to the Doral transaction, if we could turn</p> <p>20 your attention to Plaintiff's Exhibit 2960?</p> <p>21 (Whereupon, the exhibit was displayed on the</p> <p>22 screen.)</p> <p>23 (The witness was handed the exhibit.)</p> <p>24 THE WITNESS: Thank you, sir.</p> <p>25 Q Do you recognize this document?</p>	<p>R. Unell - by Defendant - Direct (Mr. Suarez) Page 5733</p> <p>1 A Yes, sir.</p> <p>2 Q Do you see that? What does that mean?</p> <p>3 A That means that the client has elected to keep the ten</p> <p>4 percent guaranty in place in order to save 25 basis points,</p> <p>5 which was the reduction in pricing without the guaranty.</p> <p>6 Q And from the lenders perspective, what, if anything,</p> <p>7 can be inferred from the ten percent guaranty resulting in a</p> <p>8 25 basis points savings on the spread?</p> <p>9 A That Deutsche Bank would value the guaranty of 25 basis</p> <p>10 points to have the comfort.</p> <p>11 Q Now, in Mr. McCarty's analysis, is the guaranty -- the</p> <p>12 existence of the guaranty at ten percent reflected in his</p> <p>13 analysis?</p> <p>14 A No, sir.</p> <p>15 MR. WALLACE: Objection. Leading.</p> <p>16 Q How, if at all --</p> <p>17 MR. SUAREZ: I'll rephrase it.</p> <p>18 Q How, if at all, is the step-down of the guaranty</p> <p>19 reflected in Mr. McCarty's analysis?</p> <p>20 A I don't believe it's reflected.</p> <p>21 MR. WALLACE: I'm going to renew my objection at</p> <p>22 this point, your Honor, that the opinions Mr. Unell is</p> <p>23 expressing here, including his prior opinions about the</p> <p>24 failure to account for the fees in the loans, were not</p> <p>25 disclosed in his expert reports.</p>
<p>R. Unell - by Defendant - Direct (Mr. Suarez) Page 5732</p> <p>1 A Yes, sir.</p> <p>2 Q Have you reviewed this document?</p> <p>3 A Yes, sir.</p> <p>4 Q Do you see at page three of this document?</p> <p>5 (Whereupon, the exhibit was displayed on the</p> <p>6 screen.)</p> <p>7 Q It recommends "Approval of a step-down of the personal</p> <p>8 guarantee from 100 percent to 10 percent, per the loan</p> <p>9 agreement."</p> <p>10 A Yes, sir.</p> <p>11 Q In your experience in the real world, what is that</p> <p>12 indicative of?</p> <p>13 A The step-down of the guarantee?</p> <p>14 Q Yes.</p> <p>15 A That the lender felt that they were secured and that</p> <p>16 the risk level had declined to a point where that they wanted to</p> <p>17 have a guarantee for a comfort level, but, however, did not feel</p> <p>18 that a hundred percent guarantee was needed at this time.</p> <p>19 Q And do you see the note down below that says "With an</p> <p>20 LTV of 34 percent, the entire personal guaranty can be reduced</p> <p>21 to zero."</p> <p>22 A Yes, sir.</p> <p>23 Q "However the client has requested to retain a ten</p> <p>24 percent guaranty on both Tranche A and Tranche B, which</p> <p>25 corresponds to a spread of L plus 1.75 percent."</p>	<p>R. Unell - by Defendant - Direct (Mr. Suarez) Page 5734</p> <p>1 MR. KISE: I mean, in keeping with your rule,</p> <p>2 you've already ruled on this, first of all.</p> <p>3 THE COURT: I don't mind if he asks for a</p> <p>4 reconsideration.</p> <p>5 MR. KISE: But if -- I'm not going to argue if you</p> <p>6 are going to overrule it, but if you want me to argue, I</p> <p>7 will.</p> <p>8 MR. WALLACE: I think we are going through a series</p> <p>9 of opinions that were not disclosed in his report. We are</p> <p>10 hearing them for the first time. And the purpose of expert</p> <p>11 disclosure is so that the parties know ahead of time what</p> <p>12 opinions the expert is going to offer and have time to</p> <p>13 analyze those opinions, which are very complex and go into a</p> <p>14 great deal of detail about the financing of loans, and have</p> <p>15 an opportunity to conduct a fair analysis, and ideally,</p> <p>16 depose the witness on those issues before trial, but at the</p> <p>17 very least giving us time to understand the opinions before</p> <p>18 we have to cross examine him.</p> <p>19 THE COURT: Is your particular objection just to</p> <p>20 the last answer, to the last half hour of answers?</p> <p>21 MR. WALLACE: I believe -- I'm trying to find it in</p> <p>22 the report as we are going along, but I don't think this</p> <p>23 specific analysis -- the step-down is definitely not in the</p> <p>24 report, as far as we can tell. I'm not sure the specific</p> <p>25 analysis to the fees, as they relate to Mr. McCarty's</p>

<p>R. Unell - by Defendant - Direct (Mr. Suarez) Page 5735</p> <p>1 opinion, were contained in the -- either the expert report 2 or the rebuttal expert report, either. We are sort -- we 3 are sort of live checking as we go through this. 4 MR. KISE: So, your Honor, again, the subject 5 matter, every last detail of every last opinion that the 6 expert has is never disclosed. As the trial comes forward, 7 you have evidence that needs to be considered by the expert 8 in the context that has been presented at trial; that's 9 what's happened here. 10 Mr. McCarty adjusted his position. I know they 11 have a different description of it, but he, in fact, 12 adjusted his position and offered a supplemental report, 13 which was accepted by this Court, and his testimony 14 reflected that supplemental report and his supplemental 15 analysis. So -- and some of that was based on testimony 16 that had happened during the trial, and events that had 17 taken place subsequent, including your Honor's decision. So 18 to say, now, that the defense can't make necessary 19 adjustments to address the evidence that they are faced with 20 at trial, evidence that -- that was available to the 21 government, just as much as it's available to us, about the 22 same subject matter that forms the basis for this expert's 23 opinion, he's opining on -- he's saying the same thing. He 24 is just offering relevant justifications based on the 25 testimony that's been educed at trial, based on the</p>	<p>R. Unell - by Defendant - Direct (Mr. Suarez) Page 5737</p> <p>1 of his reports in May and June. He has not disclosed -- if 2 the defendants can show me where this opinion is covered in 3 either of the two reports, I'm happy to withdraw the 4 objection. 5 But it is simply, this step-down, .25 analysis does 6 not appear in this -- either of this witness's reports. 7 THE COURT: Objection overruled for the same and 8 usual reasons. There's no jury. I'll decide what weight to 9 give it. You could cross examine him. If you need a little 10 time before the cross examination to consult, and I also, to 11 a certain extent, accept Mr. Kise's point that you could 12 never finalize things. And there's been a trial since 13 expert disclosure. And I understand the value of expert 14 disclosure so you can prepare, et cetera, but it's in. 15 Let's just move on. 16 MR. SUAREZ: Can you repeat the last question. 17 THE COURT: The last question. 18 MR. SUAREZ: I'm sorry, your Honor, may I have a 19 read back. 20 THE COURT: A read back of the last question. 21 (Whereupon, the requested question was read back by 22 the court reporter.) 23 A I don't believe it is reflected in his analysis. 24 Q What is the result of any of his failure to consider 25 the step-down in the opinions that he gives?</p>
<p>R. Unell - by Defendant - Direct (Mr. Suarez) Page 5736</p> <p>1 documents that have been introduced at trial, and based on 2 the scope of the issues that are now before us at trial. 3 So as you said earlier, and I think it was the 4 correct ruling, you can allow this in in a bench trial -- 5 there's no opportunity for confusion -- and you can decide 6 what to give weight to and what not to give weight to, but 7 to exclude it wholesale when they've had the opportunity to 8 have an expert come in and modify his opinions, we would 9 have to get into a whole ground war over exactly how he 10 modified it, what he did, which is what we did before. 11 And I think the more efficient and more balanced 12 approach in a bench trial is to do what your Honor has 13 already decided to do, which is allow it in and then give it 14 the weight that you determine. 15 MR. WALLACE: I will just note that this is not a 16 question of relevance or repetitiveness, or anything. This 17 is question of whether we had fair notice of this expert's 18 opinion. 19 I will reiterate that it is very clear from what we 20 did, that Mr. McCarty simply changed the time frame of his 21 analysis. The analysis stayed the same. 22 If there is an issue with a criticism of 23 Mr. McCarty's report, or if this guaranty had an opinion 24 about the actual spread on the guaranty based on this 25 step-down, all of that information was available at the time</p>	<p>R. Unell - by Defendant - Direct (Mr. Suarez) Page 5738</p> <p>1 A Similar to utilizing a fixed spread, it would not 2 render the analysis as accurate, because it would change 3 throughout the life of the loan, or have the opportunity to, 4 based on the election of the guarantor. 5 Q What, if any -- withdrawn. 6 The -- if I could turn your attention to page three of 7 the Exhibit 2960 down to the section where it says "Expected 8 enhanced value due to Capex" again. 9 (Whereupon, the exhibit was displayed on the 10 screen.) 11 A Mm-hmm. 12 Q And then the last sentence says "As noted, DJT has 13 invested nearly \$250 million on capital improvements since 2012, 14 and the results has been an increase in collateral value to 15 \$366 million. This value should continue to increase 16 significantly over the term of the Facility." Do you see that? 17 A Yes, sir. 18 Q How did the risk of the collateral that secured the 19 Doral Facility change over time, if at all? 20 A Just as on the other loans where there was an injection 21 of capital for improvements, it improved the bank's collateral 22 position, therefore, making the loan less risky because the 23 collateral had more value. 24 Q And how, if at all, is the lower risk nature of the 25 Facility over time reflected in Mr. McCarty's analysis?</p>

<p>R. Unell - by Defendant - Direct (Mr. Suarez) Page 5739</p> <p>1 A I don't believe it's reflected since the interest rate</p> <p>2 remained the same throughout the life of the loan in his</p> <p>3 analysis.</p> <p>4 Q And with respect to the Chicago Facility, was that</p> <p>5 guaranty also -- withdrawn.</p> <p>6 Was the guaranty provided in connection with the</p> <p>7 Chicago Facility extinguished at any point in time?</p> <p>8 A I believe there was an opportunity to do so, but I'm</p> <p>9 not certain if it ever was.</p> <p>10 MR. SUAREZ: Could we please pull up Plaintiff's</p> <p>11 Exhibit 298, at page seven, on the right-hand side.</p> <p>12 (Whereupon, the exhibit was displayed on the</p> <p>13 screen.)</p> <p>14 (The witness was handed the exhibit.)</p> <p>15 THE WITNESS: Thank you, sir.</p> <p>16 MR. SUAREZ: And if we could zoom up to where it</p> <p>17 says, Leverage levels required for step-down of the</p> <p>18 guaranty."</p> <p>19 (Whereupon, the exhibit was displayed on the</p> <p>20 screen.)</p> <p>21 Q And it says, "The LTV levels required to for a decrease</p> <p>22 in the guaranty levels are low enough to ensure that the loan is</p> <p>23 more than adequately collateralized as evidenced by the current</p> <p>24 Facility B, in which the guaranty was eliminated once the loan</p> <p>25 was paid down to \$45 million (about 34 percent LTV)."</p>	<p>R. Unell - by Defendant - Direct (Mr. Suarez) Page 5741</p> <p>1 Facility reflected in Mr. McCarty's analysis?</p> <p>2 A Not that I can tell.</p> <p>3 Q What is the result of the prelude of -- reflect that in</p> <p>4 his analysis?</p> <p>5 A That the increased interest rate does not account for</p> <p>6 that -- excuse me. The interest rate throughout the life of the</p> <p>7 loan remains the same, in his analysis, at 7.5 percent, which</p> <p>8 would not reflect the terms of the loan and the reduction of the</p> <p>9 guaranty and the improvement of the collateral.</p> <p>10 Q And in each of the three credit facilities that we have</p> <p>11 discussed today with respect to Deutsche Bank, did the value of</p> <p>12 the collateral increase or decrease over time?</p> <p>13 A The value of the collateral increased over time.</p> <p>14 Q And what effect did the increase in the value of the</p> <p>15 collateral over time have on the risk to the bank in connection</p> <p>16 with the loan?</p> <p>17 THE COURT: Oh, come on. Even I could answer that</p> <p>18 at this point. We've had a whole tutorial on that every</p> <p>19 day. The more value the collateral, the less risk, the</p> <p>20 lower the interest rates. Okay, we get it already.</p> <p>21 Go ahead, Mr. Kise.</p> <p>22 MR. KISE: Your Honor, I think --</p> <p>23 THE COURT: We heard this 20 times today.</p> <p>24 MR. KISE: Well, but I think he is framing this in</p> <p>25 the context of answers that are going to follow from that</p>
<p>R. Unell - by Defendant - Direct (Mr. Suarez) Page 5740</p> <p>1 A Yes, sir.</p> <p>2 MR. SUAREZ: If we could turn to the first page of</p> <p>3 this exhibit.</p> <p>4 (Whereupon, the exhibit was displayed on the</p> <p>5 screen.)</p> <p>6 Q Do you see the date up there at the top?</p> <p>7 A Yes, sir. July 20th, 2015.</p> <p>8 Q Yes.</p> <p>9 Does this refresh your recollection as to when the</p> <p>10 guaranty of the credit facility secured by The Trump Chicago was</p> <p>11 extinguished?</p> <p>12 A Yes, sir.</p> <p>13 Q When was that?</p> <p>14 A In July of 2015.</p> <p>15 Q And how, if at all, did the -- how, if at all, did the</p> <p>16 collateral securing The Trump Chicago credit Facility from</p> <p>17 Deutsche Bank change over the course of that Facility?</p> <p>18 A Do you mind repeating the question.</p> <p>19 Q Sure, how, if at all, did the risk of the collateral</p> <p>20 securing The Trump Chicago property change over the life of that</p> <p>21 Facility?</p> <p>22 A The collateral improved, therefore, making the loan to</p> <p>23 value lower, which ultimately made the loan less risky for the</p> <p>24 lender.</p> <p>25 Q And is the de-risking of the loan of the Chicago credit</p>	<p>R. Unell - by Defendant - Direct (Mr. Suarez) Page 5742</p> <p>1 conclusion.</p> <p>2 I don't want to talk about this with the witness</p> <p>3 present, but, I mean, I think -- I would think within the</p> <p>4 next question or two he's going to connect it up. I could</p> <p>5 be wrong, but I think that's where we are headed, and then</p> <p>6 we'll move on.</p> <p>7 But that proposition forms the foundation. I'm</p> <p>8 glad you are accepting that proposition, but it forms the</p> <p>9 foundation for something to follow.</p> <p>10 So I would ask the Court to just let him ask a</p> <p>11 couple of more questions, or we could have a more wholesome</p> <p>12 debate --</p> <p>13 MR. SUAREZ: That was last question I had before I</p> <p>14 moved on.</p> <p>15 THE COURT: Okay.</p> <p>16 MR. KISE: There you go.</p> <p>17 THE COURT: As usual, I'm not looking to, and I'm</p> <p>18 not restricting. I'm just pointing out it's déjà vu all</p> <p>19 over again, times 20.</p> <p>20 So anywhere, where are we Mr. Suarez? Do you need</p> <p>21 the question or do you want a read back?</p> <p>22 MR. SUAREZ: Yes, please.</p> <p>23 THE COURT: Read back the last question.</p> <p>24 MR. SUAREZ: That was Yogi Berra, "Déjà vu all over</p> <p>25 again"?</p>

<p>R. Unell - by Defendant - Direct (Mr. Suarez) Page 5743</p> <p>1 THE COURT: He was from New Jersey.</p> <p>2 (Whereupon, the requested testimony was read back</p> <p>3 by the court reporter.)</p> <p>4 A The increase in the value of the collateral would</p> <p>5 result in a lower loan-to-value, which would make the loan less</p> <p>6 risky for the lender.</p> <p>7 MR. SUAREZ: If we could, please, pull up what's</p> <p>8 been marked as Defense demonstrative 5?</p> <p>9 (Whereupon, the exhibit was displayed on the</p> <p>10 screen.)</p> <p>11 MR. SUAREZ: If we could zoom in a little bit so</p> <p>12 it's centered there on the page.</p> <p>13 (Whereupon, the exhibit displayed on the screen was</p> <p>14 enlarged.)</p> <p>15 Q Do you recall this demonstrative?</p> <p>16 A Yes, sir.</p> <p>17 Q Who prepared this demonstrative exhibit?</p> <p>18 A I did.</p> <p>19 Q And what does this demonstrative exhibit represent?</p> <p>20 A This demonstrative exhibit -- excuse me there --</p> <p>21 represents the differential in interest if there was no</p> <p>22 guaranty, in a hypothetical situation.</p> <p>23 Q With respect to Doral, the Doral credit Facility, can</p> <p>24 you walk us through the analysis that you undertook to reach the</p> <p>25 rebuttal to Mr. McCarty's opinion?</p>	<p>R. Unell - by Defendant - Direct (Mr. Suarez) Page 5745</p> <p>1 points from a hypothetical situation of no guaranty being in</p> <p>2 place, and ran that out throughout the life of the loan from</p> <p>3 origination through pay off, and that resulted in a hypothetical</p> <p>4 lost amount of \$2.567 million.</p> <p>5 Q And why was it appropriate to do that?</p> <p>6 A Why was it appropriate to do that? Because we</p> <p>7 believed, and based off of the testimony that the value of the</p> <p>8 guaranty as shown in the mind of Deutsche Bank, and in my</p> <p>9 experience, would be 25 basis points.</p> <p>10 Q And in the case of the Old Post Office Facility, was</p> <p>11 that guaranty in place throughout this entire time horizon?</p> <p>12 A Yes.</p> <p>13 Q And if the bank had called that guaranty, would the</p> <p>14 bank have had the benefit of that guaranty in place on that</p> <p>15 facility?</p> <p>16 A Absolutely. It would have had the benefit of that</p> <p>17 guaranty. And Mr. McCarty's analysis did not take into account</p> <p>18 any guaranty at all.</p> <p>19 Q And if the values of assets owned by the guarantor were</p> <p>20 to change, would that, in any way, reduce the credit support</p> <p>21 available to the Facility?</p> <p>22 MR. WALLACE: Objection. Leading.</p> <p>23 MR. SUAREZ: I could rephrase it.</p> <p>24 THE COURT: Withdrawn.</p> <p>25 Q How, if at all, would a change in the values of the</p>
<p>R. Unell - by Defendant - Direct (Mr. Suarez) Page 5744</p> <p>1 A Yes, sir. So we started very similar utilizing this</p> <p>2 the same chart as Mr. McCarty did for ease of understanding for</p> <p>3 everybody.</p> <p>4 What we have done here is we've taken the actual</p> <p>5 interest percent, which matches up with the same thing that</p> <p>6 Mr. McCarty had. However, instead of utilizing his assumed CRE</p> <p>7 interest rates, we have added 25 basis points to reflect the</p> <p>8 difference that was opined on by Deutsche Bank, and also</p> <p>9 represented in the documents, that the guaranty was worth</p> <p>10 25 basis points.</p> <p>11 From there we calculated the delta between the actual</p> <p>12 interest rate, and what the hypothetical interest rate would be</p> <p>13 with the additional 25 basis points, and have run that out</p> <p>14 throughout from origination of the loan through the pay off of</p> <p>15 the loan.</p> <p>16 Q And what hypothetical differential and interest rate</p> <p>17 results over that period of time if you increase it by the</p> <p>18 25 basis points that you suggested is appropriate?</p> <p>19 A For this loan in particular, \$2,458,048.</p> <p>20 Q And with respect to the Old Post Office credit Facility</p> <p>21 could you please walk us through your analysis on that</p> <p>22 transaction?</p> <p>23 A Okay. Similar to Doral, we did the exact same exercise</p> <p>24 utilizing the same format as Mr. McCarty, however, instead of</p> <p>25 utilizing his assumed interest rates, we added the 25 basis</p>	<p>R. Unell - by Defendant - Direct (Mr. Suarez) Page 5746</p> <p>1 assets owned by the guarantor change the credit support</p> <p>2 available to Deutsche Bank in connection with this Facility?</p> <p>3 A In this case it wouldn't, because it would be</p> <p>4 immaterial.</p> <p>5 Q Why is that?</p> <p>6 A Because as referenced earlier, part of the reason for a</p> <p>7 guaranty is not only the financial support, but also the ongoing</p> <p>8 and continual support for the operation, and ongoing ability to</p> <p>9 operate the asset in a manner that would maintain value, and</p> <p>10 enable it to provide enough cash flow for debt service.</p> <p>11 Q Would your answer be the same for the Doral Facility</p> <p>12 during the periods of time that that guaranty was in place?</p> <p>13 A Yes, sir.</p> <p>14 Q Would your answer be the same for the Chicago Facility</p> <p>15 during the periods of time when the guaranty was in place?</p> <p>16 A Yes, sir.</p> <p>17 Q All right.</p> <p>18 Moving onto 40 Wall, how, if at all, would the analysis</p> <p>19 -- would the analysis that you performed change with respect to</p> <p>20 40 Wall, to that performed by Mr. McCarty?</p> <p>21 A Utilizing the same 25 basis points, it would result in</p> <p>22 a \$2.966 million delta.</p> <p>23 Q And what was the basis for doing so?</p> <p>24 A The basis was similar to the other assets, that if</p> <p>25 there was not a guaranty, even though at some points the lower</p>

<p>R. Unell - by Defendant - Direct (Mr. Suarez) Page 5747</p> <p>1 thresholds and minimum net worth, um, erring on the side of 2 conservatism, we applied the same methodology here as we did to 3 the Deutsche Bank ones. 4 Q Was a limited guaranty, in fact, in place during the 5 life of the 40 Wall transaction with Ladder Capital? 6 A Yes. 7 Q And if I were to ask you the same question about the 8 assets of the guarantor with respect to that guaranty and the 9 effect of the credit support for that transaction, would you 10 give me the same answer? 11 A Yes, sir. 12 Q And then if we go to the bottom right hand section. 13 (Whereupon, the exhibit was displayed on the 14 screen.) 15 Q Can you please walk us through your analysis here. 16 A Yes, sir. So the \$9,006,000 -- \$9,006,603 is the 17 cumulative amount of the four loans; the Doral, OPO, Chicago and 18 40 Wall. 19 We also have considered the SWAP breakage fee, which 20 was a cost of doing business at that point, in order to enter 21 into the transaction, which they were not required to do so. 22 There was an out-of-pocket expense of \$6 million, and therefore, 23 the hypothetical number that we have derived, or I have derived, 24 is \$3,006,603. And I do note that the SWAP breakage fee is an 25 estimate.</p>	<p>Page 5749</p> <p>1 suggesting that a law enforcement investigation is improper 2 or something, it seems well beyond the scope of his 3 expertise. 4 MR. SUAREZ: I don't think that's what he said. 5 THE COURT: Can I just say, point duly noted. 6 MR. WALLACE: Fair enough, your Honor. 7 MR. SUAREZ: May I confer with my colleagues, your 8 Honor. 9 THE COURT: Yes. 10 (Whereupon, Counsel conferred off the record.) 11 MR. KISE: Your Honor, I'm going to try for, maybe 12 a fifth time now, if we take our afternoon break now and 13 come back, we may be able to truncate this as well. 14 THE COURT: AG, okay with you? 15 MR. WALLACE: I thought he was going to ask for a 16 directed verdict. 17 MR. KISE: That will be after he testifies, after 18 he testifies. 19 MR. ROBERT: We could do it now if it makes you 20 feel better. 21 THE COURT: Perfect timing. See you at 3:30. 22 (Continued on the next page.) 23 24 25</p>
<p>R. Unell - by Defendant - Direct (Mr. Suarez) Page 5748</p> <p>1 Q And why do you call it a hypothetical lost interest 2 figure? 3 A Because I don't believe, in my opinion, that there has 4 been any losses to anybody on any of these loan transactions. 5 Q And why is that? 6 A Because all contractual obligations were paid. 7 Deutsche Bank did their own analysis. They derived their own 8 interest rates. They negotiated those documents. They executed 9 those documents. The borrower and guarantors performed as 10 prescribed on those documents. And as the user of the 11 information, they were able to make their own informed decisions 12 and not have to rely upon outside parties to do so after the 13 fact. 14 Q And in your professional experience, is that 15 commonplace with how transactions operate in the marketplace? 16 A Yes, it is, absolutely one hundred percent. Private 17 transactions are negotiated between sophisticated parties, and 18 in this case both were very sophisticated parties. And 19 everybody was able to make their own decisions based off the 20 information that was provided to them. And nobody, in the 21 process of negotiating or originating a loan, wants to have to 22 worry about, after the fact, having a non-party to their 23 agreement come in and second guess their decision making, which 24 they do for a living. 25 MR. WALLACE: Objection. I think if he is</p>	<p>Proceedings Page 5750</p> <p>1 COURT OFFICER: All rise. Part 37 is back in 2 session. 3 Please be seated and come to order. 4 THE COURT: I have a question for plaintiff, 5 plaintiff's lawyers. 6 Well, let met ask the question, it may moot out. 7 MR. KISE: Sure. 8 THE COURT: I am happy to hear from you. 9 Do you want to -- are we through with the direct 10 examination? 11 MR. KISE: We are. 12 THE COURT: Would plaintiff like to start the 13 cross examination tomorrow in light of the late filing by 14 defendants, and if you think you are entitled to and need, 15 overnight to put together your thoughts. 16 MR. WALLACE: I would certainly appreciate that, 17 Your Honor. If I could ask the witness just, like, two or 18 three clarifying questions. I do think in essence he and 19 Mr. McCarty are ships in the night. So I can have a very 20 truncated -- I have one question about the .25 basis 21 points that would clarify this and let us have a truncated 22 examination tomorrow, if that's possible. 23 THE COURT: Okay. Does that take care of your 24 concerns? 25 MR. KISE: Yes.</p>

Unell - by Defendant - Cross (Wallace) Page 5751

1 THE COURT: Let's ask Mr. Unell back to the
2 stand.

3 MR. ROBERT: He is five for five, Your Honor.

4 THE COURT: I didn't catch that.

5 MR. ROBERT: All Mr. Kise caressed about is he
6 is five for five in truncating things.

7 THE COURT: He has a pristine record.

8 (Whereupon the witness resumed the stand.)

9 CROSS-EXAMINATION

10 BY MR. WALLACE:

11 Q Mr. Unell, just a quick question to make sure I
12 understand the 25 basis points.

13 A Yes, sir.

14 MR. WALLACE: If we could pull up Plaintiff's
15 Exhibit 298 and go to page three?

16 Q And if we look under interest rates. It says there:
17 L plus 1.75 or prime minus 0.75 with step-up to L 2.0 percent
18 or prime minus .5, if guaranty level falls below 10 percent.

19 Am I understanding that this is the calculation that
20 led you to identify the 25 basis points as the appropriate
21 number for the value of the guaranty in the Deutsche Bank loan?

22 A That was one factor, along with the testimony of the
23 Deutsche Bank personnel which confirmed this.

24 Q About this section of the credit memo, correct?

25 A Yes, sir.

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1 MR. WALLACE: Okay. And if we turn to the next
2 page. And we flip up to the section on guaranty.

3 Q I am just going to note that, if the guaranty level
4 falls to zero percent at 35 percent or below, and so the
5 situation where this is occurring and the guaranty burns off is
6 where the LTV is down to 35 percent and below; is that right?

7 A In this instance, yes, sir.

8 Q Okay.

9 MR. WALLACE: That was all I needed to clarify.
10 Thank you.

11 THE COURT: All right. So tomorrow at 10:00
12 everyone?

13 And I'll direct the witness not to discuss this
14 case or his testimony or anything related to it overnight
15 because you are still a witness.

16 THE WITNESS: Yes, sir.

17 THE COURT: Thank you.

18 MR. ROBERT: Thank you, Your Honor.

19 (Whereupon the trial stood adjourned to Friday
20 December 1, 2023 at 10:00 a.m.)
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Ny Supreme Court- Civil

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<p style="text-align: right;">Page 5753</p> <p>1 SUPREME COURT OF THE STATE OF NEW YORK 2 COUNTY OF NEW YORK: CIVIL TERM: PART 37 3 -----X 4 PEOPLE OF THE STATE OF NEW YORK, BY LETITIA 5 JAMES, ATTORNEY GENERAL OF THE STATE OF NEW 6 YORK, 7 8 Plaintiff, 9 10 - against - 11 12 INDEX # 13 452564/2022 14 DONALD J. TRUMP; DONALD TRUMP JR.; ERIC TRUMP; 15 IVANKA TRUMP; ALLEN WEISSELBERG; JEFFREY 16 McCONNEY; THE DONALD J. TRUMP REVOCABLE TRUST; 17 THE TRUMP ORGANIZATION, INC.; TRUMP ORGANIZATION 18 LLC; DJT HOLDINGS, LLC; DJT HOLDINGS MANAGING 19 MEMBER; TRUMP ENDEAVOR 12, LLC; 401 NORTH WABASH 20 VENTURE, LLC; TRUMP OLD POST OFFICE, LLC; 40 WALL 21 STREET, LLC; and SEVEN SPRINGS, LLC, 22 Defendants. 23 -----X 24 Bench Trial 25 December 1, 2023 60 Centre Street New York, New York 10007 B E F O R E: THE HONORABLE ARTHUR S. ENGORON, Justice of the Supreme Court A P P E A R A N C E S: OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF NEW YORK - LETITIA JAMES Attorneys for the Plaintiff 28 Liberty Street New York, NY 10005 By: KEVIN WALLACE, ESQ. COLLEEN K. FAHERTY, ESQ. ANDREW AMER, ESQ. ERIC HAREN, ESQ. LOUIS SOLOMON, ESQ.</p>	<p style="text-align: right;">Page 5755</p> <p>Unell - by Defendant - Cross (Wallace)</p> <p>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. Laptops and cell 4 phones will be permitted, but only to members of the 5 press. There is absolutely no recording or photography of 6 any kind allowed in the courtroom. 7 Now be seated and come to order. 8 THE COURT: Mr. Wallace, would you like to 9 continue your cross examination of the current witness? 10 MR. WALLACE: Yes, Your Honor. The People will 11 continue their cross examination of Mr. Unell. 12 THE COURT: Let me ask you, do you feel you had 13 enough time to prepare for this under the exigent 14 circumstances? 15 MR. WALLACE: We will see how I do. 16 CROSS-EXAMINATION 17 BY MR. WALLACE: 18 Q Good morning, Mr. Unell. 19 A Good morning. 20 Q I want to talk first about the engagement through 21 Ankura for the Trump Organization. I believe you testified 22 yesterday that you are around 900, 950 -- your time is being 23 billed at between \$900 per hour and \$950 per hour, right? 24 A I believe that's about the range. 25 Q I think you said you performed about 200 hours of</p>
<p>Proceedings</p> <p style="text-align: right;">Page 5754</p> <p>1 A P P E A R A N C E S: (Cont'd) 2 3 CONTINENTAL PLLC 4 Attorneys for Defendants 5 101 North Monroe Street, Suite 750 6 Tallahassee, FL 32302 7 By: CHRISTOPHER KISE, ESQ. 8 LAZARO FIELDS, ESQ. 9 JESUS SUAREZ, ESQ. 10 11 ROBERT & ROBERT, PLLC 12 Attorneys for Defendants 13 526 RXR Plaza 14 Uniondale, NY 11556 15 By: CLIFFORD ROBERT, ESQ. 16 17 HABBA MADAIO & ASSOCIATES, LLP 18 Attorneys for Defendants 19 1430 US Highway 296, Suite 240 20 Bedminster, NJ 07921 21 By: ALINA HABBA, ESQ. 22 23 MORIAN LAW, PLLC 24 Attorneys for Defendants 25 60 East 42nd Street, Suite 4600 New York, NY 10165 By: ARMEN MORIAN, ESQ. THE TRUMP ORGANIZATION Attorneys for the Defendant 725 Fifth Avenue New York, NY 10022 By: ALAN GARTEN, ESQ. MICHELE PANTELOUKAS MICHAEL RANITA Senior Court Reporters</p>	<p>Unell - by Defendant - Cross (Wallace)</p> <p style="text-align: right;">Page 5756</p> <p>1 work on this engagement; is that correct? 2 A Give or take, yes. 3 Q You also performed other engagements for the Trump 4 Organization while at Ankura, correct? 5 A Yes. 6 Q What have those engagements been? 7 A I have worked on one engagement, and that was on a 8 potential conservation easement valuation of the Doral 9 property. 10 Q And when did you begin your work on that engagement? 11 A Sometime probably about a year ago. 12 Q Okay. So would this have been before you were 13 retained as an expert for this case? 14 A I am not certain of the exact timing. 15 Q It might have been close to the same time? 16 A Around then, yes. 17 Q Do you have an sense of how much time you spent on 18 that engagement? 19 A Probably less than 10 or 15 hours. 20 Q And do you know what your time was billed at for that 21 engagement? 22 A That's a fixed-fee engagement that is actually led by 23 our valuation team. 24 Q So your time is not being charged at an hourly rate 25 for that engagement; am I understanding that correctly?</p>

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1 A No, sir.

2 Q Do you have a sense overall --

3 THE COURT: Mr. Wallace. Classic negative

4 question. "It is not" and then he says "no." Does that

5 mean, no, it is not; does that mean, no, you are wrong?

6 MR. WALLACE: Fair point, Your Honor.

7 I think the prior answer was clear. I tried to

8 clarify it and made it less clear. I'll leave it be.

9 THE COURT: Okay.

10 Q Do you have a sense of the total billings for Ankura

11 to the Trump Organization over the past two years?

12 A No, sir.

13 Q So going to your expert opinions, I would like start

14 off with the difference between your analysis of lost interest

15 and Mr. McCarty's analysis.

16 MR. WALLACE: If we could put up on the screen

17 DD-5?

18 Q This is the chart reflecting your --

19 MR. WALLACE: There we are.

20 Q This is the chart reflecting your analysis of the

21 differential of interest on the Deutsche Bank loans if there

22 was no guaranty; is that correct?

23 A This is a hypothetical that was done to illustrate

24 what the difference would be, based off of the information that

25 was derived from the Deutsche Bank testimony and the loan

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1 documents utilizing the 25 basis point differential between a

2 guaranty and a limited guaranty.

3 Q Okay. But it is an analysis of the difference in the

4 pricing of the Deutsche Bank loans with the guaranty -- let me

5 back up.

6 So it is a hypothetical analysis, correct?

7 A It is an illustrative analysis to show a hypothetical

8 and really the differential between Mr. McCarty's analysis and

9 the analysis that would be reflective with the 25 basis points

10 as shown in the documentation and from the testimony of the

11 Deutsche Bank personnel.

12 THE COURT: The question was whether these were

13 hypothetical numbers. I assume the answer is yes?

14 THE WITNESS: They are hypothetical, yes.

15 Q Okay. And I'll tell you, I think you described this

16 in detail, I am trying to understand the pieces of it. I'll

17 take it piece by piece. And many of the questions will be yes

18 or no.

19 So, the hypothetical analysis is what the difference

20 might be in the Deutsche Bank loans that were actually extended

21 here with the guaranty and without the guaranty; is that fair?

22 A No. It is -- to some extent it is. But what it is

23 trying to show is, is what the actual interest percentage was,

24 and then without a guaranty, where it would go. And that is

25 based off of the 25 basis points as outlined in the loan

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1 documentation based off of the step-down and the contractual

2 obligations between the borrower and the lender.

3 Q Okay. So you took the actual loans as they existed,

4 fully signed and executed by the Private Wealth Group at

5 Deutsche Bank and the Trump Organization and then backed out

6 the personal guaranty in the loan; is that fair?

7 A I did not back out the personal guaranty of the loan.

8 Q What did you do?

9 A I assumed an additional 25 basis points, an

10 elimination of the guaranty in conjunction with the loan

11 documents as prescribed, especially in the Doral loan. The

12 loan -- the Doral loan documents state that there is an

13 additional 25 basis points that would be added when the

14 guaranty burned off. However, the defendants had the option of

15 maintaining a guaranty in the limited basis for the difference

16 of 25 basis points.

17 Q Okay. I'll go back to this in a minute. But I

18 believe the 25 basis point reduction we saw yesterday was going

19 from 10 percent guaranty to zero; is that right?

20 A I am not following that.

21 Q Well, the guaranty at the time it was written off,

22 when the price went from 1.75 to 2.0, the guaranty went from

23 zero to 10 percent. Do you recall that?

24 A Yes, sir.

25 Q Okay. So the 25 basis points is the difference

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1 between no guaranty and a 10 percent guaranty; is that correct?

2 A You can't look at it that way, because a guaranty at

3 10 percent is still \$17 million. You have a 40 some odd

4 percent loan-to-value. You are trying to say that there is one

5 factor that is involved in this. As testified yesterday, there

6 are numerous factors that go into it. And it is not just the

7 guaranty. It is the fact that you have a warm body behind it.

8 Whether it is 100 percent or 10 percent, it doesn't matter.

9 The fact is that, in my experience, and in dealing with loans,

10 a 10 percent guarantee at \$17 million on a 40 percent LTV is

11 what is called a comfort guaranty. It is there. It is

12 probably never going to be called upon. It is well secured.

13 And that 25 basis points is what they place a premium on it

14 for.

15 But, you know, you are asking to make an assumption

16 here and trying to say that today is Tuesday, when everybody in

17 this courtroom here knows that today is Friday.

18 You can't make that judgment and sit here and say,

19 the documents state what it is and I am not going to deviate

20 from what the documents say. The documents state that with the

21 guaranty it is 25 basis points less. Without a guaranty is 25

22 basis points more. And in my experience, the 10 percent,

23 25 percent, 50 percent or 100 percent of the guaranty based off

24 of the other metrics with the loan, does not change that

25 opinion.

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<p>1 MR. WALLACE: I move to strike the answer as</p> <p>2 non-responsive.</p> <p>3 THE COURT: You know, yesterday not everybody</p> <p>4 could tell you it was Thursday, but today everybody can</p> <p>5 tell you it is Friday.</p> <p>6 Denied. I think he was trying. I'll determine</p> <p>7 whether he was successful or not; maybe whether I credit</p> <p>8 what he said or not.</p> <p>9 Q For the purposes of this analysis, you determined</p> <p>10 that the guaranty was worth 25 basis points; is that correct?</p> <p>11 A A guaranty.</p> <p>12 Q What is the difference you see between A guaranty and</p> <p>13 B guaranty?</p> <p>14 A There are various levels of a guaranty that are</p> <p>15 described throughout the loan documents. A guaranty, a limited</p> <p>16 guaranty, the fact that the guaranty is in place, as I</p> <p>17 testified yesterday, no matter whether it is a limited guaranty</p> <p>18 or not, the function of a guaranty as looked at by Deutsche</p> <p>19 Bank, as looked at by bankers, as looked at in my experience</p> <p>20 and as looked at in the real world, is that no matter if it is</p> <p>21 at 10 percent or if it is at 100 percent, that guaranty to them</p> <p>22 was valuable for 25 basis points for the engagement of a warm</p> <p>23 body of a billionaire to stand behind the loan in his equity</p> <p>24 infusion and capital there. So yes, 25 basis points per the</p> <p>25 documents and my experience.</p>		<p>1 position to set those fees. I don't risk write loans at</p> <p>2 Deutsche Bank, the Attorney General doesn't risk write loans at</p> <p>3 Deutsche Bank. And certainly Mr. McCarty doesn't -- I did not</p> <p>4 make any assumptions as to what the interest rate would be.</p> <p>5 The only group that can speculate or actually state</p> <p>6 what the interest rate would be is Deutsche Bank, because they</p> <p>7 are the ones that were the users of the documents, the ones</p> <p>8 that entered into the loan agreement and the ones that offered</p> <p>9 the terms to the defendants.</p> <p>10 Q Okay. So to the extent Mr. McCarty was pricing out</p> <p>11 the market interest rate for a commercial real estate loan on</p> <p>12 these four properties, with no personal guaranty at the time</p> <p>13 they were originated, you did not try to recreate his analysis?</p> <p>14 A No. I tried to give an illustrative of what it would</p> <p>15 be based off of the loan documents. I am not trying to</p> <p>16 recreate what he did.</p> <p>17 THE COURT: Let me jump in. Are you testifying</p> <p>18 that with your experience, your expertise, your knowledge</p> <p>19 of the facts in this case, you could not possibly estimate</p> <p>20 what Deutsche Bank would have charged as an interest rate</p> <p>21 in any particular situation, because it is all up to them?</p> <p>22 THE WITNESS: Yes. I can give a range and give</p> <p>23 historical as to what has been out there and show</p> <p>24 illustrative examples of it, but at the end of the day as</p> <p>25 referenced in the Deutsche Bank documents, all of their</p>	
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<p>1 MR. WALLACE: I guess I asked for that one.</p> <p>2 Q And is it your understanding that Mr. McCarty was</p> <p>3 pricing out the interest rate on a loan for the properties</p> <p>4 listed here that was only based only the collateral itself with</p> <p>5 no guaranty? Yes or no?</p> <p>6 A I do not know because I do not know exactly what</p> <p>7 Mr. McCarty did. I have an idea of what he did, but I can't</p> <p>8 speak to what Mr. McCarty did. That would have to be in his</p> <p>9 testimony as to how he derived the 10 percent and what factors</p> <p>10 went into that. And if you are trying to state that, okay, the</p> <p>11 10 percent is without a guaranty, that, once again, is the</p> <p>12 guaranty was in place. So it is not a -- that is not a</p> <p>13 scenario that would ever come into play into this case because</p> <p>14 the guaranty was in place at all times.</p> <p>15 Q So your scenarios do not incorporate the idea that</p> <p>16 there could be no guaranty, correct?</p> <p>17 A This scenario states that if there was not a</p> <p>18 guaranty, that the additional premium would be 25 basis points.</p> <p>19 Q Okay. Did you form a view, one way or the other, as</p> <p>20 to what the market interest rate would be for a commercial real</p> <p>21 estate loan on these four properties with no guaranty at the</p> <p>22 time they were originated?</p> <p>23 A No. Because the only person, as I testified earlier,</p> <p>24 that is able to do that is Deutsche Bank. The Deutsche Bank is</p> <p>25 the trier of the ability to set their own fees. I am not in a</p>		<p>1 risk rating, all of their pricing is proprietary. None of</p> <p>2 us have that information. None of us have that ability.</p> <p>3 None of us understand the total relationship value. We</p> <p>4 can try to do our best to understand it based off of the</p> <p>5 testimony that has been provided, as well as the</p> <p>6 documents. But the only person that has the ability to</p> <p>7 determine the risk and the interest rate and the overall</p> <p>8 relationship value, is the lender.</p> <p>9 THE COURT: So you said you could estimate or</p> <p>10 guesstimate within a certain range, but you just couldn't</p> <p>11 give an exact?</p> <p>12 THE WITNESS: And I did not give an exact. I</p> <p>13 have provided data to show how the defendants -- excuse</p> <p>14 me, how the plaintiffs at 10 percent was inaccurate and</p> <p>15 also not reflective of the actual loan, because the loan</p> <p>16 contained a guaranty. And the assumption that the loan</p> <p>17 did not have a guaranty is incorrect. Because at the</p> <p>18 10 percent level, the loan had an effective guaranty in</p> <p>19 all times. At no point in any testimony, in any</p> <p>20 deposition or any record have I seen that the guaranty was</p> <p>21 invalid. So running the estimate at 10 percent and</p> <p>22 stating that there is no guaranty, is an analysis that is</p> <p>23 worthless.</p> <p>24 THE COURT: Well, just as a general point, and</p> <p>25 the attorneys know this, I allow in my discretion</p>	

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<p>1 hypothetical questions. So, if you are asked a</p> <p>2 hypothetical, to say: Oh, but that's not the fact.</p> <p>3 That's not answering the question.</p> <p>4 THE WITNESS: So hypothetically 10 percent is</p> <p>5 unsupported, as not the way that anybody would do it. It</p> <p>6 was tied to bonds. Bonds are not loans. It was tied to</p> <p>7 Dell and Club Corp. which are corporate entities. And the</p> <p>8 support for it was unfounded and inaccurate in his report.</p> <p>9 So yes, I full-heartedly disagree with the 10 percent that</p> <p>10 Doral would have been at. And I firmly believe it would</p> <p>11 be closer, if not lower than the 25 basis points as</p> <p>12 described here and in the loan documents, and in the</p> <p>13 testimony of Deutsche Bank.</p> <p>14 Q So let me clarify one thing. Well, let me ask then,</p> <p>15 so are you saying that actually the commercial real estate</p> <p>16 loan, no guaranty, issued by the Commercial Real Estate group</p> <p>17 at Deutsche Bank or some other Commercial Real Estate division,</p> <p>18 would have been priced even closer to the private wealth loans</p> <p>19 than your hypothetical here with the 25 basis points added?</p> <p>20 A That's not correct.</p> <p>21 Q So what are you saying? I don't understand what you</p> <p>22 are saying.</p> <p>23 A What I am trying to say is that 10 percent is</p> <p>24 unfounded.</p> <p>25 Q And you said, I think it would be closer to the</p>		<p>1 really long way in a bank. And as we have already said, banks</p> <p>2 love billionaires because billionaires repay loans.</p> <p>3 Billionaires that repay loans with a guaranty makes it more</p> <p>4 secure.</p> <p>5 Q You are telling us that Donald Trump -- when the</p> <p>6 guaranties were at 100 percent -- when the guaranty was at</p> <p>7 100 percent on Doral, how much capital was at risk for Mr.</p> <p>8 Trump?</p> <p>9 A Several hundred million dollars, because he had</p> <p>10 placed \$250 million of capital in there.</p> <p>11 Q I am asking on the guaranty. When he had the</p> <p>12 guaranty on the Doral loan and the guaranty is 100 percent, how</p> <p>13 much of Mr. Trump's capital was at risk in that guaranty?</p> <p>14 A \$125 million.</p> <p>15 Q You are saying that Mr. Trump put \$125 million of his</p> <p>16 own capital at risk unnecessarily because he could have gotten</p> <p>17 the same interest rate --</p> <p>18 MR. WALLACE: Actually, let me strike that</p> <p>19 question if I can, or withdraw that question, if I can,</p> <p>20 Your Honor.</p> <p>21 THE COURT: Withdrawn.</p> <p>22 Q Mr. Trump guaranteed the Doral loan for \$125 million,</p> <p>23 for which he was personally responsible, but received no</p> <p>24 interest rate benefit for that guaranty; is that your</p> <p>25 testimony?</p>	
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<p>1 numbers reflected here, even more than the 25 basis points?</p> <p>2 A Absolutely. And that's reflected in the loan</p> <p>3 documents.</p> <p>4 Q So, sir, do you have an opinion, one way or the</p> <p>5 other, as to what the market rate would be for a commercial</p> <p>6 real estate loan with no personal guaranty for these four</p> <p>7 properties?</p> <p>8 A It would be in the range of where I have it here.</p> <p>9 Q So close to the private wealth amounts?</p> <p>10 A Yes. As illustrated in the loan documents.</p> <p>11 Q So if it is close to the Private Wealth Group --</p> <p>12 close to the private wealth amounts, why did Donald Trump agree</p> <p>13 to a guaranty? Why put his own assets at risk?</p> <p>14 A That's a great question. I am happy you asked it.</p> <p>15 Because real estate developers that believe in their projects,</p> <p>16 that place a tremendous amount of equity in their projects, it</p> <p>17 gives credence to their plan. Especially when you are a</p> <p>18 redevelopment and repositioning assets. That's what President</p> <p>19 Trump does.</p> <p>20 And that is part of what makes his success, is his</p> <p>21 ability to stand behind his deals, place his name behind it,</p> <p>22 place extremely large amounts of capital into the deal. And</p> <p>23 therefore it is looked upon by banks, in my experience, as</p> <p>24 Deutsche Bank did in their experience, as a well-sounded loan.</p> <p>25 And guaranties for people that stick behind their deals goes a</p>		<p>1 A No. He did receive an interest rate benefit. You</p> <p>2 are looking at it right here, 25 basis points.</p> <p>3 Q So the --</p> <p>4 A And actually, in actuality, he elected to keep his</p> <p>5 guaranty in place when he didn't have to for 25 basis points.</p> <p>6 That is actually what happened. So we are not even looking at</p> <p>7 a hypothetical here as to, oh, Mr. Trump didn't have his</p> <p>8 guaranty, what is it worth. We see what it is worth. And we</p> <p>9 see to him that he elected to keep the guaranty because that</p> <p>10 was important to him and was worth 25 basis points.</p> <p>11 Q In your description of why Mr. Trump chose to have a</p> <p>12 guaranty in order to obtain a 25 basis-point benefit, what did</p> <p>13 you do -- what documents did you review in your analysis to</p> <p>14 come to that conclusion?</p> <p>15 A The credit memos, the loan agreements and the actual</p> <p>16 what happened with the loan, in that he did elect to keep the</p> <p>17 guaranty in exchange for a 25 basis-point reduction.</p> <p>18 Q Did you review any testimony from Mr. Trump about why</p> <p>19 he chose to have a guaranty on the Doral property?</p> <p>20 A I did not.</p> <p>21 Q Okay.</p> <p>22 THE COURT: Just, the court reporter would like</p> <p>23 you to speak a little slower, generally.</p> <p>24 MR. WALLACE: Me too.</p> <p>25 THE COURT: You are not the first person.</p>	

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<p>1 THE WITNESS: We will slow it down a little bit.</p> <p>2 Q Did you review any contemporaneous documents from the</p> <p>3 Trump Organization during the period of negotiation for the</p> <p>4 Doral loan explaining that these were the reasons for including</p> <p>5 a guaranty on the loan for a 25 basis-point improvement?</p> <p>6 A At which point? That's -- I mean, the loan was</p> <p>7 originated from 2014 to 2022, had multiple iterations to it. I</p> <p>8 want to make sure we are at the right time.</p> <p>9 Q The origination of loan in 2011 and 2012.</p> <p>10 A No. But it was -- during that -- the loan documents</p> <p>11 state what the step-down would be and what the increase of</p> <p>12 interest would be. It is in the documents.</p> <p>13 Q So you are extrapolating Mr. Trump's intent from the</p> <p>14 loan documents?</p> <p>15 A What actually happened. He did decide that he was</p> <p>16 going to keep a limited guaranty in exchange for a 25</p> <p>17 basis-point change.</p> <p>18 Q I believe you said you were here for Ms. Vrablic's</p> <p>19 testimony on Wednesday; is that correct?</p> <p>20 A Yes, sir.</p> <p>21 Q And do you recall that Ms. Vrablic testified that</p> <p>22 most of her clients do not like recourse; do you recall that</p> <p>23 testimony?</p> <p>24 A Yeah, that's -- that's correct. Most people don't</p> <p>25 like recourse.</p>		<p>1 interpretation was.</p> <p>2 Q Mr. Unell, if I could hand you a document. It is</p> <p>3 already in evidence. I think it is easier for everyone.</p> <p>4 MR. WALLACE: It is Plaintiff's Exhibit 1251.</p> <p>5 (Handing)</p> <p>6 Q This is an e-mail chain between Ivanka Trump, Jason</p> <p>7 Greenblatt, Allen Weisselberg, and David Orowitz from December</p> <p>8 of 2011. Mr. Unell, did you review this document in the course</p> <p>9 of preparing your report?</p> <p>10 A I don't recall.</p> <p>11 MR. WALLACE: If we turn to page two of this</p> <p>12 document.</p> <p>13 Q At the bottom there is an e-mail from Rosemary</p> <p>14 Vrablic. She is forwarding an attached summary of terms, the</p> <p>15 proposed acquisition of the Doral resort.</p> <p>16 Ivanka Trump responds -- forwards this on to</p> <p>17 Mr. Weisselberg, Mr. Greenblatt, Mr. Orowitz. And writes: It</p> <p>18 doesn't get better than this. Let's discuss ASAP. I want to</p> <p>19 call Rosemary and thank her, but if there are any asks I would</p> <p>20 like to give her an indication. I am tempted not to negotiate</p> <p>21 this, though.</p> <p>22 Do you remember reviewing that e-mail from Ms. Trump?</p> <p>23 A I have seen that before, yes, sir.</p> <p>24 Q And if you look at the response from Jason Greenblatt</p> <p>25 above, page one. Do you know who Jason Greenblatt is?</p>	
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<p>1 Q And so it is your professional opinion that a 25</p> <p>2 basis-point improvement in interest rates is sufficient for a</p> <p>3 client to put aside that dislike of recourse?</p> <p>4 A Absolutely. If it is that -- if it is their business</p> <p>5 decision, that's their business decision. And Deutsche Bank</p> <p>6 obviously felt comfortable with it by approving it and placing</p> <p>7 it in the loan documents. I can't speak to the business</p> <p>8 decision of somebody. There is a lot of other factors that go</p> <p>9 into a decision besides that. And also, if you are a real</p> <p>10 estate developer, while some don't like it, those that are</p> <p>11 confident, that have success, they will put their name behind</p> <p>12 it.</p> <p>13 Q In the course of preparing your reports, did you come</p> <p>14 across any evidence indicating that Donald Trump had decided by</p> <p>15 2011 that he never wanted to do a recourse loan again?</p> <p>16 A I believe I read some of that, but things change.</p> <p>17 Metrics change. As I mentioned earlier, within five seconds</p> <p>18 ago, there are a lot of things that can change, including what</p> <p>19 is happening with his personal life, what is happening with his</p> <p>20 professional life, what is happening with his corporate life,</p> <p>21 as well as what is happening in the overall capital markets.</p> <p>22 THE COURT: Two things. One, slow down.</p> <p>23 And two, the question was, did you come across a</p> <p>24 certain statement. Not your interpretation of what then</p> <p>25 happened. The other side could redirect you on what your</p>		<p>1 A No, sir.</p> <p>2 Q He is an attorney at the Trump Organization, I'll</p> <p>3 represent that to you.</p> <p>4 He writes: I will review. But not immediately -- I</p> <p>5 am sorry. I will review but not -- it is supposed to be</p> <p>6 "note" -- immediately that this is a full principal and</p> <p>7 interest and operating expenses personal guaranty. Is DJT</p> <p>8 willing to do that? Also, the net worth covenants and DJT</p> <p>9 indebtedness limitations would seem to me like a problem.</p> <p>10 Do you know if you determined why Mr. Greenblatt felt</p> <p>11 the net worth covenants and indebtedness limitations would be a</p> <p>12 problem?</p> <p>13 A I can't speak on behalf of Mr. Greenblatt.</p> <p>14 Q If we look at the next e-mail in the chain from</p> <p>15 Ivanka Trump, she writes: That we have known from day one. We</p> <p>16 wanted to get a great rate, and the only way to get</p> <p>17 proceeds/term and principal where we want them is to guarantee</p> <p>18 the deal. As the market has illustrated, getting leverage on</p> <p>19 resorts right now is not easy. (i.e. 125 plus an equity kicker</p> <p>20 for another 25 percent or Beal with full cash flow sweeps and</p> <p>21 steep prepayment penalties).</p> <p>22 Did you review that e-mail in preparation?</p> <p>23 A Yes.</p> <p>24 Q Okay. So, Ms. Trump believes that the only way to</p> <p>25 get a great rate and the terms and principal they wanted, were</p>	

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<p>1 guarantee the deal. Is that indicative of the benefit that</p> <p>2 they were going to be able to obtain by guaranteeing the deal?</p> <p>3 Is that fair?</p> <p>4 A Yes.</p> <p>5 Q If you look at the response from Mr. Greenblatt. He</p> <p>6 states: Obviously this is not my decision, but this is</p> <p>7 completely inconsistent with what he told me he would ever do</p> <p>8 again when we had the Chi and Vegas issues, and the magnitude</p> <p>9 of this is much bigger. He was so angry that he got himself</p> <p>10 "into the Chi/Vegas mess" and told me he never wanted to do</p> <p>11 this again. I understand that he has changed his mind. And</p> <p>12 that's fine. But he has to recall that banks do sue under</p> <p>13 payment guaranties and he may have to write a check north of</p> <p>14 125 million if there is any default on the loan.</p> <p>15 I think we can agree though, that despite these</p> <p>16 concerns of Mr. Greenblatt, Mr. Trump agreed to guarantee these</p> <p>17 loans, correct?</p> <p>18 A Yes. He was the ultimate decision maker as the</p> <p>19 guarantor.</p> <p>20 Q It is your opinion that he did this to obtain a 25</p> <p>21 basis-point improvement in the interest rate on the loans; is</p> <p>22 that right?</p> <p>23 A No, that's not it. That's not what I stated.</p> <p>24 Q What are you saying?</p> <p>25 A I am stating he did it to obtain a preferential rate</p>		<p>1 that go with an interest rate. It is not just, oh, guaranty or</p> <p>2 no guaranty 25 bits. You can't put this in a square box in a</p> <p>3 vacuum. You are ignoring multiple other facts that go into the</p> <p>4 pricing of a loan.</p> <p>5 Q So, I am going to represent to you that what is</p> <p>6 happening is an effort to figure out how much disgorgement, how</p> <p>7 much benefit the Trump Organization obtained, and we are just</p> <p>8 trying to obtain a reasonable approximation.</p> <p>9 So, let me ask, is there -- what -- I'll withdraw.</p> <p>10 I'll restate the question.</p> <p>11 Can you state what the interest rate benefit was from</p> <p>12 having a guaranteed loan as opposed to a non-guaranteed loan on</p> <p>13 the Doral property?</p> <p>14 A I cannot state what the exact benefit is. However,</p> <p>15 there was a benefit.</p> <p>16 Q Okay. And so I take it -- and I apologize if I did</p> <p>17 cover this one. You did not reach an independent opinion on</p> <p>18 what the market rate for a commercial real estate loan with no</p> <p>19 personal guaranty for these four loans would be, right?</p> <p>20 A No.</p> <p>21 Q Okay. So Mr. Unell, I will represent to you that as</p> <p>22 part of the assignment Mr. McCarty received, he was asked to</p> <p>23 assume that Mr. Trump did not have access to the Private Wealth</p> <p>24 Management group because Mr. Trump had engaged in fraud in the</p> <p>25 preparation of his financial statements.</p>	
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<p>1 in the bank of the Private Wealth Management bank, which would</p> <p>2 have been in line with their pricing guidelines, which he was</p> <p>3 aware of. They have a published pricing guideline, and it</p> <p>4 required a guaranty. And he provided the guaranty. What</p> <p>5 Deutsche Bank decided was the premium there, that's for</p> <p>6 Deutsche Bank to decide, not me or you.</p> <p>7 Q What is your evidence that Deutsche Bank published it</p> <p>8 its pricing guideline?</p> <p>9 A They didn't publish their pricing guideline.</p> <p>10 However, in my experience, they would able -- and</p> <p>11 Rosemary Vrablic or others would have discussed that with them.</p> <p>12 That's how business gets done. You say, okay, what are</p> <p>13 indicative rates? You don't go out and just throw it. They</p> <p>14 knew there was a benefit to be derived and that benefit would</p> <p>15 be negotiated. And to say that there is no benefit derived or</p> <p>16 for me to try to put myself in the mind of the guarantor, to</p> <p>17 determine what that benefit is, or to determine what that</p> <p>18 benefit to Deutsche Bank is, that's for Deutsche Bank and the</p> <p>19 guarantor to decide, not for me.</p> <p>20 Q Or the Court, to be fair.</p> <p>21 I am focused on interest rates. And are you saying</p> <p>22 that there was a greater benefit to be derived in interest</p> <p>23 rates beyond the 25 basis points you have been talking about?</p> <p>24 A There is a benefit to be derived, to be determined</p> <p>25 based on other deal terms. The guaranty is one of many terms</p>		<p>1 Does your interest differential calculation include</p> <p>2 that assumption?</p> <p>3 A No, because that's not what my assignment was,</p> <p>4 because there was a guaranty in place.</p> <p>5 Q So putting aside the fraud piece. Does your interest</p> <p>6 differential calculation include an assumption that Mr. Trump</p> <p>7 does not have access to the Private Wealth Management group at</p> <p>8 Deutsche Bank?</p> <p>9 A No, because he did have access to it.</p> <p>10 Q And so if that was Mr. McCarty's assignment, you two</p> <p>11 aren't really measuring the same thing, are you?</p> <p>12 A I can measure that his rates --</p> <p>13 Q That's not my question.</p> <p>14 My question is, you and Mr. McCarty were not</p> <p>15 measuring, if that was Mr. McCarty's assignment, you and Mr.</p> <p>16 McCarty were not measuring the same thing.</p> <p>17 MR. KISE: Objection, Your Honor. I think</p> <p>18 Mr. Wallace's hypothetical presumes facts contrary to the</p> <p>19 evidence. This is an improper hypothetical.</p> <p>20 MR. WALLACE: It is a hypothetical, so.</p> <p>21 MR. KISE: You can't pose a hypothetical that is</p> <p>22 squarely contrary. That's like saying assume today is</p> <p>23 Tuesday. It is not Tuesday, it is Friday.</p> <p>24 THE COURT: Okay. I am not sure he is doing</p> <p>25 that.</p>	

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<p>1 MR. KISE: But he is. If you want to excuse the</p> <p>2 witness, we can, but that's definitely what he is doing.</p> <p>3 His hypothetical -- his hypothetical presumes in</p> <p>4 the first instance that President Trump wouldn't have</p> <p>5 qualified for the private wealth bank. He did. You</p> <p>6 already heard testimony, 10 million and 100 million,</p> <p>7 that's it. 10 million liquidity, 100 million net worth.</p> <p>8 Once you are there, you are in the private bank. That's</p> <p>9 it, you are in. Period. It doesn't matter beyond that.</p> <p>10 So it is like assuming that he didn't qualify.</p> <p>11 MR. WALLACE: Now we should excuse the witness.</p> <p>12 MR. KISE: That's fine. I offered.</p> <p>13 (Whereupon the witness stepped down from the</p> <p>14 stand and exited the courtroom.)</p> <p>15 (Whereupon the following proceedings were</p> <p>16 stenographically recorded by Senior Court Reporter Michael</p> <p>17 Ranita.)</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>		<p>1 that's what the guaranty is worth. Once you are in the</p> <p>2 private bank, you are in this sort of rarified air and you</p> <p>3 get access to these rates. So it's a flawed premise. It's</p> <p>4 an improper hypothetical to say, well, no, no, we have to</p> <p>5 compare it to the outside world, and this witness has to</p> <p>6 accept that premise. I mean, yes, if I assume that today is</p> <p>7 Tuesday not Friday, then tomorrow will be Wednesday and not</p> <p>8 Saturday. I mean, right --</p> <p>9 MR. WALLACE: This is -- your Honor, this is not an</p> <p>10 evidentiary objection. Mr. Kise --</p> <p>11 MR. KISE: It is an evidentiary.</p> <p>12 MR. WALLACE: -- he does this all the time. You</p> <p>13 argue your case. I would say it also shows, Mr. Kise,</p> <p>14 something you never talk about, that the Court found</p> <p>15 Mr. Trump committed fraud to get into the --</p> <p>16 MR. KISE: No.</p> <p>17 MR. WALLACE: To get into Private Wealth Group, he</p> <p>18 committed fraud.</p> <p>19 MR. KISE: No.</p> <p>20 MR. WALLACE: He did.</p> <p>21 MR. KISE: No.</p> <p>22 MR. WALLACE: The Court has found that.</p> <p>23 MR. KISE: No. The Court has found that he</p> <p>24 violated 63(12), which expressly means only that he violated</p> <p>25 the statute and not fraud; that's what we are here about.</p>	
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<p>1 THE COURT: Mr. Kise, do you need to finish or --</p> <p>2 MR. KISE: Yeah, no, it's -- it's like going back</p> <p>3 and debating whether the world is round or whether the world</p> <p>4 is flat. I mean, the evidence in the record demonstrates he</p> <p>5 qualified for the Private Wealth Bank; 10 million liquidity,</p> <p>6 100 million in net worth. I mean, that's just undisputed.</p> <p>7 So once you are in the Private Wealth Bank, and maybe this</p> <p>8 is where the disconnect is. Once you are in the Private</p> <p>9 Wealth Bank, your interest rates are different, period, full</p> <p>10 stop. They are different. And they are different because,</p> <p>11 as you heard the testimony, they are different because the</p> <p>12 bank wants you as a client. He's a whale of a client. He's</p> <p>13 a billionaire. He is one of -- so they are willing to give</p> <p>14 him rates because they are going to get deposits; they are</p> <p>15 going to get access to his assets; they are going to write</p> <p>16 other loans. You heard all this testimony. So they are</p> <p>17 willing to do things for this client that they are not going</p> <p>18 to do for just somebody who comes in off the street.</p> <p>19 So, yes, you have to give a personal guaranty, but</p> <p>20 the pricing to on the personal guaranty is not the pricing</p> <p>21 between the regular world and Private Wealth. The pricing</p> <p>22 is within the Private Wealth parameters. And that's exactly</p> <p>23 what this witness is saying is, okay, there's a range you</p> <p>24 heard -- you heard the witness, Mr. Williams, testify to it,</p> <p>25 2 percent to 2.5 percent. So that's 25 basis points. So</p>		<p>1 This is the problem with the Attorney General's view. They</p> <p>2 haven't proven -- in order to establish fraud, intent,</p> <p>3 materiality, reliance and damage. I mean, that was what you</p> <p>4 have to establish; that's what is at issue with these</p> <p>5 remaining counts. They wanted a trial on these remaining</p> <p>6 counts. That's what this trial is about.</p> <p>7 MR. WALLACE: I believe.</p> <p>8 MR. KISE: 63(12) violation, as your Honor has</p> <p>9 held, a 63(12) violation doesn't require those elements. So</p> <p>10 to call it fraud in the generic sense because we use that</p> <p>11 term in association with 63(12), doesn't mean that it's</p> <p>12 fraud in the sense of what's at issue in this case.</p> <p>13 MR. WALLACE: Your Honor, your Honor.</p> <p>14 THE COURT REPORTER: I can't hear when you are</p> <p>15 both --</p> <p>16 MR. KISE: I'm not arguing a case. It's an</p> <p>17 evidence objection. A hypothetical, it's an improper</p> <p>18 hypothetical.</p> <p>19 THE COURT: Mr. Wallace, do you have anything to</p> <p>20 say?</p> <p>21 MR. WALLACE: Are you about to strike my</p> <p>22 examination of this witness?</p> <p>23 THE COURT: Your what?</p> <p>24 MR. WALLACE: My examination of this witness.</p> <p>25 Mr. Kise is saying I shouldn't be allowed to because they</p>	

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<p>R. Unell - by Defendant - Cross (Mr. Wallace) Page 5781</p> <p>1 are improper hypotheticals.</p> <p>2 MR. KISE: It was one question. It wasn't the</p> <p>3 whole examination. I liked most of the rest of it.</p> <p>4 THE COURT: Would you like to explain --</p> <p>5 MR. WALLACE: No, I don't want to rephrase my</p> <p>6 question.</p> <p>7 THE COURT: I'm --</p> <p>8 MR. WALLACE: I'm sorry. I interrupted you.</p> <p>9 THE COURT: I'm not asking you to rephrase. I'm</p> <p>10 asking for you to defend it.</p> <p>11 MR. WALLACE: It is completely consistent with our</p> <p>12 disgorgement theory, which also relates to 63(12) fraud,</p> <p>13 that he lied to the Private Wealth Group to get these loans,</p> <p>14 and therefore, we are looking as to what the interest rates</p> <p>15 would have been if he had not had access to the group that</p> <p>16 he lied to. That is the simple measure, and the Court will</p> <p>17 be free to decide whether it likes that measure or it</p> <p>18 prefers Mr. Unell's measure at the end of the day.</p> <p>19 MR. KISE: We are right back to circuitous again.</p> <p>20 MR. WALLACE: It's less circuitous if I just finish</p> <p>21 the exam.</p> <p>22 THE COURT: Objection overruled. We could argue</p> <p>23 all day. Let's get the witness back. You could ask him</p> <p>24 hypotheticals. I don't see a problem with that, and I</p> <p>25 accept Mr. Wallace's explanation.</p>	<p>R. Unell - by Defendant - Cross (Mr. Wallace) Page 5783</p> <p>1 A Yes, sir.</p> <p>2 Q And do you recall that he testified that using -- he</p> <p>3 viewed using a fixed rate as more conservative?</p> <p>4 A Yes, sir.</p> <p>5 Q And he said that was because the loan rates were tied</p> <p>6 to LIBOR, and that LIBOR increased over the term of these loans;</p> <p>7 is that correct?</p> <p>8 A I believe that's what his testimony was. I do not know</p> <p>9 the LIBOR spread over the time, so I can't say whether it was</p> <p>10 true or correct or not?</p> <p>11 Q Well, if we look at the loans. We could use your</p> <p>12 chart. The actual interest rates, they started at one point --</p> <p>13 I will read this to you. It's impossible so see.</p> <p>14 A I could see down here.</p> <p>15 Q Let me move back here then. So the 2014 rate starts at</p> <p>16 1.9035, and then goes up to a high of 4.1616 in 2019. Do you</p> <p>17 see that?</p> <p>18 A Yes, sir.</p> <p>19 Q So, that is indicative of an increase in LIBOR over</p> <p>20 that period.</p> <p>21 A It is, but without seeing what the overall impact is in</p> <p>22 the years '20 to 2022 where it goes down to 1.8042, without</p> <p>23 seeing the full analysis run out on a spreadsheet, one can't</p> <p>24 tell me that's a conservative approach, because you wouldn't</p> <p>25 know what the overall impact would be of sometimes it went up,</p>
<p>R. Unell - by Defendant - Cross (Mr. Wallace) Page 5782</p> <p>1 (Whereupon, there is a brief pause in the</p> <p>2 proceedings as the witness enters the courtroom and steps</p> <p>3 into the witness stand.)</p> <p>4 THE COURT: I should explain "I accept his</p> <p>5 explanation." I think so his explanation is correct. Thank</p> <p>6 you.</p> <p>7 Okay. Next question.</p> <p>8 Q Mr. Unell, I think you said that you did not accept --</p> <p>9 MR. WALLACE: Why don't we put up DD5 and PDX4 side</p> <p>10 by side.</p> <p>11 (Whereupon, the exhibit was displayed on the</p> <p>12 screen.)</p> <p>13 Q So this is your analysis, and it should hopefully be</p> <p>14 Mr. McCarty's analysis, both which are very hard to view on this</p> <p>15 screen, but I can say that -- we talked about this, but</p> <p>16 Mr. McCarty uses a ten percent rate for Doral; correct?</p> <p>17 A Yes, sir.</p> <p>18 Q And I believe you, yesterday, criticized Mr. McCarty</p> <p>19 for using a fixed rate rather than a flat rate; is that correct?</p> <p>20 A Yes, sir.</p> <p>21 Q And that's because the DB loans had floating rates; is</p> <p>22 that correct?</p> <p>23 A Yes, sir.</p> <p>24 Q You reviewed Mr. McCarty's trial testimony; is that</p> <p>25 right?</p>	<p>R. Unell - by Defendant - Cross (Mr. Wallace) Page 5784</p> <p>1 but he doesn't account for when it goes down to 1.8042 percent,</p> <p>2 which is below the origination at 1.9035.</p> <p>3 THE COURT: Slower, still.</p> <p>4 Q I believe Mr. McCarty testified that he did do that,</p> <p>5 and it was more conservative, but you didn't actually run an</p> <p>6 analysis whether fixed or flat was more conservative?</p> <p>7 A I have not, and I have not seen any indication or</p> <p>8 evidence to support Mr. McCarty's claim that it was</p> <p>9 conservative.</p> <p>10 Q Well, I mean, it's math. Somebody can just run it</p> <p>11 tomorrow and figure it out.</p> <p>12 A But it hasn't been provided to me, so I'm sure it could</p> <p>13 be done, and it could've been done beforehand, but it hasn't.</p> <p>14 Q Mr. Unell, I'm going to hand you a document that's been</p> <p>15 marked Plaintiff's Exhibit 2658. This is the Realty Rates</p> <p>16 Investor Survey for the fourth quarter of 2011.</p> <p>17 Do you see that?</p> <p>18 A Yes, sir.</p> <p>19 Q And this is one of the reports you reviewed in the</p> <p>20 preparation of your report; correct?</p> <p>21 A Yes, sir. And it was also utilized in the deposition.</p> <p>22 Q Okay.</p> <p>23 A I recognize the --</p> <p>24 Q You see that.</p> <p>25 So if we could go to page six of this document, if we</p>

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<p>R. Unell - by Defendant - Cross (Mr. Wallace) Page 5785</p> <p>1 could pull up -- focus on the chart, I think. Well, just the 2 chart is fine. 3 (Whereupon, the exhibit was displayed on the 4 screen.) 5 Q This is the table that you utilized in preparing your 6 analysis of the increases -- the flow of interest rates -- let 7 me rephrase that. 8 This is the information you used in preparing your 9 tables showing the changes in interest rate spreads over time; 10 is that right? 11 A Actually, I believe that it was taken from the various 12 individual pages throughout here that, for instance, when you 13 would look at page 23 of 41 where it says "lodging facilities, 14 full-service", that that would provide that information. 15 I'm not certain that it ties back out to the overall on 16 this page. So it -- no, it was not. It was more so both this, 17 and it ties back to 23. 18 Q We could pull up -- 19 A 11 and 23. I want to make sure I'm saying that all the 20 data was. This was a portion of it, but 23, also. 21 Q So let's pull up page 23. 22 A Yes. 23 THE COURT: One at a time, and slower. 24 MR. WALLACE: Apologies. 25 A Mr. Wallace, I'm not saying it wasn't. I want to make</p>	<p>R. Unell - by Defendant - Cross (Mr. Wallace) Page 5787</p> <p>1 A Yes. 2 Q -- you looked at yesterday, is this using the spread 3 over base? 4 A Spread over base for office. Yes, because this is 5 based off of the average, yes, sir. 6 Q And if we look at the notations, the two stars next to 7 spread over base, at the bottom it says this is a spread over 8 base over the ten-year treasury rate. 9 Does that mean that it's measuring the interest spread 10 for these categories over the ten-year treasury bond? 11 A It would mean the ten-year treasury would be the base 12 rate. 13 Q And the Doral loan was priced as a spread over LIBOR; 14 is that correct? 15 A Yes. 16 Q And these -- the data presented here, and we could open 17 up, are Class A, Class B properties; is that correct? 18 A Yes. 19 Q And I believe you testified at your deposition that 20 Doral, at this time, was a Class B property; is that correct? 21 A It was a full-service lodging facility. I'm not 22 certain if it was a Class B, but it would have been factored 23 into Class A based off the renovations that were going to be 24 undertaken by the defendants. 25 Q I guess that's my question. Is the plan at the time of</p>
<p>R. Unell - by Defendant - Cross (Mr. Wallace) Page 5786</p> <p>1 sure this was also placed out there, too. 2 (Whereupon, the exhibit was displayed on the 3 screen.) 4 Q Presumably the information, the two tables, correlates. 5 A I believe so. This is the more detailed table, yes. 6 Q Why don't we just go to the broad table then. I'm not 7 going to get into too much detail. 8 A That's fine. I want to make sure we are working off of 9 the same numbers. 10 MR. WALLACE: Okay. So if we go back to page six, 11 the table. 12 (Whereupon, the exhibit was displayed on the 13 screen.) 14 Q So your analysis, you are using the first row at the 15 top, correct, which is spread over base? 16 A We've used several of these. We've used the 17 loan-to-value, we've used interest rate. 18 THE COURT REPORTER: I'm sorry, we've used interest 19 rate and -- 20 A Spread over base, interest rate and loan-to-value. 21 MR. WALLACE: Why don't we pull up DD4, page one, 22 if we could. 23 (Whereupon, the exhibit was displayed on the 24 screen.) 25 Q For this chart --</p>	<p>R. Unell - by Defendant - Cross (Mr. Wallace) Page 5788</p> <p>1 the Doral loan being initiated was for Mr. Trump to do extensive 2 renovations to the resort; is that correct? 3 A Yes. 4 Q I believe he had said that the brand had been 5 misaligned and that it had been miss run by the Marriott group; 6 is that correct? 7 A I believe so, yes. 8 Q So he eventually spent more than \$200 million 9 renovating the property; is that right? 10 A That's correct. 11 Q But it's your position that at the time they're 12 initiating this loan, with all that renovation still to come, it 13 was appropriate to price it as a Class A property? 14 A Absolutely. It was a first-class facility, and just 15 because it needs renovation does not mean that it is not a Class 16 A facility. 17 There are multiple examples and items or projects that 18 I've worked on throughout my career that are renovation projects 19 that are treated as Class A. 20 Class A not only has to do with the condition. It has 21 to do with the location, the actual asset itself in its 22 competitive set. You cannot just state the condition. The 23 condition was not really a factor in determining whether it's a 24 Class A asset or Class B asset at the time. 25 Q So -- I apologize.</p>

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<p>R. Unell - by Defendant - Cross (Mr. Wallace) Page 5789</p> <p>1 Just to set some ground rules, some ground work,</p> <p>2 Mr. Trump paid 150 million to purchase the resort out of</p> <p>3 bankruptcy; correct?</p> <p>4 A Correct.</p> <p>5 Q And he was then going to invest more than \$200 million</p> <p>6 of his own funds in the property?</p> <p>7 A Correct.</p> <p>8 Q So the fact that the property was going to need</p> <p>9 \$200 million of renovation over several years, to your</p> <p>10 professional view, did not add any risk to the loan for the</p> <p>11 Doral property?</p> <p>12 A Additional risk over what?</p> <p>13 Q That the project would be successful; that the project</p> <p>14 would be repaid?</p> <p>15 A It's what banks do. They analyze the risk on a</p> <p>16 construction loan. That's what they do.</p> <p>17 Q And --</p> <p>18 A So it's no more risky than any other, you know,</p> <p>19 repositioning loan that's out there.</p> <p>20 Q My question is, these are for operating properties.</p> <p>21 Was the fact that Doral was going to require extensive</p> <p>22 renovations, \$200 million, did that add any risk that should be</p> <p>23 considered in pricing the loan for that property?</p> <p>24 A Add any risk to what? I'm trying to figure out what we</p> <p>25 are adding risk to.</p>	<p>R. Unell - by Defendant - Cross (Mr. Wallace) Page 5791</p> <p>1 A Correct.</p> <p>2 Q That's why you included the golf courses and country</p> <p>3 club number in your chart; correct?</p> <p>4 A Yes, sir.</p> <p>5 Q If we look at the spread for golf, the minimum is 1.2,</p> <p>6 the maximum is 11.5, and the average is 5.84. Actually, why</p> <p>7 don't we look at the interest rate instead, because I believe</p> <p>8 the two percent number that -- the two point -- the two plus</p> <p>9 number that you were using was the actual interest rate, so that</p> <p>10 included the spread plus whatever the base rate would have been;</p> <p>11 correct?</p> <p>12 A Um, we looked at it from multiple different angles, so</p> <p>13 happy to look at it however you like.</p> <p>14 Q So since Mr. McCarty, in his chart, and you, in your</p> <p>15 chart, include natural interest rate, let's look at the interest</p> <p>16 rate column. For golf, the minimum is 3.5; correct?</p> <p>17 A Correct.</p> <p>18 Q And so that's higher than the two plus rate that</p> <p>19 Mr. Trump actually obtained; correct?</p> <p>20 A It is.</p> <p>21 Q And the maximum is 13.8; is that correct?</p> <p>22 A Correct.</p> <p>23 Q And the average is 8.14; correct?</p> <p>24 A Correct.</p> <p>25 Q So that eight percent -- so the ten percent used by</p>
<p>R. Unell - by Defendant - Cross (Mr. Wallace) Page 5790</p> <p>1 Q You said that banks set interest rates based on their</p> <p>2 assessment of the risk in the loan.</p> <p>3 A Okay. And that was factored in to their analysis of</p> <p>4 the project in the plan.</p> <p>5 Q I'm asking -- the "they" you are referring to is</p> <p>6 Deutsche Bank?</p> <p>7 A Deutsche Bank, yes, sir.</p> <p>8 Q I'm not asking about Deutsche Bank at this point. My</p> <p>9 question is whether the Doral loan is more risky because the</p> <p>10 property needed to be renovated, over an operating property that</p> <p>11 is not planning on extensive renovations?</p> <p>12 A If you are trying to compare it between a property that</p> <p>13 needs renovation and doesn't need renovation, it could.</p> <p>14 However, there are many examples of luxury properties that go</p> <p>15 through a renovation that are accretive and do not create</p> <p>16 additional risk. So to measure that risk, you would have to</p> <p>17 dive into the actual details of what the plan was, the timing of</p> <p>18 it, the impact on ADR, how would it affect occupancy, how it</p> <p>19 affects cash flow, the timing of it. So in order for</p> <p>20 seasonality, there are multiple factors that go into that that I</p> <p>21 did not evaluate that were evaluated by Deutsche Bank in that</p> <p>22 analysis of the project.</p> <p>23 Q Let's go back to the sort of market rate information</p> <p>24 you were talking about. If we look at golf, Doral also had a</p> <p>25 golf element; correct?</p>	<p>R. Unell - by Defendant - Cross (Mr. Wallace) Page 5792</p> <p>1 Mr. McCarty is between the maximum and the average; is that</p> <p>2 correct?</p> <p>3 A Yeah.</p> <p>4 Q Okay.</p> <p>5 Why don't we take a look at another document. Let me</p> <p>6 ask, Mr. Unell, did you consider any contemporaneous documents</p> <p>7 about the potential commercial real estate loans, without a</p> <p>8 personal guaranty, that were being offered on Doral?</p> <p>9 A I reviewed nonbinding term sheets.</p> <p>10 Q And you decided not to use those documents; correct?</p> <p>11 A They were nonbinding.</p> <p>12 Q So you didn't rely on them.</p> <p>13 A They were not binding and not relied in my opinion.</p> <p>14 They were not to be relied on.</p> <p>15 Q And so you, in fact, did not rely on them; correct?</p> <p>16 A In my expert opinion, in my experience, a nonbinding</p> <p>17 term sheet is not an indication of terms, so therefore, I did</p> <p>18 not include it.</p> <p>19 THE COURT: All you had to say was no, or no, I</p> <p>20 didn't rely on it. He didn't ask for a reason. Please,</p> <p>21 we'll save a lot of time if you answer yes or no questions</p> <p>22 with yes or no answers.</p> <p>23 As long as I have -- I just wanted to follow up on</p> <p>24 the last topic. I think what Mr. Wallace was asking --</p> <p>25 maybe I'm wrong -- all other things being equal, because</p>

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<p>1 Mr. Unell, you like to bring in all these various factors,</p> <p>2 which often are very important about the pricing of a loan,</p> <p>3 but if all other things are equal, is there more risk to a</p> <p>4 lender in lending to a fully built Class A property worth</p> <p>5 approximately \$350 million as opposed to a potential Class A</p> <p>6 property that's being purchased for \$150 million and there's</p> <p>7 an estimate of \$200 million to bring it up to Class A?</p> <p>8 Wouldn't there be more risk? I could ask leading questions</p> <p>9 I hope.</p> <p>10 THE WITNESS: There is, but there is also more</p> <p>11 reward there. And the upside is more. So you're initial</p> <p>12 investment of \$150 million for the lender is less than the</p> <p>13 \$350 million loan that they would make. So with the equity</p> <p>14 infusion of the \$200 million, the guarantor and borrower had</p> <p>15 more money invested into this asset than the lender did.</p> <p>16 And so I would have to say with -- it's not all things</p> <p>17 equal. You would have to look at everything there. So you</p> <p>18 are trying to say a \$350 million stabilized loan or</p> <p>19 \$150 million stabilized loan with \$200 million of equity in</p> <p>20 it, that's not an apples to apples comparison. And there is</p> <p>21 no way to compare that without doing extreme analysis that</p> <p>22 was conducted by Deutsche Bank to determine where the risk</p> <p>23 profile is.</p> <p>24 Those are two completely different animals that --</p> <p>25 you are talking about different amounts of leverage; you are</p>		<p>1 document that's been marked as Plaintiff's Exhibit 369.</p> <p>2 (Whereupon, the exhibit was displayed on the</p> <p>3 screen.)</p> <p>4 (The witness was handed the exhibit.)</p> <p>5 THE WITNESS: Thank you, sir.</p> <p>6 Q Mr. Unell, you reviewed this document preparing your</p> <p>7 report; is that correct?</p> <p>8 A Let me make sure this is it. Yes, sir.</p> <p>9 Q And this is a transaction overview of a proposed loan</p> <p>10 by Doral for the CRE Group in Deutsche Bank, dated November 21,</p> <p>11 2011; correct?</p> <p>12 A Yes, sir.</p> <p>13 Q This proposal does not include a personal guaranty,</p> <p>14 does it?</p> <p>15 A No, it doesn't.</p> <p>16 MR. WALLACE: Turn to page five of the document.</p> <p>17 (Whereupon, the exhibit was displayed on the</p> <p>18 screen.)</p> <p>19 Q Under the bar marked "Facility", it states the amount</p> <p>20 of the loan would be 130 million dollars, and the transaction</p> <p>21 would be LIBOR 800 -- LIBOR plus 800, with a LIBOR floor of 200</p> <p>22 BPS, or two percent; is that correct?</p> <p>23 A Yes, sir.</p> <p>24 Q And so this rate matches the ten percent rate that</p> <p>25 Mr. McCarty used; is that correct?</p>	
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<p>1 talking about a different amount of equity contribution; you</p> <p>2 are talking about a different future value. And more</p> <p>3 importantly, you are talking about a different principal</p> <p>4 amount of 150 versus 350 million.</p> <p>5 THE COURT: What if the principal amount of the</p> <p>6 loans was equal?</p> <p>7 THE WITNESS: Well, if it was 150 million and 150</p> <p>8 million, you wouldn't be able to -- how would you come up</p> <p>9 with the \$200 million of equity to purchase a \$350 million</p> <p>10 loan. Nobody is going to go out and buy a \$350 million</p> <p>11 operating stabilized hotel and only take out \$150 million of</p> <p>12 debt. They would leverage it up to 65 to 75 percent, as is</p> <p>13 done and shown in the investor survey, that the average LTV</p> <p>14 was 70 percent. So you can't compare \$150 million loan to a</p> <p>15 \$150 million loan that is at a completely different</p> <p>16 loan-to-value with a different profile in equity</p> <p>17 contribution. It's not -- it's not fair to for anybody to</p> <p>18 do.</p> <p>19 It would be impossible to do, as I sit here today,</p> <p>20 without having all of those factors in front of me, and to</p> <p>21 underwrite them side by side and tell you what that would</p> <p>22 be. It's not an equal comparison. They are two different</p> <p>23 loan products.</p> <p>24 THE COURT: All right. Next question.</p> <p>25 MR. WALLACE: We are going to hand the witness a</p>		<p>1 A Yes, it does.</p> <p>2 Q And it is your opinion that this proposal from Deutsche</p> <p>3 Bank does not reflect the market rate; is that correct?</p> <p>4 A Yes, it does not reflect market rate -- it does not</p> <p>5 reflect market rate.</p> <p>6 Q So your opinion of the rate of LIBOR plus 800 with a</p> <p>7 floor of 200 BPS would not have been standard in that time?</p> <p>8 A That is my opinion.</p> <p>9 Q You reviewed the deposition testimony of Donald J.</p> <p>10 Trump in this action, in the process of preparing your report;</p> <p>11 is that correct?</p> <p>12 A Yes, sir.</p> <p>13 MR. WALLACE: Could we pull up the excerpt of his</p> <p>14 testimony, starting page 307.</p> <p>15 (Whereupon, the exhibit was displayed on the</p> <p>16 screen.)</p> <p>17 Q If you see there is -- I'll represent to you this is a</p> <p>18 discussion of the same document we are looking at. It states:</p> <p>19 "Mr. Trump, we've handed -- the court reporter has</p> <p>20 handed you a document that has been marked at Exhibit 22.</p> <p>21 It's a golf resort -- Doral Golf Resort and Spa, Miami, a</p> <p>22 set of discussion materials from Deutsche Bank." There's</p> <p>23 the production number, and it says, "I don't know if you saw</p> <p>24 -- I don't think you saw this document."</p> <p>25 He says, "No."</p>	

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<p>R. Unell - by Defendant - Cross (Mr. Wallace) Page 5797</p> <p>1 "I wanted to ask you if the last page of documents,</p> <p>2 easiest way to see it, there is a summary of terms in the</p> <p>3 line that say the facility."</p> <p>4 "Yeah."</p> <p>5 "It says the amount is 130 million. The spread is</p> <p>6 L plus 800 BPS, which I'm interpreting to mean LIBOR plus</p> <p>7 800?"</p> <p>8 "ANSWER: Yes.</p> <p>9 "QUESTION: The LIBOR floor is two percent OID is</p> <p>10 97, and the maturity is six years. I just wanted to see if</p> <p>11 this refreshes your recollection that Deutsche Bank, the</p> <p>12 Commercial Real Estate Group, was offering you a rate of</p> <p>13 LIBOR plus 800?"</p> <p>14 "ANSWER: Well, it's LIBOR, a floor of two, which</p> <p>15 it was going lower than that at the time. So I was actually</p> <p>16 -- so I had a floor of two, which was sort of standard, and</p> <p>17 then 800 over that."</p> <p>18 "So that would be ten percent at the lowest of the</p> <p>19 lowest?"</p> <p>20 "ANSWER: So it would be -- no. It would mean two</p> <p>21 plus 800 BPS."</p> <p>22 "Okay."</p> <p>23 "ANSWER: I think that was an I think it was pretty</p> <p>24 standard."</p> <p>25 "Okay but you didn't choose to go with the</p>	<p>R. Unell - by Defendant - Cross (Mr. Wallace) Page 5799</p> <p>1 Q Okay.</p> <p>2 MR. WALLACE: Your Honor, I would move to admit</p> <p>3 Plaintiff's Exhibit 369 into evidence.</p> <p>4 THE COURT: Granted. It's in.</p> <p>5 (Plaintiff's Exhibit 369 was deemed marked and</p> <p>6 admitted in evidence.)</p> <p>7 MR. WALLACE: If we could turn to another document,</p> <p>8 Plaintiff's Exhibit 3232.</p> <p>9 (Whereupon, the exhibit was displayed on the</p> <p>10 screen.)</p> <p>11 (The witness was handed the exhibit.)</p> <p>12 THE WITNESS: Thank you sir.</p> <p>13 Q Mr. Unell, I'll give you a second to look at it, but</p> <p>14 did you review this document in the process of preparing your</p> <p>15 opinions.</p> <p>16 A Yes, sir.</p> <p>17 Q Okay.</p> <p>18 It's an e-mail dated November 15th, 2011, from Steve</p> <p>19 Harvey, at CSG Investments, to Ivanka Trump and Dave Orowitz.</p> <p>20 Do you see that?</p> <p>21 A Yes, sir.</p> <p>22 Q Are you familiar with CSG Investments?</p> <p>23 A I am not.</p> <p>24 Q So I will represent to you that is the investment</p> <p>25 advisor for Beal Bank. Are familiar with that entity?</p>
<p>R. Unell - by Defendant - Cross (Mr. Wallace) Page 5798</p> <p>1 Commercial Real Estate Group at Deutsche Bank; is that</p> <p>2 correct?"</p> <p>3 "No, I didn't."</p> <p>4 So Mr. Trump is stating that two plus 800 BPS is</p> <p>5 pretty standard; correct?</p> <p>6 A I mean, he says it was sort of standard. He doesn't</p> <p>7 say that. He said it was sort of standard. If you would scroll</p> <p>8 back up, he is actually talking about the floor is sort of</p> <p>9 standard, not the 800 over that.</p> <p>10 Q Well, we could each interpret --</p> <p>11 A Could you please scroll up so that I could read into</p> <p>12 the whole thing so that I can have my answer correct, please.</p> <p>13 My reading of this in the opinion is that the floor was</p> <p>14 standard, not the 800 BPS was standard.</p> <p>15 Q Well, he then says:</p> <p>16 "So it would be -- no it would mean the two plus</p> <p>17 800 BPS, okay. And I think this was pretty standard."</p> <p>18 That was after the discussion of ten percent. Your</p> <p>19 interpretation of this is it's only the two -- LIBOR floor</p> <p>20 of two?</p> <p>21 A That's correct.</p> <p>22 Q If Mr. Trump was, in fact, saying that LIBOR floor of</p> <p>23 two plus 800, or 10 percent was standard, you would disagree</p> <p>24 with that?</p> <p>25 A Yes, based off of my experience.</p>	<p>R. Unell - by Defendant - Cross (Mr. Wallace) Page 5800</p> <p>1 A I am familiar with Beal Bank and have worked with them</p> <p>2 in the past.</p> <p>3 Q As you could see, he is sending an attachment that is</p> <p>4 entitled Doral term sheet.</p> <p>5 A Yes.</p> <p>6 Q If we could turn to the second page of this document,</p> <p>7 there is a set of terms that start with "The borrower, Trump</p> <p>8 Endeavor 12, LLC," that is the borrower for Doral; correct?</p> <p>9 A Yes, sir.</p> <p>10 Q Okay.</p> <p>11 And the loan amount here, you could see there is a</p> <p>12 change from 80 million to 95 million. Do you see that?</p> <p>13 A Yes, sir.</p> <p>14 Q Okay.</p> <p>15 And it states that the interest rate is LIBOR plus 550;</p> <p>16 is that correct?</p> <p>17 A Yes, sir.</p> <p>18 Q And so, it's your opinion that even this would be above</p> <p>19 market; is that correct?</p> <p>20 A Yes, because Beal Bank is not a traditional lender.</p> <p>21 Q And if The Trump Organization were to have accepted</p> <p>22 this loan, I believe it would mean they would have had to add</p> <p>23 another \$30 million of their own equity to the project; is that</p> <p>24 correct?</p> <p>25 A To be determined, because they would already had gone</p>

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<p style="text-align: right;">Page 5801</p> <p>1 above and placed the 250 above --</p> <p>2 THE COURT REPORTER: I'm sorry, to be determined,</p> <p>3 because they already had gone above --</p> <p>4 A They already gone above 250 million, and the plans</p> <p>5 could've changed based off of the financing.</p> <p>6 Q But to use a turn of phrase, all other things being</p> <p>7 equal, this loan, as opposed to the Deutsche Bank loan, they</p> <p>8 would have had to have \$30 million of their own equity added?</p> <p>9 A If the development plan would have stayed the same,</p> <p>10 yes, sir.</p> <p>11 MR. WALLACE: If we could do another document,</p> <p>12 Plaintiff's Exhibit 3243.</p> <p>13 (Whereupon, the exhibit was displayed on the</p> <p>14 screen.)</p> <p>15 MR. WALLACE: It's in evidence.</p> <p>16 (The witness was handed the exhibit.)</p> <p>17 THE WITNESS: Thank you.</p> <p>18 Q So this is an e-mail between Ivanka Trump, Ronnie</p> <p>19 Levine, Ralph Herzka, and Dave Orowitz, dated November 1, 2011.</p> <p>20 Mr. Unell, did you review this document in the course</p> <p>21 of preparing your report?</p> <p>22 A I don't believe so.</p> <p>23 (Continued on the next page.)</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 5803</p> <p>Unell - by Defendant - Cross (Wallace)</p> <p>1 A I am not aware of that.</p> <p>2 Q At the end he says: We have lunch with HSBC tomorrow</p> <p>3 and will be discussing the deal with them.</p> <p>4 Do you know if the Trump Organization approached HSBC</p> <p>5 about financing for the Doral transaction?</p> <p>6 A I am not aware.</p> <p>7 Q If we go to the top e-mail from Ms. Trump she writes:</p> <p>8 I actually spoke to Tom Harrison at Colony today. I know Todd</p> <p>9 through Jared as well, as we are partners on another deal</p> <p>10 together. He said that we wouldn't want to do a deal with them</p> <p>11 on the debt side, as they are too expensive for what we would</p> <p>12 be looking for (low teens).</p> <p>13 Do you have a view as to whether or not a rate in the</p> <p>14 low teens would have been a market rate for debt on the Doral</p> <p>15 project?</p> <p>16 A Perhaps from a non-bank lender such as Colony or</p> <p>17 these other firms that are out there from a debt fund.</p> <p>18 Q I think we have heard Mr. Suarez say the Trump</p> <p>19 Organization could have approached thousands of banks about</p> <p>20 these loans. First of all, do you know how many banks the</p> <p>21 Trump Organization approached to finance these transactions?</p> <p>22 A I do not.</p> <p>23 Q Do you know how many non-banks they approached to</p> <p>24 finance these transactions?</p> <p>25 A I do not.</p>
<p>Unell - by Defendant - Cross (Wallace)</p> <p style="text-align: right;">Page 5802</p> <p>1 Q Do you know who Ronny Levine at Meridian Capital is?</p> <p>2 A No, sir.</p> <p>3 Q If you look at the e-mail from Mr. Levine to Ivanka</p> <p>4 Trump he writes: Heard back from Blackstone a little while ago</p> <p>5 and they are a pass on the deal. Didn't get a definitive</p> <p>6 answer as to why. But Peter mentioned to me this morning they</p> <p>7 over weighted on hotels in the debt fund.</p> <p>8 Do you know if the Trump Organization approached</p> <p>9 Blackstone about financing for the Doral resort?</p> <p>10 A I am not aware if they did or not.</p> <p>11 Q A little further down he writes about following up</p> <p>12 with Jeff Weissman from Macquaire.</p> <p>13 Do you know if the Trump Organization approached</p> <p>14 Macquaire for the loan?</p> <p>15 A Macquaire is an investment bank. I am not certain</p> <p>16 what their ability to finance that is or not.</p> <p>17 Q The next paragraph he mentions a reach-out to Chuck</p> <p>18 Rosenzweig at Criterion Partners. Do you know if Trump</p> <p>19 Organization approached Criterion Partners about financing for</p> <p>20 the Doral project?</p> <p>21 A I do not.</p> <p>22 Q If you look down he writes: He has been trying to</p> <p>23 reach out to Todd Sammann at Colony.</p> <p>24 Do you know if the Trump Organization approached</p> <p>25 Colony about financing for the Doral transaction?</p>	<p>Unell - by Defendant - Cross (Wallace)</p> <p style="text-align: right;">Page 5804</p> <p>1 MR. WALLACE: I think we can put that document</p> <p>2 aside.</p> <p>3 To further continue a theme, Your Honor, if we</p> <p>4 want to take a slightly early break I may be able to</p> <p>5 condense.</p> <p>6 THE WITNESS: You would be one for one overall.</p> <p>7 MR. ROBERT: As long as he has the same batting</p> <p>8 average, we have no objection.</p> <p>9 MR. WALLACE: I think we can shorten things.</p> <p>10 THE COURT: You are taking a page from</p> <p>11 Mr. Kise's playbook.</p> <p>12 MR. WALLACE: As often as I can, Your Honor.</p> <p>13 THE COURT: All right, so 20 after we will see</p> <p>14 you then.</p> <p>15 (Pause in the proceedings.)</p> <p>16 COURT OFFICER: All rise.</p> <p>17 Part 37 is back in session.</p> <p>18 Please be seated and come to order.</p> <p>19 (Whereupon the witness resumed the stand.)</p> <p>20 THE COURT: Mr. Wallace, are you ready to</p> <p>21 continue?</p> <p>22 MR. WALLACE: I am, Your Honor.</p> <p>23 Q Mr. Unell, just a couple of quick questions to close</p> <p>24 out the Doral loan. I believe you said that the offers from</p> <p>25 the Deutsche Bank CRE group had not been fully negotiated, they</p>

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<p>1 didn't have as detailed an understanding of the property, and</p> <p>2 that that's some of the reasons you didn't consider those to be</p> <p>3 market estimates of value; is that fair?</p> <p>4 A Yes, sir.</p> <p>5 MR. WALLACE: If we could pull up Plaintiff's</p> <p>6 Exhibit 3111. This is already in evidence.</p> <p>7 Q I apologize, I don't have a hard copy. But this is</p> <p>8 an e-mail chain from November 2011 between Dave Orowitz and</p> <p>9 Allen Weisselberg and others at Deutsche Bank. The top e-mail</p> <p>10 Mr. Orowitz writes: Mark, it was good speaking with you</p> <p>11 earlier today.</p> <p>12 Please find a link to a folder containing the due</p> <p>13 diligence materials that you requested.</p> <p>14 I'll just note that the cc also includes David</p> <p>15 Goodman. Do you know if the people on this e-mail chain were</p> <p>16 in the CRE group of Deutsche Bank or the Private Wealth</p> <p>17 Management group of Deutsche Bank?</p> <p>18 A I do not, no.</p> <p>19 Q I'll represent to you that Dave Goodman is in the CRE</p> <p>20 group at Deutsche Bank.</p> <p>21 MR. WALLACE: If we could go down to, I believe,</p> <p>22 page two of this document?</p> <p>23 Q This is after Ivanka Trump has written an</p> <p>24 introductory e-mail and she writes: Thank you for providing us</p> <p>25 with the investment memo and projections for the Doral Golf</p>		<p>1 Q And I just wanted to check on one thing on page 11,</p> <p>2 on the last page. I am sorry, paragraph 11.</p> <p>3 A I was going to say, I am missing part of it.</p> <p>4 It is Friday.</p> <p>5 Q Paragraph 11, page four. You write that given the</p> <p>6 testimony and documents presented at trial that show 1)</p> <p>7 Deutsche Bank relied on adjusted financial numbers for</p> <p>8 approving loan origination and reviews. 2) Step-downs on Doral</p> <p>9 and OPO were in place that decreased or eliminated Trump's</p> <p>10 financial covenants.</p> <p>11 I just want to make sure that the reference to OPO</p> <p>12 was an error and it should be Doral and Chicago. Is that</p> <p>13 correct?</p> <p>14 A Yes, sir.</p> <p>15 MR. SUAREZ: It also says President Trump and</p> <p>16 not Trump's financial covenants?</p> <p>17 MR. WALLACE: I thought I said President, I</p> <p>18 apologize.</p> <p>19 Q I want to talk briefly about 40 Wall Street.</p> <p>20 MR. WALLACE: If we could put up DD-5 and PDX-4,</p> <p>21 again?</p> <p>22 Q Again, it is all very difficult to see.</p> <p>23 A It is easier on this little monitor up here.</p> <p>24 Q So, Mr. McCarty estimates a market rate for 40 Wall</p> <p>25 Street of 5.71 percent, correct?</p>	
Unell - by Defendant - Cross (Wallace)	Page 5806	Unell - by Defendant - Cross (Wallace)	Page 5808
<p>1 Resort and Spa in Miami, Florida. We at Deutsche Bank are very</p> <p>2 familiar with the asset, as we have financed this loan several</p> <p>3 times over the years for previous ownership.</p> <p>4 Then it states: The Commercial Real Estate group in</p> <p>5 conjunction with the Leverage Finance group are giving</p> <p>6 immediate attention to your request.</p> <p>7 Do you know what the Leverage Finance group at</p> <p>8 Deutsche Bank is?</p> <p>9 A No, sir.</p> <p>10 Q You will see that there is an attachment of a due</p> <p>11 diligence file. Do you know how far the due diligence went</p> <p>12 between the Commercial Real Estate group and the Trump</p> <p>13 Organization on the financing of the Doral transaction?</p> <p>14 A I have seen no evidence to indicate one way or the</p> <p>15 other.</p> <p>16 MR. WALLACE: We can put Doral to the side.</p> <p>17 Q I just want to clarify one point, actually, in the</p> <p>18 affidavit that you submitted two nights ago.</p> <p>19 MR. WALLACE: So if we could put up on the</p> <p>20 screen Defendant's Exhibit 1061.</p> <p>21 Q This is the affidavit you prepared that, among other</p> <p>22 things, updated your opinion. And I believe was the basis for</p> <p>23 the table we looked at calculating a potential interest</p> <p>24 differential. Is this correct?</p> <p>25 A Yes. This was a portion of that basis, yes.</p>		<p>1 A Yes, sir.</p> <p>2 Q And you estimate a fixed rate of 3.9150, correct?</p> <p>3 A Yes, sir.</p> <p>4 Q And that's because the 40 Wall loan, in all instances</p> <p>5 was a fixed-rate loan, correct?</p> <p>6 A Yes. Representing this was an illustrative example</p> <p>7 of the differences.</p> <p>8 Q And can I ask you a question about the \$6 million</p> <p>9 swap breakage fee? First of all, you testified yesterday</p> <p>10 that's an estimate, correct?</p> <p>11 A Yes, sir.</p> <p>12 Q And the -- that fee was paid by the Trump</p> <p>13 Organization to get out of its existing loan with Capital One,</p> <p>14 is that correct?</p> <p>15 A It was paid to get out of the existing swap</p> <p>16 agreement, not the loan.</p> <p>17 Q Fair enough.</p> <p>18 Are you aware that there was a \$5 million capital</p> <p>19 contribution due on the 40 Wall loan in November 2015?</p> <p>20 A Yes.</p> <p>21 Q And so there was going to be at least some payment by</p> <p>22 the Trump Organization, even if they maintained the loan with</p> <p>23 Capital One; is that correct?</p> <p>24 A Yes.</p> <p>25 Q And if we look at your analysis, your illustrative</p>	

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<p>1 interest rates, are both outside the existing loan with Capital</p> <p>2 One, correct?</p> <p>3 A I am not following that.</p> <p>4 Q Well, my point is just that for either the 3.6650</p> <p>5 rate or the 3.9150 rate to come into effect, the Trump</p> <p>6 Organization would have had to pay the swap breakage fee,</p> <p>7 correct?</p> <p>8 A I am not following that -- what you are asking.</p> <p>9 Q Well, your point, I believe, was that to get to this</p> <p>10 rate there was a cost to the Trump Organization of \$6 million.</p> <p>11 So if they wanted to get this 3.6650 fee -- rate, they had to</p> <p>12 pay a swap breakage fee. Right?</p> <p>13 A It was factored in. I am still not following how the</p> <p>14 6 million -- how you are trying to or what you are trying to</p> <p>15 ask as related to the \$6 million and where it went.</p> <p>16 Q Any transaction where they were no longer in the</p> <p>17 Capital One loan as of 2015, there would have had to have been</p> <p>18 a swap breakage fee, correct?</p> <p>19 A Not necessarily. It depends on the loan documents in</p> <p>20 the ISDA agreement. So without knowing that, the agreements,</p> <p>21 the swap agreement and the loan agreement could have not been</p> <p>22 tied together. There could be an opportunity for the borrower</p> <p>23 to keep the swap in place if it wasn't directly tied and</p> <p>24 secured by that, without having the underlying documents to</p> <p>25 review that. But it was a cost of doing business, so it would</p>		<p>1 A Yes, sir.</p> <p>2 Q And I think your testimony was today, I assume that</p> <p>3 you mean that at the time of the swap of the breakage or the</p> <p>4 change in the loan in 2015; is that fair?</p> <p>5 A Yes, in 2015. Yes, sir.</p> <p>6 Q Now, that 5.71 percent interest rate was from a loan</p> <p>7 that was in existence in 2015 and continued into the future; is</p> <p>8 that correct?</p> <p>9 A Yes.</p> <p>10 Q So in fact, just staying in place with the</p> <p>11 5.71 percent interest rate going into the future, if the Trump</p> <p>12 Organization had maintained that loan they would not have had</p> <p>13 to pay the swap breakage fee; is that fair?</p> <p>14 A It would have been a business decision. The swap</p> <p>15 breakage fee, depending on what market rates do, they may have</p> <p>16 decided if it was in the money or out of the money to have</p> <p>17 broken it or not. It could have gone one way or the other.</p> <p>18 They are not directly tied to each other.</p> <p>19 Q It wouldn't have been necessitated by refinancing the</p> <p>20 loan?</p> <p>21 A Correct.</p> <p>22 Q And I take it you have an independent view that a</p> <p>23 5.71 percent interest rate was not market in July of 2015; is</p> <p>24 that correct?</p> <p>25 A I have seen nothing to indicate that it is.</p>	
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<p>1 not have been necessarily tied to that. Borrowers can</p> <p>2 sometimes keep a swap in place because if it is not directly</p> <p>3 tied to an asset, it is an instrument that is utilized to fix</p> <p>4 an interest rate, where essentially you pay a fee in order to</p> <p>5 fix a rate. And it is -- the risk is taken on for that fixed</p> <p>6 rate by somebody else. So the counterparty to that may not</p> <p>7 have been Capital One, so I can't say with certainty,</p> <p>8 Mr. Wallace, that that would not have been one way or the</p> <p>9 other.</p> <p>10 THE COURT: Mr. Unell, I often say something but</p> <p>11 I don't know that you have ever heard it. The person with</p> <p>12 the hardest job in this entire room, not me, not you, it</p> <p>13 is the reporter. Please slow down.</p> <p>14 THE WITNESS: Yes, Your Honor.</p> <p>15 THE COURT: She just asked you to do so, and I</p> <p>16 have asked you to do so several times.</p> <p>17 Q So the 3.9150 rate does not include any separate</p> <p>18 analysis of whether the swap breakage fee would have had to be</p> <p>19 paid; is that correct?</p> <p>20 A That's correct, yes.</p> <p>21 Q I believe that in your testimony yesterday you</p> <p>22 criticize Mr. McCarty's use of the 5.71 percent interest rate</p> <p>23 because it reflected an assumption that the 2005 interest rate</p> <p>24 would still be applicable today, and conditions have changed</p> <p>25 since that time. Do you recall that testimony?</p>		<p>1 Q I thought you -- well, I believe that you -- when you</p> <p>2 testified about the Ladder Capital loan, your testimony was</p> <p>3 that much of that was driven by the underlying collateral and</p> <p>4 the LTV on the transaction; is that fair?</p> <p>5 A Yes, sir.</p> <p>6 Q Okay. And that was based on a loan of \$160 million</p> <p>7 and an appraised value of \$540 million; is that correct?</p> <p>8 A I believe so, yes.</p> <p>9 Q Did you review any contemporaneous documents from</p> <p>10 other market participants concerning the market rate for a loan</p> <p>11 on 40 Wall Street?</p> <p>12 A No, sir.</p> <p>13 MR. WALLACE: If we could take a look at</p> <p>14 Plaintiff's Exhibit 268.</p> <p>15 (Hanging)</p> <p>16 THE WITNESS: Thank you, sir. I got two. It is</p> <p>17 Friday.</p> <p>18 Q Mr. Unell, did you review this document in the course</p> <p>19 of preparing your expert report?</p> <p>20 A Yes, sir.</p> <p>21 Q And what is this document?</p> <p>22 A This is the annual review from Capital One of the 40</p> <p>23 Wall Street loan. And the date is September 9, 2005 is the</p> <p>24 origination date and the --</p> <p>25 Q I'll direct your attention to the current review date</p>	

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1 of October 31, 2014 in the middle of the page.

2 A There it is, I see it. Yes, sir.

3 MR. WALLACE: Your Honor, we move Plaintiff's

4 Exhibit 268 into evidence.

5 THE COURT: Granted, it is in.

6 (Whereupon, the document referred to was deemed

7 marked for evidence as Plaintiff's Exhibit 268 by the

8 Court.)

9 Q So if we look at the summary underneath the heading

10 "Appraisal dates," you see that on the third row is listed an

11 Internal value of \$257,729,000?

12 A Yes.

13 Q And that generates an LTV/LTC of 62.1 percent. Do

14 you see that?

15 A Yes, sir.

16 Q And so this would be a difference of \$283 million

17 over the valuation of the 40 Wall appraisal that was part of

18 the Ladder Capital transaction, correct?

19 A Yes.

20 Q And would a difference of \$283 million in the value

21 of the underlying building impact how a banker would price a

22 commercial real estate loan for that property?

23 A Yes.

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

25 this document?

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1 Q If you look underneath the table that is at the top

2 of the page, there is a box entitled refinancing scenario. And

3 underneath it it states that there is a five-year extension

4 available if the following are achieved: One, a 1.25X DSCR.

5 Two, a 75 percent LTV. And three, if the aggregate dollar

6 amount of all principal reductions by borrower plus the amount

7 of all funds in the cash -- excess cash flow collateral

8 accounts during the internal term equal or exceed 20 million.

9 I'll actually stop there.

10 Do you know if any of those conditions were met?

11 A I do not.

12 Q If you look at the next paragraph it says: Based on

13 a projected 2017 NOI of 18.7 million and a minimum DSCR of

14 1.35X per UW guideline, the loan can support maximum proceeds

15 of 179.3 million assuming a sensitized 6 percent interest rate

16 and a 25-year amortization.

17 First of all, do you understand the notation UW

18 guideline to mean underwriting guideline?

19 A Yes, sir.

20 Q Okay. And so the terms listed here are roughly

21 consistent with the existing loan terms at the time of the

22 credit report in October of 2014; is that fair?

23 A I am looking to tie it out here.

24 Q Sure.

25 A Yes, it is consistent.

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1 MR. WALLACE: We can put that document down.

2 Q The Ladder loan on 40 Wall Street was securitized; is

3 that correct?

4 A I believe so.

5 Q And can you just explain to the Court, what does it

6 mean to securitize a loan?

7 A A securitized loan is a loan that is the cash flow

8 streams are essentially sold to investors within the market.

9 Q And in the course of preparing your reports, did you

10 review any analysts reports concerning the securities that

11 included the 40 Wall Street loan?

12 A I did not.

13 Q I am going to hand you a document that has been

14 marked as Plaintiff's Exhibit 3186. It is 135 pages. So I

15 think we can just go through it on the screen.

16 A Absolutely.

17 Q I think it is a little easier.

18 I'll state that this is a Morningstar report with

19 preliminary ratings on a Wells Fargo commercial mortgage trust

20 as of September 9, 2015. Are you familiar with Morningstar?

21 MR. SUAREZ: Objection, Your Honor.

22 THE COURT: What's the ground of the objection?

23 MR. SUAREZ: Outside of the scope of my direct

24 and outside of the scope of the witness's testimony to

25 talk about the securitization of the loans and the ratings

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1 by outside agencies. He is not being offered as an expert

2 in that area.

3 MR. WALLACE: I think it is relevant regardless

4 of whether -- but I am going to tie it into LTVs and

5 things that this witness has talked about. So I am happy

6 to have you reconsider it once I have shown where we are

7 going with this.

8 THE COURT: All right. Let's see where we are

9 going with this.

10 Q I believe the question pending that was objected to

11 was, are you familiar with Morningstar?

12 A I am aware of Morningstar, yes.

13 Q And I will represent to you that the securities

14 covered in this report include the 40 Wall Street loan?

15 MR. WALLACE: And if we could go to page 33 of

16 the document.

17 Q Again, it is probably easiest to do it up on the

18 screen here. You will see this is the section of the report

19 that addresses the 40 Wall Street loan by Ladder Capital. And

20 I want to walk through the metrics very quickly.

21 MR. WALLACE: Since we are not looking at the

22 full thing, if we can go down one more page.

23 Q I don't want to be accused of misleading you.

24 If you look at the top under the Morningstar

25 perspective, it says that Morningstar has a favorable opinion

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<p>1 of the loan to 40 Wall Street, primarily due to the positive</p> <p>2 loan metrics, the granular rent-roll and amortization through</p> <p>3 the loan term.</p> <p>4 So, I will let you know, they have a positive view of</p> <p>5 the loan.</p> <p>6 A Yes.</p> <p>7 MR. WALLACE: If we can go back to the summary</p> <p>8 page. If you zoom in on the Morningstar analytics.</p> <p>9 Q You can see that Morningstar states that the value of</p> <p>10 the building is \$262,270,494. And that Morningstar calculates</p> <p>11 an LTV of 61 percent. Beginning LTV.</p> <p>12 This was an amortizing loan correct?</p> <p>13 A Yes.</p> <p>14 Q So the beginning LTV would be higher than the ending</p> <p>15 LTV?</p> <p>16 A That's correct.</p> <p>17 Q Okay. So Morningstar calculates a higher LTV than</p> <p>18 Ladder Capital did in their analysis, correct?</p> <p>19 A Yes.</p> <p>20 Q And these amounts of the value of the building and</p> <p>21 the LTV might affect how a banker would underwrite the loan if</p> <p>22 they came to a different conclusion?</p> <p>23 A It is difficult to tell, because without the backup</p> <p>24 to know where this valuation came from, I don't know what it is</p> <p>25 based off of. So I couldn't tell you because rating agencies</p>		<p>1 Q Mr. Unell, yesterday you testified about a</p> <p>2 discrepancy in the reporting of the size of Mr.-- President</p> <p>3 Trump's triplex. Do you recall that?</p> <p>4 A Yes, sir.</p> <p>5 Q And that discrepancy involved an inflation of the</p> <p>6 value of Mr. Trump's triplex apartment by at least</p> <p>7 \$200 million; is that correct?</p> <p>8 A I am not certain of the exact amount.</p> <p>9 Q If the -- well, it was your testimony yesterday that</p> <p>10 the discrepancy would not be material based on the other</p> <p>11 information and the amount of assets and liabilities that are</p> <p>12 included on the Statement of Financial Condition; is that</p> <p>13 correct?</p> <p>14 A Yes, sir.</p> <p>15 Q So if the overstatement was \$200 million, is it your</p> <p>16 position that it is okay for a guarantor to intentionally</p> <p>17 inflate their net worth as reported to a bank by \$200 million?</p> <p>18 A No, it is not okay, because it was subsequently</p> <p>19 corrected; and was immaterial.</p> <p>20 Q I am not asking about a correction. I am asking</p> <p>21 about if a guarantor intentionally inflates their assets by</p> <p>22 \$200 million in a representation they are making to their</p> <p>23 banker, is that acceptable under -- is that acceptable?</p> <p>24 A If it was intentional, it is not acceptable.</p> <p>25 Q Okay. Are you aware that Mr. Trump has acknowledged</p>	
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<p>1 in my experience do different ways that they look at it. They</p> <p>2 also look at it from a loss perspective versus whether or not</p> <p>3 they are a independent agency. It is outside of my scope to be</p> <p>4 able to speculate on the value and compare it to anything and</p> <p>5 how Morningstar calculated value.</p> <p>6 Q I'll say that it mentions that they had a site visit.</p> <p>7 As you can see it says: Morningstar site visit, yes.</p> <p>8 But my question -- let's step back from what</p> <p>9 Morningstar did. If a banker came to a different conclusion</p> <p>10 about the LTV of the property and the value of the property</p> <p>11 that would affect how the banker would underwrite the loan. Is</p> <p>12 that fair?</p> <p>13 A A banker would rely on an appraisal report</p> <p>14 commissioned by them, not a Morningstar number without any</p> <p>15 backup behind it.</p> <p>16 Q I am asking about using this. I am saying if a</p> <p>17 banker -- if someone comes to a different analysis of the asset</p> <p>18 value and the LTV, that's going to affect the pricing per loan?</p> <p>19 A It could.</p> <p>20 MR. WALLACE: We can put that down.</p> <p>21 THE COURT: Objection overruled.</p> <p>22 MR. WALLACE: Oh. Thank you.</p> <p>23 THE WITNESS: I was following you.</p> <p>24 MR. WALLACE: To borrow a phrase from Mr. Unell,</p> <p>25 it is Friday.</p>		<p>1 that his estate at Seven Springs was also inflated by</p> <p>2 \$200 million?</p> <p>3 A I am not aware of that.</p> <p>4 Q So you didn't consider that information in forming</p> <p>5 your opinions, correct?</p> <p>6 A No.</p> <p>7 THE COURT: That was a negative question with an</p> <p>8 ambiguous answer.</p> <p>9 MR. KISE: I would just, for the record, object</p> <p>10 to the characterization. I am not exactly sure that</p> <p>11 President Trump said it was inflated by \$200 million. I</p> <p>12 think he said it was a higher -- it was higher than it</p> <p>13 should have been. I don't know that he put a precise</p> <p>14 number on it. I could be wrong about that, but I don't</p> <p>15 think so.</p> <p>16 THE COURT: Okay.</p> <p>17 Q So any inflation -- did you consider any inflation in</p> <p>18 the Seven Springs property in preparing your report?</p> <p>19 A No, I did not do any valuation work.</p> <p>20 Q You testified that you had read some of the Court's</p> <p>21 summary judgment decision; is that correct?</p> <p>22 A Yes, sir.</p> <p>23 Q I would like to ask if you happened to read a portion</p> <p>24 of his opinion that appears on page 19 when he writes: OAG has</p> <p>25 submitted conclusive evidence that between 2014 and 2021,</p>	

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<p>1 defendants overvalued the assets reported in the SFCs between</p> <p>2 17.27 and 38.51 percent. This amounts to a discrepancy of</p> <p>3 between \$812 million and \$2.2 billion.</p> <p>4 Did you review that section of the summary judgment</p> <p>5 decision?</p> <p>6 A Yes, sir.</p> <p>7 Q And in your professional opinion, is it acceptable</p> <p>8 for a guarantor, like Mr. Trump, to intentionally inflate his</p> <p>9 assets as reported to a bank by \$2.2 billion?</p> <p>10 A If it was intentional, then it would not be</p> <p>11 acceptable.</p> <p>12 Q You testified yesterday that the net worth covenants</p> <p>13 on the Deutsche Bank loans are solely determined by the</p> <p>14 guarantor's stated assets. In your professional view, is it</p> <p>15 acceptable for a guarantor to fraudulently inflate their assets</p> <p>16 to meet a net worth covenant?</p> <p>17 A It is not acceptable to fraudulently inflate assets.</p> <p>18 MR. WALLACE: If we could pull up DD-4, page;</p> <p>19 seven.</p> <p>20 Q This is your chart showing the number of billionaires</p> <p>21 in the United States and the world between 2010 and 2020.</p> <p>22 Mr. Unell, would it have been acceptable under the</p> <p>23 bank regulations, as you understand them, for the 492</p> <p>24 billionaires in the United States as of 2015 to lie about their</p> <p>25 asset values in seeking lending from a bank?</p>		<p>1 Q If I could direct your attention to page five of this</p> <p>2 document? The section that says Client Segmentation and</p> <p>3 Coverage.</p> <p>4 A Yes, sir.</p> <p>5 Q It says: Our target client base for this initiative</p> <p>6 will have the following general characteristics.</p> <p>7 And the first bullet says: Individuals or families</p> <p>8 actively investing in U.S. commercial real estate properties,</p> <p>9 with proven, successful track records in this sector. As a</p> <p>10 private wealth management business, we will view the principals</p> <p>11 and their families as our primary clients.</p> <p>12 How, if at all, did President Trump fit in this</p> <p>13 criteria?</p> <p>14 MR. WALLACE: Objection, asked and answered.</p> <p>15 Cumulative. Beyond the scope of cross.</p> <p>16 THE COURT: I got the gist, but read back of the</p> <p>17 question, please.</p> <p>18 (Whereupon, the record was read back by the</p> <p>19 court reporter.)</p> <p>20 (The following proceedings were stenographically</p> <p>21 recorded by Senior Court Reporter Michael Ranita.)</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	
Unell - by Defendant - Redirect (Suarez)	Page 5822	R. Unell - by Defendant - Redirect (Mr. Suarez)	Page 5824
<p>1 A I am not certain I follow the question.</p> <p>2 Q Is there anything special about the 492 billionaires</p> <p>3 that United States had in 2015 that would make it acceptable</p> <p>4 for them to lie about their asset values when seeking financing</p> <p>5 from a bank?</p> <p>6 A No, as I just testified, it would not be acceptable</p> <p>7 for anybody.</p> <p>8 MR. WALLACE: Nothing further, Your Honor.</p> <p>9 THE COURT: Okay. Any redirect?</p> <p>10 MR. SUAREZ: Briefly, Your Honor.</p> <p>11 THE COURT: Okay.</p> <p>12 REDIRECT EXAMINATION</p> <p>13 BY MR. SUAREZ:</p> <p>14 Q Mr. Unell, good morning.</p> <p>15 A Good morning. We are almost at the afternoon.</p> <p>16 Q Almost.</p> <p>17 MR. SUAREZ: If we could please pull up what has</p> <p>18 previously been admitted as Defendant's Exhibit 62, and</p> <p>19 turn to page five.</p> <p>20 First let's put up page one.</p> <p>21 Q Are you familiar with this document, Mr. Unell?</p> <p>22 A Yes, sir.</p> <p>23 Q What is this document?</p> <p>24 A This is the new Private Wealth Management U.S.</p> <p>25 Lending Product Commercial Real Estate Finance Guidelines.</p>		<p>1 THE COURT: Objection sustained for the three or</p> <p>2 four reasons given. We've already been over this.</p> <p>3 MR. SUAREZ: Your Honor if I may ask yes or no</p> <p>4 questions, I could cut 30 questions into three. They are</p> <p>5 not leading questions. They are simply yes or no questions.</p> <p>6 I'll try it that way.</p> <p>7 THE COURT: I don't think the objection was</p> <p>8 leading.</p> <p>9 MR. SUAREZ: No, I know, but I was doing it that</p> <p>10 way in order to avoid the inevitable leading question when I</p> <p>11 ask a yes or no question. But if I could just cut to the</p> <p>12 chase, I'll cut to the chase.</p> <p>13 THE COURT: You can't ask a question that goes</p> <p>14 beyond the scope of cross examination, especially since you</p> <p>15 discussed this ad nauseam yesterday.</p> <p>16 MR. SUAREZ: I'll try it this way.</p> <p>17 Q Did President Trump meet this criteria to qualify for a</p> <p>18 commercial real estate loan in the private bank?</p> <p>19 MR. WALLACE: Same objection.</p> <p>20 THE COURT: Same ruling. Sustained.</p> <p>21 MR. SUAREZ: All right. Let's put up Defendant's</p> <p>22 Exhibit 205.</p> <p>23 (Whereupon, the exhibit was displayed on the</p> <p>24 screen.)</p> <p>25 A I don't need it. I could look at it on here. Save the</p>	

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<p>R. Unell - by Defendant - Redirect (Mr. Suarez) Page 5825</p> <p>1 walk.</p> <p>2 Q What, if anything, did President Trump have to do to</p> <p>3 qualify for this pricing grid?</p> <p>4 MR. WALLACE: Same objection.</p> <p>5 THE COURT: What did he have to do -- let's take a</p> <p>6 simple ground. Is this -- are you claiming, Mr. Wallace,</p> <p>7 it's outside the scope of the cross?</p> <p>8 MR. WALLACE: Outside of cross, was covered</p> <p>9 yesterday extensively.</p> <p>10 THE COURT: That's enough. Sustained.</p> <p>11 MR. KISE: Your Honor, I don't see how it's outside</p> <p>12 the scope of cross, because what Mr. Wallace was talking</p> <p>13 about was the whole differential in interest rates. It was</p> <p>14 a whole colloquy with the witness about the differential in</p> <p>15 interest rates, and what Mr. McCarty did, and the CRE rates</p> <p>16 versus these rates.</p> <p>17 And what Mr. Suarez is doing is simply going back</p> <p>18 and pointing out why this witness believes that the range,</p> <p>19 his range is the appropriate range.</p> <p>20 Well, I mean, you challenged this witness -- the</p> <p>21 government challenged this witness's opinion that the range</p> <p>22 that point -- the two 25-basis points was incorrect. And</p> <p>23 the presumption behind that was that Mr. McCarty was more</p> <p>24 correct because his CRE rates, his ten percent rates, were</p> <p>25 the better way to go; that was the more acceptable method.</p>	<p>R. Unell - by Defendant - Redirect (Mr. Suarez) Page 5827</p> <p>1 repetitive, asked and answered, and beyond the scope of my</p> <p>2 cross.</p> <p>3 THE COURT: I changed my mind. Overruled, for the</p> <p>4 reasons Mr. Kise stated.</p> <p>5 Q Once President Trump was admitted into the private</p> <p>6 bank, would he have had access to this pricing group?</p> <p>7 A Yes.</p> <p>8 Q And do you see the spread of 2.0 to 2.5 percent?</p> <p>9 A Yes, sir.</p> <p>10 Q Would he have had to negotiate between that spread,</p> <p>11 what interest rate he and the bank ultimately settled on?</p> <p>12 MR. WALLACE: Objection. Leading.</p> <p>13 THE COURT: Sustained.</p> <p>14 Q How, if at all, would the commercial real estate range</p> <p>15 of 2.0 to 2.5 percent have resulted in the interest rate used on</p> <p>16 the specific bank transactions?</p> <p>17 A It would have provided the guidance for Deutsche Bank</p> <p>18 to appropriately price the loan once President Trump was</p> <p>19 admitted into the Private Wealth Management Group.</p> <p>20 Q And in order -- what, if anything, would President</p> <p>21 Trump have had to do to qualify for pricing within that range?</p> <p>22 A He would have had to have been a client of the Private</p> <p>23 Wealth Management Bank. And in order to qualify for that would</p> <p>24 have needed to have had a minimum amount of assets, which he</p> <p>25 clearly qualified for.</p>
<p>R. Unell - by Defendant - Redirect (Mr. Suarez) Page 5826</p> <p>1 So what Mr. Suarez is doing is simply going, on</p> <p>2 redirect, over those same -- over those issues, and it's</p> <p>3 certainly within scope. And we are certainly entitled, even</p> <p>4 if we covered it some yesterday, we are certainly entitled</p> <p>5 to focus, now, on exactly what the Government brought out</p> <p>6 this morning, and demonstrate, or at least attempt to</p> <p>7 demonstrate for the Court why this witness has the right</p> <p>8 view.</p> <p>9 So I think it's fully within the scope of the cross</p> <p>10 examination, because they've spent a good deal of time on</p> <p>11 that very issue, and that's all we are doing. We are not</p> <p>12 going to go through back through the entire litany of it.</p> <p>13 It's just focusing on the precise pieces that were covered</p> <p>14 this morning.</p> <p>15 MR. WALLACE: Your Honor, I will just say Mr. Kise</p> <p>16 is, again, telling the witness what he would like him to</p> <p>17 present through this redirect.</p> <p>18 I believe what Mr. Kise is, at base, saying is that</p> <p>19 they are going to go back through certain portions of</p> <p>20 yesterday's testimony to reiterate things that have been</p> <p>21 established; that is cumulative, that is repetitive, it is</p> <p>22 not appropriate. And I will also say that the focus of my</p> <p>23 examination was that Mr. McCarty and Mr. Unell were doing</p> <p>24 completely different things.</p> <p>25 So I retain my objection to this as cumulative,</p>	<p>R. Unell - by Defendant - Redirect (Mr. Suarez) Page 5828</p> <p>1 Q And if he didn't have the minimum amount of assets</p> <p>2 required to qualify for the Private Wealth Group, would he have</p> <p>3 had access to this pricing grid?</p> <p>4 A No. This pricing grid is reserved for clients in the</p> <p>5 Private Wealth Management Group.</p> <p>6 Q And have you seen anything in the record or the</p> <p>7 testimony that you've reviewed that suggests that President</p> <p>8 Trump, under any measure, would have failed to qualify for the</p> <p>9 Private Wealth Management Group?</p> <p>10 A I have not seen or heard any evidence that would</p> <p>11 indicate that President Trump was not qualified to be in the</p> <p>12 Private Wealth Management Group.</p> <p>13 Q And in your real world experience in banking, would</p> <p>14 President Trump have qualified for the Private Wealth Group</p> <p>15 under any measure of his net worth?</p> <p>16 MR. WALLACE: Objection. Leading.</p> <p>17 THE COURT: I was expecting asked and answered. We</p> <p>18 knew the answer to that question. We know the witness's</p> <p>19 answer, not necessarily the answer.</p> <p>20 MR. WALLACE: These are all asked and answered. I</p> <p>21 thought I've been overruled on that, your Honor.</p> <p>22 THE COURT: My philosophy -- I don't know how other</p> <p>23 judges do this -- if the witness, on direct, says "X" and on</p> <p>24 cross examination there's evidence of anti X, I will let</p> <p>25 redirect say, okay, but X, even if it's asked and answered,</p>

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<p>R. Unell - by Defendant - Redirect (Mr. Suarez) Page 5829</p> <p>1 even if it's cumulative, so let's just move along. 2 Overruled. 3 Do you need a read back. Ask it again? 4 THE WITNESS: Please, your Honor. 5 THE COURT: Mr. Suarez, your choice. 6 MR. SUAREZ: I'll accept the read back. Thank you. 7 (Whereupon, the requested testimony was read back 8 by the court reporter.) 9 A Absolutely. 10 THE COURT: I'll allow it as preliminary and 11 introductory, whatever you want to call it. And we have an 12 answer. 13 MR. SUAREZ: Thank you. 14 Can we please pull up the Court's summary judgment 15 order, and go to the section that Mr. Wallace just reviewed 16 with the witness. 17 THE COURT: Look at all those documents I had to 18 review to write that decision. 19 MR. WALLACE: It's page 19. 20 (Whereupon, the exhibit was displayed on the 21 screen.) 22 Q Do you see where it says, "OAG has submitted conclusive 23 evidence that between 2014 and 2021, defendants overvalued the 24 assets reported in the SFCs between 17.27 to 38.51 percent; this 25 amounts to a discrepancy of between \$812,000,000 and \$2.2</p>	<p>R. Unell - by Defendant - Redirect (Mr. Suarez) Page 5831</p> <p>1 Q It says, "Reported 4.2 billion and adjusted based on DB 2 due diligence of 2.4 billion." 3 A Yes, sir. 4 Q Is Deutsche Bank's adjustment to the President's net 5 worth of -- more or less what the Court has concluded in its 6 summary judgment order to be a difference between what the OAG 7 submitted in evidence and what the bank concluded was -- 8 MR. WALLACE: Objection. Leading, foundation. 9 MR. SUAREZ: It's a math question. 10 MR. WALLACE: It's a leading question. 11 MR. SUAREZ: Okay. 12 MR. WALLACE: And you haven't given him all the 13 math. 14 THE COURT: It's leading, and I could do the math, 15 too. 16 MR. SUAREZ: Okay. 17 Q Having concluded, according to DB due diligence that 18 the President had a net worth of 2.4 billion, is that adjustment 19 within the range that the Court determined the OAG had submitted 20 evidence to adjust the value of assets in the Statement of 21 Financial Condition? 22 MR. WALLACE: Objection. That mischaracterizes the 23 evidence that has gone on since summary judgment, that there 24 was, like, an adjustment. 25 THE COURT: I'll say again, I could do the math. I</p>
<p>R. Unell - by Defendant - Redirect (Mr. Suarez) Page 5830</p> <p>1 billion?" 2 A Yes, sir. 3 Q Does the word "intentional" appear anywhere there? 4 A No, sir. 5 Q Can we pull up Defendant's Exhibit 312 and put it side 6 by side to the summary judgment order? 7 (Whereupon, the exhibit was displayed on the 8 screen.) 9 Q Have you reviewed this e-mail prior to today? 10 A Yes, sir. 11 MR. SUAREZ: If we could turn to page three of this 12 e-mail. 13 Q Do you see where it says -- 14 MR. SUAREZ: Actually, let's start at page two. 15 (Whereupon, the exhibit was displayed on the 16 screen.) 17 Q Do you see where it says "DJT financial profile"? 18 A Yes, sir. 19 Q And here where it says "net worth" at the bottom of 20 page two. 21 A Yes, sir. 22 MR. SUAREZ: And then if we could scroll to the 23 next paragraph. 24 (Whereupon, the exhibit was displayed on the 25 screen.)</p>	<p>R. Unell - by Defendant - Redirect (Mr. Suarez) Page 5832</p> <p>1 don't need him to say that X is within the range of Y to Z. 2 Q Is an adjustment in that range to the net worth of the 3 sponsor, in this case President Trump, unusual in your 4 experience in the banking world? 5 MR. WALLACE: Objection. There's two documents on 6 the screen right now. It's not clear which one he is 7 referring to. 8 MR. SUAREZ: They really don't want this to come 9 out. 10 MR. WALLACE: If you could ask a proper question it 11 can come out. The Judge understands what you are getting 12 at. 13 THE COURT: I don't think the question relied on 14 the documents. It was just a standard question. Overruled. 15 Is it unusual to have that kind of adjustment? Was 16 that the question? 17 MR. SUAREZ: Correct. 18 A No, sir, it would not be unusual. 19 Q Why is that? 20 A Because after based off the analysis and the way that 21 banks review things and take their approaches, that that is 22 customary in the commercial real estate finance world. 23 Q Now, after having adjusted the President's net worth by 24 -- do you see the last sentence, it says, "Defendants have 25 failed to identify any authority for the notion that the</p>

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<p>R. Unell - by Defendant - Redirect (Mr. Suarez) Page 5833</p> <p>1 discrepancy of the magnitude demonstrated here could be 2 considered immaterial"?</p> <p>3 A Yes, sir.</p> <p>4 Q Do you agree with that?</p> <p>5 A No, sir.</p> <p>6 Q Why?</p> <p>7 A Based on the evidence that I've received, the reports 8 that I've reviewed, the testimony I've heard, that it would be 9 immaterial, in my opinion, as evidenced by the adjustments done 10 by Deutsche Bank in and my own analysis and experience.</p> <p>11 THE COURT: I will just point out that I'm -- he is 12 certainly entitled to that opinion.</p> <p>13 This opinion is law of the case, and I believe it's 14 under appeal. So it is what it is, to repeat what I said 15 yesterday.</p> <p>16 MR. SUAREZ: And if we could turn to the first page 17 of Defendant's Exhibit 312.</p> <p>18 (Whereupon, the exhibit was displayed on the 19 screen.)</p> <p>20 Q I would like to draw your attention to the sentence 21 that says, in the e-mail from Thomas Bowers to Marcus Mitchell, 22 "Mentioned that it is among the strongest personal balance 23 sheets we have seen, and totally unlike any of our major real 24 estate developer clients in that we observe an absence of 25 personal debt, with huge asset base and diversified CF." Do you</p>	<p>R. Unell - by Defendant - Reross (Mr. Wallace) Page 5835</p> <p>1 THE COURT: I'm not going to strike the answer. 2 There is no -- or question. There is no jury here. When I 3 said that I'll allow, on redirect, things covered on direct, 4 I'm hoping that they'll be a lot less of that.</p> <p>5 And I think -- I don't remember any cross 6 examination about whether Mr. Trump was one of the richest 7 people in the world.</p> <p>8 Mr. Kise?</p> <p>9 MR. KISE: You made your ruling. I'll stop there.</p> <p>10 THE COURT: Wise move.</p> <p>11 (Counsel conferred with his colleagues off the 12 record.)</p> <p>13 MR. SUAREZ: No further questions.</p> <p>14 THE COURT: Okay. Any recross.</p> <p>15 MR. WALLACE: Just one.</p> <p>16 RECROSS EXAMINATION</p> <p>17 BY MR. WALLACE:</p> <p>18 Q I believe, Mr. Unell, you testified yesterday about the 19 qualifications for the Private Wealth Management Group and the 20 loan chart we saw, and it was \$50 million of assets for a 21 borrower; is that correct?</p> <p>22 A I believe it was 50. We've seen different numbers. 23 Between 50 and a hundred.</p> <p>24 Q And the hundred is the ultrahigh net worth category; is 25 that correct?</p>
<p>R. Unell - by Defendant - Redirect (Mr. Suarez) Page 5834</p> <p>1 see that?</p> <p>2 A Yes, sir.</p> <p>3 Q Based upon your experience in the real world, is that a 4 statement that you agree with?</p> <p>5 A Absolutely, that the analysis that they were looking at 6 is an analysis that I would look at in my experience. Personal 7 debt, liabilities are something that is of most importance 8 because of the ability for -- to carry that debt. And also, a 9 diversified cash flow allows for a changes in market to perhaps 10 be offset by different asset classes.</p> <p>11 And it is different than most other real estate 12 developers because most real estate developers stay in one lane, 13 whether they are industrial developer, multifamily developer, 14 hotel developer. Very few successfully have a diversified cash 15 flow stream such as President Trump and The Trump Organization.</p> <p>16 THE COURT: Hold on.</p> <p>17 Mr. Wallace, is that question and answer beyond the 18 scope of your cross examination?</p> <p>19 MR. WALLACE: I think all of this is beyond the 20 cross examination, with the possible exception of asking him 21 about the same passages that I asked him about in the 22 summary judgment decision.</p> <p>23 But I understood we were sort of letting them 24 continue with these lines of questions. It is beyond the 25 scope of my --</p>	<p>R. Unell - by Defendant - Reross (Mr. Wallace) Page 5836</p> <p>1 A That's my understanding, yes, sir.</p> <p>2 Q In your professional experience, have you seen any 3 individuals with \$50 million of net worth obtain \$378 million of 4 credit from a lending institution?</p> <p>5 A Yes, sir.</p> <p>6 Q And in what instances have you seen that?</p> <p>7 A When I was at Bank of America and there were multiple 8 instances of individuals with guarantees in the 10 to 9 \$15 million range that had facilities that were guaranteed 10 upwards of 500 plus million dollars. And they were syndicated 11 facilities run across multiple banks with similar collateral.</p> <p>12 Q And did the individuals guarantee the entirety of the 13 debt, or was the guarantee limited to the full amount of their 14 net worth?</p> <p>15 A It varied based off of the different deals.</p> <p>16 MR. WALLACE: Okay.</p> <p>17 THE COURT: Any other questions from this witness 18 from anyone? The witness is excused.</p> <p>19 THE WITNESS: Thank you, your Honor.</p> <p>20 THE COURT: Thank you.</p> <p>21 (Whereupon, the witness stepped down from the 22 witness stand.)</p> <p>23 MR. KISE: Could we just have five minutes to make 24 sure the witness's transportation --</p> <p>25 THE COURT: Sure. And then I'll address motions.</p>

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<p>1 MR. KISE: Yes, your Honor.</p> <p>2 (Whereupon, there is a brief pause in the</p> <p>3 proceedings.)</p> <p>4 THE COURT: Did Mr. Unell have a successful</p> <p>5 departure?</p> <p>6 MR. KISE: He did.</p> <p>7 THE COURT: Okay. We are up to housekeeping,</p> <p>8 motions, and anything else that we can accomplish in the</p> <p>9 next 35, 40 minutes.</p> <p>10 MR. WALLACE: So, your Honor, I guess we are the</p> <p>11 movant, so I will start with our motion to strike the</p> <p>12 testimony of Mr. Shubin.</p> <p>13 I'll state this very basically. He is offering</p> <p>14 illegal opinions. He is offering illegal conclusions about</p> <p>15 the interpretation of the various easement donations and</p> <p>16 restrictions on the Doral -- on the, I'm sorry, Mar-a-Lago</p> <p>17 property. And that is improper expert testimony.</p> <p>18 You've already found this twice in this case when</p> <p>19 the defendants have submitted judicial opinions as expert's</p> <p>20 affidavits for various legal issues. It's the same</p> <p>21 principle. Mr. Shubin's testimony is not helpful to the</p> <p>22 Court because the Court is the one who finds the law.</p> <p>23 MR. KISE: I didn't know he was done. Sorry, your</p> <p>24 Honor.</p> <p>25 So, briefly, your Honor, you have our submissions.</p>		<p>1 demeaning of a determine in a statute. So if a witness</p> <p>2 comes in, a lawyer witness, or any expert comes in and says</p> <p>3 that, you know, best efforts means X, well, that's a legal</p> <p>4 conclusion. But here, Mr. Shubin's testimony addresses</p> <p>5 facts. They are complex facts. He identifies the relevant</p> <p>6 documents, and then the application of those facts to the</p> <p>7 subject property. That subject matter is unquestionably</p> <p>8 beyond the knowledge or understanding, or will dispel</p> <p>9 misconceptions of a typical finder of fact. And that's</p> <p>10 cited in the Guide to New York Evidence rule. I'm still</p> <p>11 getting used to the fact that you all don't have an evidence</p> <p>12 code here. It's all done by case law.</p> <p>13 But importantly as well, Mr. Shubin doesn't opine</p> <p>14 on the seminal legal issue to be decided in the case. His</p> <p>15 testimony would be admissible, even if it did embrace an</p> <p>16 ultimate issue, but I would say, your Honor, it does not.</p> <p>17 To the extent it would, or could, then that should be</p> <p>18 decided when Mr. Shubin is here. And if there is a</p> <p>19 particular question asked, or series of questions asked that</p> <p>20 your Honor finds that invade that province, then that can be</p> <p>21 addressed then, but to wholesale discard his testimony isn't</p> <p>22 supported.</p> <p>23 We've cited the Court to case where expert</p> <p>24 witnesses may offer opinions as to the applicability of</p> <p>25 documents and regulatory schemes. The Zohar case,</p>	
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<p>1 Mr. Shubin's testimony is both material and necessary for</p> <p>2 the defendants case. He will provide critical evidence as</p> <p>3 to the scope of and application of the documents, not legal</p> <p>4 conclusions. And I will get to that.</p> <p>5 It's uncontested, still, that Mr. Shubin possesses</p> <p>6 the requisite experience, training and knowledge. I mean,</p> <p>7 there's no challenge there.</p> <p>8 So Mr. Shubin does two things. First he identifies</p> <p>9 the relevant universe of documents, of governing documents</p> <p>10 that apply to the situation. That exercise alone requires</p> <p>11 expertise. That's not something that the average person,</p> <p>12 the average fact finder could do, and, in fact, the average</p> <p>13 lawyer couldn't do. Land use and zoning is very insular,</p> <p>14 unique, specialized, I'm sorry, area of the law. And so it</p> <p>15 requires expertise to go look at the public record, and of</p> <p>16 the 500 documents in the public record, pick out which ones,</p> <p>17 actually, are important to look at for purposes of whatever</p> <p>18 analysis you are doing. So that's the first thing that he</p> <p>19 does.</p> <p>20 And then he explains which provisions of those</p> <p>21 documents are pertinent to the Court's ultimate</p> <p>22 determination, focusing the Court on the specific provisions</p> <p>23 of those documents.</p> <p>24 So it's not a legal conclusion. A bare legal</p> <p>25 conclusion is demeaning of a specific contract term,</p>		<p>1 Z-O-H-A-R, the Lurie case, L-U-R-I-E, the Loscalzo,</p> <p>2 L-O-S-C-A-L-Z-O -- I won't cite them. They are in our</p> <p>3 papers.</p> <p>4 And the Attorney General's cases that preclude</p> <p>5 experts based on offering legal opinions all involve</p> <p>6 situations where the contract term or the seminal legal</p> <p>7 issue that's to be decided by the Court is that forms the</p> <p>8 foundation of the opinion; the Goodhill case, precluding</p> <p>9 testimony related to interpretation of a contract provision,</p> <p>10 the same example I gave before. The Measom, M-E-A-S-O-M,</p> <p>11 case, where the legality, the question of legality of an</p> <p>12 apartment was central to the issues in the case.</p> <p>13 The Colon, C-O-L-O-N case, again, precluding expert</p> <p>14 testimony as to the interpretation of a particular contract</p> <p>15 provision, or particular statutory provision. But</p> <p>16 Mr. Shubin is not being called to opine on the seminal</p> <p>17 issues in the case.</p> <p>18 The seminal legal issues in the case are the</p> <p>19 matters set forth requisite elements of counts two through</p> <p>20 seven. He is not opining at all on any of those.</p> <p>21 Now, his testimony relates to the question of</p> <p>22 intent, ultimately, and, and it assists the finder of fact</p> <p>23 in determining, understanding the relevant complex</p> <p>24 documents, the universe of documents and the application of</p> <p>25 the particular terms to the subject property. And that</p>	

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<p>1 testimony is properly admitted. We cited the Court to one</p> <p>2 other case, the Clardy case, C-L-A-R-D-Y, it's not a</p> <p>3 New York case. It's a Ninth Circuit case. Their expert</p> <p>4 testimony was permitted to explain the application of tax</p> <p>5 laws. So if it's a purely legal issue, specifically and</p> <p>6 purely legal issue, then I would agree with the Government</p> <p>7 that that's not the proper subject of expert testimony.</p> <p>8 And I think their analogy to the judicial</p> <p>9 affidavits is inapposite, because that's an entirely</p> <p>10 different context. And those affidavits were speaking to</p> <p>11 legal issues. We think it's inappropriate for the fact</p> <p>12 finder, but that doesn't apply here because Mr. Shubin is</p> <p>13 talking about factual matters. He's not expressing legal</p> <p>14 opinions. He's identifying -- I'm not going to say it</p> <p>15 again. You don't like me to say it again.</p> <p>16 So it's a bench trial. You can give whatever</p> <p>17 weight you deem necessary. We have the right to present a</p> <p>18 complete defense. If the Court determines that a particular</p> <p>19 question or series of questions goes beyond the province of</p> <p>20 expert testimony, then you could simply stop the examination</p> <p>21 there. But to exclude him wholesale when he is offering a</p> <p>22 tremendous range of factual information isn't supported. So</p> <p>23 his testimony should be admitted.</p> <p>24 THE COURT: So is he an expert witness? A fact</p> <p>25 witness? A hybrid? Both?</p>		<p>1 in great length describing is a legal opinion where you take</p> <p>2 the facts, you understand the legal restrictions as they</p> <p>3 apply to those facts, and analyze them.</p> <p>4 Mr. Shubin testified that the analysis he performed</p> <p>5 for this case was the same that he would perform for a</p> <p>6 client, but in actually less detail. He cites one case that</p> <p>7 says you have to interpret the plain meaning of an easement</p> <p>8 -- of restriction document on a piece of property. I think</p> <p>9 the Court is capable of analyzing any legal issues that it</p> <p>10 needs to, but I certainly think the plain meaning of an</p> <p>11 easement on a piece of property is certainly within the</p> <p>12 Court's ability, and, in fact, is the Court's</p> <p>13 responsibility.</p> <p>14 So he's a hundred percent an expert on legal</p> <p>15 analysis of an easement on the property in Doral. It is not</p> <p>16 a specialized area. It is not an area that is beyond the</p> <p>17 pen of the Court. It is a waste of our time. He can -- his</p> <p>18 analysis can be incorporated into the briefs that the</p> <p>19 defendants prepare. They can have him, I don't know, try to</p> <p>20 file an amicus, but it is not appropriate for expert</p> <p>21 testimony.</p> <p>22 THE COURT: No more argument, but, I want to ask,</p> <p>23 if I would allow him to testify in some limited capacity,</p> <p>24 when would he do so and for how long?</p> <p>25 MR. KISE: I think he is on the schedule for</p>	
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<p>1 MR. KISE: He is an expert witness. He is the not</p> <p>2 a fact witness.</p> <p>3 THE COURT: You keep talking about how he is going</p> <p>4 to give facts.</p> <p>5 MR. KISE: No, he is not going to give facts. He's</p> <p>6 going to advise the Court as to the facts. He's going to</p> <p>7 explain the facts that are relevant. He is going to take</p> <p>8 facts that are there, but it takes his expert opinion to</p> <p>9 identify what those documents are. What the provisions are.</p> <p>10 I mean, you or I -- well, I don't want to speak for</p> <p>11 the Court. I know that if I took a stack of land use and</p> <p>12 zoning documents, it would take me a long time just to</p> <p>13 figure out which one relates and which one doesn't.</p> <p>14 So to the extent that the Court finds that he is</p> <p>15 offering some conclusion, legal conclusion to be drawn from</p> <p>16 the those documents, that's a very different matter than</p> <p>17 saying he can't come in and explain how the system works.</p> <p>18 It's a fairly complicated regulatory structure. And the</p> <p>19 cases that we cited say that same thing.</p> <p>20 So explaining to the fact finder how all that works</p> <p>21 and what these facts mean is purely within the province of</p> <p>22 expert testimony. And he's not drawing legal conclusions,</p> <p>23 even though he happens to be a lawyer.</p> <p>24 THE COURT: Any reply?</p> <p>25 MR. WALLACE: Yes. What Mr. Kise is eloquently and</p>		<p>1 Tuesday. And it probably would not take half a day. I mean</p> <p>2 not a long --</p> <p>3 MR. WALLACE: Half a day?</p> <p>4 MR. KISE: I don't think it's a lengthy</p> <p>5 examination, depending on what they have on cross. It's</p> <p>6 pretty abbreviated.</p> <p>7 THE COURT: Although, I have already ruled, twice,</p> <p>8 that expert testimony on the law is not allowed, and</p> <p>9 defendants' Counsel have acknowledged this solid rule, I</p> <p>10 will allow Mr. Shubin to testify as to his expert opinion</p> <p>11 about the arguably complex interrelationships, well</p> <p>12 described by Mr. Kise, between and the practical meaning of</p> <p>13 the various deeds, covenants, restrictions, easements,</p> <p>14 zoning rules and local and state statutes, et cetera,</p> <p>15 governing use of the Mar-a-Lago property. Although, I will</p> <p>16 not allow his opinion on the law. I will do my best to draw</p> <p>17 the line between what is practical and business experience</p> <p>18 and what is a legal conclusion.</p> <p>19 So consistent with what both sides said, if the AG</p> <p>20 wants to object that something is just a pure question of</p> <p>21 law, I will allow it.</p> <p>22 THE COURT REPORTER: I'm sorry, Judge, "If the AG</p> <p>23 wants to object that something is just a pure question of</p> <p>24 law..." did you say, "I will allow it"?</p> <p>25 THE COURT: I will allow him to testify subject to</p>	

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<p>1 the limitations I've just indicated. 2 (Continued on the next page.) 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>1 Condition was accurate. He literally said that he came up 2 with the price for Mar-a-Lago based on a fantasy list that 3 included, quote, "anyone from Elon Musk to Bill Gates and 4 everyone in-between, kings, emperors and heads of state." 5 He is purely just offering an opinion with no re-creatable 6 process, no re-creatable values. 7 The defendants take the position that he is not 8 bound by Frye because he is offering just is professional 9 experience. He is extremely different from a doctor 10 talking about how he would conduct a surgery. He is 11 providing a valuation advice. 12 And I believe is our case, The Matter of New 13 York Central, it is 106 AD3d 1152, struck an expert on 14 valuation who was, in fact, an appraiser who could not 15 disclose facts, figures or calculations underlying his 16 determinations. That is Mr. Moens to a tee. There are no 17 facts. There are no figures. There is no re-creatable 18 process. He is a real estate broker, friendly with Donald 19 Trump, who is going to come in and say I think it is worth 20 1.5 billion with no analysis that can be recreated or 21 tested. 22 THE COURT: Mr. Kise? 23 MR. KISE: So, I don't know where to begin. 24 I think the government raises two separate 25 questions.</p>
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<p>1 THE COURT: Okay. So, motion granted only to 2 the extent -- 3 MR. WALLACE: Motion is denied I thought? Our 4 motion was to preclude Mr. Shubin, I believe. It has been 5 denied. 6 THE COURT: I am precluding him from testifying 7 as to certain areas. 8 MR. WALLACE: I'll move on to Mr. Moens, 9 although it seems like anything an expert wants to say is 10 going to at least be heard. 11 Mr. Moens, in particular, provides no formal 12 basis. He is an ipse dixit expert. He has said his 13 calculations cannot be recreated. He says that he used 14 his gut feeling; that he didn't verify information; that 15 it would not be possible for another person to reproduce 16 his analysis. His testimony stated that he did not, his 17 testimony did not depend on whether the property could be 18 used as a private residence, only a social a club. A fact 19 which this Court has already found. 20 He has stated that he has not reviewed any of 21 the data showing how Mr. Trump actually prepared his 22 valuation of the Statements of Financial Condition, so he 23 is offering nothing that is relevant to the Court's 24 analysis of whether what the Trump Organization did 25 contemporaneously throughout the Statements of Financial</p>	<p>1 THE COURT: I am not sure the microphone is 2 picking you up. 3 MR. KISE: Sorry, Judge. 4 First of all, the government raises two separate 5 questions. One, whether the Frye analysis applies. And 6 two, some form of Mr. Moens isn't qualified. I don't hear 7 him saying that, but that to me is built into their 8 analysis. 9 So with respect to the first, and we cite this 10 in our cases. The Oddone case and the Wernick case. As 11 well as the Guide to New York Evidence. Frye requires an 12 expert witness to demonstrate that the theory or opinion 13 he or she is espousing follows generally accepted 14 principles and methodologies only where such testimony is 15 not based on the witness's personal training and 16 experience. 17 And so it is very clear that where a witness is 18 testifying based on their experiences, their personal 19 training and knowledge and experience, that Frye doesn't 20 necessarily apply. He doesn't have to have a re-creatable 21 process. In fact, what makes Mr. Moens successful, is 22 that other people can't recreate his process. And you 23 will hear him testify to that. To say that an individual, 24 who has been in the real estate industry, the preeminent 25 broker in Palm Beach, who has been doing this for 40-plus</p>

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<p>1 years and closed billions of dollars of transactions in</p> <p>2 and around the Mar-a-Lago property, is just making it up</p> <p>3 when he comes up to values. Most of what I heard</p> <p>4 Mr. Wallace say is cross examination. If he wants to</p> <p>5 critique what Mr. Moens, the basis of his opinions, the</p> <p>6 validity of his opinions, whether there is a -- there is</p> <p>7 some foundation for those opinions. But to say that he is</p> <p>8 excludable just because he doesn't meet some Frye standard</p> <p>9 where you can recreate it, this isn't a scientific</p> <p>10 formula.</p> <p>11 And an appraiser is held to a different</p> <p>12 standard. Because an appraiser, there you are dealing</p> <p>13 with established processes. So the case they cite</p> <p>14 relating to an appraiser is very different than Mr. Moens.</p> <p>15 He is not an appraiser. That may be something they care</p> <p>16 to bring out on cross examination that he isn't an</p> <p>17 appraiser.</p> <p>18 But, his opinions are based on documents that he</p> <p>19 reviewed. The fantasy list, as Mr. Moens called it, in</p> <p>20 his industry it is. He has represented some of the most</p> <p>21 wealthy and powerful individuals in the world in that</p> <p>22 region. And so he knows what someone who has</p> <p>23 \$100 million, \$500 million, a billion dollars to spend on</p> <p>24 a residence, he has some basis of knowledge to speak to</p> <p>25 that.</p>		<p>1 And so there is no basis to exclude his</p> <p>2 testimony simply because he doesn't meet the Frye</p> <p>3 standard. He is certainly qualified.</p> <p>4 Mr. Robert may have more CPLR based analysis</p> <p>5 than me. But, issues relevant to his qualifications and</p> <p>6 competency aren't -- I just don't think that there is a</p> <p>7 plausible basis to argue that he isn't, given his vast</p> <p>8 experience.</p> <p>9 We have a right to present a complete defense</p> <p>10 and the denial of critical expert testimony is, as Your</p> <p>11 Honor I think has recognized when you have said it over</p> <p>12 and over again, a fundamental basis for reversal.</p> <p>13 You can accord whatever weight that you deem</p> <p>14 appropriate to the testimony. And any purported lack of</p> <p>15 experience or any purported lack of merit of his opinions</p> <p>16 can be well brought out on cross examination. But none of</p> <p>17 that rises to the level of excluding Mr. Moens testimony.</p> <p>18 He is an expert in this industry. And I think</p> <p>19 Your Honor will be very satisfied that he has the</p> <p>20 requisite qualifications.</p> <p>21 MR. ROBERT: If I may briefly, Your Honor?</p> <p>22 And I think Mr. Kise is learning the CPLR just</p> <p>23 great. So that's actually not what I am going to talk</p> <p>24 about for the moment.</p> <p>25 Mr. Moens qualifications are world renowned, and</p>	
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<p>1 Again, it is a bench trial. The Court can weigh</p> <p>2 it and determine it. If they want to challenge the</p> <p>3 credibility of Mr. Moens and the foundation for his</p> <p>4 opinion or whether or not it squares with someone else,</p> <p>5 someone else's opinion or an appraised opinion, that's</p> <p>6 fine.</p> <p>7 Also importantly, Judge, ASC 274, which you know</p> <p>8 I like to talk about, ASC 274, it expressly provides for</p> <p>9 reliance on this type of information. As we cite in</p> <p>10 papers, ASC 274-10-55-6, provides specifically that</p> <p>11 information of this kind, estimates of selling prices and</p> <p>12 selling costs obtained from independent real estate agents</p> <p>13 or brokers familiar with similar properties in similar</p> <p>14 locations; estimated current values based on sales of</p> <p>15 similar property in similar circumstances. That's what</p> <p>16 Mr. Moens is going to testify about. He is going to</p> <p>17 testify about sales with similar properties and similar</p> <p>18 circumstances.</p> <p>19 As to the point about valuation, and he is not</p> <p>20 going back to what we did before, well, none of us are</p> <p>21 really doing that. We are all looking here in 2023 with</p> <p>22 the benefit of hindsight. We are all backward looking.</p> <p>23 And so Mr. Moens is providing his view of the market. A</p> <p>24 market that he has been in. That he has been fully</p> <p>25 immersed in for 40-plus years.</p>		<p>1 you will see. I just want to talk about a factual issue.</p> <p>2 In the government's own case when they called Mr. McArdle</p> <p>3 to the stand from Cushman & Wakefield, one of the things</p> <p>4 they asked him about is to how he valued certain property.</p> <p>5 And he talked about bringing in a local expert to help him</p> <p>6 value property. And it is at page 1986 of the trial</p> <p>7 transcript, line nine to line 16:</p> <p>8 "QUESTION: Who was that expert?</p> <p>9 "ANSWER: The local expert was, I selected, was</p> <p>10 a gentleman named David Turner from a highly regarded</p> <p>11 large residential brokerage firm in the Westchester area</p> <p>12 called Houlihan Lawrence. So David was one of the top</p> <p>13 producers in the luxury marketplace that would include</p> <p>14 home sales and land. I approached him and asked him if he</p> <p>15 would be interested in helping me with my understanding of</p> <p>16 land values in Bedford, and he quickly agreed.</p> <p>17 So, their own witness affirms the fact that</p> <p>18 local real estate brokers who are highly qualified and top</p> <p>19 producers, and it is beyond any dispute that Mr. Moens is</p> <p>20 a top producer and he works in the luxury marketplace, and</p> <p>21 Palm Beach is his specialized area, that he could</p> <p>22 certainly provide information that would be relevant and</p> <p>23 information that would be necessary for this Court to</p> <p>24 hear.</p> <p>25 Thank you, sir.</p>	

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1 THE COURT: Thanks.		1 extent.	
2 Mr. Kise, when this trial is over, not until		2 So, go ahead. And you know I am very reluctant	
3 then, but when it is over, I will accept an offer to		3 to allow this. But make your best case.	
4 condense everything you ever write or say.		4 MR. KISE: But I think that we have to start	
5 MR. KISE: Most people that know me would.		5 from the foundational premise. The foundation premises is	
6 THE COURT: You should follow your buddy there		6 the public has a right to everyman's evidence. We didn't	
7 on your left, Mr. Robert. He is very succinct and to the		7 cite this in our papers but Branzburg v Hayes 408 US 665.	
8 point.		8 A Supreme Court of the United States case which stands for	
9 MR. WALLACE: Can I be heard on one point?		9 a fundamental foundational proposition that we are	
10 THE COURT: Of course, in a second.		10 entitled to evidence unless there is some constitutional	
11 Let me try to condense things right now. Okay?		11 or privilege, you know, some reason to exclude.	
12 So, am I correct, and there are a lot of		12 None of that applies here. All adults are	
13 witnesses here, this potential expert witness is going to		13 competent to testify. The evidence is highly relevant and	
14 basically come in and say, I am an expert, and I can,		14 probative. Under the CPLR, material and necessary as used	
15 based on my experience, and I'll tell you what the		15 in section 3101 must be interpreted liberally to require	
16 property is worth, I'll opine what the property is worth.		16 disclosure.	
17 MR. KISE: Loosely speaking, I think that's		17 THE COURT: Mr. Robert probably gave that to	
18 right. Loosely speaking, yes.		18 you.	
19 THE COURT: Mr. Wallace, any quick response?		19 MR. KISE: He did, as a matter of fact.	
20 MR. WALLACE: I would direct Your Honor to page		20 And we have cited cases on this. Judge Jones	
21 26 of your summary judgment opinion where Mr. Moens'		21 can certainly testify as to the specific issues addressed	
22 opinion is discussed at length.		22 in her reports, her observations and conclusions to date	
23 You write that: It is well settled that where		23 as to the defendant's business practices, accounting,	
24 an expert's ultimate assertions are speculative or		24 compliance practices, et cetera, are extremely probative,	
25 unsupported by any evidentiary foundation, however, the		25 we would submit, to certainly the issue of the need for	
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1 opinion should be given no probative force and is		1 ongoing injunctive relief and the scope of any such	
2 insufficient to withstand summary judgment.		2 relief.	
3 You have already decided the issue of whether		3 And the reports, respectfully, are hearsay. And	
4 the easement donations and the easement deeds restrict the		4 so to the extent that the Court has or intends to rely on	
5 use of the Mar-a-Lago property. The defendants are now		5 the reports, then, as with all hearsay, this isn't a	
6 proposing to spend a full trial day valuing, establishing		6 situation, respectfully, where we are talking about the	
7 that, in fact, you are wrong, and the easement does not		7 interpretation of a contract or a legal document. It is	
8 restrict the use of the Mar-a-Lago property. And that in		8 an interpretation of a factual record. And the witness is	
9 turn, it should be valued at \$1 billion because Elon Musk		9 readily available. There has already been disputes	
10 might want to move to Palm Beach. That will be a full day		10 between the parties as to what these various reports mean.	
11 of this trial.		11 And so we should be entitled to at least the benefit of	
12 THE COURT: And that's what we are going to do.		12 having Judge Jones here to respond to those questions	
13 Motion to preclude denied.		13 about any ambiguities that might exist in her reports.	
14 And if I am being inconsistent -- what is it? A		14 So, for those reasons and the reasons stated, in	
15 foolish consistency is the hobgoblin of little minds.		15 the interest of brevity, for those reasons and the reasons	
16 Let him testify. It seems sort of		16 stated in our papers, we think Judge Jones can and should	
17 straightforward.		17 be called as a witness.	
18 Any other housekeeping or motions?		18 THE COURT: Time goes fast when you are having a	
19 MR. KISE: We wanted to address briefly the		19 good time.	
20 Judge Jones testimony you asked us -- I don't think you		20 MR. AMER: If I may be heard on this?	
21 asked us, you allowed us.		21 THE COURT: Sure, Mr. Amer.	
22 THE COURT: That's a more accurate word.		22 MR. AMER: So the challenge that the Court laid	
23 MR. KISE: That's a better statement.		23 down was to have defendants find a case that said that the	
24 THE COURT: I read some or all of your		24 court-appointed monitor can be compelled to testify. I	
25 submissions on this issue; and the others to a certain		25 don't believe they found such a case in their letter.	

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<p>1 And certainly this Court has broad discretion</p> <p>2 when looking at relevance and prejudice. And of course</p> <p>3 Your Honor already identified one point of prejudice,</p> <p>4 which is a potential conflict that could arise.</p> <p>5 But we actually have found cases that go the</p> <p>6 opposite way of your request to defendants that</p> <p>7 demonstrate that a court-appointed monitor cannot be</p> <p>8 compelled to testify. And there is really two bases in</p> <p>9 these cases, and it all comes down to immunity.</p> <p>10 New York State recognizes the Doctrine of</p> <p>11 Judicial Immunity extends to non-Judges in the cloak of</p> <p>12 quasi judicial immunity where they perform discretionary</p> <p>13 acts of a judicial nature. And in the Clapper v Guria</p> <p>14 case 153 Misc2d 726. That's a 1992 New York County</p> <p>15 Supreme Court decision. The State defendants on behalf of</p> <p>16 the disciplinary committee performed a judicial function</p> <p>17 in their investigation of plaintiff's alleged misconduct</p> <p>18 and commencement of the petition. And in this case the</p> <p>19 Court recognized that the defendants there were cloaked</p> <p>20 with quasi judicial immunity.</p> <p>21 It has also been recognized in the decision</p> <p>22 Pertilla v Genetic Design Inc., that's 166 Misc2d 843.</p> <p>23 Generally the doctrine of judicial immunity extends to</p> <p>24 those parties acting in a quasi judicial capacity in the</p> <p>25 course of their performance of court-appointed duties.</p>		<p>1 subpoena was served on our office, Office of the Attorney</p> <p>2 General, where we were a non-party in a 1983 case. And</p> <p>3 the Court held that that subpoena was invalid and struck</p> <p>4 the subpoena because our office enjoyed sovereign</p> <p>5 immunity. And the same holds here. Any effort to</p> <p>6 subpoena Judge Jones in her role as a court-appointed</p> <p>7 monitor, and therefore an arm of the state, would not be</p> <p>8 valid because of sovereign immunity. And so, because she</p> <p>9 is immune from process, that would be a subpoena to compel</p> <p>10 her to come here to testify. The defendants request to</p> <p>11 compel her should not be allowed.</p> <p>12 THE COURT: Very quick reply, partly because we</p> <p>13 are running out of time.</p> <p>14 MR. KISE: Yes, Your Honor.</p> <p>15 First of all, a monitor is not --</p> <p>16 Well, let me start with, you asked us to come up</p> <p>17 with a case that said the monitor is subject to testimony.</p> <p>18 Yes. Branzburg v Hayes, we are entitled to everyman's</p> <p>19 evidence --</p> <p>20 THE COURT: That doesn't do it. Come on.</p> <p>21 MR. KISE: No, it isn't. It isn't. There are</p> <p>22 only 17 cases in the system that can be located that even</p> <p>23 use the word monitor. And five of the references in the</p> <p>24 case law are to this case. So that only leaves like 12</p> <p>25 others.</p>	
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<p>1 THE COURT: But wait a minute. Immunity from</p> <p>2 what? Is this --</p> <p>3 MR. AMER: My next case.</p> <p>4 THE COURT: Okay.</p> <p>5 MR. AMER: Just to finish quoting from Pertilla:</p> <p>6 This privilege is based upon the public policy that expert</p> <p>7 witnesses must being encouraged to perform public services</p> <p>8 without fear of harassment or threat of litigation.</p> <p>9 And then finally the First Department, to</p> <p>10 address Your Honor's point in Alvarez v Schneider that's</p> <p>11 264 AD2d 27 at page 34, noted that: As with other forms</p> <p>12 of immunity, judicial immunity is an immunity from suit,</p> <p>13 not just from ultimate assessment of damages. And suit is</p> <p>14 recognized as a judicial proceeding that compels someone</p> <p>15 to act or refrain from acting. So the act of compelling</p> <p>16 Judge Jones to come to this court and testify would be a</p> <p>17 suit within the meaning of these immunity doctrines.</p> <p>18 Then there is a second separate immunity that</p> <p>19 applies here, Your Honor. And that's sovereign immunity.</p> <p>20 Judge Jones, because she is an arm of this Court, is a</p> <p>21 state actor who is entitled to broad state sovereign</p> <p>22 immunity. State immunity applies to both states and their</p> <p>23 agents. And she would be an agent of the state. Recently</p> <p>24 in an Eastern District decision by Magistrate Judge Lock.</p> <p>25 It is Felix v County of Nassau, 2023 Westlaw 5978189, a</p>		<p>1 The Court itself, this Court itself drew a</p> <p>2 distinction between a monitor, which is undefined, and a</p> <p>3 receiver, which is defined as an arm of the court,</p> <p>4 specifically in its order. And we cite that in the</p> <p>5 November 3, 2022 decision, where you state that they, in</p> <p>6 fact, perform two different functions. And that a limited</p> <p>7 function of a monitor is entirely different from the</p> <p>8 functions of a receiver. So the receiver case law and the</p> <p>9 case law that applies to immunity is inapposite here.</p> <p>10 Even if a receiver were an arm of the court, we</p> <p>11 cited the Court the cases, the Continental case, the</p> <p>12 Urinski case, and other cases where receivers have been</p> <p>13 called to testify. As I mentioned to the Court last week,</p> <p>14 in the bankruptcy and other context, SEC context, they are</p> <p>15 called frequently to testify. And the notion that a</p> <p>16 monitor in this context enjoys some broad sovereign</p> <p>17 immunity, I don't think that enjoys any support in the</p> <p>18 case law.</p> <p>19 For those reasons and the reasons in our papers,</p> <p>20 we think she is a qualified witness that should be called.</p> <p>21 THE COURT: Just putting my thoughts together</p> <p>22 here quickly.</p> <p>23 (Pause in the proceeding)</p> <p>24 THE COURT: The request to subpoena Judge Jones</p> <p>25 is denied.</p>	

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1 First of all, as has already come up, there is
2 no authority for subpoenaing a monitor to testify. And
3 I'll just use the word "monitor" as opposed to
4 "independent monitor." I don't think there is a
5 difference in this case.

6 Secondly, as argued by Mr. Amer, I think it
7 would be a dangerous infringement on court immunity and
8 prerogatives.

9 Third of all, I basically appointed her to
10 assist me in making sure that everything was correct -- I
11 will use that bland word -- in the defendant's business
12 practices or documents. I appointed her to assist me.
13 What she has -- her reports have already generated all
14 sorts of criticisms, I assume that will continue, or at
15 least commentary. The post-trial briefs can discuss
16 whatever they want about those reports.

17 I am not afraid go out on a limb, but I am not
18 going to be the first Judge to say that a monitor can be
19 subpoenaed.

20 And by the way, my research assistant, who is
21 sitting alongside me, claims to have found 472 cases,
22 state and federal, just searching for the character string
23 "independent monitor." So, not that this is dispositive,
24 but there seems to be dispute about how many cases there
25 are that talk about independent monitors.

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1 And that's the ruling.

2 Any other business we can finish today?

3 Have a great weekend everybody.

4 MR. ROBERT: Thank you, Your Honor.

5 THE COURT: See you Monday at 10:00 as usual.

6 MR. KISE: Yes, Your Honor.

7 THE COURT: I would admonish the witness but
8 there is no witness to admonish.

9 (Whereupon, the trial stood adjourned to Monday
10 December 4, 2023 at 10:00 a.m.)
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NYS Attorney General v.
Donald J. Trump et al

RECEIVED NYSCEF: 01/04/2024

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