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

November 27, 2023

Ny Supreme Court- Civil

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Mr. Robert, would you like to proceed?

Mr. ROBERT: Thank you. Good morning, Your Honor.

DIRECT EXAMINATION

BY MR. ROBERT:

Q Good morning, Mr. Hawthorn.

A Good morning.

Q I know you testified a few weeks ago. But I, just to put things context, I want to go briefly through your educational background and professional history. Okay, sir?

A Okay.

Q Please tell us about your educational background from college on.

A So, I attended the University of Florida and I obtained a Bachelor's degree and a Master's degree in accounting in the year 2000.

Subsequent to graduation I had my first employment at Arthur Anderson, which is a public accounting firm in Fort Lauderdale, Florida. I worked at Arthur Anderson from 2000 to 2002. From 2002 to --

Q I'll break it down.

A Prior to your work at Arthur Anderson, did you obtain any professional certification?

A Yes. I obtained a CPA license in the state of Florida.
And when did you obtain that license, sir?
A I obtained that license in 2000.
Q Okay. So now talking about your time at Arthur Anderson, which I believe you said was 2000 to 2002, sir?
A Correct.
Q What did you do at Arthur Anderson during that time?
A I was in the audit practice, so I worked on audits of both public and private companies as a staff auditor; with increasing responsibility to a senior auditor overseeing audit engagements for the firm.
Q And in its most basic sense, what is an audit, sir?
A An audit is a -- when a company requests that a firm, such as an accounting firm, comes in and does work and procedures to check the books and the records of the company; and to issue -- potentially issue audited financial statements of the company.
Q When an accounting firm reviews -- I know review is a term of art, I will not use that word. When an accounting firm analyzes financial records of a client of theirs, are there different levels of review?
A Yes.
Q What are those different levels?
A Generally speaking there is a compilation; there is a review; there is an audit; and there is maybe something else called agreed-upon procedures.
Q And when you discussed your experience at Arthur Anderson, was that solely in the audit, meaning some level of public accounting?
A Yes.
Q And what made you decide to go to Kerzner International in 2002?
A I was an audit senior.
Q Where did you go from Arthur Anderson, sir?
A In 2002 I went to Ernst & Young. It effectively took over the practice of Arthur Anderson in Fort Lauderdale at the time. So I was in the same office with the same clients. It was just that the Ernst & Young firm took over that office from Arthur Anderson at the time in 2002.
Q How long were you there with Ernst & Young?
A Ernst & Young, I was there for two years from 2002 to 2004. And I started as an audit senior, and continued in that role as a -- an experienced audit senior when I left in 2004.
Q And did your responsibilities change in any way during those two years from 2002 to 2004?
A They did. I had increasing levels of responsibility as I became more senior to the firm and more senior on the client engagements that I was on. So I had more in supervisory responsibilities, I had more interactions with the client on more technical accounting matters, as I have gotten more, at the time skilled in certain transactions and understanding accounting rules and financial reporting disclosure.
Q Where did you go after Ernst & Young?
A I left Ernst & Young in June of 2004, and I joined a firm called Kerzner International, which is a company, not an audit firm. So Kerzner International at the time, based in Plantation, Florida, was the owner and operator of luxury resort hotels. And I served as my first role as the manager of financial reporting.
Q And what made you decide to go to Kerzner International in 2004?
A It was a unique opportunity to work in private industry, which I had an affinity to do. And it was a good circumstance for me because the individual they were looking for had my -- I believed I fit the background for what they were looking for, meaning some level of public accounting experience, and an understanding also of the hospitality industry.
Q At Ernst & Young I had worked on some hospitality...
In 2006 the company went private on private transaction. And I continued in a role of financial reporting but more so as a private company where you report to the ownership interests of the company versus public company reporting.

And then as the -- my role expanded in 2000 -- let's say 12 and thereafter, I got involved more also in treasury. Became appointed as the vice president of treasury, where I still held financial reporting oversight and responsibilities because of my knowledge of that area.

But also got involved working with the company's lenders; working with the company's other stakeholders in terms of financial matters. Not only historical financial matters, which is what the financial statements oversee or tell, but also prospective financial matters like, you know, how the company is capitalized, how the company is working with its lenders on debt arrangements and things like that.

Q    You used a phrase, "vice president of treasury:" what exactly does that mean or did it mean?
A    That meant my role was expanded to not just be with financial reporting, but also work with lenders and also oversee the cash flow of the company. So in treasury you are also dealing with banks; you are dealing with lenders; you are dealing with cash flow forecasting for the operations of the company. Not necessarily just financial reporting, which is a more historical-type role where you are issuing financials of what happened in the past. But my role also expanded to be more operational in terms of how the company is looking forward prospectively and doing its business.

Q    You testified that you dealt with lenders and stakeholders, what did you mean by stakeholders?
A    Board members of the company. So even though it is a private company, the board was comprised of certain individuals appointed to direct the operations of the company. So, we would also, in my role, provide to the board of the company, like, quarterly updates. So, I would help provide board packages, so to speak, that gave, you know, information on quarterly board meetings to the ownership of the company and directors of the company.

Q    And from what years did you work at Kerzner International, sir?
A    I worked at Kerzner International from 2004 to 2016.
Q    And can you describe for the Court how your role, if in any way, changed at that time period in Kerzner?
A    Over the course of my employment at Kerzner I again had increasing levels of responsibility. So I started as a manager of financial reporting. At the time in 2004 to 2006 the company was a public company. So I was in charge of overseeing the financial statements that were filed with the SEC.

In February of 2016 I was hired as the Chief Accounting Officer of Trump Hotels based in New York.
Donald Trump November 27, 2023

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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?
Donald Trump November 27, 2023

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Hawthorn - by Defendant - Direct (Robert) Page 5132

1  A  After Mr. Weisselberg left the company I have been called upon from time to time as needed to assist with how the company is operating generally in other divisions, so not just the hotel division. And I have been called upon to, kind of, ask how we could replicate certain practices and procedures that we do in the hotel division across the company.

2  Q  And if you could add a little more detail to that?

3  A  Sure. I mean, I think the hotel division, in my humble opinion, because I have -- I am overseeing it, we have a good set of procedures and controls and ways we go about doing the day-to-day business in the operations. So, for example, we have a standardized chart of accounts. I know it sounds kind of boring, but if every hotel has the same general chart of accounts, it is easy to have consistency and roll up across the company.

4  Q  And do you want me to keep explaining?

5  A  Okay.

6  Q  Did there come a time that someone within the Trump Organization asked you to assist in these other projects after Mr. Weisselberg left?

7  A  Yes. I think Eric Trump has asked me -- well, I know Eric Trump has asked me to assist in other matters where I can be of assistance to the company.

8  Q  Okay. And just so that we are clear, that assistance is in what form?

9  A  It is helping to utilize certain of the characteristics of the hotel division and other ways to create, you know, more efficiencies, better procedures and practices across the company as a whole.

10  Q  You talked about uniformity, and I think you used a phrase "roll up" a couple of minutes ago. What did you discover when you were asked to help -- I'll use the word "modernize" the other divisions?

11  A  So as an example, I think as I was explaining before, the hotel division has the benefit of already an existing structure where every hotel is accounted for in the same way. As I was asked to, kind of, assist in other areas of the business, for example in the golf division, which is similar to the hospitality division hotels, the golf division at the time of, let's say, summer of 2021, didn't have that same uniformity. As the golf division grew over time, golf courses were acquired and the property level comptrollers entrusted to oversee the books and records, either continued to use the same chart of accounts that they had on a previous ownership, or had discretion in how they could book transactions in a chart of accounts that made sense for their property.

12  Q  So as an example, one of the projects that I helped to oversee over the last year and a half with some team members from my team, is to help standardize the chart of accounts for golf, so that you could consistently compare across every golf course the operations, the performance and understand, if everything is booked the same way and the same accounts, you can have consistency. That's an example.

13  Q  You used the phrase, "chart of accounts," what do you mean by that?

14  A  The chart of accounts is the, for lack of a better term, the books and records of the company, where all of the debits and credits go when you book journal entries. So there is typically a number assigned to a certain general ledger account. A description assigned to a certain general ledger account that comprises the assets, liabilities and equity of the books and records of the trial balance. And so it is much more efficient as a corporate oversight to evaluate the performance of your portfolio if everyone is on the same chart.

15  Q  Now, that's not to say that each entity had anything wrong with it. It is just that each entity maybe booked things in a different account than a different entity. So if you are trying to cross compare certain things, it may not be as noticeable because they are not on an apples to apples basis. So this is kind of inherent, you know, efficiency in the organization and the golf division similar to what we had in the hotel division as an example.

16  Q  Has there been any new accounting software that has been used as a result of your involvement in these other divisions?

17  A  So in addition to the chart of accounts project at golf, which is utilizing the same software which is golf specific, there is an undertaking ongoing now at the Trump Organization corporate accounting level to input new general ledger accounting software, so to be more modern, to be more like the hotel division. Meaning in a way that today in 2023 there is software packages available that helps people do their jobs a little bit easier, more consistent and have more control, standardization.

18  Q  When you talk about the corporate office, what are you referring to?

19  A  So, the corporate office resides generally at 725 Fifth Avenue in New York, which has a back office accounting function. There is a team that oversees those assets. Whereas I oversee the hospitality hotel assets.

20  Q  And what is the difference between the corporate accounting level you used -- you phrased, as opposed to how things work at the hotels or golf courses?
A Maybe to put it in the appropriate context, that was kind of the corporate office’s, kind of, generally referred to the prior regime of Jeff McConney and Allen Weisselberg. Whereas now we have other individuals in certain roles overseeing the commercial assets, the real estate assets of the portfolio.

Q And the commercial assets are no longer governed by the corporate accounting department, or are they?

A They are.

Q Is there a distinction between who is running -- who is in the corporate accounting department versus who is at the golf courses and hotels? If so, what is that?

A There is. So we have, again, myself in hotels. We have an individual in golf. We have individuals in the corporate accounting function today.

You know, for example, I think you may know Donna Kidder. She continues to be in the capacity of an assistant comptroller. We have a director of finance now that is running the oversight of that department, that runs that day-to-day.

Q What, if any, involvement did you have in the last few years with the check issuing system at the Trump Organization?

A Can you repeat the question?

Q Sure. What, if any, involvement have you had in the last few years with the check issuing system of the Trump Organization?

A Did there come a point in time someone at the Trump Organization specifically asked you to assist with this disbursement issue?

Q Yes.

21 Q And who was that person?

A Eric Trump.

Q And what were the circumstances surrounding -- first of all, when was that, if you recall?

A It was probably in the summer of 2021.

Q What were the circumstances surrounding that, sir?

A So, just for perspective and background, right, the way that the corporate office functioned, had previously worked, is that there was only -- if you are only paying with check and you only have three signers who can sign checks, you are very limited on how you can make disbursements. And the three signers that were always entrusted with overseeing the bank accounts were Allen Weisselberg, Donald Trump Jr. and Eric Trump. So, in practice, Allen Weisselberg in his role, to my understanding, would be the one that would review check disbursements and sign them so that they would go out, because that was his role.

I guess at the time of summer of 2021 Allen Weisselberg was no longer in the role of Chief Financial Officer. He was removed from those duties. So, when the operation keeps needing to run, checks need to be signed. So now you only have two signers who can sign checks, Donald J. Trump Jr. and Eric Trump. So I recall walking into Eric Trump’s office and he called me in to assist, and he had a stack of checks to sign that was very high.

And he said: Well, what do I do with all of these? Because typically Eric would never sign checks. It would be Allen. Allen would sign all of the checks and Eric would work on the operation. But if you need to pay vendors, who is going to sign the check? It is really Eric or Don.

Q Did there come a time that you became aware of a disbursement issue?

A I did not.

21 Q And did you have any involvement in the preparation of President Trump’s Statement of Financial Condition?

A I did not.

24 Q Did there come a time that you became aware of a document called President Trump’s Statement of Financial Condition of President Trump’s Statement of Financial Condition, correct, sir?

A I did not.

25 Q Did there come a time that you became aware of a document called President Trump’s Statement of Financial Condition of President Trump’s Statement of Financial Condition, correct, sir?

A I did not.
Donald Trump November 27, 2023

NYS Attorney General v. Donald Trump

INDEX NO. 452564/2022

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Donald Trump

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NYSCEF: 01/04/2024

M. Hawthorn - by Defense - Direct (Mr. Robert) Page 5144

1 financial audit of an entity. So we had a property, a hotel
2 property that required an audit from its, um -- under the terms
3 of its lease agreement, and also under the terms of its debt.
4 So one property under those requirements needed to have an audit
5 issued versus a compilation.
6 Q If you, on behalf of your division, had accounting
7 questions, who, if anyone, would you turn to outside of The
8 Trump Organization?
9 A We would turn to Mazars.
10 Q And who, if anyone, would you turn to within The Trump
11 Organization during that time period that Mazars was the outside
12 accountant?
13 A It would be myself.
14 Q Other than consulting with yourself, is it fair to say
15 that Mazars would have been the only other entity you had
16 contacted with?
17 A Correct.
18 Q Primarily that would have been Mr. Bender?
19 A Correct. I could still hold a CPA license. I'm not a
20 practicing CPA. You know, I'm -- I worked work for a private
21 company, so while I still keep up with accounting rules and
22 regulations and changes, relied heavily on Mazars to understand
23 what the current pronouncements are in accounting so that when
24 we are issuing -- when they are issuing financial statements,
25 that we make sure that we are properly disclosing required

M. Hawthorn - by Defense - Direct (Mr. Robert) Page 5145

1 disclosures that were ensuring that we are properly recording
2 entries appropriately and in accordance with the latest
3 standards.
4 Q How did you communicate with Mazars?
5 A Telephone, e-mail, um, frequent communication as needed.
6 Q In-person meetings as well?
7 A In-person, of course.
8 Q What kind of information did you give Mazars about the
9 hotels in your division?
10 A We would give them the information that they would
11 require to put together the compilation or for their audit,
12 which would be the underlying financial statements of the
13 entity, and any supporting backup, or schedules, or detail that
14 they required so that they could conduct audit testing.
15 Q Do you recall ever an instance where Mazars asked you
16 for something and you didn't provide it to them?
17 A No.
18 Q At some point in time, Mazars was no longer the outside
19 accountants for The Trump Organization; correct?
20 A Correct.
21 Q Do you remember approximately when that was?
22 A Um, I don't recall exactly, but it would have been 2020
23 or 2021, around there.
24 Q And who comes in to be the new outside accountants for
25

M. Hawthorn - by Defense - Direct (Mr. Robert) Page 5146

1 The Trump Organization?
2 A A firm called Whitley Penn.
3 Q And what, if any involvement, did you have in the
4 selection of Whitley Penn to be the new external accountants for
5 The Trump Organization?
6 A I had some involvement because the audits and
7 compilations under my responsibility. I, you know, took great
8 pride in to make sure were accurate. We wanted to make sure we
9 had a good firm that had the capability to do the work. So the
10 initial meetings, I was part of it with respect to the
11 hospitality properties that we needed to have certain work
12 performed, such as these audits and compilations.
13 Q Were you involved in the selection of the Whitley Penn
14 firm, or after they were selected, for lack of a better word, to
15 help get them up to speed, or both?
16 A A little bit of both. My input was valued based on my
17 kind of interactions with Whitley Penn at the onset, and the
18 questions that I would ask if they were capable of handling the
19 work. Um, and then I was one of the probably primary liaisons
20 with the audit partners at Whitley Penn, especially with respect
21 of the hospitality properties.
22 Q And the primary point of contact at Whitley Penn was,
23 and is?
24 A On the audit, same gentleman named Camron Harris.
25 Q You talked about on the audit side. What do you mean

M. Hawthorn - by Defense - Direct (Mr. Robert) Page 5147

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

Q Mr. Hawthorn, what is this document?

A So this is a summary document that illustrates, for the years 2011 to 2022, all of the financial statements that were issued by various accounting firms on behalf of the company for various entities. The chart is simply showing that from 2011 to 2022, across numerous United States based properties, that there have been 82 financial statements, annual financial statements issued for these entities. It indicates in the box whether it was a compilation, an audit or a review.

And then also on the lower part of the chart it also includes other accounting firms. I think I mentioned the Scotland property in the past that had an audit firm named JCCA, an Ireland audit done by a firm called BDO, both are internationally recognized accounting firms in those areas. So those areas also required audited financial statements for years presented. So it provides a snapshot for all of the work that the accounting firms and the company at large has done over the last ten years to issue compliant financial statements.

Q Sir, to Mr. Amer's point, from 2011 to 2015, you did not work at The Trump Organization; correct?

A Correct.

Q And the preparation of these reports in 2011 to 2015, obviously you were not involved in the creation or preparation of those; correct?

A Correct.

Q Was the 2016 year the first year that you were personally involved or would it be more accurate to start with the ones in 2017?

A 2016 I started in February, so this would be a year ended December 31st, 2016, generally speaking year. That report would have been issued in 2017 after the fiscal year end closed.

Q So let's take a look at 2016 to start, if we could. What, if any, involvement did you have in the compilation report prepared by Mazars for -- withdrawn. What is Trump Endeavor 12?

A Trump Endeavor 12 is the legal entity that is the ownership entity of Trump National Doral. That is the 643 room hotel resort with four golf courses in Florida.

Q Mr. Hawthorn, what, if any, involvement did you have in the compilation report prepared by Mazars in 2016 for Trump Endeavor 12?

A So I was the liaison for the company on behalf of the hotel division so that Mazars could prepare the compilation on the company's behalf.

Q And for whose purpose was that compilation prepared?

A So the compilation was prepared because the lender of this entity, so the entity, Trump Endeavor 12, has a loan outstanding with, at the time, Deutsche Bank. Under the terms of the loan agreement, the lender requires annual compilation financial statements of the borrower. So that's why these were prepared from 2016 onward.

Q And do you recall Mazars asking you for any information, with regard to this compilation, that you didn't provide to them?

A Say that again.

Q Do you recall ever being asked by Mazars to provide you information to prepare this compilation that you didn't provide to Mazars?

A No. We provided them everything they asked for.

Q Going to the second item on 2016, what, if any, involvement did you have in the compilation for the 401 North Wabash, LLC entity?

A So similar to the above, so 401 North Wabash, LLC that is the legal entity of the ownership of the commercial space and unsold units at the Trump Chicago. Again, that entity has, at that time, debt outstanding with Deutsche Bank under the loan agreement.

Q The loan agreement requires that the borrower provides entity-level compilation financial statements to the lender. So from all those years presented, those were provided.

Q And I know I pronounced it wrong. I didn't say

THE COURT: Wabash.

Mr. Hawthorn, moving to the third item, Trump Old Post Office, LLC, what, if any, involvement did you have in the audit that was performed by Mazars in 2016?

A So I was involved in that similar to the above. The procedures were more detailed than a compilation, because it's an audit. So the entity, Trump Old Post Office, LLC, again, at the time had a loan outstanding. The loan required that the borrower provide audited financial statements.

Q In the other cases they were compilation financial statements. So just following the terms of the loan, Trump Old Post Office, LLC's requirement was for an audit.

A So in a similar fashion, I oversaw and was a liaison for Mazars to get them the information they needed for completing those audits. There's also another line that says "compilation." So that was an entity where we had both an audit and a compilation done for a certain period of time. Uh, that was also required as a result of the loan instrument requiring certain testing at a different date than the audit date. So, therefore, in a certain period of time, as you see from 2019 to 2021, a compilation was also performed.

MR. ROBERT: Don't worry, Judge. I'm not going to
1. Do each year, but I'll get to 2019 in a minute.
2. Q. Mr. Hawthorn, I'm not going to ask you about each entity, this one question, but fair to say with all the entities on this chart there was never a time that you can recall that Mazars asked you for information and you didn't provide it; fair enough?
3. A. Correct.
4. Q. Going to the --
6. MR. ROBERT: He didn't object, and I'm trying to move it along.
7. THE COURT: You asked him previously --
8. MR. AMER: For the relevance, you know, I think hopefully we are done with the chart soon.
9. MR. ROBERT: We are not. This chart demonstrates that there are over 116 financial statements that no one had a problem with, and all the work that Mazars did and all the work Whitley Penn did, this is absolutely relevant.
10. THE COURT: I'm not joining the relevance fray, I'm just saying, you asked him if he ever was asked by Mazars for information and he did not give it. And he said, "No."
11. And I think you asked pretty much the exact same question.
12. MR. ROBERT: I don't plan to ask it anymore on this chart; that much I could assure you, Judge.
13. Q. Moving to 40 Wall Street, LLC. Do you see that in
14. M. Hawthorn - by Defense - Direct (Mr. Robert) Page 5158

15. M. Hawthorn - by Defense - Direct (Mr. Robert) Page 5156

1. 2016?
2. A. Yes.
3. Q. What, if any, involvement did you have in an audit?
4. A. I did not have involvement in that one.
5. Q. Same question for TIHT Commercial?
6. A. I did not have direct involvement.
7. Q. Trump Plaza, LLC?
8. A. I did not have any involvement.
9. Q. Trump Tower Commercial?
10. A. I did not have direct involvement.
11. Q. Why is it, sir, that with regard to 40 Wall Street, TIHT Commercial, LLC, Trump Plaza, LLC, or Trump Tower Commercial, LLC, that you had no involvement in that?
12. A. Those aren't in the hospitality portfolio. Those are, again, commercial real estates, but I'm aware in my position that these audits were done.
13. Q. And your answer would be the same for those assets, for the assets meaning 40 Wall, TIHT Commercial, Trump Plaza, Trump Tower Commercial, your answer would be the same for -- from 2011 -- well, from 2016 to 2022, those were not under your supervision; fair enough?
15. Q. Okay. Moving down in 2016, what is JCCA?
16. A. That's an abbreviation for a firm called Johnston Carmichael. That is an audit firm of Scotland entities.
M. Hawthorn - by Defense - Direct (Mr. Robert) Page 5160

1 Q And same thing as TIGL management, correct, sir?
2 A Correct.
3 Q Just so the record is clear, these are golf courses.
4 Why is it that they fell within your purview of hotels?
5 A These are hotel resorts. There are hotels that have
6 overnight guest rooms, as well as a golf course. So similar to
7 Doral, Turnberry, Aberdeen and Doonbeg are all overnight
8 accommodation services, hotel properties that have a golf course
9 as an amenity in the golf courses.
10 Q Drawing your attention to 2019 for a moment, and you
11 kind of alluded to this earlier, if I draw your attention to
12 Trump Old Post Office, LLC, do you see that?
13 A Yes.
14 Q There is a compilation in addition to an audit for
15 2019; correct?
16 A Yes.
17 Q Why is that?
18 A That was required by the lender in accordance with a
19 reporting test. So they required not only annual audited
20 financials, but they required annual, what we call "debt service
21 testing." There is an acronym called DSCR, which is debt
22 service coverage ratio. That loan agreement required testing
23 over a trailing 12-month period ending in January, whereas the
24 fiscal year financial statements were a 12-month period ending
25 in August. So we did an audit for the August period, and we did

M. Hawthorn - by Defense - Direct (Mr. Robert) Page 5161

1 a compilation for the DSCR testing period.
2 MR. ROBERT: Your Honor, I'm going to try to finish
3 this chart very quickly, but to do that I would like to move
4 D-1054, rather than demonstrative, into evidence, otherwise
5 I have to ask him a question about each line item to get the
6 testimony out. And I want to make it simpler, so I could
7 refer to the document as a whole.
8 MR. AMER: My initial question is, why aren't we
9 marking this as demonstrative instead of an exhibit.
10 MR. ROBERT: It should be an exhibit.
11 MR. AMER: It's got D-1054. Why don't we mark it
12 as demonstrative?
13 MR. ROBERT: Let's introduce this in evidence as
14 D-1054, a document created by Mr. Hawthorn. I'm fine with
15 that. It would make this go much faster.
16 MR. AMER: I thought we weren't introducing into
17 evidence demonstratives.
18 MR. ROBERT: No, I'm changing my mind, because it
19 will take me at least a half hour to go through each item
20 with Mr. Hawthorn. This is much easier.
21 THE COURT: I don't think demonstratives just go in
22 as ordinary evidence.
23 MR. ROBERT: So I'll withdraw the request to put it
24 in as a demonstrative and enter it as a piece of evidence.
25 It's a document created by Mr. Hawthorn based on his review

M. Hawthorn - by Defense - Direct (Mr. Robert) Page 5162

1 of documents in explaining what was done for each property.
2 If the Court and Attorney General don't want it to
3 come in evidence that way, I'll go through each year and ask
4 him was there an audit, what involvement did you have. I'm
5 happy to do it. That's fine.
6 MR. AMER: I think the problem is the best evidence
7 rule. If you are going to put in evidence about each of
8 these audits, then you should put in the audit or
9 compilation. You shouldn't just put in a chart that
10 summarizes something that isn't already in evidence.
11 MR. ROBERT: It's not --
12 MR. AMER: It's a problem, I think.
13 MR. ROBERT: I'm not attempting to get into the
14 bona fides of what there was, just that these were done and
15 he was involved in getting them done. I'm not suggesting
16 and I don't want to get into having to put in 116 financial
17 statements.
18 MR. AMER: Well, so this document we saw for the
19 first time last night, and I don't think it was created
20 prior to that or shortly before that. And it purports to
21 summarize a lot of evidence, but that evidence has not been
22 introduced into -- as exhibits in this case. So it's just
23 not proper to use a summary chart in this fashion.
24 MR. ROBERT: I'm happy to do it the long way,
25 Judge.
<table>
<thead>
<tr>
<th>Page 5164</th>
<th>Hawthorn - by Defendant - Direct (Robert)</th>
<th>Page 5166</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Q And what, if any, involvement did you have with that -- withdrawn.</td>
<td>1</td>
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<td>2</td>
<td>What was your role with regard to that?</td>
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<td>3</td>
<td>A Same role as in 2016: Overseeing the audit, that the audit firm got the information they required to issue their report.</td>
<td>3</td>
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<td>4</td>
<td>Q Were you -- what, if any, involvement did you have with -- just trying to read this, Your Honor -- withdrawn.</td>
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<td>5</td>
<td>In 2017, were you involved in an audit involving SLC Turnberry Limited?</td>
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<td>6</td>
<td>Q As well as an audit of Trump International Golf Club Scotland Limited in 2017?</td>
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<td>7</td>
<td>A Yes.</td>
<td>7</td>
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<td>8</td>
<td>Q And what was your involvement, sir?</td>
<td>8</td>
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<tr>
<td>9</td>
<td>A Overseeing the audit from the client's side to see that the audit firm got the information they needed to issue the report.</td>
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<td>10</td>
<td>Q Was there an audit that was done for the Doonbeg properties in Ireland in 2017?</td>
<td>10</td>
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<td>11</td>
<td>A Yes.</td>
<td>11</td>
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<td>12</td>
<td>Q And how many audits were there?</td>
<td>12</td>
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<td>13</td>
<td>A Two.</td>
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<td>14</td>
<td>Q What was your involvement with those?</td>
<td>14</td>
</tr>
<tr>
<td>15</td>
<td>A Oversee the audit engagement process to ensure the relevant. And we will save time just letting him go the long way.</td>
<td>15</td>
</tr>
<tr>
<td>16</td>
<td>A Yes.</td>
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</table>
THE WITNESS: Mr. Hawthorn, this is a chart that you prepared, apparently, to stare at me and still have his voice picked up by the microphone. You are very good at that. It is a skill.

THE COURT: And I want to compliment the witness. He is the first one to really be able to stare over to the witness. He is the first one to really be able to stare at me and still have his voice picked up by the microphone. You are very good at that. It is a skill.

All right. It is in evidence for the limited purposes. But if there is any further objection I'll reconsider.

MR. AMER: That's fine, Your Honor, for the limited purposes.

THE COURT: Okay.

So with regard to Trump Endeavor 12 and 401 North Wabash, the reports listed in D-1054 were produced for purposes of loans that were procured, correct?

A Correct.

Q And what is your familiarity, if any, with the Chicago and Doral loans?

A I am familiar that those entities named are the borrowers under those loans. I am familiar in my role of overseeing the hotel division -- I am familiar with the loan instrument. I had to read it. I had to understand it as part of my job function.

Q And those two properties fall within your purview of your division, correct?

A Correct, they are hotel properties.

Q So I want to talk to you about the Chicago loan. Okay, sir?

A Yes, sir.

Q And when was the Chicago loan taken out, approximately?

A My understanding is that the Chicago loan was taken out in June of 2014 with an original principal balance of $69 million.

Q And pursuant to the loan documents back in June of 2014, was there a guaranty that was attached to it?

A Yes, I believe there was.

Q And what, if anything, do you know about that guaranty in terms of a net worth requirement?

MR. AMER: Yes.
on the loans and what happened with the loans over the life of the loans. And there is no evidence in the record that this witness in his role that was circumscribed to the hotel division, would have had that type of responsibility or involvement in how the loans operated. So, and I think to turn this witness from a fact witness into an expert witness on the loans, is improper. He wasn't designated as an expert and it is, you know, not anything that was ever disclosed to us in the form of an expert report. So he shouldn't be allowed to become an expert in these loans.

THE COURT: Well, Mr. Amer, I have a different take. I don't think he needs to be an expert to say a loan was paid off. But he wasn't there. So, to me it is hearsay.

MR. ROBERT: Your Honor, this witness is going to be laying out certain facts. And we will have expert testimony from Mr. Unell later in the week, which is the banking expert that would be akin to an expert. But Mr. Hawthorn clearly would know what was paid and when it was paid, as his role, he was the CFO and now the COO of the hotel division. This loan was operational before it was paid off during his time as CFO and then COO. So he certainly would know what the term of the loan was, when payments were made to the loan; and what the implications

Mr. McConney on the stand. He was in corporate accounting. He had a role to play with the loan. I haven't heard anything about this witness's job description that would suggest that he had anything other than a passing knowledge of the fact that these loans existed. But not that he had any responsibility for maintaining the loans or interacting with the bank personnel about these loans. So I think this is just having this witness review a bunch of documents so that he

MR. ROBERT: He is going to know that from the fact that he has reviewed the documents. And there is also an e-mail that I am about to introduce, which is between Emily Schroeder of Deutsche Bank and Jeff McConney, that confirms that this payment was made in December of -- in 2014.

MR. AMER: That's the point. Right? They had Mr. McConney on the stand. He was in corporate accounting. He had a role to play with the loan.
Mr. Robert, can you deal with the objection? I think there are some things in the exhibits that we have seen that are disputing. Particularly whether there was a continuing requirement for the guarantor to submit a certification, at least in the documents we have seen, that they sent us last night. There is going to be a dispute over that. The objection? The objection? The objection?

Mr. Amer: I think there are some things in the exhibits that we have seen that are disputing. Particularly whether there was a continuing requirement for the guarantor to submit a certification, at least in the documents we have seen, that they sent us last night. There is going to be a dispute over that.

Mr. Robert: First --

The Court: You are not answering my question.

Q: What is a DSCR test?

A: So that is the debt service coverage ratio test. It is a very common ratio that lenders put into loan agreements to help provide evidence that the borrower has sufficient cash flow or net operating income, sometimes is what it is called, to service the loan.

Q: And what, if anything, do you need to know about the loan documents themselves to be able to understand how to prepare a DSCR?

A: You need to understand definitions in the loan agreement, defined terms, how things are calculated. You need to understand provisions in the loan regarding financial reporting, and other compliance matters. As well as just the loan generally to understand how you can be compliant with your obligation as a borrower.

Q: Is one of the issues of the DSCR how much of the principal amount is still due to the bank?

Mr. Amer: Objection, leading.

The Court: Sustained.

Q: What are some of the factors that you must look at to determine whether the DSCR is satisfied?

A: The DSCR is a periodic test. It is an annual test to see if the borrower has sufficient cash flow or net operating income, which is a very common ratio that lenders put into loan agreements to help provide evidence that the borrower has sufficient cash flow or net operating income, sometimes is what it is called, to service the loan.

Q: And what, if anything, do you need to know about the loan documents themselves to be able to understand how to prepare a DSCR?

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A: The DSCR is a periodic test. It is an annual test derived from the income statement of the loan. The revenues and expenses, which derives the net operating income, which is your numerator. And then the interest expense is the
1 LTV, correct?
2 A Correct.
3 Q So I am going to ask you again, sir, what, if anything, happened in December of 2014 with regard to the principal of this loan?
4 A So the principal was paid down.
5 MR. AMER: Objection, foundation.
6 THE COURT: Sustained.
7 Q Were you -- did there come a time that you became aware of what the principal amount of the loan was?
8 A Yes.
9 Q And what is the -- what was the principal amount of the loan prior to October of 2023?
10 A It is in the financial statements that I prepare with the accounting firm.
11 Q So, again, sir, in December of 2014, was there -- what, if anything, happened with regard to the principal balance of this loan?
12 A It was $45 million. It was reduced from 69 million to 45 million.
13 MR. ROBERT: I am going to show the witness a document that has been marked as D-1055 for identification.
14 THE COURT: And six-minute warning.
15 MR. ROBERT: Thank you.
16 (Handing)
17 Q I ask the witness to take a look at the document for a moment.
18 Putting the document to the side for a minute, going back to the notion of a step down percentage; what is the significance of that?
19 A It is the percentage of the loan principal that is guaranteed by the guarantor.
20 Q And what, if anything, under the terms of this loan happened to the guaranty in December of 2014?
21 MR. AMER: Objection, foundation.
22 THE COURT: Sustained.
23 Q Mr. Hawthorn, are there provisions in this loan that speak of what happens to the guaranty as the principal amount is reduced?
24 A Yes.
25 Q And what factors under the terms of the loan are looked at in determining what happens to the guaranty?
26 A The principal, the DSCR and/or the LTV.
27 Q Is there some sort of formula that is then used?
28 A Yes.

THE COURT: Withdrawn.
Hawthorn - by Defendant - Direct (Robert)  Page 5184

1 an accountant, well, I suppose --
2  
3 MR. ROBERT: He is also the one doing the DSCR
4 test every month and looking at the loan-to-value ratio,
5 so he clearly knows this.
6  
7 MR. KISE: Yes, Your Honor. All of this
8 foundation stuff seems to be dancing on the head of a pin.
9 Corporations only speak through appropriate individuals.
10 So if someone leaves the company, and a new person comes
11 in, and that new person has to learn what happened before
12 they got there, that doesn't mean everything that they now
13 know can't be they can't testify to. I mean, what if
14 the other person is dead? What if the other person who
15 left is no longer employed? So it is kind of, I don't
16 want to use the word, silly, but it is almost silly that a
17 person who is now the de facto CFO/COO that is in the role
18 in the company that would have to have this broad
19 understanding of what took place historically, can't
20 testify.
21  
22 This man testified as the corporate
23 representative in their own deposition. He was the
24 designee. So I don't really understand all of this
25 foundational stuff. Just because someone in a corporation
26 wasn't there -- there were things that happened in the
27 corporation in the 1980s and 1990s, but as the person now
28 responsible for that, he would have to know that. And
29 they can't be precluded from testifying because they
30 weren't actually present at the time, as long as they have
31 a sufficient basis of knowledge in their current role in
32 the company to testify about it.
33  
34 And as Your Honor pointed out correctly, if they
35 want to explore the limits of that knowledge on cross
36 examination, then they can explore the limits of that
37 knowledge on cross examination. But to say that the
38 person in that role now can't testify because he wasn't
39 actually there, doesn't make any legal sense.
40  
41 THE COURT: I think this is an interesting
42 philosophical issue. I tend to take a somewhat hard line
43 view on -- I think I have said this before -- witnesses,
44 either you are a fact witness or an expert witness. If
45 you are a fact witness, how do you know. Did you see it?
46 Did you hear it?
47  
48 MR. KISE: Did you learn it though? He is not
49 an expert witness. He is not an expert witness because he
50 is testifying about factual matters that took place before
51 he joined the company. He is a fact witness for the
52 company. And if he learned it through reviewing
53 documents, reviewing things in his role that would
54 naturally encompass these issues, then there is just
55 really no reason to preclude his testimony based on
56 foundation simply because he wasn't physically at the

Hawthorn - by Defendant - Direct (Robert)  Page 5185

1 company at the time. Any CFO or COO that takes over in a
2 role is going to have that limitation that they weren't
3 there prior to when they arrived. That doesn't mean they
4 can't testify with competence and knowledge about matters
5 within the ambit of their responsibilities.
6  
7 THE COURT: I'll pick up on something you said.
8 What he learned. That's why plaintiff is entitled to ask
9 how did he learn it.
10  
11 MR. KISE: How did he learn it, that's fair, and
12 they can ask that. How did he learn it. If they want to
13 question the --
14  
15 THE COURT: Well --
16 MR. KISE: -- the limits of that, that's fine.
17 THE COURT: It is not just the cross examination
18 point. It is a foundation point.
19 MR. KISE: How did he learn? He reviewed the
20 documents.
21 MR. AMER: So.
22 MR. ROBERT: I think as the CFO --
23 MR. AMER: Excuse me. Excuse me. We are at a
24 point where I think the witness needs to be excused again,
25 or you want to take a break?
26 THE COURT: We will break for lunch and order
27 the witness not to discuss the case or his testimony
28 during the break.

Hawthorn - by Defendant - Direct (Robert)  Page 5186

1 THE WITNESS: Yes, sir.
2 THE COURT: Okay. See you all at 11:45. Not
3 lunch.
4  
5 MR. ROBERT: We knew what you meant, Judge.
6 THE COURT: It is called a sanity break.
7 (Pause in the proceeding.)
8 (The following proceedings were stenographically
9 recorded by Senior Court Reporter Michael Ranita.)

Hawthorn - by Defendant - Direct (Robert)  Page 5187

1 THE COURT: I think this is an interesting
2 philosophical issue. I tend to take a somewhat hard line
3 view on -- I think I have said this before -- witnesses,
4 either you are a fact witness or an expert witness. If
5 you are a fact witness, how do you know. Did you see it?
6 Did you hear it?
7  
8 MR. KISE: Did you learn it though? He is not
9 an expert witness. He is not an expert witness because he
10 is testifying about factual matters that took place before
11 he joined the company. He is a fact witness for the
12 company. And if he learned it through reviewing
13 documents, reviewing things in his role that would
14 naturally encompass these issues, then there is just
15 really no reason to preclude his testimony based on
16 foundation simply because he wasn't physically at the
THE COURT OFFICER: All arise, Part 37 is back in session. Please be seated and come to order.

THE COURT: I have to ask the witness to go in the back for just another minute or two. I hope it's not so bad back there. I spend half my day back there.

Where is your buddy.

MR. ROBERT: He went back to Florida, maybe.

THE COURT: Here's what I'm going to do. As I often do, or sometimes do, I'll telegraph what I plan to do, and you can argue strenuously if you really feel strongly.

MR. AMER: I did want a quick opportunity to respond to Mr. Kise.

There were two things that Mr. Kise said that I think need a response. One is, he referred to this witness as the "de facto CFO" of the company. And I want to make clear that I don't believe that is supported by the testimony. I think he said his role was in the hotel division, and, in fact, the corporate accounting department has a new director of finance, whose name remains undisclosed, but we'll get to that.

But the other thing that he said in terms of foundation, I think is also unsupported. The witness -- and this is really the crux of it. I think we are entitled to the foundation for how this witness knows what happened to the guaranty, the effect on the guaranty, based on some undisclosed, but we'll get to that.

MR. ROBERT: May I proceed?

MR. AMER: No, sir. It's fair game.

THE COURT: Mr. Amer?

MR. WALLACE: I think if he is going to rely on a document or a function that he performed, then the dots need to be connected. He can't just say he relies on a document if the document actually doesn't shed light on what it is he is about to testify to.

Mr. Robert, is that -- and Mr. Robert, any comments?

MR. ROBERT: Sounds like a good idea. That's why I'm stopping.

THE COURT: Which is another way of saying, rule number one.

All right. Let's get the witness again.

MR. ROBERT: Yes, sir.

(Whereupon, the witness stepped into the witness stand.)

MR. ROBERT: May I proceed?

THE COURT: Please.

Q Mr. Hawthorn, how did you come to the knowledge that in December of 2014, a $15 million payment was made toward principal on the Chicago loan?

A The balance of 45 million is stated in the financial statements for that year that I've reviewed.
Donald Trump

M. Hawthorn - by Defense - Direct (Mr. Robert)  Page 5192

1 effect the guaranty has on that loan?
2 MR. AMER: Objection. Leading.
3 THE COURT: Can you read it back.
4 (Whereupon, the requested question was read back by
5 the court reporter.)
6 THE COURT: Well, it's convoluted, but if you could
7 answer, I'll allow it.
8 A I understand that the guaranty is linked to the
9 stepdown percentage in the loan agreement.
10 Q And why would that matter to you in your role as CFO
11 and COO of the hotel group, with regard to this loan?
12 A Because I oversee the hotel portfolio and I oversee all
13 aspects relating to hotel assets.
14 Q But more specific than that, is there a financial
15 reason in your role as to why you would want to know whether the
16 guaranty was in effect or not?
17 MR. AMER: Objection. Leading.
18 THE COURT: Leading.
19 Q What do you want to understand with regard to the loans
20 that are -- withdrawn.
21 Part of your role is to oversee the loans for the
22 properties in your division; correct?
23 A Yes.
24 Q And what are the factors that you look at when
25 determining -- withdrawn.

M. Hawthorn - by Defense - Direct (Mr. Robert)  Page 5193

1 What do you want to know about those loans?
2 A I want to know everything about them so I could
3 understand them to do my job.
4 Q I can't ask you a leading question, so what would that
5 include?
6 A That would include terms and conditions of the loan, it
7 would include the principal balance, it would include interest
8 rates, it would include any guarantee provisions and anything
9 contained therein that we, as a company, need to be compliant
10 with.
11 Q Now, you just focused on the guarantee provisions. Why
12 would you want to know about the guarantee provisions?
13 A To have an understanding of the loan and the
14 obligations of borrower.
15 Q The examples that you just gave, did you do that
16 process with regard to the Chicago loan?
17 A I did.
18 Q And did you do that process when you took over your
19 role in 2016?
20 A I did.
21 Q And could you do this every subsequent year with regard
22 to this loan?
23 A Yes.
24 Q And sir, after this payment was made in December of
25 2014, what was your understanding as to the effect of the

M. Hawthorn - by Defense - Direct (Mr. Robert)  Page 5194

1 guaranty?
2 A My understanding is that in connection with the
3 principal reduction, that the stepdown percentage, effectively
4 the guaranty percentage, was reduced to zero.
5 Q And do you know if The Trump Organization received
6 confirmation from anyone about that fact?
7 MR. AMER: Objection. Lack of foundation.
8 We are talking about 2014 now, right?
9 MR. ROBERT: Right. So I'm asking him if he knows
10 in or around 2014, or '15, whether The Trump Organization
11 had confirmation of that from anyone other than you.
12 MR. AMER: Lack of foundation.
13 THE COURT: I think that is a foundational
14 question.
15 MR. ROBERT: Yeah.
16 THE COURT: Overruled.
17 A So I reviewed correspondence with the lender and the
18 company's representatives about the matter.
19 Q And in front of you has been presented Defendant's
20 Exhibit 1055. Is this one of the documents that you reviewed?
21 A Yes.
22 Q What is this document?
23 A This is an e-mail from Deutsche Bank to Jeff McConney
24 in 2015.
25 Q Let's go to the bottom of it and work our way up.

M. Hawthorn - by Defense - Direct (Mr. Robert)  Page 5195

(Whereupon, the exhibit was displayed on the
screen.)

1 Q What do you see occurring on January 21st, 2015, at
2 12:12 p.m.?
3 MR. AMER: I'm going to object, your Honor. This
4 is a witness just reading a document that was sent before he
5 worked for the company. How is this appropriate?
6 THE COURT: Sustained.
7 MR. ROBERT: Your Honor, if I may, first of all, I
8 spent hours listening to having the Attorney General have
9 people read from e-mails.
10 Secondarily, this is one of the documents --
11 THE COURT: But, well, a lot of those e-mails they
12 sent, they received, they were there at the time, had
13 independent confirmation.
14 MR. ROBERT: Your Honor, this witness said this was
15 one of the e-mails he reviewed in coming to his assessment.
16 I think the e-mail comes into evidence because it's a
17 corporate record, but nonetheless, I'll introduce it subject
18 to connection, because Ms. Schroeder is going to be here
19 tomorrow or Wednesday -- I'm not sure what day she is
20 testifying -- and say she sent this e-mail exchange to
21 Mr. McConney. The e-mail is coming in whether we do it
22 today, tomorrow or subject to connection, but it's coming
23 in.

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Ny Supreme Court- Civil

(20) Pages 5192 - 5195

21 of 316
A: Because he claims that this is one of the documents that he used to confirm his knowledge that Deutsche Bank agreed with his assessment that the guaranty was no longer in existence once there was the pay down. THE COURT: That satisfied Engoron’s two prong test. Overruled. I’m changing my mind, overruled. MR. ROBERT: So we then have 1055 in evidence, correct, sir? THE COURT: I’m sorry? MR. ROBERT: D-1055 is in evidence, correct? THE COURT: You didn’t move it into evidence before. You were just asking him to -- MR. ROBERT: Okay. I’ll refer and just go through the questions and move it in afterwards, subject to connection, if you want, for tomorrow. THE COURT: Let’s do that. MR. ROBERT: If I could have the question read back, please. THE COURT: Please. (Whereupon, the requested question was read back by the court reporter.)

A: I see an e-mail inquiry to Jeffrey McConney, to Emily

Q: And this is the package that you sent to Mr. Frank on April 30th, 2019?

A: Yes, sir.

MR. ROBERT: I’m not going to take him through each year, Judge. If we could slow the witness and the Court Defendant’s Exhibit 1047, please, and call it up on the screen.

(Whereupon, the exhibit was displayed on the screen.)
M. Hawthorn - by Defense - Direct (Mr. Robert) | Page 5200

<p>| | |</p>
<table>
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<tr>
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<tbody>
<tr>
<td>1</td>
<td>A Correct.</td>
</tr>
<tr>
<td>2</td>
<td>MR. ROBERT: Your Honor, I move Defendant's Exhibit 1047 into evidence.</td>
</tr>
<tr>
<td>3</td>
<td>MR. AMER: No objection.</td>
</tr>
<tr>
<td>4</td>
<td>THE COURT: Granted. It's in.</td>
</tr>
<tr>
<td>5</td>
<td>Q Drawing your attention to page two of that, which would be 1047-2, 3 and 4, what, if any, involvement did you have in the preparation of the compliance certificate?</td>
</tr>
<tr>
<td>6</td>
<td>A I prepared it.</td>
</tr>
<tr>
<td>7</td>
<td>Q And what did you do to prepare that certificate, sir, specifically?</td>
</tr>
<tr>
<td>8</td>
<td>A I had to review the 2018 issued financial statements and the numbers therein. I had to also compute the DSCR for the period. And then I had to list out those amounts on this certificate for visibility, and the computation of the DSCR for that period.</td>
</tr>
<tr>
<td>9</td>
<td>(Whereupon, the exhibit was displayed on the screen.)</td>
</tr>
<tr>
<td>10</td>
<td>Q And what are we looking at on the top of D-1047? It's actually the bottom of D-1047-2 onto the top of page three.</td>
</tr>
<tr>
<td>11</td>
<td>A Section two is a confirmation of the debt service coverage ratios, the DSCR, and its components for that fiscal year.</td>
</tr>
<tr>
<td>12</td>
<td>Q What are those components, sir?</td>
</tr>
</tbody>
</table>

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M. Hawthorn - by Defense - Direct (Mr. Robert) | Page 5201

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<table>
<thead>
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<tbody>
<tr>
<td>1</td>
<td>A Those components are the operating income and operating contributions over less operating expenses, and that amount divided by the debt service expense for the period, coming to a calculation of 2.384 for this period.</td>
</tr>
<tr>
<td>2</td>
<td>Q What, if any, significance is there to the 2.38?</td>
</tr>
<tr>
<td>3</td>
<td>A The 2.38 is compared to the threshold required in the loan agreement. If you see in section two, it says that they are required to maintain a DSCR of 1.25. So it's exceeding that. And therefore, the ratio in this particular year is complied with.</td>
</tr>
<tr>
<td>4</td>
<td>Q I'm then going to draw your attention to D1047-4.</td>
</tr>
<tr>
<td>5</td>
<td>A Okay.</td>
</tr>
<tr>
<td>6</td>
<td>Q Who signed this document?</td>
</tr>
<tr>
<td>7</td>
<td>A This was signed by Donald Trump, Jr., as president of the 401 North Wabash Venture, LLC entity.</td>
</tr>
<tr>
<td>8</td>
<td>Q What, if any, involvement did you have in Mr. Trump executing this agreement, referring to Mr. Donald Trump, Jr?</td>
</tr>
<tr>
<td>9</td>
<td>A I provided Donald Trump, Jr. this packet, noting that it was complete, that the team, led by myself, prepared it; that it was ready to be submitted so that he may sign the certificate so it could be submitted.</td>
</tr>
<tr>
<td>10</td>
<td>Q And this was a conversation you would have had with him; correct?</td>
</tr>
<tr>
<td>11</td>
<td>A Yes. Probably also documented in an e-mail.</td>
</tr>
<tr>
<td>12</td>
<td>Q Okay. And what are we looking at at D-1047-5 through 12?</td>
</tr>
</tbody>
</table>

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M. Hawthorn - by Defense - Direct (Mr. Robert) | Page 5202

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Q And what is at six through 14?</td>
</tr>
<tr>
<td>2</td>
<td>A It is the compilation financial statements of this entity for this fiscal year.</td>
</tr>
<tr>
<td>3</td>
<td>Q And these were required under the terms of the loan?</td>
</tr>
<tr>
<td>4</td>
<td>A Correct.</td>
</tr>
<tr>
<td>5</td>
<td>Q Okay. Thank you, sir.</td>
</tr>
<tr>
<td>6</td>
<td>A I prepared it.</td>
</tr>
<tr>
<td>7</td>
<td>Q And for saving time, attached to this is your cover letter; correct?</td>
</tr>
<tr>
<td>8</td>
<td>A Correct.</td>
</tr>
<tr>
<td>9</td>
<td>Q And what is on pages three through five?</td>
</tr>
<tr>
<td>10</td>
<td>A It's the compliance certificate for the 2019 year.</td>
</tr>
</tbody>
</table>

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M. Hawthorn - by Defense - Direct (Mr. Robert) | Page 5203

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Q What, if any, involvement did you have in Mr. Donald Trump, Jr.’s execution of this agreement?</td>
</tr>
<tr>
<td>2</td>
<td>A Similar to 2018 and every other year, I would advise him that the work had been completed, that we were comfortable with it being submitted, and we would present it to him for signature so it could be sent duly to the lender.</td>
</tr>
<tr>
<td>3</td>
<td>MR. ROBERT: Your Honor, I move Defendant's Exhibit 1051 into evidence.</td>
</tr>
<tr>
<td>4</td>
<td>MR. AMER: No objection.</td>
</tr>
<tr>
<td>5</td>
<td>THE COURT: Granted. It's in.</td>
</tr>
<tr>
<td>6</td>
<td>(Defendant's Exhibit 1051 was admitted in evidence.)</td>
</tr>
<tr>
<td>7</td>
<td>Q Mr. Hawthorn, what, if anything, happened with regard to this loan in August of 2020?</td>
</tr>
</tbody>
</table>
| 8 | A August of 2020, we recall was during the COVID-19 pandemic. During that year, businesses such as hotels were shut
Donald Trump November 27, 2023

NYS Attorney General v. Donald Trump

INDEX NO. 452564/2022

FILED: NEW YORK COUNTY CLERK 01/04/2024 11:10 PM

NYSCEF DOC. NO. 1659

THE COURT: These things happen.

MR. ROBERT: Your Honor, I would like to show the

witness Defendant’s Exhibit 1050.

(Whereupon, the exhibit was displayed on the
screen.)

Q    Whose signatures are those?

A    Yes.

Q    And at the same time did Trump Organization agree to

have a minimum net worth of $250 million?

A    Yes.

MR. ROBERT: Your Honor, I move Defendant’s

Exhibit 1050 into evidence.

THE COURT: Granted. The question was a lot

simpler than the answer.

THE WITNESS: Sorry.

THE COURT: These things happen.

Q    With regard to this particular loan, did The Trump

Organization receive notice from Deutsche Bank?

A    Yes.

Q    And what did Deutsche Bank -- what was your

understanding as to what the Trump Organization -- withdrawn.

Did The Trump Organization DSCR fall below the

acceptable limit?

A    Correct.

Q    What, if any, options did the Trump Organization have

at that time with regard to this loan?

A    They could either post collateral, pay down the loan,
or reinstate the stepdown percentage to an acceptable level,
which would have been ten percent at that point in time.

Q    And what does that mean in practical terms for The
Trump Organization if they were going to increase the stepdown

percentage, which had been zero, to 10 percent.

THE COURT: If that’s all he wants it admitted for,
I’m fine with that.

Mr. Amer, do you agree?

MR. AMER: For notice purposes or for more than
notice purposes.

MR. ROBERT: For the fact that the Trump
Organization did, in fact, agree to increase the stepdown
percentage, which had been zero, to 10 percent.

THE COURT: It’s in for that purpose.

MR. ROBERT: Well, to be clear, it would be

everything contained in the paragraph that says, “This will
also confirm that” because that’s what The Trump
Organization is confirming.

THE COURT: Well, they are saying “we confirm it.”

THE COURT: These things happen.

MR. ROBERT: Your Honor, I’m going to move to strike

the agreement.

MR. AMER: Your Honor, I’m going to move to strike

the answer. The question was what, if anything, happened

with regard to this loan as a result of that, “that” meaning

COVID. I don’t think the answer responded to that.

MR. ROBERT: He’s -- I’m sorry, your Honor.

THE COURT: Granted. The question was a lot

simpler than the answer.

THE WITNESS: Sorry.

THE COURT: These things happen.

Q    With regard to this particular loan, did The Trump

Organization receive notice from Deutsche Bank?

A    Yes.

Q    And what did Deutsche Bank -- what was your

understanding as to what the Trump Organization -- withdrawn.

Did The Trump Organization DSCR fall below the

acceptable limit?

A    Correct.

Q    What, if any, options did the Trump Organization have

at that time with regard to this loan?

A    They could either post collateral, pay down the loan,
or reinstate the stepdown percentage to an acceptable level,
which would have been ten percent at that point in time.

Q    And what does that mean in practical terms for The
Trump Organization if they were going to increase the stepdown

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MR. ROBERT: For the fact that the Trump
Organization did, in fact, agree to increase the stepdown
percentage, which had been zero, to 10 percent.

THE COURT: It’s in for that purpose.

MR. ROBERT: Well, to be clear, it would be

everything contained in the paragraph that says, “This will
also confirm that” because that’s what The Trump
Organization is confirming.

THE COURT: Well, they are saying “we confirm it.”
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<tr>
<th>M. Hawthorn - by Defense - Direct (Mr. Robert)</th>
<th>Page 5208</th>
</tr>
</thead>
<tbody>
<tr>
<td>1    MR. ROBERT: And then The Trump Organization, signed by Eric Trump and Donald Trump, Jr. on behalf of the corporate entity, are agreeing to that term.</td>
<td></td>
</tr>
<tr>
<td>2    THE COURT: Okay.</td>
<td></td>
</tr>
<tr>
<td>3    MR. AMER: Just so we are clear, it's coming in for the acknowledgment and agreement that appears on the final page that's signed by the Trump employees; is that right?</td>
<td></td>
</tr>
<tr>
<td>4    MR. ROBERT: Can I just read what you just said.</td>
<td></td>
</tr>
<tr>
<td>5    I'm going to read it from there.</td>
<td></td>
</tr>
<tr>
<td>6    (Whereupon, there is a brief pause in the testimony.)</td>
<td></td>
</tr>
<tr>
<td>7    MR. ROBERT: Yeah, that The Trump Organization is agreeing to what Deutsche Bank offered them, yes.</td>
<td></td>
</tr>
<tr>
<td>8    THE COURT: Okay. That's what it's in for.</td>
<td></td>
</tr>
<tr>
<td>9    Q What, if any, impact did this have, then, on the loan, sir?</td>
<td></td>
</tr>
<tr>
<td>10   A So this increased the stepdown percentage or the guaranty percentage from zero to 10 percent.</td>
<td></td>
</tr>
<tr>
<td>11   Q And again, as to the net worth?</td>
<td></td>
</tr>
<tr>
<td>12   A The net worth was now 250 million.</td>
<td></td>
</tr>
<tr>
<td>13   Q What, if anything, happened with regard to this loan a year or so later in July of 2021?</td>
<td></td>
</tr>
<tr>
<td>14   A Performance since rebounded after the pandemic subsided. Hotel guests were able to come to the hotel again.</td>
<td></td>
</tr>
<tr>
<td>15   Q And what, if any, impact did the guaranty going away have on the loan itself?</td>
<td></td>
</tr>
<tr>
<td>16   A The guaranty went away.</td>
<td></td>
</tr>
<tr>
<td>17   Q And what, if any, impact did it have on the interest rate?</td>
<td></td>
</tr>
<tr>
<td>18   A It increased the interest rate 25 basis points.</td>
<td></td>
</tr>
<tr>
<td>19   Q Now, I would like to show the witness what's been marked as Defendant's Exhibit D-1046?</td>
<td></td>
</tr>
<tr>
<td>20   (Whereupon, the exhibit was displayed on the screen.)</td>
<td></td>
</tr>
<tr>
<td>21   (The witness was handed the exhibit.)</td>
<td></td>
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<thead>
<tr>
<th>M. Hawthorn - by Defense - Direct (Mr. Robert)</th>
<th>Page 5209</th>
</tr>
</thead>
<tbody>
<tr>
<td>1    were able to rebound, the DSCR test was, um, met on the face.</td>
<td></td>
</tr>
<tr>
<td>2    Q And what, if any, impact did that have on the loan and revival of the guaranty you just spoke of?</td>
<td></td>
</tr>
<tr>
<td>3    A At that point in time, then the company had the option to take the stepdown percentage back down to zero and remove the guaranty entirely again.</td>
<td></td>
</tr>
<tr>
<td>4    Q What, if anything, did The Trump Organization do with that?</td>
<td></td>
</tr>
<tr>
<td>5    MR. AMER: I'm sorry. Again, I'll move to strike the answer, because I think the question was what impact did it have on the guaranty, and answer was the company had the option to do something. But that doesn't respond to what actually happened.</td>
<td></td>
</tr>
<tr>
<td>6    MR. ROBERT: I think it does, because he's explaining, as a result of what they do with the guaranty that affects the company's interest rate.</td>
<td></td>
</tr>
<tr>
<td>7    THE COURT: I understand Mr. Amer's point.</td>
<td></td>
</tr>
<tr>
<td>8    MR. ROBERT: Let me see the question and I'll ask it again. Can I scroll this up?</td>
<td></td>
</tr>
<tr>
<td>9    (Whereupon, there is a brief pause in the testimony.)</td>
<td></td>
</tr>
<tr>
<td>10   Q Let's break it down.</td>
<td></td>
</tr>
<tr>
<td>11   What, if any, impact did this development in the change of the DSCR have in July of 2021 as to the loan itself? Not the guaranty, just the loan.</td>
<td></td>
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</table>

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<tr>
<th>M. Hawthorn - by Defense - Direct (Mr. Robert)</th>
<th>Page 5210</th>
</tr>
</thead>
<tbody>
<tr>
<td>1    A The interest rate increased.</td>
<td></td>
</tr>
<tr>
<td>2    Q And what, if any, impact did this new DSCR in July of 2021 have on the guaranty?</td>
<td></td>
</tr>
<tr>
<td>3    A The guaranty went away again.</td>
<td></td>
</tr>
<tr>
<td>4    Q And did The Trump Organization, in fact, allow the guaranty to go away in July of 2021?</td>
<td></td>
</tr>
<tr>
<td>5    A Yes.</td>
<td></td>
</tr>
<tr>
<td>6    MR. AMER: Objection. Leading.</td>
<td></td>
</tr>
<tr>
<td>7    THE COURT: Sustained. Leading.</td>
<td></td>
</tr>
<tr>
<td>8    Q And what, if any, impact was -- what, if any, impact was there on the guaranty in July of 2021 as a result of the DSCR now being above the limit?</td>
<td></td>
</tr>
<tr>
<td>9    A The guaranty went away.</td>
<td></td>
</tr>
<tr>
<td>10   Q And what, if any, impact did the guaranty going away have on the loan itself?</td>
<td></td>
</tr>
<tr>
<td>11   A No guaranty means no net worth requirement of the guarantor.</td>
<td></td>
</tr>
<tr>
<td>12   Q And what, if any, impact did it have on the interest rate?</td>
<td></td>
</tr>
<tr>
<td>13   A It increased the interest rate 25 basis points.</td>
<td></td>
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<tr>
<th>M. Hawthorn - by Defense - Direct (Mr. Robert)</th>
<th>Page 5211</th>
</tr>
</thead>
<tbody>
<tr>
<td>1    Q Mr. Hawthorn, I've shown you what has been marked as Defendant's Exhibit D-1046 for identification.</td>
<td></td>
</tr>
<tr>
<td>2    What do you recognize this document to be?</td>
<td></td>
</tr>
<tr>
<td>3    A This is an e-mail correspondence from myself to Julie Brand, who, at the time, was the director of finance for the Trump Chicago Hotel.</td>
<td></td>
</tr>
<tr>
<td>4    MR. ROBERT: Your Honor, I move Defendant's Exhibit 1046 into evidence.</td>
<td></td>
</tr>
<tr>
<td>5    MR. AMER: No objection.</td>
<td></td>
</tr>
<tr>
<td>6    THE COURT: Granted. It's in. (Defendant's Exhibit 1046 was admitted in evidence.)</td>
<td></td>
</tr>
<tr>
<td>7    Q Mr. Hawthorn, if you could please read what you are telling -- withdrawn.</td>
<td></td>
</tr>
<tr>
<td>8    Who is Ms. Brand again?</td>
<td></td>
</tr>
<tr>
<td>9    A She, at the time, was the director of finance for the Trump Chicago Hotel.</td>
<td></td>
</tr>
<tr>
<td>10   Q And what, if any, role would the director of finance have with regard to this loan?</td>
<td></td>
</tr>
<tr>
<td>11   A At the property level, the property is responsible for paying the interest, the monthly interest from available cash flows at the property, so she would receive the monthly invoice of the loan every month.</td>
<td></td>
</tr>
<tr>
<td>12   Q And what did you exactly tell Ms. Brand in this e-mail, if you could read it to the Court, please.</td>
<td></td>
</tr>
</tbody>
</table>

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Ny Supreme Court- Civil

(24) Pages 5208 - 5211

25 of 316
THE COURT: Can I ask for a readback.

Mr. Hawthorn, you have been handed what has been marked as a demonstrative exhibit marked as DD-2; do you recognize this document?

A Yes.

Q What is this document?

A This is a timeline of the loan and key events from June 2014 through October 2023.

Q Did you prepare this document?

A I assisted with the preparation of it.

Q And does this document reflect the testimony you just gave about when the SOFC was required by Deutsche Bank and when it wasn’t?

A Yes.

Q So according to this demonstrative piece of evidence from December of 2014 through August of 2020, the SOFC was not required, correct?

Mr. Hawthorn, you have been handed what has been marked as a demonstrative exhibit marked as DD-2; do you recognize this document?

A Yes.

Q What is this document?

A This is a timeline of the loan and key events from June 2014 through October 2023.

Q Did you prepare this document?

A I assisted with the preparation of it.

Q And does this document reflect the testimony you just gave about when the SOFC was required by Deutsche Bank and when it wasn’t?

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Q What is this document?

A This is a timeline of the loan and key events from June 2014 through October 2023.

Q Did you prepare this document?

A I assisted with the preparation of it.

Q And does this document reflect the testimony you just gave about when the SOFC was required by Deutsche Bank and when it wasn’t?

A Yes.

Q So according to this demonstrative piece of evidence from December of 2014 through August of 2020, the SOFC was not required, correct?
Donald Trump November 27, 2023

1Q And do you know the principal amount of that loan, sir?
A 125 million.

1Q And, sir, do you have an understanding as to whether there was guaranty associated with that loan?
A Yes.

1Q And do you have an understanding as to what the terms of that guaranty were back in June of 2012?
A My understanding is it was a 100 percent guaranty.

1Q And anything with regard to a net worth requirement?
A Yes.

1Q And did that net worth requirement from August of 2013 to the time the loan was paid in full change?
A It did not. It remained the same.

1Q When was this loan paid in full, sir?
A The loan was repaid in May of 2022.

1Q Going back to the period of August of 2015 and the step down basis, what, if any, option was given to the Trump Organization to exercise the step down basis?
A The company had the option to elect the step down percentage to go all the way to zero percent because the LTV onset had a $2.5 billion net worth provision.

1Q And without going through everything, it is similar in concept to what we just talked about with regard to Chicago?
A Yes.

1Q And sir, what, if anything, happened with regard to this loan in August of 2015?
A My understanding is that the step down percentage was elected to be 10 percent. And that meant that the guarantors guaranty is 10 percent of the loan balance. So effectively the guarantor is guaranteeing 12.5 million of the loan at that point in time, no longer 100 percent of the loan. And at the same time because it is a 10 percent step down percentage, the net worth requirement of the guarantor is 250 million at that point in time.

1Q And did that net worth requirement from August of 2015 of $250 million change from then to the time the loan was changed?
A It did not. It remained the same.

1Q When was this loan paid in full, sir?
A The loan was repaid in May of 2022.

1Q Going back to the period of August of 2015 and the step down basis, what, if any, option was given to the Trump Organization to exercise the step down basis?
A The company had the option to elect the step down percentage to go all the way to zero percent because the LTV was satisfied to allow that to occur. The company, however, elected to keep the step down percentage at 10 percent at that point in time.

1Q Which then led to the $250 million net worth requirement and the 12 and a half million dollar guaranty...
Hawthorn - by Defendant - Direct (Robert)  Page 5220

1. Q And, sir, during the course of this loan what, if any, requirements of reporting did the Trump Organization have, or particularly Trump Endeavor 12?
A. Donald Trump Jr.

2. Q And the process that you articulated earlier with how you would present this to Mr. Trump Jr. for his execution with regard to the Chicago property, would be the same as for this?
A. Correct.

3. MR. ROBERT: Your Honor, I move Defendant's Exhibit 1048 into evidence.

4. MR. AMER: No objection.

5. THE COURT: Granted, it is in.

6. (Whereupon, the document referred to was deemed marked for evidence as Defendant's Exhibit 1048 by the Court.)

7. MR. ROBERT: I would like to show the witness Exhibit D-1048 into evidence.

8. MR. AMER: No objection.

9. THE COURT: Granted, it is in.

10. (Whereupon, the document referred to was deemed marked for evidence as Defendant's Exhibit 1048 by the Court.)

11. MR. ROBERT: I would like to show the witness what has been marked as Defendant's Exhibit 1052.

12. (Handing)

13. Q Mr. Hawthorn, what do you recognize Defendant's Exhibit 1052 for identification to be?
A. This is my correspondence to Deutsche Bank in a similar fashion; but this time it is for the year 2019.

14. Q And this, again, has your letter attached as well as the compliance certificate and the financial statement prepared by Mazars, correct?
A. Correct.

15. MR. ROBERT: I move Defendant's Exhibit 1052 into evidence.

Hawthorn - by Defendant - Direct (Robert)  Page 5221

1. A Correct.

2. Q I would like to show the witness Exhibit D-1048.

3. (Handing)

4. MR. ROBERT: And I'll make the second year very fast Judge, don't worry.

5. THE COURT: You read my mind.

6. MR. ROBERT: I try.

7. Q Mr. Hawthorn, I have handed you what has been marked as Exhibit 1048 for identification. Do you recognize this document?
A. Yes.

8. Q What do you recognize this document to be?
A. This is my correspondence to Joshua Frank at Deutsche Bank relating to Trump Endeavor 12 LLC.

9. Q What is attached to the letter?
A. Annual compliance certificates for the year 2018, along with a calculation of the DSCR, along with the annual financial statements of the entity.

10. Q And the -- what, if any, role did you have in the preparation of the compliance certificate?
A. I prepared it.

11. Q And the same steps that you testified about earlier for the Chicago loan would apply to the Trump Endeavor 12 loan?
A. Correct.

12. Q And the signatory on page D1048-4 is whose?
A. Donald Trump Jr.
Mr. Hawthorn, do you recognize the document that has been identified for identification as PX-497?

A Yes.

Q And what is this document, sir?

A This is my correspondence to Joshua Frank and

This is my correspondence to Deutsche Bank for the

That loan in terms of reporting?

A Annual financial statements to be submitted with a

A I assisted with the preparation of it.

Q And reviewing this, is this consistent with your
testimony you gave earlier this morning with regard to this
timeline?

A Yes.

Q So from August of 2015 through May of 2022, the

guaranty was only 10 percent with a $250 million net worth
requirement, correct?

A Correct.

Q Sir, another one of the properties in your division

is the Trump Old Post Office, correct?

A Correct.

Q And sir, the loan involving the Old Trump Post

Office, what, if any, involvement did you have with that loan?

(sic.)

A Similar to Chicago and Doral, I had to understand the
terms and conditions of the loan; I had to ensure that the
property level, borrower level information was provided to the
lender as required.

Q And what, if any, terms and conditions were there

that the Trump Organization needed to undertake with regard to

the Trump Old Post Office LLC loan, and its reporting requirements

And reviewing this, is this consistent with the other documents?

A Yes.

Q Using the same methods that you talked about earlier?

A Yes.

Q Is the manner in which you did that the same as you
testified to earlier on the other documents?

A Yes.

Q What is the final document from Mazars attached to

this?

A This is the compilation financial statement for the
entity for the year ended -- for the 12 months ended

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

Exhibit PX-497. We have copies of it.

A Yes, Andy, I am actually using one of yours.

Q Mr. Hawthorn, in a moment I am going to show you an
e-mail -- hold this -- hold this to the side for a moment.

MR. ROBERT: I would like to show the witness

Exhibit 1049 into evidence.

MR. AMER: No objection.

WHEREUPON, the Court finds

WHEREUPON, the document referred to was deemed
marked for evidence as Defendant's Exhibit 1049 by
the Court.

Q Mr. Hawthorn, do you recognize the document that has
been identified for identification as PX-497?

A Yes.

Q And what is this document, sir?

A This is my correspondence to Joshua Frank and

And this time, Judge, I am only going to use one
year's worth.

(Handing)

Q Sir, this would be consistent with each year of the
loan, correct?

A Yes.

Q Okay.

Sir, you have been handed what has been marked as
Defendant's Exhibit 1049 for identification. What do you
recognize this document to be?

A This is my correspondence to Joshua Frank and

Deutsche Bank relating to the Trump Old Post Office LLC loan.
And this is for the year -- this is for the 12 months ending

Q And sir, there is a compliance certificate attached
to it?

A Yes.

Q And what, if any, involvement did you have in the
preparation of the compliance certificate?

A I prepared it.

Q Using the same methods that you talked about earlier?

A Yes.

Q Is the manner in which you did that the same as you
testified to earlier on the other documents?

A Yes.

Q What is the final document from Mazars attached to

this?

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MR. AMER: No objection.

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been identified for identification as PX-497?

A Yes.

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And this time, Judge, I am only going to use one
year's worth.

(Handing)

Q Sir, this would be consistent with each year of the
loan, correct?

A Yes.

Q Okay.

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Defendant's Exhibit 1049 for identification. What do you
recognize this document to be?

A This is my correspondence to Joshua Frank and

Deutsche Bank relating to the Trump Old Post Office LLC loan.
And this is for the year -- this is for the 12 months ending

Q And sir, there is a compliance certificate attached
to it?

A Yes.

Q And what, if any, involvement did you have in the
preparation of the compliance certificate?

A I prepared it.

Q Using the same methods that you talked about earlier?

A Yes.

Q Is the manner in which you did that the same as you
testified to earlier on the other documents?

A Yes.

Q What is the final document from Mazars attached to

this?

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MR. AMER: No objection.

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been identified for identification as PX-497?

A Yes.

Q And what is this document, sir?

A This is my correspondence to Joshua Frank and

And this time, Judge, I am only going to use one
year's worth.

(Handing)

Q Sir, this would be consistent with each year of the
loan, correct?

A Yes.

Q Okay.

Sir, you have been handed what has been marked as
Defendant's Exhibit 1049 for identification. What do you
recognize this document to be?

A This is my correspondence to Joshua Frank and
Mr. Hawthorn, before we look at the document itself, PX-497, what is the difference between these two, aside from the date?

A Between the two Trump Old Post Office documents?

Q Correct. One being, one you send in May and one you send in December?

A The one sent in December submits the annual audited financial statements of the entity. This entity had a fiscal year end of August 31, 2019. Attached to this submission were the annual audited financial statements.

Q Okay. So, Defendant’s Exhibit 1049, which I showed you a few moments ago, that would be the same as the ones I showed you for Chicago and the ones I showed you for Doral, correct?

A They would include the DSCR provision. They would not include or reattach the annual financial statements.

Q And they were also not audits that were attached to those, correct?

A Correct. Those were compilations. This was an audit.

Q Okay. So what was the requirement that -- withdrawn.

A What was the reason why the Trump Organization provided audited financials with this December 2019 exchange with the bank?

Q A In clarification with the lender, that I did personally and with other representatives, we confirmed that the DSCR testing period for this loan was on a 12-month ended January 31, period. And therefore the DSCR was not computed off of the annual financial statements which were on an August 31, 2019, year. So we had to do two sets of financial statements for compliance purposes, the audited financial statements which were satisfying that requirement, the entities on a fiscal year ending August. Then the DSCR was required to be due on a 12-month January period. And again, only a compilation was required.

Q And sir, how would you describe the difference, and I know when we started the exam you gave us the difference between an audit, a review and compilation, but specifically, aside from you explaining that the dates are different, how did this audit of Trump Old Post Office LLC differ from the compilation that is provided earlier in the year?

A Well, you can see in the audit itself it has a full set of footnotes. The work done by Mazars and the audit opinion indicates it was an audit. So it was much more detailed procedures for an audit. There was substantive testing done of the entity. Whereas, a compilation is less testing, more putting together in a document.

Q I am going to switch gears now. You can put that aside. Thank you, Mr. Hawthorn. And talk to you about the court.
organization. So they did ask a lot of questions to understand to fully understand the depth and the complexity of the would take some time for the monitor and their representatives. At the onset of the meeting it was clear that it was an introductory meeting. Judge Jones and her team were interested in learning about the company, its structure, its organization, and its key executives in place running the company, and how it runs today. So that was an introductory meeting that set in motion a very cooperative, transparent, regular partnership where myself, as one of the individuals on behalf of the company, meets regularly with Judge Jones and her team members. At the onset of the meeting it was clear that it would take some time for the monitor and their representatives to fully understand the depth and the complexity of the organization. So they did ask a lot of questions to understand the entity's structure, who does what in the organization, how process flows work. So it was definitely a significant undertaking on our side to make sure we were being fully compliant, answering all of their questions diligently, responding to inquiries and so forth. Were requests for information made of you and the Trump Organization?

A Yes.

Q And how did you provide that information to the monitor -- withdrawn. Did the monitor request it be sent to her or to others?

A As an administrative matter the monitor and their designees set up a data room that allowed for information that they requested to be provided to them in the format they requested. The onset of the monitorship obviously was a lot of questions, again, to get an understanding of the company, its structure, its organization, and a lot of operating businesses. So, as they, meaning the monitor and their designees, asked questions, we would provide the information they requested. There would be a lot of follow-up questions. And through the course of since November 2022, we have gotten into a pretty good mutual understanding of what they require and how we respond to them timely and get them what they need. So, ongoing it has been very detailed. It has been very thorough. And you know, any and all questions that they ask we have been transparent and open and happy to assist them in whatever information they need.

Q So you --

MR. AMER: My only objection is to the phrase, mutual, good mutual understanding. I think that implies that it went both ways. He can certainly testify as to his understanding. But I don't think it is appropriate for him to testify about what Judge Jones and her staff had an understanding of.

THE COURT: He wouldn't know what was in their mind.

As long as I have you, Mr. Amer, I am assuming that Ms. Jones was there to ask questions and listen, not just say things. And anything she said was probably not going to be introduced to prove the truth of its contents here, so, that's why I found that a strange objection.

MR. ROBERT: I would respectfully disagree.

MR. AMER: Since I don't know what this witness will say about what Judge Jones may have said at the meeting, it is hard to know in advance whether it is just for notice purposes or not.

But, in terms of my prior objection on good
Mr. Amer: Thank you, Your Honor.

We have six minutes.

The Court: five.

The Court: Or whomever?

Mr. Amer: I can start.

The Court: Yeah, let's. Five minutes are five minutes.

Mr. Robert: I am willing to stipulate those five.

The Court: Let's start the cross examination.

We have six minutes.

Mr. Amer: Thank you, Your Honor.

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CROSS-EXAMINATION

By Mr. Amer:

Q Good afternoon, Mr. Hawthorn.

A Good afternoon.

Q I want to go through a number of comments you made during your direct to seek some clarification. You talked about compilation being the lowest level of assurance; do you recall that?

A Yes.

(The following proceedings were stenographically recorded by Senior Court Reporter Michael Ranita.)

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 who retains the outside accounting firm?
4  A It's lower than an audit, but in context it means the lowest level of assurance to the reader of the financial statements.
5  Q Does that also indicate, though, to the client that what they are paying for is the lowest level of assurance among the three choices you outlined?
6  A Yes.
7  Q And you indicated that with a compilation. I think you said there's no substantive testing; is that right?
8  A There's no testing of invoices and samples where an audit would have that type of thing.
9  Q There's no testing of the financial figures in the compilation; correct?
10 A There's observation and review and an understanding of what goes into the numbers. An auditor doing a compilation isn't just going to kind of cover their ears and eyes to what's happening, and seeing the numbers, but they are not going to pull underlying documents like an audit to verify that -- so like in an audit, for example, Mr. Amer, you would have an auditor test certain transactions by pulling source data, whereas in a compilation, the accounting firm would put together

11 Q And you indicated that for the entities that you were responsible for, they had both compilations and audits; correct?
12 A Correct.
13 Q And am I correct that there was no reason why The Trump Organization could not have retained Mazars to do an audit of Donald J. Trump's financial statements as opposed to just a compilation; right?
14 A I don't know.
15 Q You don't know of any reason why they couldn't have hired Mazars to do an audit, right?
16 A I don't know. It's not -- that wouldn't be my area, being in the hospitality division. So if you are asking a hypothetical --
17 Q No, I'm asking, as you sit here today, you were aware of no reason why The Trump Organization could not have retained
1  Mazars to do an audit instead of a compilation; is that fair?
2   A  And I think I previously testified there is no
3  requirement for an audit. So if the company -- if any private
4  company doesn't have a requirement for an audit for some
5  constituency like a lender or a government agency, there's
6  really no need for an audit.
7   Q  Despite the fact --
8  THE COURT: You are not answering the question. Am
9  I correct, Mr. Amer? You agree?
10  MR. AMER: Correct. I agree.
11  THE COURT: But you are asking it in the negative.
12  Why don't you ask it in the positive.
13  Is there any reason -- and Mr. Amer, if you want to
14  ask a different question, or whatever, is there any reason
15  The Trump Organization could not have asked for an audit?
16  THE WITNESS: I would just say, other than time and
17  resources and the cost of it, no.
18  THE COURT: Did I ask it in the negative? Sorry.
19  Let me rephrase it. We are going to get the same answer.
20  A  The same answer, I think.
21  THE COURT: Could The Trump Organization have asked
22  for an audit if they were willing to pay for it?
23  THE WITNESS: Yes.
24  THE COURT: Okay. See, it's not so hard, Mr. Amer.

1  Q  MR. AMER: Took you two tries, so.
2  THE COURT: I'm going to ask Mr. Amer to hold his
3  horses for a few moments, but he could stand at the podium.
4  We could break now. That's fine.
5  THE COURT: If you want another few minutes, fine, or
6  we could break now. It's up to you.
7  MR. AMER: We could break now. That's fine.
8  THE COURT: You're hungry. Okay. 2:15 as usual.
9  And I'll direct the witness not to discuss the
10  case, or his testimony, of course. You've heard that
11  several times.
12  (Whereupon, the case on trial was adjourned until
13  2:15 for the luncheon recess.)
14  * * * * * * * * * *  
15  AFTERNOON SESSION
16  * * * * * * * * * *  
17  THE COURT OFFICER: All rise. Part 37 is back in
18  session. The Honorable Judge Arthur Engoron presiding.
19  Please be seated and come to order.

1  Q  So are you the most senior executive person within the
2  hotel's division at The Trump Organization?
3  "ANSWER: Yes.
4  "QUESTION: And can you just explain to us how the
5  hotel's division fits within the overall corporate structure
6  of The Trump Organization?
7  "ANSWER: Everything related to the hotel

---

M. Hawthorn - by Defense - Cross (Mr. Amer) Page 5241

1  Q  And I want to ask you about your specific role at The
2  Trump Organization. Am I correct that your current position is
3  within the hotels division?
4  A  Correct.
5  Q  And you oversee the hotel brand operations and are the
6  most senior executive person within the hotel division; correct?
7  A  Yes.
8  Q  And am I correct that your responsibilities as Chief
9  Operating Officer of Trump Hotels is limited to the owned and
10  managed hotels of the portfolio of the hotel division?
11  A  No.
12  Q  Can we go ahead and put up Mr. Hawthorn's trial
13  testimony from last month? It's at lines 14 -- page 1417,
14  starts at line 17?
15  (Whereupon, the exhibit was displayed on the
16  screen.)
17  MR. AMER: Sixteen.
18  Q  "So are you the most senior executive person within the
19  hotel's division at The Trump Organization?
20  "ANSWER: Yes.
21  "QUESTION: And can you just explain to us how the
22  hotel's division fits within the overall corporate structure
23  of The Trump Organization?
24  "ANSWER: Everything related to the hotel

---

M. Hawthorn - by Defense - Cross (Mr. Amer) Page 5242

1  Q  And --
2  THE COURT: If you want another few minutes, fine, or
3  we could break now. It's up to you.
4  MR. AMER: We could break now. That's fine.
5  THE COURT: You're hungry. Okay. 2:15 as usual.
6  And I'll direct the witness not to discuss the
7  case, or his testimony, of course. You've heard that
8  several times.
9  (Whereupon, the case on trial was adjourned until
10  2:15 for the luncheon recess.)
11  * * * * * * * * * *  
12  AFTERNOON SESSION
13  * * * * * * * * * *  
14  THE COURT OFFICER: All rise. Part 37 is back in
15  session. The Honorable Judge Arthur Engoron presiding.
16  Please be seated and come to order.

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The independent monitor order stated that they are
10  to report back to the Court via their reports, and the
11  reports speak for themselves. I also do not want to create
12  the possibility of any conflicts of interest of any kind.
13  The last thing this case needs is to have Judge Jones need
14  to step aside.
15  Finally, I am not aware of a single instance in
16  which a litigant asked to examine an independent monitor, or
17  anything like an independent monitor, and I spent part of
18  the lunch break researching the issue. I couldn't find any
19  examples. And for sure I'm not aware of any court granting
20  or allowing this.
21  But I'll hear from the defendants if they have
22  authority for their request.
23  MR. KISE: We don't at this time, your Honor, but
24  to the extent that we research the issue and decide to raise
25  it, then we'll return to it.

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Ny Supreme Court- Civil

(32) Pages 5240 - 5243

33 of 316
<table>
<thead>
<tr>
<th>M. Hawthorn - by Defense - Cross (Mr. Amer)</th>
<th>Page 5244</th>
</tr>
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<tbody>
<tr>
<td>1</td>
<td>MR. ROBERT: Will there be a formal order or will you so order the transcript?</td>
</tr>
<tr>
<td>2</td>
<td>THE COURT: I would ask that you just so order the transcript.</td>
</tr>
<tr>
<td>3</td>
<td>And yes, Mr. Kise, I would grant your request. If you find some authority for the proposition, of course I'll hear it.</td>
</tr>
<tr>
<td>4</td>
<td>MR. KISE: Thank you.</td>
</tr>
<tr>
<td>5</td>
<td>THE COURT: Okay. Let's get the witness back on the witness stand.</td>
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<tr>
<td>6</td>
<td>(Whereupon, the witness stepped into the witness stand.)</td>
</tr>
<tr>
<td>7</td>
<td>THE COURT: Mr. Amer, please continue.</td>
</tr>
<tr>
<td>8</td>
<td>MR. AMER: Thank you, your Honor.</td>
</tr>
<tr>
<td>9</td>
<td>Q We were discussing your role and responsibilities at The Trump Organization. And I want to ask you a few more questions to clarify what that role is.</td>
</tr>
<tr>
<td>10</td>
<td>Have you ever worked in the corporate accounting department at Trump Tower, which is the department that Mr. Weisselberg and Mr. McConney worked in?</td>
</tr>
<tr>
<td>11</td>
<td>A No.</td>
</tr>
<tr>
<td>12</td>
<td>Q Did you take over Mr. Weisselberg's responsibilities that he had when he was CFO of the corporate accounting department after he left the organization?</td>
</tr>
<tr>
<td>13</td>
<td>A Partially.</td>
</tr>
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<thead>
<tr>
<th>M. Hawthorn - by Defense - Cross (Mr. Amer)</th>
<th>Page 5245</th>
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<tbody>
<tr>
<td>1</td>
<td>Q And is the partial point the responsibility that you were asked to assist in standardizing the accounting methodology across various divisions?</td>
</tr>
<tr>
<td>2</td>
<td>A That's a good example.</td>
</tr>
<tr>
<td>3</td>
<td>Q What else, aside from that standardization project, do you consider to be responsibility that Mr. Weisselberg had that you now have?</td>
</tr>
<tr>
<td>4</td>
<td>A I would say just helpful guidance and accounting knowledge to any arms of the business that are needing of assistance.</td>
</tr>
<tr>
<td>5</td>
<td>Q Were you ever asked to provide helpful guidance and accounting knowledge with respect to the preparation of Donald J. Trump's Statement of Financial Condition?</td>
</tr>
<tr>
<td>6</td>
<td>A No.</td>
</tr>
<tr>
<td>7</td>
<td>MR. AMER: I would like to show you some trial testimony from Donald Trump, Jr., just so we could further clarify your role. It's page 3987 starting at line 13, continuing onto the next page, line two.</td>
</tr>
<tr>
<td>8</td>
<td>(Whereupon, the exhibit was displayed on the screen.)</td>
</tr>
<tr>
<td>9</td>
<td>MR. AMER: So if we could get the rest of the answer on the page on the screen.</td>
</tr>
<tr>
<td>10</td>
<td>(Whereupon, the exhibit was displayed on the screen.)</td>
</tr>
<tr>
<td>11</td>
<td>Q This is Donald Trump, Jr.'s trial testimony during his direct examination by Mr. Robert:</td>
</tr>
<tr>
<td>12</td>
<td>&quot;QUESTION: So when you testified a week ago, you mentioned that Mark Hawthorn was the CFO of The Trump Organization. Is that actually his official title?</td>
</tr>
<tr>
<td>13</td>
<td>&quot;ANSWER: I think he's still chief financial officer. He, he's assumed that role, I guess I just said, sort of. So he is the, you know, the finance guy within Trump, Trump world now and has taken on all those decisional responsibilities. He is an actual CPA and does that. So it may not -- again, we are not as -- not as big on title, but he's functioning in that capacity, correct.&quot;</td>
</tr>
<tr>
<td>14</td>
<td>Are you functioning in the capacity as the chief financial officer of The Trump Organization?</td>
</tr>
<tr>
<td>15</td>
<td>A No.</td>
</tr>
<tr>
<td>16</td>
<td>Q I think you mentioned that others are -- well, first of all, do you oversee the corporate accounting department?</td>
</tr>
<tr>
<td>17</td>
<td>A No.</td>
</tr>
<tr>
<td>18</td>
<td>Q I think you mentioned that others are overseeing the corporate accounting department in the wake of Mr. McConney and Mr. Weisselberg leaving the company; correct?</td>
</tr>
<tr>
<td>19</td>
<td>A Yes.</td>
</tr>
<tr>
<td>20</td>
<td>Q And you mentioned Donna Kidder. Is she the assistant controller now?</td>
</tr>
<tr>
<td>21</td>
<td>A Yes.</td>
</tr>
<tr>
<td>22</td>
<td>Q You also mentioned that there is now a director of finance; is that right?</td>
</tr>
<tr>
<td>23</td>
<td>A Yes.</td>
</tr>
<tr>
<td>24</td>
<td>Q And what is that person's name?</td>
</tr>
<tr>
<td>25</td>
<td>A His name is Michael love chuck.</td>
</tr>
<tr>
<td>26</td>
<td>Q And when did he assume the position of director of finance?</td>
</tr>
<tr>
<td>27</td>
<td>A He's been a director of finance at the company for over 20 years. He served as the director of finance for the Trump International Hotel and Tower in New York, a hotel property. Subsequently to that, he took on the same role for the Trump International SoHo Hotel and the Trump International Washington, D.C. Hotel when that hotel was sold in May of 2022. He did not leave the company. He was able to use the skills and expertise in the corporate accounting function as the director of finance.</td>
</tr>
<tr>
<td>28</td>
<td>Q Is it your testimony that he is now functioning in the capacity as the chief financial officer of The Trump Organization?</td>
</tr>
<tr>
<td>29</td>
<td>A No.</td>
</tr>
<tr>
<td>30</td>
<td>Q Is there anyone else other than Ms. Kidder and Mr. Love chuck, who is overseeing the corporate accounting department?</td>
</tr>
<tr>
<td>31</td>
<td>A ^ Splg Mr. Love chuck would be the highest individual of financial expertise in that area.</td>
</tr>
<tr>
<td>32</td>
<td>Q I'm just trying to find out if there are any other people?</td>
</tr>
</tbody>
</table>
M. Hawthorn - by Defense - Cross (Mr. Amer) Page 5248

1  A There's a team, yes.
2  Q Who are they?
3  A They are the accounting staff for that team.
4  Q The same staff that was there before Mr. Weisselberg left?
5  A Some yes, some are now.
6  Q Has any individual in the corporate accounting department taken over in the capacity as the chief financial officer of The Trump Organization?
7  A No.
8  Q And to the extent --
9  MR. AMER: Can we put up Mr. Trump's testimony we were just looking at.
10 (Whereupon, the exhibit was displayed on the screen.)
11 Q And to the extent that Donald Trump, Jr.'s testimony could be read to suggest that you are functioning in the capacity of CFO of The Trump Organization, that would be incorrect?
12 A There is no CFO of The Trump Organization.
13 Q And to the extent that his testimony could be read to mean that you have taken on all of the decisional responsibilities that Mr. Weisselberg had, his testimony would be inaccurate; correct?
14 MR. ROBERT: Objection.

M. Hawthorn - by Defense - Cross (Mr. Amer) Page 5249

1  THE COURT: What's the objection?
2  MR. ROBERT: He's saying to the extent his testimony could be interpreted that way. It's either the testimony is or it isn't. This witness is not there to extrapolate how one could interpret Mr. Trump, Jr.'s testimony.
3  MR. AMER: I'll withdraw --
4  THE COURT: Rephrase.
5  MR. AMER: -- and rephrase.
6  Q When Mr. Trump testified that you have taken on all those decisional responsibilities of the CFO of The Trump Organization, he was wrong; correct?
7  A I think the word "all" makes it incorrect.
8  Q And we spoke about the project to standardize across the various divisions how the general ledgers are kept; correct?
9  A Yes.
10 Q Was that a project that you undertook with an outside consulting firm named Ankura?
11 A No.
12 Q Were you involved in a project related to updating the accounting processes with Ankura?
13 A The company engaged Ankura to assist with an evaluation of the finance function so that areas of improvement could be identified.
14 Q And that was something that you worked with Ankura on;

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Ny Supreme Court- Civil

(34) Pages 5248 - 5251

35 of 316
M. Hawthorn - by Defense - Cross (Mr. Amer)  Page 5252

1 statements for those properties, I'm also copied on quarterly bank compliance statements, so that we made information flow directly to the monitor.
2
3 So, for example, the 2021 audited statements of 40 Wall, THHT Commercial, LLC, Trump Plaza, LLC, and Trump Tower Commercial, LLC, I am copied on correspondence relating to submission of those to lenders, including the 2021 financial statements, because in my role as a liaison to the monitor, I want to make sure we are encompassing any and all requests that they need.
4
5 Q So we all understand the monitor was appointed in 2023, okay?
7
8 THE COURT: I think it was 2022.
9
10 Q November of 2022. So just to be clear, you did not review -- can we just refer to 40 Wall Street, THHT Commercial, Trump Plaza, and Trump Tower Commercial as "the four commercial properties"?
11 A Yes, sir.
12
13 Q Okay. So am I correct that you did not review any of the statements on this chart for the four commercial properties prior to November of 2022?
14 A That's fair.
15
16 Q And you had no involvement in preparing the statements for the four commercial properties; correct?
17

M. Hawthorn - by Defense - Cross (Mr. Amer)  Page 5253

1 A Correct.
2 Q You testified on direct that you were not aware of any instance with respect to the preparation of the statements on this chart where Mazars asked for information and didn't receive it; is that right?
3 A Correct.
4 Q Okay.
5
6 But with respect to the four commercial properties, since you weren't involved in the preparation of those statements, is it fair to say you wouldn't know what Mazars asked for or what was provided in response to those requests; right?
7 A Yes, I was thinking about the hotel statements.
8 Q So your response to Mr. Robert's question with respect to not knowing of any instance where Mazars asked for something and didn't get it in return, it excluded the four commercial property statements; right?
9 A That's fair.
10 Q And similarly, you had zero involvement in preparing Donald J. Trump's Statement of Financial Condition; correct?
11 A Correct.
12 Q And so you would have no knowledge of any requests that Mazars made during the course of the preparation of those statements; right?
13 A Correct.

M. Hawthorn - by Defense - Cross (Mr. Amer)  Page 5254

1 MR. AMER: Now let's go ahead and look at D-1055.
2 (Whereupon, the exhibit was displayed on the screen.)
3 Q (The witness was handed the exhibit.) This is a series of e-mails that you testified about on direct. Do you recall that?
4 A Yes.
5 Q Was the first time you saw this document in preparation for testing at this trial?
6 A Yes.
7 Q So this was not anything that you looked at when you came -- when you were first employed back in 2016; right?
8 A This particular e-mail? I don't recall having looked at it then.
9 Q And this was not anything that you saw in connection with your role as liaison for the monitor; right?
10 A Correct.
11 Q And you'll see in Ms. Schroeder's e-mail, she mentions in the last sentence, "Mr. Trump's guaranty burns down to 0."
12 Do you see that?
13 A Yes.
14 Q Is there anything in this document indicating that when the guaranty burns down to zero, that means the guarantor is no longer obligated to submit a compliance certificate attaching the guarantor's Statement of Financial Condition?
15

M. Hawthorn - by Defense - Cross (Mr. Amer)  Page 5255

1 A The e-mail does not say that.
2 MR. AMER: And if we look at demonstrative DD2.
3 (Whereupon, the exhibit was displayed on the screen.)
4 Q This is a document I believe you testified you assisted in preparing; correct?
5 A Yes.
6 Q Were there others involved in its preparation?
7 A In-house counsel and myself. I drew it on a piece of paper out of my mind, and they helped put it into a nice format.
8 Q Other than formatting, is the entirety of the contents of this document something you prepared?
9 A Um, most of it.
10 Q Well, which part isn't?
11 A The dates, the key terms, just the timeline, right. I could go back to the loan documents, understand the timeline of the loan to help simplify for the explanation of the history of this particular instrument.
12 Q Well, how about what's in red? Is that yours?
13 A Yes.
14 Q Okay. And what was the basis for your concluding that the Donald J. Trump Statement of Financial Condition was not required between December 2014 and August 2020?
15 A My understanding of the loan documents.
16 Q And was that also the basis for your understanding that

Min-U-Script®  Ny Supreme Court- Civil  (35) Pages 5252 - 5255  36 of 316
MR. AMER: Let's go ahead and look at a document that we've marked as Plaintiff's Exhibit 503. (Whereupon, the exhibit was displayed on the screen.)

Q You'll see that it's a May 10, 2016 compliance certificate. Do you see that?

A Yes.

Q And this is a compliance certificate from the guarantor, Donald J. Trump. Do you see that?

A I see it.

Q Have you seen this document before?

A No.

MR. AMER: Can we put the side by side with the demonstrative chart that we were just looking at.

Q And it's your understanding that this was submitted during the period of time where you've written in red in this chart that the Statement of Financial Condition was not required. Do you see that?

A Yes.

Q Were you aware, when you were preparing this chart, that, in fact, The Trump Organization had submitted a compliance certificate in May 2016 that attached the 2015 Statement of Financial Condition for Donald J. Trump as guarantor? Is that right?

A Mm-hmm.

Q And let's look at one more. MR. AMER: Plaintiff's Exhibit 502. (Whereupon, the exhibit was displayed on the screen.)

MR. AMER: Go back to five.

Q And this is a year later. This compliance certificate was submitted for the Chicago loan; correct?

A Yes.

Q Have you seen this before?

A No.

Q This is a compliance certificate that was submitted and attached the 2018 Statement of Financial Condition. Do you see that?

A Yes.

Q And it's your understanding that this was submitted notwithstanding your view that there was no obligation to do so; is that right?

A Correct.

Q And let's look at one more. MR. AMER: Plaintiff's Exhibit 502. (Whereupon, the exhibit was displayed on the screen.)

MR. AMER: Let's go ahead and mark as Plaintiff's Exhibit 5 -- I'm sorry.

Q This is a scan.

A MR. AMER: Actually, if we could just flip through until we get to the Chicago one.

Q (Whereupon, the exhibit displayed on the screen was scrolled through.)

A Correct.

Q By the way, did you ask to see any of the compliance certificates that had been submitted during the period where you write in red that the statement was not required?

A I did not.

Q MR. AMER: Let's go ahead and show Plaintiff's Exhibit 393 in evidence.

A MR. AMER: Let's go ahead and show Plaintiff's Exhibit 563.

Q Do you see, on page five, there is a compliance certificate. And that's on the Chicago loan?

A Yes.
THE COURT: Okay. Hold on.

MR. KISE: Your Honor --

MR. AMER: Do we need to excuse the witness if

this is going to be a lengthy --

MR. KISE: No. It is a quick question.

Turnabout is fair play, I think is the phrase.

What is the foundation about asking this witness

for this document? It is hearsay and he is reading it

into evidence between two individuals, neither of which is

the witness. I don't know what the -- he is just reading

it into evidence. What is the purpose of --

THE COURT: Well, we didn't let him finish and

then ask questions.

MR. KISE: Maybe we should excuse the witness

then, because we kind of need to know what the question is

before he reads the entire thing into evidence.

MR. AMER: The witness has indicated he prepared

a chart that says in this timeframe no Statement of

Financial Condition was required to be submitted. And

that's his view that there was no such obligation. This

letter goes directly to that point, Your Honor.

THE COURT: Objection overruled.

MR. KISE: If he has never seen it before.

THE COURT: So?

MR. KISE: Okay.

THE COURT: Okay, overruled.

If you want to continue reading, or whatever.

MR. AMER: I do, just the next sentence.

Q "The modified financial reporting you have proposed

is not acceptable to Deutsche Bank."

Do you see that?

A I see it.

Q Were you aware that there was a request made to

excuse the Trump Organization from having to submit Donald J.

Trump's annual Statement of Financial Condition as of June 30,

2022 during the period where you wrote in your chart that no

such obligation existed?

A I was aware of a disagreement between the parties on

the interpretation of the loan.

Q Well, this is not a disagreement, this is a request

that the bank accept something in lieu of the Statement of

Financial Condition. And the bank says no, it is not

acceptable. Right?

MR. KISE: Your Honor, now he is testifying and

arguing with the witness. The witness answered his

question.

MR. ROBERT: I am curious if Mr. Amer is going

to show the response from Mr. Rosen to Mr. Candela. Which
### November 27, 2023

**Hawthorn - by Defendant - Cross (Amer) Page 5264**

<table>
<thead>
<tr>
<th>Q</th>
<th>A</th>
</tr>
</thead>
<tbody>
<tr>
<td>Where in this letter do you see a disagreement?</td>
<td>Not in this e-mail.</td>
</tr>
<tr>
<td>And at the bottom of this e-mail, if we could go down</td>
<td>The witness characterized this as a disagreement.</td>
</tr>
<tr>
<td>to the bottom, it says Deutsche Bank will not agree to waive or</td>
<td>MR. AMER: The witness characterized this as a disagreement.</td>
</tr>
<tr>
<td>otherwise modify the guarantor's obligation to deliver to</td>
<td>MR. ROBERT: For completeness, I would think you want to respond.</td>
</tr>
<tr>
<td>Deutsche Bank no later than October 28, 2022, his annual</td>
<td>MR. AMER: You can do redirect.</td>
</tr>
<tr>
<td>Statement of Financial Condition (as defined in the guaranty) as of June 30, 2022.</td>
<td>THE COURT: There is a little bit of testimony in your question. Can you rephrase?</td>
</tr>
<tr>
<td>Do you see that?</td>
<td>MR. AMER: The witness characterized this as a disagreement.</td>
</tr>
<tr>
<td>I see it.</td>
<td>MR. ROBERT: For completeness, I would think you want to respond.</td>
</tr>
<tr>
<td>Were you aware in September 2022 that Deutsche Bank's view was that the guarantor had an obligation to deliver Donald</td>
<td>MR. ROBERT: For completeness, I would think you want to respond.</td>
</tr>
</tbody>
</table>

**Hawthorn - by Defendant - Cross (Amer) Page 5265**

<table>
<thead>
<tr>
<th>Q</th>
<th>A</th>
</tr>
</thead>
<tbody>
<tr>
<td>And your view is that no such obligation existed; is that right?</td>
<td>Yes.</td>
</tr>
<tr>
<td>And your view is based on the loan documentation that is the same documentation that Deutsche Bank is looking at when they write this e-mail, correct?</td>
<td>Yes.</td>
</tr>
<tr>
<td>THE COURT: Well, he wouldn't necessarily know what Deutsche Bank was looking at. But I understand.</td>
<td>THE COURT: He doesn't know what they looked at.</td>
</tr>
<tr>
<td>But you could -- we will take the question to mean, did they have the same information that the witness looked at. And his answer is yes.</td>
<td>And his answer is yes.</td>
</tr>
<tr>
<td>THE WITNESS: I believe so, yes.</td>
<td>MR. AMER: Your Honor, I move to admit Plaintiff's Exhibit 563.</td>
</tr>
<tr>
<td>THE COURT: Granted, it is in.</td>
<td>MR. ROBERT: Same objection.</td>
</tr>
<tr>
<td>Mr. ROBERT: Same objection.</td>
<td>THE COURT: Overruled.</td>
</tr>
<tr>
<td>(Whereupon, the document referred to was deemed marked for evidence as Plaintiff's Exhibit 563 by the Court reporter.)</td>
<td></td>
</tr>
</tbody>
</table>

**Hawthorn - by Defendant - Cross (Amer) Page 5266**

<table>
<thead>
<tr>
<th>Q</th>
<th>A</th>
</tr>
</thead>
<tbody>
<tr>
<td>Let's go ahead and look at Plaintiff's Exhibit 562.</td>
<td>THE COURT: Mr. Kise?</td>
</tr>
<tr>
<td>MR. KISE: Your Honor, this e-mail that he is moving into evidence, the one between Candela and Rosen, I mean, it is one thing to question him about it for impeachment, but to move it into evidence substantively without any foundation, that's quite a different matter altogether. What is the foundation? This isn't between either of the recipients -- the recipient or the sender. And it is being offered to prove what, the truth of the matter asserted? It is a hearsay document.</td>
<td></td>
</tr>
</tbody>
</table>

**Hawthorn - by Defendant - Cross (Amer) Page 5267**

<table>
<thead>
<tr>
<th>Q</th>
<th>A</th>
</tr>
</thead>
<tbody>
<tr>
<td>THE COURT: The credibility of the witness.</td>
<td>MR. KISE: That's impeachment.</td>
</tr>
<tr>
<td>THE COURT: The correctness of the witness.</td>
<td>MR. KISE: That's impeachment, not substantive evidence. I don't see how this comes in as substantive evidence. It is hearsay.</td>
</tr>
<tr>
<td>MR. AMER: We can limit it for purposes of notice, Your Honor, to Adam Rosen of the Trump Organization.</td>
<td>MR. AMER: Notice of the contents -- notice of the contents of the letter, the e-mail which is Deutsche Bank's position. Notice to Adam Rosen of Deutsche Bank's position that they were not accepting the proposal.</td>
</tr>
<tr>
<td>THE COURT: Admitted as evidence of notice?</td>
<td>THE COURT: Sounds good to me. Seems to be an important part of this case.</td>
</tr>
<tr>
<td>MR. KISE: Same objection.</td>
<td></td>
</tr>
<tr>
<td>This is another e-mail from Mr. Candela to Mr. Rosen. This one dated a month later in October of 2022. This is still during the period of time where you have written in red that there was no obligation to submit a compliance certificate, correct?</td>
<td></td>
</tr>
<tr>
<td>Have you seen this e-mail before?</td>
<td>Yes.</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>And in the second paragraph, which I'll just read to you, Mr. Candela writes to Mr. Rosen at the Trump Organization: Having considered the request, Deutsche Bank is willing to agree to extend the guarantor's time by which to deliver the three financial reports specified above by from October 28 to December 31 on the condition that: And then little (ii): The guarantor timely delivers his annual certificate of compliance required by section 11(i)(D) of the guaranty by the due date of October 28. Do you see that?</td>
<td></td>
</tr>
<tr>
<td>A</td>
<td>Yes.</td>
</tr>
</tbody>
</table>
1. Q. Were you aware when you were preparing your chart indicating there was no obligation for the guarantor to provide a Statement of Financial Condition, that the bank's view was that the extension -- that an extension would be granted to December 31 on the condition that the guarantor timely delivers his annual certificate of compliance?

A. I am sorry, that was a long question, you lost me. THE COURT: Do you want a readback?

MR. AMER: If I could get a readback. THE COURT: Read back, please.

(Whereupon, the record was read back by the court reporter.)

A. I was probably not aware, no.

Q. Would you agree that the bank's position as set forth in this e-mail is inconsistent with your view that there was no obligation to provide a Statement of Financial Condition for the guarantor in this time period?

A. Correct.

Q. And if you look further down in this e-mail, Mr. Candela writes: For your awareness and in considering the request and proposing the agreement described above, Deutsche Bank considered various factors, including but not limited to the following:

And then I want to mention the second bullet, which says:

By operation of the guaranty, because the loan-to-value ratio produced by last year's appraisal was less than 35 percent, the step-down percentage of the guaranty is currently zero percent. Do you understand that to be a confirmation that the guaranty has burned off?

A. Correct.

Q. And so notwithstanding the fact that the guaranty has burned off, Deutsche Bank is still insisting that the guarantor must deliver Donald J. Trump's Statement of Financial Condition as part of a certificate of compliance, correct?

A. That's what this e-mail says.

Q. And the next bullet says:

Also by operation of the guaranty, because the step-down percentage of the guaranty is currently zero percent, the guarantor is not currently subject to a minimum net worth requirement.

A. Do you see that?

Q. And can we agree that notwithstanding the fact that there is no minimum net worth requirement, Deutsche Bank is still insisting that Donald J. Trump submit a certificate of compliance with his Statement of Financial Condition?

A. Yes.

Q. So, would you agree that Deutsche Bank views the guarantor as being under an obligation to submit a certificate of compliance with Donald J. Trump's Statement of Financial Condition, notwithstanding the fact that the guaranty has burned down to zero and there is no net worth requirement?

A. I don't know if this is the only e-mail related to the exchange, so I don't know if this was the final conclusion.

Q. Again, there is likely responses from Mr. Rosen that iterate our position as a company, so I can't say if this was the final determination or not. This is just one e-mail.

A. Correct.

Q. Well, can we agree that based on this e-mail that is what the bank's position is?

A. Yes.

Q. And I think you said that in order to prepare this compliance certificate, right?

A. Yes.

Q. And is that what you believe you were required to do to prepare the compliance certificate for any year for the guarantor on the loans?

A. Correct.

MR. AMER: Your Honor, I move to admit Plaintiff's Exhibit 562 for notice purpose.

THE COURT: Granted, it is in.

(Whereupon, the document referred to was deemed marked for evidence as Plaintiff's Exhibit 562 by the Court.)

Q. I want to show you Defendant's Exhibit 1047 which you were asked about on direct.

A. Correct.

Q. And is that what you believe you were required to do to prepare the compliance certificate for any year for the guarantor on the loans?

A. Yes.

Q. And am I correct that you were never asked by anyone as the person preparing this compliance certificate?

A. Yes.

Q. Did you receive any assistance preparing this, other than assistance in formatting?

A. Mostly my work.

Q. Well, you say "mostly," is there work that isn't yours?

A. Um, no. Again, it was probably in consultation with in-house counsel.

Q. And am I correct that you are not suggesting on this chart that there was ever a point in the life of this loan...
Donald Trump

Hawthorn - by Defendant - Cross (Amer)  Page 5272

1 where the guarantor ceased to have an obligation to submit a
certificate with Mr. Trump's Statement of Financial
Condition?
2 A I am sorry, could you say it one more time?
3 Q Sure. I'll rephrase it.
4 Are you suggesting that there was ever a point in the
life of this loan where the guarantor ceased to have an
obligation to submit a certificate attaching
5 Mr. Trump's Statement of Financial Condition?
6 A No, I am not suggesting that.
7 Q Mr. Hawthorn, you also testified about your role in
liaising with the monitor; do you recall that?
8 A Yes.
9 Q And you characterized the relationship with the
monitor in various ways. I would like to share with you some
portion of the Judge's summary judgment decision discussing the
monitor's reporting, and ask you if you are familiar with it.
10 MR. AMER: If we could pull up the Court's
decision at page 33?
11 Q First of all, have you read the Court's summary
judgment decision in this case?
12 A Not wholly, but the section you have there I am
familiar with.
13 Q And the decision states on August 3, 2023 Judge Jones
reported as follows:

Hawthorn - by Defendant - Cross (Amer)  Page 5273

1 Since my appointment, I have reviewed material,
financial and accounting information submitted by the Trump
Organization. As part of my review, I have made preliminary
observations regarding certain current financial disclosures
with respect to the Trump Organization's reporting of financial
information.
2 Specifically, I have observed that information
regarding certain are material liabilities provided to
lenders -- such as intercompany loans between or among Trust
entities and Donald J. Trump, certain of the Trust's contingent
liabilities, as well as refundable golf club membership
deposits -- has been incomplete.
3 Were you aware that Judge Jones had issued a report
indicating that an aspect of the organization's reporting of
financial information has been incomplete?
4 A Yes, we are aware of this letter.
5 Q I was asking more if you were aware of the specific
statement conclusion that Judge Jones reached that certain
reporting had been incomplete?
6 A Yes.
7 Q She goes on to -- Judge Jones goes on to say the
Trust has also not consistently provided all required annual
and quarterly certifications attesting to the accuracy of
certain financial statements.
8 A Yes.
9 Q Yes.
10 Q And she -- and Judge Jones finally states:
11 In addition, annual audited financial statements for
certain entities prepared by an external accounting firm list
depreciation expenses. However, interim internally prepared
financial statements provided to third parties for these same
entities inconsistently report depreciation expenses.
12 Were you aware that Judge Jones had identified such
inconsistencies?
13 A Yes.
14 Q And Judge Jones finally states:
15 Mr. Hawthorn, you also testified about your role in
liaising with the monitor; do you recall that?
16 A Yes.
17 Q And you characterized the relationship with the
monitor in various ways. I would like to share with you some
portion of the Judge's summary judgment decision discussing the
monitor's reporting, and ask you if you are familiar with it.
18 MR. AMER: If we could pull up the Court's
decision at page 33?
19 Q First of all, have you read the Court's summary
judgment decision in this case?
20 A Not wholly, but the section you have there I am
familiar with.
21 Q And the decision states on August 3, 2023 Judge Jones
reported as follows:

Hawthorn - by Defendant - Cross (Amer)  Page 5274

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 spell over until tomorrow, some
tomorrow. And then we have, I think, Williams, Sullivan,
Pereless, Bravlik and then Unell, who is the banking
expert.
9 We will start -- we may not be done with
10 Ms. Bravlik until Thursday morning, so I think, you know,
11 the plan anyway, is that Unell will take us through
12 Friday.
13 THE COURT: I'll turn the microphone over to my
14 person who sits alongside of me.
15 MS. GREENFIELD: Just in case, can we have
16 another witness for Friday? Who were you planning to call
17 next Monday? Can they be available just in case we finish
18 that witness early?
19 MR. KISE: So Mr. Chin is in another trial on
20 Friday, who is called for Monday.
21 MS. GREENFIELD: Who do we have for Monday?
22 MR. KISE: Monday is Fred Chin.
THE COURT: And you expect that to be an entire day.

MR. KISE: That one, yes, he will be. And then Moens, Schubin, on Tuesday.

MS. GREENFIELD: I am sorry, can you spell those?

MR. KISE: M-O-E-N-S, Lawrence Moens. And then John Schubin S-C-H-U-B-I-N.

And then he will continue over a little bit on Wednesday. And then we will have Eric Trump on Wednesday the 6th, either late morning or early afternoon. And then Elie Bartov B-A-R-T-O-V will be the Thursday and over into Friday.

MS. GREENFIELD: Okay. And then who else?

MR. KISE: And then the Monday will be President Trump, the 11th, at least that's the plan. I don't have final confirmation that's his schedule, but I think we can make that work.

THE COURT: And that's your final witness?

MR. KISE: Right. So there may be, kind of like we had with the plaintiff's case, there may be a little gap between when Bartov is done and Trump takes the stand, because I don't know that we can get him here on the 8th. Fridays and Saturdays tend to be pretty challenging.

THE COURT: Okay.

MR. ROBERT: Just so we are clear, if Mr. Birney doesn't finish today, which he probably won't, we may have to take a break with him and put him on after we are done with the Deutsche Bank witnesses.

MS. GREENFIELD: I recall you said that last week. We got that.

When do we know if there is going to be a rebuttal?

MR. WALLACE: I believe we will know by the middle of next week. We will update you on Friday if at that point we think there is a need to bring back any rebuttal witnesses, and if so who they would be. It will be minimal at this point though, I think it is fair to say.

MS. GREENFIELD: Okay. Thank you.

MR. WALLACE: I believe we will know by the middle of next week. We will update you on Friday if at that point we think there is a need to bring back any rebuttal witnesses, and if so who they would be. It will be minimal at this point though, I think it is fair to say.

MS. GREENFIELD: Okay. Thank you.

MR. WALLACE: I believe we will know by the middle of next week. We will update you on Friday if at that point we think there is a need to bring back any rebuttal witnesses, and if so who they would be. It will be minimal at this point though, I think it is fair to say.

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Donald Trump November 27, 2023

Hawthorn - by Defendant - Redirect (Robert)  Page 5280

1  Q  And ultimately that loan was paid off, correct?
2  A  Correct.
3  Q  Mr. Amer also was questioning you about portions of
4  Justice Engoron's summary judgment decision; do you remember
5  that?
6  A  Yes.
7  Q  And specifically he was asking you questions related
8  to Justice Engoron quoting from Barbara Jones' August 3, 2023
9  letter; do you remember that?
10  A  Yes.
11  MR. ROBERT: I would like to present to the
12  witness Defendant's Exhibit 1057 for identification.
13  (Handing)
14  Q  Mr. Hawthorn, what do you recognize this document to
15  be?
16  A  This is a letter from Judge Jones on Bracewell
17  letterhead updating the Court on the status of the monitorship.
18  MR. ROBERT: Your Honor, I'll represent that
19  this is filed on the public docket as NYSCEF 647.  And I
20  ask that this document be introduced into evidence as
21  Defense Exhibit 1057.
22  MR. AMER: No objection.
23  THE COURT: Granted.  It is in.
24  (Whereupon, the document referred to was deemed
25  marked for evidence as Defendant's Exhibit 1057 by

Hawthorn - by Defendant - Redirect (Robert)  Page 5281

1  Q  the Court.)
2  Q  Mr. Hawthorn, I am going to draw your attention to
3  page two of this letter.
4  A  MR. ROBERT: If you could put it up on the
5  screen, Nate, as well?
6  Q  And I start by drawing your attention to the first
7  paragraph.  Do you see that, sir?
8  A  Yes.
9  Q  Let's go through the first paragraph.  What does the
10  first sentence says?
11  A  As noted above, since my appointment I have reviewed
12  material, financial and accounting information submitted by the
13  Trump Organization.
14  Q  Continue, sir.
15  A  As part of my review I have made preliminary
16  observations regarding certain -- certain financial disclosures
17  with respect to the Trump's organizations reporting of
18  financial information.
19  Q  Continue.
20  A  Specifically, I have observed that information
21  regarding certain material liabilities provided to lenders --
22  such as intercompany loans between or among Trust entities and
23  Donald J. Trump, certain of the Trust's contingent liabilities,
24  as well as refundable golf club membership deposits -- has been
25  incomplete.

Hawthorn - by Defendant - Redirect (Robert)  Page 5282

1  Q  Do you have an understanding of what Judge Jones is
2  saying in that last sentence?
3  A  I do.
4  Q  What is that?
5  A  During the course of the monitorship, as I mentioned,
6  we had a lot of discourse between the monitor of what they
7  observed and what our response to those observations were.  So,
8  ten months into the monitorship we were advised by the
9  monitor's representatives that they would be advising the Court
10  of some updates.  They provided to us in a meeting certain of
11  those matters for discussion, with which we provided responses.
12  Specifically to the matters that are raised here,
13  that's what this is talking about.
14  Q  And, sir, was the information incomplete?
15  A  It is our view that it was not because of our
16  response to the information.  Specifically, for each point
17  noted here, the observation of information regarding certain
18  material provided to lenders, as you know the company no longer
19  prepares a Statement of Financial Condition.  It is not
20  required by any lender.  The company simply prepares a
21  statement of assets, material assets and material liabilities
22  to lenders.  So one of the lenders, for example, today, that
23  has the Doral loan, receives that information.
24  Obviously because it is being provided to a lender it
25  is provided to the monitor.  And the monitor had some questions

Hawthorn - by Defendant - Redirect (Robert)  Page 5283

1  Q  about it.  One of the questions arose relating to one of our
2  Scotland entities.  So if you remember, we have a hotel in
3  Scotland, Trump Turnberry.  We also have Trump Aberdeen.  In
4  connection with the monitor's also review of those financial
5  statements, because they review all of the financial
6  statements, they identified to us and had questions about what
7  was disclosed in those financial statements about an
8  intercompany loan to the Trust.
9  Our response was, yes, that exists because the
10  company upon purchasing the Trump Turnberry asset in 2014
11  effectively loaned money to the Scotland entity, was set up as
12  a shareholder loan, and therefore that entity owes back money
13  to the Trust, to the parent entity.
14  This is what is referred to as an intercompany loan.
15  It is not a loan to a third party.  It is not a loan that is
16  callable accept by the owner of the loan, which is the same
17  party.
18  So, the monitor's observation to us was, your
19  statement of liabilities doesn't include this loan.  Why does
20  it not?
21  And our response was, well, if you are going to put
22  the loan as a liability, you also have to put the asset, the
23  receivable as well, because the Trust is owed that money from
24  itself, effectively.
25  They asked why was that information not included if
The order said provide sales tax returns, financial

At the onset of the monitorship, we were being as diligent and
understanding, it was a mutual understanding about materiality.

So when I made a statement before about a mutual

However, they had -- even though no lender had asked
us to make a change about it, the monitor said, would you take
our question under advisement and perhaps going forward you
could make a footnote on the schedule identifying that this is
an intercompany loan. So that's what this item is related to.

It is simply a loan within the Trust, not owed to a third
party.

So for someone to say it is incomplete, we actually
disagree with that because it is not something a lender would
be interested in. It is not an obligation outside of yourself.

If you are going to put a loan, you also have to put the
receivable. We didn't think it made sense to gross up assets
and liabilities. Rather, just if you want us to disclose it as
a footnote, we will. So prospectively we have done that. We
have made that revision.

(Whereupon, the following proceedings were
stenographically recorded by Senior Court Reporter Michael
Ranita.)

And our response is, they are not included on there
because if you included those liabilities, there's actually a
greater asset value associated with them. If those members
leave, a new member would have to join. You know, for a new
member to join, those members leave, and you would get a much
greater asset value associated with them. If those members
leave, you would get a much larger asset value offsetting those
liabilities, if that makes sense.

THE COURT: I follow that. What if they couldn't
find somebody to become a new member?

THE WITNESS: That's a possibility. But, um, in
our experience, membership changes very frequently. Certain
clubs, there are waiting lists to join membership. So in our
view, and our disclosure to the monitor, by not including
those liabilities, we are actually being conservative, otherwise
we will have to put a much larger asset value offsetting those
liabilities, if that makes sense.

Nonetheless, the statement of assets and
liabilities has a footnote that literally says, um, certain
contingent liabilities may be excluded. And, again, the
unfortunate thing about this disclosure doesn't mention
anything about materiality. In my experience, as an auditor
and public accounting, like none of these items are material
to the organization's financial representation as a whole,
if you are talking about these types of liabilities.
Q    What is your view as to that statement, sir?
A    Again, all of the multitude of financial statements, quarterly compliance, annual compliance certificates that the monitor reviewed, they identified that for a handful of them, and those would relate to the commercial properties we talked about earlier, like Trump Plaza, Trump International Commercial, that historically, if you look at the actual loan document, which was written many years ago, the financial reporting section says the submission of these financials should also be accomplished by a certification signed, right. And if you look going back to the inception of these loans, every time it was submitted by the company, there was no manual signature on the paper that it was scanned and delivered to the lender.
Our response was, well, we understand that that's not technically what the loan document says, but the bank has never asked us to sign it over many years, so the practice has always just continued. Um, and frankly when you submit something on its face to a lender, you are already de facto, you know, disclaiming the accuracy of it saying these are the statements that you need. However, we said, "No problem. Going forward, if you would like to add a signature line and someone to physically sign the statement, we will do that." And we did that going forward.
So, again, I get to say that something relating to that statement --

M. Hawthorn - by Defense - Redirect (Mr. Robert) Page 5288

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

M. Hawthorn - by Defense - Redirect (Mr. Robert) Page 5289

Q    What is your view as to that statement, sir?
A    Again, all of the multitude of financial statements, quarterly compliance, annual compliance certificates that the monitor reviewed, they identified that for a handful of them, and those would relate to the commercial properties we talked about earlier, like Trump Plaza, Trump International Commercial, that historically, if you look at the actual loan document, which was written many years ago, the financial reporting section says the submission of these financials should also be accompanied by a certification signed, right. And if you look going back to the inception of these loans, every time it was submitted by the company, there was no manual signature on the paper that it was scanned and delivered to the lender.
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So, again, I get to say that something relating to a statement --

M. Hawthorn - by Defense - Redirect (Mr. Robert) Page 5290

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

M. Hawthorn - by Defense - Redirect (Mr. Robert) Page 5291

Q    I move to the next paragraph, Mr. Hawthorn.
A    If we could bring that up on the screen.
Q    (Whereupon, the exhibit was displayed on the screen.)
A    So this says, "In addition, annual audited financial statements for certain entities, prepared by an external accounting firm, list depreciation expenses. However, internally prepared financial statements provided to third parties for these same entities inconsistently report depreciation expenses."
Q    Again, this arose from the same disclosure of financial information sent to a golf course maintenance lender, back in January and February, that even if we were to do it today, it may not even meet the materiality threshold. But nonetheless, those statements, if you are signing up to lease golf course maintenance equipment like mowers and blowers and things like

Min-U-Script®
Donald Trump

M. Hawthorn - by Defense - Redirect (Mr. Robert)  Page 5292

1. impact a lender's analysis if you have cash flow to service a lease.
2. So we did have an internal conference call with the
3. monitor in August, or probably in July of 2023 as they reviewed
4. these points with us. They were, again, cordial, they were
5. explaining to us. We explained our responses very clearly. Um, 6. they did give us a draft of this before it went out. We did
7. strongly disagree with their draft because of the way it was
8. worded. It's very, you know, it's very vague and doesn't give
9. materiality. So I think to someone reading it without the
10. context might assume certain conclusions. But, again, with me
11. providing some specificity over these things being not adversely
12. material to the company, and our responses to them being, you
13. know, what we believed to be accurate, I just wanted to clarify
14. that point.

M. Hawthorn - by Defense - Redirect (Mr. Robert)  Page 5293

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.
Proceedings Page 5296

1 Judge Jones?

2 MR. AMER: No. And we think your Honor is correct, that the case law does not permit it. I would also say that the point of sharing the portion of the decision that discusses Judge Jones’s observations was to contrast that with what this witness characterized as the relationship between The Organization and Judge Jones and her staff, which I think is inconsistent -- we would submit is inconsistent with what the Judge’s observations were in her August 3rd letter.

3 MR. ROBERT: We would respectfully disagree, because it was this Court that used the words "fraud" and "misleading information" accusing The Trump Organization of engaging in that. Those words appear nowhere in Judge Jones’ report. They appear nowhere in the earlier reports submitted to Court. It was never a word or a concept that was ever a disseminated to this witness, or anyone else involved in the monitorship process, whether by Judge Jones, the accountants she retained, or anyone else.

4 Notwithstanding the hundreds of thousands of dollars that have been paid to the monitor and the accountant, which is evidence of their due diligence of combing through voluminous financial records, and there has been no evidence of any false or misleading information.

5 THE COURT: Well, go ahead.

6 MR. KISE: Your Honor, and again, we'll brief this, but just as an aside, in Bankruptcy court, monitors are called examiners, they routinely testify. In SEC receivership proceedings, the examiner or the receiver routinely testifies, they're fiduciaries.

7 THE COURT: That's receiver, not monitor; right?

8 MR. KISE: But it's the same concept. It's the exact same concept. The fact that they are arms of the court and have fiduciary responsibilities does not in any shape, form or fashion preclude them from testifying.

9 Additionally, a monitor can't communicate through a report, because the report by itself is hearsay. The report, itself, is hearsay. You can't take a report and use that as truth of the matter asserted. The report, itself, is hearsay.

10 As you could see the challenges that arise from doing that, without the monitor here to testify, I mean, they obviously have a very different view of what that letter says than we do. They have opened the door by asking this witness direct questions. I mean, they were cute. They took your quoting of the letter, but it's the same principle. So they -- what the monitor thinks is clearly and squarely at issue with respect to equitable relief that this Court is considering.

11 If the monitor is going to come in here, which I'm virtually certain she will, and say what it doesn't say in that letter; there is no fraud. There's no -- hasn't been any indicia of fraud. There hasn't been any ongoing indicia of inappropriate activity. We are talking about, as this witness just testified, minor accounting discrepancies, all of which occur in a major corporation all the time.

12 So we need the monitor here to be able to, at least present live testimony that can be considered, not hearsay, in the record, as to whether or not there needs to be some equitable relief to address things that we think do not exist. We think she will say they don't exist, but the government is clearly pounding the table saying, "No, no, no. This is a fraudulent enterprise. We have to shut it down and put them out of business." When you have a monitor that's been in place for now 14 or 15 months and hasn't uncovered any evidence of that, has a cooperative relationship with the company, and clearly has confidence that what the company is doing now is fine.

13 The idea that the government could even assert that somehow we need to put these people out of business and shut them down seems a nonstarter. It's almost as much a nonstarter as the whole certification roundabout we went through, even when the guaranty is zero and there is no net worth requirement, somehow or other there is harm if there's a problem with the certification.

Proceedings Page 5298

1 But, in any event, I don't see how monitor testimony is not squarely and highly relevant here. And there is nothing to preclude the monitor from testifying simply because she's got fiduciary obligations to the Court.

2 She is an independent monitor, just like in a Bankruptcy Court, an independent examiner; just like in an SEC proceeding, they are all the same.

3 THE COURT: Well, Mr. Kise, I won't even ask you, I'll just suggest that every time you want to speak about a particular issue that maybe you don't have to argue the whole case.

4 MR. KISE: I feel like I have to, because we don't seem to be getting anywhere. We don't seem to be communicating at all. We have evidence that comes in after -- witness after witness after witness, there's no problem. There's no -- even today with the certifications, okay. So even assuming they are right, there is a problem with the certification, how does that go to equitable relief when this is no guaranty. It's zero.

5 The document that they put into evidence says that the guaranty was zero or 10 percent. Has there ever been any allegation that the net worth of Donald Trump was below $250 million? No. So all we are doing is having this sort of circuitous discussion about them jumping up and down saying, "There's fraud. There's fraud. There's fraud."
Ny Supreme Court- Civil

November 27, 2023

INDEX NO. 452564/2022

RECEIVED NYSCEF: 01/04/2024

M. Kise - by Defense - Direct (Ms. Hernandez)

Proceedings

1. one thing, but if I remember correctly, you brought it up
2. first, asked a whole bunch of questions, and then they just
3. wanted to basically respond, answer to those questions. So
4. I don't think they opened the door. You tried to open the
door.
5. And third, as I had said earlier, the monitor is
6. supposed to report with statements. If there are
7. disagreements about what they mean, I'll worry about that.
8. Okay, I'll decide what her reports mean and the implications
9. thereof.
10. So anything else from either side?
11. MR. AMER: Nothing from the plaintiff.
12. THE COURT: All right. We have -- the witness is
13. excused. You could sit out there and be amused, if you
14. want.
15. Nice to meet you.
16. THE WITNESS: Thank you.
17. THE COURT: Okay. We have another witness for the
18. defense?
19. MR. ROBERT: We call Patrick Birney.
20. MR. WALLACE: Your Honor, for the record is
21. Mr. Birney a fact witness watching the proceedings? I don't
22. think --
23. MR. ROBERT: First of all, he's already been called
24. in your case. So I know of no prohibition. But secondly,

P. Birney - by Defense - Direct (Ms. Hernandez)

Proceedings

1. he should be in his little anteroom in the Judge's chambers,
2. and I told Ms. Hernandez to watch the proceedings so she
3. knows when to come in.
4. MR. WALLACE: Ms. Hernandez is a lawyer on the
5. defendant's team, and if she's watching the case, that is
6. different than a fact witness.
7. THE COURT: All right. So we are good on that.
8. MR. WALLACE: Thank you for the clarification.
10. (Whereupon, there is a discussion held off the
11. record, at the bench, among the Court and all Counsel.)
12. THE COURT OFFICER: Is the court ready for the
13. witness?
14. THE COURT: We're ready.
16. MS. HERNANDEZ: Good afternoon, your Honor.
17. THE COURT: Good afternoon.
18. (Whereupon, the witness stepped into the witness
19. stand.)
20. THE COURT OFFICER: Please 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?

Proceedings
Donald Trump November 27, 2023

### Question 1
- Q: And where did you work after you left AON?
- A: The Trump Organization.

### Question 2
- Q: What was your title when you began at The Trump Organization?
- A: Senior financial analyst.

### Question 3
- Q: What were your responsibilities as a senior financial analyst?
- A: Um, I worked on the insurance renewals and the, um, golf course financials and operations.

### Question 4
- Q: And what was your intention in maintaining and updating the spreadsheet?
- A: I gathered information and inputted it into multiple spreadsheets. I think there was a fifth spreadsheet, um, and then any of the backup information that was used for those spreadsheets.

### Question 5
- Q: Why did you become involved?
- A: Yes.

### Question 6
- Q: And when did you start working at The Trump Organization?

### Question 7
- Q: And what year did you start working at The Trump Organization?

### Question 8
- Q: And what did you expect them to learn by looking through the spreadsheet?
- A: Anybody who worked on the spreadsheet. Um, Jeff McConney, Allen Weisselberg, ultimately, the accounting firm.

### Question 9
- Q: And what was your role in preparing these Statements of Financial Condition?
- A: Vice president financial operations.

### Question 10
- Q: And what were your responsibilities as an assistant vice president of financial operations?
- A: Similar responsibilities, worked on insurance and the golf course financials. I worked on other projects. I did a lot.

### Question 11
- Q: And what position did you hold after associate?
- A: Assistant vice president of financial operations.

### Question 12
- Q: And what were your responsibilities as an assistant vice president?
- A: Similar, similar responsibilities; insurance, golf courses. I do a lot of things for the company.

### Question 13
- Q: Is that your current title at The Trump Organization?
- A: Yes.

### Question 14
- Q: And where did you work after you left AON?
- A: The Trump Organization.

### Question 15
- Q: What were your responsibilities as a senior financial analyst?
- A: Um, I worked on the insurance renewals and the, um, golf course financials and operations.

### Question 16
- Q: And what were your responsibilities as an associate?
- A: Associate.

### Question 17
- Q: And what year did you start working at The Trump Organization?

### Question 18
- Q: And what position did you hold after assistant vice president?
- A: Assistant vice president of financial operations.

### Question 19
- Q: And what were your responsibilities as an assistant vice president?
- A: Similar responsibilities, worked on insurance and the golf course financials. I worked on other projects. I did a lot.

### Question 20
- Q: And what position did you hold after associate?
- A: Assistant vice president of financial operations.

### Question 21
- Q: And what were your responsibilities as an assistant vice president?
- A: Similar, similar responsibilities; insurance, golf courses. I do a lot of things for the company.

### Question 22
- Q: Is that your current title at The Trump Organization?
- A: Yes.

### Question 23
- Q: And when did you get that title?
- A: About a year ago.

### Question 24
- Q: And what position did you hold after assistant vice president?
- A: Assistant vice president of financial operations.

### Question 25
- Q: And what were your responsibilities as an assistant vice president?
- A: Similar responsibilities, worked on insurance and the golf course financials. I worked on other projects. I did a lot.

### Question 26
- Q: Is that your current title at The Trump Organization?
- A: Yes.

### Question 27
- Q: And where did you work after you left AON?
- A: The Trump Organization.

### Question 28
- Q: What were your responsibilities as a senior financial analyst?
- A: Um, I worked on the insurance renewals and the, um, golf course financials and operations.

### Question 29
- Q: And what were your responsibilities as an associate?
- A: Associate.

### Question 30
- Q: And what year did you start working at The Trump Organization?

### Question 31
- Q: And what position did you hold after assistant vice president?
- A: Assistant vice president of financial operations.

### Question 32
- Q: And what were your responsibilities as an assistant vice president?
- A: Similar responsibilities, worked on insurance and the golf course financials. I worked on other projects. I did a lot.

### Question 33
- Q: And what position did you hold after assistant vice president?
- A: Assistant vice president of financial operations.

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- A: Similar responsibilities, worked on insurance and the golf course financials. I worked on other projects. I did a lot.

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- A: About a year ago.

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- Q: And what were your responsibilities as an associate?
- A: Associate.

### Question 43
- Q: And what year did you start working at The Trump Organization?

### Question 44
- Q: And what position did you hold after assistant vice president?
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### Question 46
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- Q: And when did you get that title?
- A: About a year ago.

### Question 50
- Q: And what position did you hold after assistant vice president?
- A: Assistant vice president of financial operations.

### Question 51
- Q: And what were your responsibilities as an assistant vice president?
- A: Similar responsibilities, worked on insurance and the golf course financials. I worked on other projects. I did a lot.
Q. So very generally, what sort of information would you have included in that supporting data spreadsheet?
A. It depends on the asset. It depends on the year. In general, financial statement information, income statements, balance sheets, square footage information, value of residential unit information.

Q. And then you mentioned in a previous answer that you would send Mazars the backup, can you describe what you mean with when you say, "the backup"?
A. There is backup for the information on the supporting data spreadsheet for all of the assets and liabilities. Basically indicates where the information was from and what information was used.

Q. And that's the information used throughout the supporting data spreadsheet?
A. Yes.

Q. And how would that normally be divided, backup?
A. It would be divided by asset.

Q. Can you please describe your interface with Mazars on the Statement of Financial Condition?
A. Usually in the last month of working on the Statement of Financial Condition we would begin sending information to Mazars, supporting data spreadsheet drafts, any backup to the supporting data spreadsheet, any other spreadsheet. The Word doc that ultimately became the Statement of Financial Condition would be sent to Mazars.

Mazars would call with questions, reach out to us with questions. There was back and forth in that final month, generally.

Q. Thank you. And who at Mazars would you normally speak to about the statement?
A. Donald Bender and Jenn Safron.

Q. So you mentioned follow-up questions Mazars would ask. Did they ever ask you about appraisals that were not utilized in the Statement of Financial Condition?
A. Not that I can recall.

Q. And did they ever ask you to change the methodology that a property was valued by?
A. Not that I can recall.

MS. HERNANDEZ: Okay. So I am going to pull up what has already been admitted into evidence as PX758.

Q. Do you recognize this document, Mr. Birney?
A. Yes.

Q. What is it?
A. It is a version of the Statement of Financial Condition supporting data spreadsheet for 2017.

Q. And does this appear to be the final version for 2017?
A. I don't know that.

Q. Do you see in column E? What would those numbers indicate there?
A. I believe those numbers are from Mazars.

Q. So would this appear to be the spreadsheet that Mazars checked for 2017?
MR. HAREN: Objection as to "checked."

THE COURT: I am sorry.

MR. HAREN: Objection as to the word "checked."

THE COURT: Do you have a different word?

MR. HAREN: I think she is trying to establish whether this was or was not the final version and whether the numbers on the spreadsheet indicate that Mazars processed -- processed it in some way.

But whether Mazars did some kind of process that resulted in those numbers is not the same as Mazars checking the numbers, so.

MS. HERNANDEZ: I am happy to change it to processed.

Q. Does this appear to be the spreadsheet that Mazars processed?
A. It appears to be a spreadsheet that -- a spreadsheet that Mazars processed.

Q. Okay. And so I am going to take you to row 30 of the spreadsheet.

Can you tell me a little bit about Trump Tower?
A. As it relates to the spreadsheet?
THE COURT: Let's start with did, rather than wouldn.
Q Did you look at the previous year's Statement of Financial Condition?
MR. WALLACE: Objection, leading.
MS. HERNANDEZ: You tricked me there, Kevin.
THE COURT: It is leading, sorry. We led you down the wrong path.
MS. HERNANDEZ: We did, right.
Q How did the previous year's Statement of Financial Condition play into the process for creating or maintaining and updating the spreadsheet for a new year?
A My process would have started by doing what we did in the previous year. So obtaining the same sort of information.
And as we are looking at 2017, right?
Q Correct.
A I would have had the backup for 2016, because I worked on that statement, and I probably would have looked at the same backup for 2016 and requested that for the updated year.
Q So it would build upon each other every year?
A Generally, yes.
MS. HERNANDEZ: And so, for Trump Tower I am going to pull up what has been premarked in evidence as PX-761.

Q Do you recognize this document, Mr. Birney?
THE COURT: While he is looking, is this in evidence?
MS. HERNANDEZ: Not yet.
THE COURT: Not yet. Okay.
A Yes.
Q What is this document?
A The backup to the 2017 Trump Tower commercial valuation, the backup to the information in the supporting data spreadsheet.
Q Would you -- is this the information you would have sent to Mazars?
A This is the information that was sent to Mazars.
MS. HERNANDEZ: Your Honor, I would like to move Plaintiff's Exhibit 761 into evidence.
THE COURT: Granted, it is in.
(Whereupon, the document referred to was deemed marked for evidence as Plaintiff's Exhibit 761 by the Court.)
Q So whose handwriting is this on the first page, Mr. Birney?
A Mine.
Q And what is the first page of this document?
A It is an income statement for the year ending December 31, 2016 for Trump Tower Commercial LLC.
Q And why would you have sent this to Mazars?
A Because it is the backup for the number -- for the numbers that were used on the supporting data spreadsheet.
Q And who would have done this adding tape in the middle of the document?
A I think I did.
Q And why would you have done that?
A To indicate the calculations that were made.
Q And what calculations are these?
A The top one is for, it looks like average security cost without excessive security due to political campaign.
The next one is for operating expenses.
Q So why did you have to do that, average security cost for this year?
A Because I was told to.
MS. HERNANDEZ: Okay. And if we could go to page four.
Q What is this document? Or what is this page of the document?
A It looks like it indicates the Trump Tower campaign lease information.
Q And what role did this play in the 2017 value?
A Can you show the spreadsheet back on the screen?
Q Sure.
MS. HERNANDEZ: Okay. And so I am going to pull up what has been premarked as D-1056.

THE COURT: Five-minute warning.

MS. HERNANDEZ: Thank you, Your Honor.

(Handing)

Q Do you recognize this document, Mr. Birney?

A Yes.

Q And what is this document?

A It is the backup to the supporting data spreadsheet for the Niketown asset for 2017.

Q And this would have -- would this have been sent to Mazars?

A This was sent to Mazars.

MS. HERNANDEZ: Your Honor, I would like to move what has been premarked has Defendant's Exhibit 1056 into evidence.

THE COURT: Granted, it is in.

(Whereupon, the document referred to was deemed marked for evidence as Defendant's Exhibit 1056 by the Court.)

Q So, what are the first -- what is the first page of this document, this backup?

A It is a lease summary for the Nike lease.

Q And going to page two, who would have done the highlights and stars on this page?

MS. HERNANDEZ: That's a good stopping place for me today, Your Honor.

THE COURT: You are not finished with the witness but it is a good stopping place?

MS. HERNANDEZ: Yes, sir.

THE COURT: Okay. We will see you all 10:00 tomorrow.

MS. FAHERTY: Do you want to instruct the witness, Your Honor?

THE COURT: I instruct the witness not to discuss this case or his testimony or anything related to it during the evening break while you are still a witness.

Thank you.

(Whereupon, the trial stood adjourned to November 28, 2023 at 10:00 a.m.)
B

baby (1) 5176:8
Bachor's (1) 5119:15
back (54) 5135:20,5165:5,18; 5151:3,13;1565:14,15,16;1681:21; 5173:16,5176:5; 5178:11,14;5182:9; 5188:1,4,5,5,7; 5191:12,14;5192:3,4; 5196:21,23;5197:14; 5209:5,5213:18; 5214:6,5216:6,7,8; 5218:8,5219:16; 5224:4,5226:23; 5234:10,5242:4; 5254:12,5255:16; 5258:7,5259:10,11; 5274:20,5277:11; 5283:12,5288:2; 5289:11,5290:21; 5309:3,5314:24
background (8) 5119:10,12,5123:21; 5126:5,5138:2; 5148:18,5149:4; 5303:12
backup (17) 5145:14,5306:15; 5308:9,10,17,23; 5311:20,5312:17; 19,5313:9,10,5314:3; 5315:15,5317:9,22
bad (1) 5188:4
balance (14) 5134:13,5143:10; 5171:19,5181:22; 5190:24,5191:3,4,10; 5193:7,5192:5,4586:2,7,14;5308:5
banking (2) 5174:19,5275:10
Bankruptcy (2) 5297:2,5299:5
banks (1) 5125:12
Bank's (8) 5264:24,5266:25,25; 5267:4,5268:3,14; 5270:11,5279:17
bar (1) 5302:9
Barbara (4) 5230:3,25,5243:4; 5280:8
Bartov (2) 5276:12,22
B-A-R-T-O-V (1) 5276:12
basic (2) 5120:11,5137:8
basically (4) 5150:2,5206:3; 5301:3,5308:12
basis (19) 5134:20,5149:11,12; 5176:18,5185:3; 5198:15,5206:12; 5207:7,5210:20; 5212:6,5213:2; 5215:25,5219:17,18; 5255:21,5256:1; 5277:22,5291:14
BDO (3) 5152:15,5159:7,8
became (7) 5123:3,5124:22; 5139:24,5158:2; 5181:9,5308:25
become (7) 5174:10,5181:17; 5217:10,13,5287:12; 5305:10,13
Bedminster (1) 5117:14
began (1) 5304:3
begin (1) 5308:22
behave (12) 5142:24,5144:6; 5152:6,5153:21,23; 5165:4,5208:2; 5223:12,5226:12; 5232:20,5291:18; 5303:1
below (5) 5197:24,25,5205:16; 5212:1,5299:22
Bench (2) 5116:12,5302:11
Bender (7) 5142:17,18,23,25; 5143:20,5144:18; 5309:7
benefit (1) 5133:11
Besides (1) 5243:6
best (2) 5140:8,5162:6
better (6) 5131:14,5133:4; 5134:7,5146:14; 5167:12,5168:24
big (1) 5246:10
billion (3) 5172:3,5206:9; 5218:12
billions (1) 5288:9
bills (2) 5137:4,9
Birney (12) 5275:8,5277:1; 5301:20,22,5303:6,12; 5309:17,5313:2,22;
5315:14,23,5317:6
bit (8) 5135:9,5146:16; 5148:16,5264:7; 5276:9,5310:24; 5311:1,5316:17
blank (1) 5291:9
blowers (1) 5290:25
Board (5) 5125:21,22,24,25; 5126:2
boarding (2) 5148:12,13
boca (1) 5162:14
book (2) 5133:21,5134:9
booked (2) 5134:3,17
booking (1) 5149:21
books (11) 5120:14,5127:8; 5131:6,7,5133:19; 5134:8,13,5147:17,23; 5149:10,5150:15
boring (1) 5132:13
borrowers (1) 5171:6
borrower's (2) 5164:3,5198:12
borrowing (3) 5163:15,5165:3; 5271:1
both (12) 5120:8,5146:15,16; 5147:16,5152:15; 5155:19,5159:12; 5172:13,5234:9; 5239:12,5318:22,22
bottom (7) 5194:25,5197:12; 5200:20,5264:16,17; 5318:11,14
box (1) 5152:10
Bracewell (3) 5230:16,16,5280:16
Brand (4) 5211:5,15,24,5241:6
Bravlik (2) 5275:10,13
break (16)
null
| D1048-4 (1) | 5221:25 | D-1054 (6) | 5151:22;5161:4,11,14;5170:25;5250:7 |
| D-1055 (3) | 5182:1;5196:13;5254:1 | D-1056 (1) | 5317:2 | dancing (1) | 5184:6 |
| Danziger (3) | 5127:17;5128:11,18 | dash (2) | 5199:16,16 | data (26) | 5223:15;5238:24;5305:23;5306:12,17,18,22;5307:4;5308:2,11,15,23,24;5309:21;5313:10;5314:4;5315:4,5,6,7,22;5316:6;5317:9;5318:8,17,25 |
| date (5) | 5155:22,22;5228:4;5267:23;5270:12 | dated (2) | 5261:2;5267:8 | dates (2) | 5229:15;5255:15 |
| day (3) | 5188:5;5195:21;5276:2 | day-to-day (6) | 5130:14,18,18,21;5132:11;5136:19 | DC (1) | 5247:12 |
| DD (2) | 5255:2 | DD-2 (2) | 5214:19;5215:2 | DD-3 (3) | 5223:23;5224:3;5271:12 |
| de (3) | 5184:15;5188:15;5289:18 | dead (1) | 5184:12 | deal (4) | 5158:16;5167:20;5168:20;5177:23 |
| dealing (4) | 5125:12,12,13;5199:12 | deals (1) | 5126:12 | dealt (2) | 5125:19;5142:14 | debts (1) |

5134:9 | 5179:11;5264:20 | depth (1) | 5232:24 |
| debt | 5121:22;5125:6;5126:11;5144:3;5154:20;5160:20,21;5179:2;5200:22;5201:3 | derived | 5179:23 |
| defined | 5180:17 | derives | 5179:24 |
| December | 5153:8;5172:6,21;5175:15;5181:4,20;5182:14;5183:10,17;5190:22;5193:24;5218:14;5215:15;5228:7,8,24;5255:23;5267:20;5268:5;5311:18;5314:1 | described | 5129:6;5204:21;5268:21 |
| decentralized | 5130:11 | description | 5134:11;5175:20 | designated | 5174:8 |
| decide | 5123:16;5189:20;5243:24;5301:9 | decisions | 5162:19 | designee | 5184:21 |
| decision | 5272:16,19,21,24;5280:4;5295:5;5296:4 | demonstrates | 5156:15 | designees | 5233:15,21 |
| demonstrating | 5246:8;5248:22;5249:11 | demonstrating | 5164:13 | determination | 5270:9 |
| Defendant | 5171:22;5303:2 | demonstrative | 5124:21;5161:4,9,12,24;5167:24,25;5168:6,11;5214:20;5215:2,14;5216:11;5223:22;5224:3;5225:5;5226:25;5271:12 | determinate | 5179:21;5180:24,24;5250:24:16 |
| Defendants | 5116:11;5117:13;5119:8,9;5164:5;5165:7;5243:21;5274:25;5292:24;5293:1,21 | demonstrating | 5164:13 | determining | 5270:9 |
| Defendant's | 5170:12;5194:19;5198:3,7,23;5199:6;5200:2;5202:8,14;5203:16,20;5206:18;5207:9;5210:22;5211:2,7,11;5222:6,11,14,16,24;5223:4,23;5225:23;5226:25;5227:5;5228:12;5243:3,6;5270:20;5289:16,5192:17,21 | development | 5209:23 | difference | 5229:16 |
| defined | 5225:14;5235:11;5280:21;5301:19 | different | 5210:20;22;5211:17;5212:9;5134:18,18;5148:2;5151:4 | differences | 5235:23;5158:15,18;5159:16;5228:3;5229:12,13 |
| December | 5158:16;5167:20,21;5179:2;5200:22;5201:3 | described | 5129:6;5204:21;5268:21 | described | 5129:6;5204:21;5268:21 |
| defined | 5225:14;5235:11;5280:21;5301:19 | different | 5210:20;22;5211:17;5212:9;5134:18,18;5148:2;5151:4 |

5155:22;5158:19;5159:18;5163:11;5174:12;5176:16;5229:15;5240:14;5266:8;5297:18;5302:6;5310:8 | digital | 5170:7 |
| diligence | 5140:7;5296:22 | diligent | 5285:22 | diligently | 5233:4;5236:5 |
| DIRECT | 5119:4;5125:23 | director | 5120:16;5121:5,16,18;5246:25;5247:5,7,8,15 |
| directors | 5126:3 | 
| disagree | 5234:20;5284:14;5288:14 | 5292:8;5296:11 |
| disagreement | 5263:15,17;5264:10,11 |
| disagreements | 5301:8 | 
| disbursement | 5137:19 |
| disbursements | 5137:3;4;5138:6,11;5139:17 |
| disclaiming | 5289:19 | 
| disclose | 5284:18 |
| disclosed | 5174:9;5283:7;5286:25 |
| disclosing | 5144:25;5285:23 |
| disclosure | 5123:8;5163:17;5164:23;5287:7,21;5290:20 |
| disclosures | 5145:1;5273:4;5281:16;5293:2,5 |
| discourse | 5108:1 |
managers (1) 5131:1
Manhattan (2) 5315:17,17
manner (4) 5223:10,15,18; 5226:17
manual (1) 5289:12
many (6) 5150:18;5151:13; 5166:22;5191:12; 5289:8,16
Mar-a-Lago (1) 5277:19
margin (1) 5212:5
Mark (6) 5118:12;21:5139:1; 5161:11;5246:3; 5259:13
marked (24) 5170:12;5182:1; 5202:8;13;5210:22; 5211:11;5214:19; 5215:2;5218:1; 5222:11,14;5223:4;22; 5225:22;5227:5;25; 5256:6;5259:21; 5265:25;5270:18; 5280:25;5313:19; 5317:19
market (1) 5316:6
marketing (1) 5129:12
marking (1) 5161:9
Master’s (1) 5119:15
material (15) 5261:23;5273:1,8; 5281:12;21;5282:18; 21;21;5285:6;17; 5286:4;23;5287:23; 5290:5;5292:13
materiality (5) 5285:21;5287:22; 5288:8;5290:23; 5292:10
materially (1) 5143:6;5146:10; 5152:8;5153:17; 5154:14;5155:23; 5290:5;5292:13
mean (25) 5222:3;5225:8,8,20; 5216:5;5132:8;5134:6; 5143:6;5146:25; 5147:11;5148:13; 5149:3;5184:10,11; 5186:3;5205:24; 5248:22;5265:15; 5266:6;5297:17,20; 5300:17;5301:8,9; 5308:8
mean (8) 5121:14;5123:22; 5130:2;5135:7; 5157:18;5205:4; 5233:21
manipulate (1) 5172:16
maturity (1) 5172:16
May (27) 5128:10;5134:19; 5136:16;5167:14; 5180:16;5189:14; 5190:19;5195:9; 5201:20;5219:15; 5224:11,10;5225:12; 5228:6;5234:22; 5242:2;5246:10; 5247:12;5256:16; 5257:10;5275:12; 5276:20;5277:2,23; 5287:20;5290:23
maybe (12) 5120:24;5134:17; 5136:13;5137:13; 5151:6;5169:9;5188:7; 5190:9;5239:1; 5262:16;5264:1; 5299:10
Mazars (68) 5142:5,5,7,8,15,25; 5143:24;5144:9,11,15; 22,1545:4,9,16,19; 5147:3;5148:2,5150:2; 6,22;5151:4,6,18; 5153:13,19,22;5154:6, 10;12;5155:7,17; 5156:5,17;20;5164:15; 5167:4;5200:8; 5222:2;5226:20; 5229:19;5239:15,20; 5240:1;5253:4,10,15; 23;5291:17;5308:8,19; 5320:9,12,5,8; 5310:2,4,11,13,14,18; 21;5313:13,14,5314:2; 5317:12,13
McConney (14) 5136:3;5175:14,17; 5194:23;5195:23; 5196:25;5197:16; 5244:20;5246:19; 5305:14,20;5306:3; 5307:7;5311:17
measured (1) 5131:1
Michigan (1) 5117:24
microphone (2) 5170:17;5275:16
middle (2) 5277:10;5314:6
midtown (1) 5315:17
might (7) 5121:18;5126:10; 5148:9;5321:4;5325:4; 5292:11;5300:20
million (25) 5171:20;5175:5,5; 5181:23;23,24; 5183:16;5190:22,24; 5191:19;5197:2,24,25; 5206:6,10,15;5208:20; 5218:3;5219:5,8,11,24; 25;5224:11;5299:23
mind (7) 5161:8;5168:12; 5196:9;5221:6; 5234:14;5235:4; 5255:10
Mine (1) 5313:23
minimal (1) 5277:13
minimum (3) 5206:15;5269:16,21
minor (1) 5298:5
minute (5) 5142:4;5156:1; 5182:8;5188:4; 5236:14
minutes (6) 5133:7;5236:17,18; 22;5242:11;5274:15
misleading (4) 5290:6;5293:24; 5296:13,24
Mm-hmm (1) 5258:13
modern (1) 5135:6
modernize (3) 5133:9;5137:14; 5139:6
modified (1) 5263:6
modify (1) 5264:18
Mooes (2) 5276:4,7
M-O-E-N-S (1) 5239:10
November 27, 2023

Min-U-Script®

Ny Supreme Court- Civil

(16) love - moments

68 of 316
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NYS Attorney General v.

MORIAN (2)
5117:17,19
MORIAN (2)
5117:17,19
morning (6)
5119:2,6,7;5224:7;
5275:13;5267:11
most (6)
5120:11;5241:7,19;
5255:2;5286:10;
5287:16
Mostly (2)
5271:19,20
motion (1)
5232:18
movements (1)
5278:8
move (24)
5156:11;5159:7;
5161:3;5168:2;24;
5196:14;7;5198:17;
5200:2;5203:16;
5205:2;5207:9;5209:9;
5211:7;5222:6;24;
5226:25;5227:20;
5265:19;5266:7;
5270:14;5290:9;
5313:15;5317:14
moving (4)
5155:5;5156:25;
5157:23;5266:5
mower (1)
5292:18
mowers (1)
5290:25
much (17)
5134:13;5149:15;
5156:22;24;5161:15;
20;5172:22;5179:16;
18;5180:22;5209:20;
5251:10;5297:5;9;
5288:1;10;5298:21;
5305:25
multiple (3)
5167:20;20;5306:9
multiplication (1)
5289:2
must (2)
5179:20;5269:10
mutual (6)
5233:25;5234:8,8;
5235:1;5285:20;21
myself (10)
5136:13;5144:13;
5148:19;5169:4;
5201:19;5202:18;
5211:4;5230:17;
5232:19;5255:9

N

name (8)
5118:19,21;5131:16;
5158:25;5188:19;
5247:3,4;5303:5
named (7)
5127:17;5146:24;
5152:14;5158:8;
5164:5;5171:5;
5249:18
Nate (5)
5281:5;5315:11,10,
19;5318:21
National (2)
5153:16;5223:25
naturally (1)
5185:23
necessarily (5)
5125:14;5126:14;
5147:10;5149:22;
5265:10
necessary (2)
5159:5;5180:25
need (33)
5121:18;5138:16;
24;5148:6;5167:14;
5176:6;5177:21;
5179:7,10;5180:11,
23;5188:14;5190:4;
5193:9;5231:17;
5234:1,5;5240:6;
5243:13;5252:10;
5262:4;17;5274:13,14;
5277:11;5289:20;
5298:7;50:20;30:5
needed (16)
5124:21;5132:2;
5141:13;5144:4;
5145:6;5146:11;
5151:2;5155:17;
5158:13;5159:25;
5166:17;5167:1;
5191:14;5224:25;
5291:11;15
needing (3)
5158:13;5159:25;
5166:17;5167:1;
5191:14;5224:25;
5291:11;15
need (33)
5121:18;5138:16;
24;5148:6;5167:14;
5176:6;5177:21;
5179:7,10;5180:11,
23;5188:14;5190:4;
5193:9;5231:17;
5234:1,5;5240:6;
5243:13;5252:10;
5262:4;17;5274:13,14;
5277:11;5289:20;
5298:7;50:20;30:5
needed (16)
5124:21;5132:2;
5141:13;5144:4;
5145:6;5146:11;
5151:2;5155:17;
5158:13;5159:25;
5166:17;5167:1;
5191:14;5224:25;
5291:11;15
needing (3)
5158:13;5159:25;
5166:17;5167:1;
5191:14;5224:25;
5291:11;15
needs (6)
5121:17;5174:13;
5178:22;5186:21;
5243:13;5298:9
negative (2)
5240:11;18
never (1)
5262:10
net (26)
5171:25;5172:3;
5179:5;24;5183:3;
5204:3;5206:7,9,15;
5208:19,20;5210:16;
5218:10,12;5219:8,10,
24;5224:11;5269:16;
21;5270:4;5291:7;
5298:23;5299:22;
5311:10;5316:21
nevertheless (1)
5257:15
NEW (32)

NYS Supreme Court - Civil

November 27, 2023

(17) Monday - Objection
5231:5,19;5232:8; 5234:7,19,25;5248:25; 5249:1;5262:24; 5265:22;5267:6; 5277:20;5278:11; 5280:22;5310:5,7; 5311:24;5312:5; 5318:1,12

objections (3) 5277:17,23;5278:9

obligated (4) 5220:13,14,18; 5254:24

obligation (17) 5179:15;5204:6; 5257:14;5258:20; 5259:12;5262:22; 5263:14;5264:18,25; 5265:3;5267:10; 5268:2,16;5270:1; 5272:1,8;5284:15

observation (4) 5236:5;5238:18; 5282:17;5283:18

observations (11) 5235:7;5236:3; 5273:4;5281:16; 5282:7;5290:7;5293:3; 9,13;5296:5,9

observed (6) 5282:9,13;5290:7;5293:3; 5273:4;5281:16; 5282:7;5290:7;5293:3; 9,13;5296:5,9

off (11) 5174:14,23;5175:3;
Min-U-Script®

Ny Supreme Court- Civil (20) plead - property

5117:9;5157:7,12;18,5251:14,5252:5,17;5289:6
plead (1) 5300:8
pleading (1) 5300:7

Please (28)
5118:14,18;5119:12;5152:1,5165:14;18,5188:2;5190:20;5196:21,22;5198:23;5211:13,25;5214:22;5216:6,7;5242:25;5244:13,6;5268:10;5274:21,5278:20;5292:23;5302:20;5303:4,8,5306:20;5308:19;5311:8,15

PLLC (3)
5117:3,8,17

plow (1)
5292:18

pm (1)
5195:4

podium (1)
5243:2

point (38)

pointed (1)
5185:5

points (6)
5189:7,5210:20;5212:6,5213:2,5290:8;5292:5

policies (1)
5147:18

policy (2)
5286:11,16

political (1)
5314:12

portfolio (11)
5128:14,5129:15;5134:15,5136:6;5143:5,5157:14;5192:12,5216:21;5241:11,5242:5,7

portion (2)
5272:16,5296:4

portions (1)
5280:3

position (15)
5128:8,5157:15;5241:3,5247:5;5266:25,5267:1,4;5268:14,5270:8,11;5279:17,5303:18;5304:14,20,5305:1

positive (1)
5240:12

possibility (2)
5243:12,5287:13

possibly (1)
5285:23

Post (16)
5155:5,10,15;5158:11,5160:12;5164:9,5165:23;5204:22;5205:21;5224:15,17,5262:1,13;5227:18,5228:5;5229:16

potentially (2)
5120:15,5278:12

pounding (1)
5298:12

practical (1)
5205:24

practice (7)
5120:7,5122:17;5127:7,5138:9,5147:7;5191:7;5289:16

practices (5)
5132:5,5133:4;5147:19,5292:24;5293:3

practicing (1)
5144:20

preclude (4)
5185:24,5243:5;5297:10,5299:3

precluded (1)
5185:1

predate (1)
5250:16

preliminary (3)
5273:3,5278:8;5281:15

premarked (3)
5312:24,5317:2,15

preparation (22)
5139:21,5147:5;5152:25,5153:1;5189:3,5191:25;5200:8,5203:5,5215:9;5216:24,5221:20;5223:7,5224:5,5226:8;5245:12,5253:3,9,23;5254:8,5255:8,5305:10,5306:2

prepare (10)
5151:17,5153:22

preparing (11)
5168:19,5189:4;5255:6,5257:8;5258:14,5268:1;5271:7,517,5306:7

present (9)
5185:2,5203:14;5222:3,5223:15,16;5226:15,5230:18;5280:11,5298:8

presented (6)
5152:18,5154:24;5194:19,5198:16,18;5223:18

presenting (1)
5214:14

president (15)

presiding (2)
5118:3,5242:24

press (1)
5118:6

pretty (4)
5156:22,5197:13;5233:25,5276:24

previous (10)
5133:20,5165:20;5203:8,5307:1,5308:7;5311:20,5312:3,10,14

previously (10)
5138:3,5147:3;5150:14,19,5156:12;5202:20,5220:11

proceed (4)
5119:1,5190:19;5278:20,5303:8

proceeding (2)
5187:6,5299:7

proceedings (8)
5140:14,5187:7,5237:10,5274:19;5284:21,5297:4;5301:22,5302:2

process (14)
5148:11,20,5166:25;5193:16,18,5222:2;5233:2,5250:22,24;5296:18,5305:20;5310:13,5312:11,13

processed (5)
5110:12,17,19,21,23

processes (2)
5139:5,5249:21

procured (1)
5171:1

produced (2)
5170:25,5269:2

professional (2)
5119:10,23

prohibition (1)
5301:25

project (8)
5135:2,11,5139:7,5245:5,5249:14,17,20;5294:14

projects (3)
5132:20,5133:23;5304:18

promoted (2)
5122:7,5128:11

prong (1)
5196:7

prongs (1)
5204:19

pronounce (1)
5167:16

pronounced (1)
5154:25

pronouncements (1)
5144:23

pronunciation (1)
5167:13

proper (2)
5162:23,5176:19

properly (2)
5144:25,5145:1

properties (27)
5130:21,5131:2,13;5143:13,14,18;5146:11,21,5152:8;5158:16,17,5159:10;5160:8,5166:20;5171:10,12,5173:4;5192:22,5224:14;5242:1,5251:12;5252:1,18,21,25;5253:8,5289:5

property (31)
5130:3,5131:8;5133:18,22,5144:1,2,4;5142:15,5155:3,4;
Ny Supreme Court- Civil

(21) proposal - referenced

November 27, 2023

Min-U-Script®

73 of 316
Ny Supreme Court-Civil

(22) referencing - responsibilities

Min-U-Script®
Minnesota Supreme Court: Civil (23) responsibility - screen

(23) responsibility - screen
<table>
<thead>
<tr>
<th>year (72)</th>
<th>0</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 (1)</td>
<td>5254:19</td>
</tr>
<tr>
<td>07921 (1)</td>
<td>5117:14</td>
</tr>
<tr>
<td>1,652,847 (1)</td>
<td>5318:22</td>
</tr>
<tr>
<td>1,702,432 (1)</td>
<td>5318:23</td>
</tr>
<tr>
<td>1.25 (1)</td>
<td>5212:6</td>
</tr>
<tr>
<td>10 (11)</td>
<td>5207:15,5208:18;5213:4,5214:5,5219:3,4,7,22,5224:11;5225:6,16,19:29</td>
</tr>
<tr>
<td>10:00 (2)</td>
<td>5319:6,15</td>
</tr>
<tr>
<td>100 (3)</td>
<td>5172:2,5182:9;5219:6</td>
</tr>
<tr>
<td>10005 (1)</td>
<td>5116:22</td>
</tr>
<tr>
<td>10007 (1)</td>
<td>5116:14</td>
</tr>
<tr>
<td>10022 (3)</td>
<td>5117:23,5118:24;5303:7</td>
</tr>
<tr>
<td>101 (1)</td>
<td>5117:4</td>
</tr>
<tr>
<td>1046 (3)</td>
<td>5210:22,5211:8,11</td>
</tr>
<tr>
<td>1047 (4)</td>
<td>5198:23,5199:6;5200:3,5207:20</td>
</tr>
<tr>
<td>1047-2 (2)</td>
<td>5199:14,5200:7</td>
</tr>
<tr>
<td>1048 (3)</td>
<td>5219:1,5222:7,11</td>
</tr>
<tr>
<td>1049 (5)</td>
<td>5225:14,23,5227:1,5328:12</td>
</tr>
<tr>
<td>1050 (2)</td>
<td>5206:18,5207:10</td>
</tr>
<tr>
<td>1051 (4)</td>
<td>5202:8,14,5203:17,20</td>
</tr>
<tr>
<td>1052 (4)</td>
<td>5222:14,17,24;5223:4</td>
</tr>
<tr>
<td>1054 (1)</td>
<td>5170:12</td>
</tr>
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<td>1055 (4)</td>
<td>5170:12</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
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</thead>
<tbody>
<tr>
<td>5198 (1)</td>
<td>5202:8,14,5203:17,20</td>
</tr>
<tr>
<td>1050 (2)</td>
<td>5206:18,5207:10</td>
</tr>
<tr>
<td>1051 (4)</td>
<td>5202:8,14,5203:17,20</td>
</tr>
<tr>
<td>1052 (4)</td>
<td>5222:14,17,24;5223:4</td>
</tr>
<tr>
<td>1054 (1)</td>
<td>5170:12</td>
</tr>
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<td>5170:12</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>world (1)</th>
<th>5246:8</th>
</tr>
</thead>
<tbody>
<tr>
<td>5198 (1)</td>
<td>5202:8,14,5203:17,20</td>
</tr>
<tr>
<td>1050 (2)</td>
<td>5206:18,5207:10</td>
</tr>
<tr>
<td>1051 (4)</td>
<td>5202:8,14,5203:17,20</td>
</tr>
<tr>
<td>1052 (4)</td>
<td>5222:14,17,24;5223:4</td>
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<td>1054 (1)</td>
<td>5170:12</td>
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<td>1055 (4)</td>
<td>5170:12</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>worry (3)</th>
<th>5155:25,5221:5,5301:8</th>
</tr>
</thead>
<tbody>
<tr>
<td>529 (9)</td>
<td>5316:3</td>
</tr>
<tr>
<td>2:15 (2)</td>
<td>5242:14,19</td>
</tr>
<tr>
<td>20 (2)</td>
<td>5128:5,5247:8</td>
</tr>
<tr>
<td>2000 (5)</td>
<td>5119:16,5120:2,4,5124:20</td>
</tr>
<tr>
<td>2002 (8)</td>
<td>5119:20,5120:4,5123:16,20,22;5123:1</td>
</tr>
<tr>
<td>2004 (7)</td>
<td>5122:24,5123:1,10,17,5124:6,11</td>
</tr>
<tr>
<td>2006 (2)</td>
<td>5124:11,15</td>
</tr>
<tr>
<td>2012 (2)</td>
<td>5217:25,5218:8</td>
</tr>
<tr>
<td>2013 (2)</td>
<td>5218:14,20</td>
</tr>
<tr>
<td>2014 (28)</td>
<td>5171:19,22,5172:2,4,6,21,5175:5,9,15;5176:9,5181:4,20;5182:14,5183:5,10,17;5189:1,5190:22;5191:16,5193:25;5194:8,10,5213:14,15;5215:7,5155:25,22;5283:10</td>
</tr>
<tr>
<td>2015 (13)</td>
<td>5152:22,5159:16;5194:24,5195:3;5198:10,5219:11,16,16;5201:25,5214:12;5224:10,5250:12</td>
</tr>
<tr>
<td>2016 (49)</td>
<td>5124:6,5127:10,11,12;21,22,5128:5,5142:10,5150:9,12;5151:3,5153:4,7,8,11,19;5154:5,14,5155:7,5157:1,20,5158:1,9,22;5159:23,5166:4;5169:25,5170:1;5173:6,5189:3,5191:7,9;5193:19,5250:17;5251:5,5254:12;5256:16,5257:10;5305:12,18,5306:2,5311:9,5312:19,19;5313:9,5314:23;5317:13,15</td>
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<td>Year</td>
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<td>2019</td>
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</tr>
</tbody>
</table>

Min-U-Script® Ny Supreme Court- Civil

(30) 2018 - 8th

82 of 316
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

Original File November 28 2023 Trump.txt
Min-U-Script® with Word Index
THE COURT OFFICER: All rise. Part 37 is now in session. The Honorable Judge Arthur Engoron presiding. Make sure all cell phones are on silent. Laptops and cell phones will be permitted, but only to members of the press. There's absolutely no recording or photography of any kind allowed in the courtroom. Now be seated and come to order.

THE COURT: Good morning everyone. So, defendants, I understand that you have a new witness and that Mr. Birney will be back to finish at a later time. Okay.

Would you like to call your new witness?

MR. SUAREZ: Good morning, your Honor. The defense calls Dave Williams of Deutsche Bank. And also in the courtroom today I would like to point out to the Court that Deutsche Bank's Counsel, David Zensky, is also here.

THE COURT: Okay. Thank you. Let's get the next witness.

THE COURT OFFICER: Witness entering.

(Whereupon, the witness stood.)

THE COURT OFFICER: Raise your right hand. (The witness complied.)

THE COURT OFFICER: Do you solemnly swear or affirm that any testimony you give will be the truth, the whole truth and nothing but the truth?

THE WITNESS: I do.


(Whereupon, the witness took the oath.)

THE COURT: Thank you. Please state your full name and home or business address for the record.

THE WITNESS: David Cosby Williams, 890 Hammocks Way, Edisto Island, South Carolina.

THE COURT: Mr. Williams, good morning.

BY MR. SUAREZ:

Q Mr. Williams, good morning.

A Good morning.

Q I'm JESUS Suarez. I represent certain of the defendants in this case.

Briefly, Mr. Williams, what is your educational background?

A I have an undergraduate degree in political science and a master's in business administration.

THE COURT: Did you take public speaking at all?

You have to speak much louder right into the mic. As close as possible.

THE WITNESS: I got you.

Q Are you employed at Deutsche Bank?

A Yes.

Q How long have you been employed at Deutsche Bank?
Donald J. Trump, et. al. November 28, 2023
Attorney General of the State of New York v.

Q    What is a "target market profile"?
A    "Target market profile" is largely subjective or is subject to the use of estimates.

Q    Why not?
A    Um, I don't believe that's possible.

Q    Calculate an individual's net worth to mathematical certainty?
A    It is largely subjective or is subject to the use of estimates.

Q    In underwriting a loan, is it possible for the bank to calculate an individual's net worth to mathematical certainty?
A    May be, but --

MR. WALLACE: Objection. Leading.

THE COURT: Okay. I think the question is sort of harmless, but --

MR. SUAREZ: Your Honor, I understand that I'm allowed to ask, with your Honor's permission, certain leading questions just to get the frame of reference going.

I'm not suggesting an answer, and he's free to elaborate.

It's not a yes or no question.

THE COURT: I think they are called preliminary questions that are leading, but accessible or introductory questions. I didn't think this was one of those. And I think this is all about nothing, but can you rephrase it somehow so that it's more of a general ask than, "isn't this the case?"

Q    What, if anything, does the underwriting process endeavor to do to calculate an individual's assets to a mathematical certainty?
A    Um, I don't believe that's possible.

Q    Why not?
A    I think an individual's net worth is, as it's reported, largely subjective or subject to the use of estimates.
**Donald J. Trump, et. al. November 28, 2023**

**Attorney General of the State of New York v.**

**INDEX NO. 452564/2022**

**RECEIVED NYSCEF: 01/04/2024**

<table>
<thead>
<tr>
<th>D. Williams - by Defense - Direct (Mr. Suarez)</th>
<th>Page 5328</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Q    What, if anything, do you do as a lender to make sure that the bank's view of asset values is appropriate in light of a client's self-reported asset values?</td>
<td>Page 5329</td>
</tr>
<tr>
<td>2 A    So as part of our due diligence and underwriting process, we subject clients' reported information through or to some adjustments to account for that.</td>
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</tr>
<tr>
<td>3 Q    How does the bank view adjustments that it makes to a client's stated asset values in the underwriting process?</td>
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<td>4 A    I'm sorry, can you repeat that.</td>
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<td>5 Q    Sure. How does the bank react to differences in the adjusted values of -- reached by the bank as opposed to those reported by the client?</td>
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<td>6 A    Again, it's part of our underwriting process. Um, it's a process that we apply to every client, um, regardless of what's reported.</td>
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<td>7 Q    Is a difference of opinion in asset values between the client and the bank a disqualifying factor to extend credit?</td>
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<td>8 A    No.</td>
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<td>9 Q    Why not?</td>
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<td>10 A    I think, again, it's -- it's a difference of opinion. Um, I think we expect, um, a clients provided information to be, um, accurate. At the same time, um, it's not an industry standard that these financial statements are audited. Um, they are largely relying on the use of estimates. Um, that said, we account for that and make some adjustments as a conservative measure.</td>
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</tr>
</tbody>
</table>

**MR. SUAREZ:** Could we please pull up pre-marked Exhibit D-66 for identification. (Whereupon, the exhibit was displayed on the screen.)

**THE COURT:** What does it mean to "make adjustments as a conservative measure"?

**MR. SUAREZ:** Well, again, I would say it's a factor of, um, the type of financial information that is, um, typically provided by, um, high net worth and ultrahigh net worth individuals. Um, again, we -- you go into it with the expectation or understanding that, um, there is a use of estimates, um, in the preparation of the financial statements.

**MR. SUAREZ:** We'll give you a hard copy right now. (The witness was handed the exhibit.)

Q  Mr. Williams, do you recognize this document?

A  Yes.

Q  What is this document?

A  Credit Risk Management Credit Guidelines for Private Wealth Management Americas, dated June of 2012.

MR. SUAREZ: If you could please turn to page 17 of this document. (Whereupon, the exhibit was displayed on the screen.)

Q  Which is page 17 of the exhibit, page 16 of the actual document.

**D. Williams - by Defense - Direct (Mr. Suarez) | Page 5330**

| 1 document. | |
| 2 A    Okay. | |
| 3 Q    And if I could direct your attention to the section that says "2.9 Commercial Real Estate." Are you familiar with this section? | |
| 4 A    Yes. | |
| 5 Q    Do you see where it says, "The commercial real estate lending team within PWM are considered commercial properties as collateral for borrowers short-term bridge financing needs, as well as longer term financing for up to ten years."

**THE COURT:** And then it goes onto list a client's eligibility criteria. And then it says, "Typical borrowers will have a net worth of over $50 million."

**THE COURT:** In both cases, loans will have recourse to one or more guarantors.

||
| 1 A    Yes. | |
| 2 Q    Did President Trump meet this criteria in connection with the loans obtained from Deutsche Bank? | |
| 3 A    Yes. | |
| 4 Q    And then it says, "Borrowers must have a proven successful track records" -- excuse me. "Borrowers must have proven successful track records in the US commercial real estate markets." Do you see that? | |

**THE COURT:** What, if any, view did Deutsche Bank have as to whether President Trump satisfied that criteria?

**MR. WALLACE:** Objection. Leading.

THE COURT: I feel like I have to sustain that. It's leading.

Q  Going on, there is a section that says "PWM commercial real estate lending may offer: Interim loan facilities for up to five years for the purpose of acquisition or repositioning a particular property." Do you see that?

A  Yes.

Q  Were the loans offered by the Wealth Management Division and guaranteed by President Trump consistent with that criteria?

A  He met this criteria.

Q  Going on, there is a section that says "PWM commercial real estate lending may offer: Interim loan facilities for up to five years for the purpose of acquisition or repositioning a particular property." Do you see that?

A  Yes.

Q  Then it goes onto say "Long term loan facilities for stabilized properties of up to eight years designed to give borrowers some flexibility when compared to traditional conduit financing." What does it mean "to give borrowers some flexibility when compared to traditional conduit financing"?

A  So "conduit financing" is nonrecourse financing. By
D. Williams - by Defense - Direct (Mr. Suarez)  Page 5332

1 that, I mean, generally speaking, no individual is signed on as a guarantor for the loan. Structures are a little bit more rigid in terms of prepayments, um, might be a little bit higher priced. Loan-to-value on the collateral may be slightly lower.

2 So within Wealth Management lending for commercial real estate transactions with a personal guaranty, we might offer more flexible terms in terms of all of those things, higher loan-to-value, better pricing, more flexibility in terms of repayment.

3 Q  And moving on to the "additional criteria." It says, "PWM lending will consider a maximum advance rate of up to 85 percent, depending upon term, loan covenants, property type, debt service, coverage ratios, and markets in which the property exists." Do you see that?

4 A    Yes.

5 Q    Which of any of those factors are determinative in the bank's decision to make a loan?

6 A    I'm sorry, can you repeat the question.

7 Q    Are any of those factors determinative of -- in the bank's decision to make the loan?

8 A    Yes, I would say those are all factors.

9 Q    Are they all factors that are considered by the bank in its underwriting process?

10 A    Yes.

11 Q    And do you see where it says, "It is anticipated that..."

D. Williams - by Defense - Direct (Mr. Suarez)  Page 5333

1 this program will appeal to those borrowers who are acquiring or repositioning non-stabilized properties)?

2 A    Yes.

3 Q    What, if any, view do you have as to whether the loans extended by the Wealth Management Division and guaranteed President Trump satisfied this criteria?

4 A    They satisfied this criteria.

5 MR. SUAREZ: Your Honor, I move Defendant's Exhibit 66 into evidence.

6 THE COURT: Granted. It's in.

7 (Defendant's Exhibit 66 was deemed marked and admitted in evidence.)

8 MR. SUAREZ: If we could please pull up pre-marked for identification Defendant's Exhibit 378.

9 (Whereupon, the exhibit was displayed on the screen.)

10 Q    Mr. Williams, do you recognize this document?

11 A    Yes.

12 Q    What is this document?


14 Q    Can you please turn to page 17 of this document, which is also page 17 of the exhibit?

15 (Whereupon, the exhibit was displayed on the screen.)

D. Williams - by Defense - Direct (Mr. Suarez)  Page 5334

1 MR. SUAREZ: Can we zoom in on section 4.25, Verification of Material Facts.

2 (Whereupon, the exhibit was displayed on the screen.)

3 Q    Where it says "It is the credit officer's responsibility to independently verify all material facts pertaining to a credit (e.g., if told that an entity benefits from a statutory guarantee, evidence should be obtained to support this view; if told that a line is fully utilized, this should be checked; if told an entity is a subsidiary of another entity, this should be supported by evidence on the KYC form) these examples are meant to be illustrative rather than exhaustive."

4 Q    What does this mean, Mr. Williams?

5 A    This is illustrative or a summary of, um, significant part of our due diligence in which, as it states, we independently verify all material facts as they pertain to a credit transaction.

6 Q    And was this process adhered to in connection with the loan made by the Wealth Management Division of Deutsche Bank to the Trump Old Post Office, LLC?

7 A    Yes.

8 Q    Was it adhered to in the loan made by the Wealth Management Division to 401 North Wabash?

9 A    I believe so.

D. Williams - by Defense - Direct (Mr. Suarez)  Page 5335

1 MR. WALLACE: Objection.

2 A    Yes.

3 MR. WALLACE: Objection. Foundation.

4 THE COURT: I thought you were going to object to leading.

5 MR. WALLACE: It is leading, but I'm trying to let us get through this.

6 THE COURT: So far through his own ingenuity or my liberality, Mr. Suarez has circumvented all your leading objections. He gets it in any way.

7 Q    Was this adhered to in the Wabash loan, was that basically the question?

8 A    MR. SUAREZ: Yes.

9 THE COURT: Do you want to add leading to the list?

10 MR. WALLACE: I will add leading to the list, your Honor, and I will add that we haven't established which specific loans using the terms Mr. Suarez is using here.

11 THE COURT: We would have to identify the loans a little bit more, or the loan.

12 Q    Are you aware of any instance in which Deutsche Bank failed to adhere to its own credit lending guidelines when making loans guaranteed by President Trump?

13 A    No.

14 MR. SUAREZ: If you could please turn to page 18.

15 (Whereupon, the exhibit was displayed on the screen.)
Q    Are you familiar with a payment default?

A    Yes.

Q    Do you see where it says "Principles for writing a credit report"?

A    Yes.

Q    Do you see where -- five bullet points down it says "Does the report clearly show how the approved exposures accord with the approved business strategy"?

A    Yes.

Q    What is the significance of that principle?

A    One of the considerations in underwriting a credit request is the overall business strategy as it pertains to the client.

Generally speaking, we prefer not to enter into a credit transaction on a stand-alone business basis, but as part of a broader relationship with the bank.

Q    Are you aware of any facts that Deutsche Bank failed to adhere to that principle when extending credit guaranteed by president Donald Trump?

A    No.

MR. SUAREZ: Your Honor, I move Defendant's Exhibit 378 into evidence.

THE COURT: Granted. It's in.

Exhibit 378 into evidence.

Q    Have you reviewed any financial or operating statements for the guarantor? If so, which statements?

A    We may require a guarantor to maintain a minimum level of stated net worth. If throughout the life of the loan, the guarantor fails to adhere to that minimal requirement, it permits the bank to come back to the table?

A    We may require a guarantor to maintain a minimum level of stated net worth. If throughout the life of the loan, the guarantor fails to adhere to that minimal requirement, it permits the bank to come back to the table?

Q    Are you familiar with a covenant default?

A    Yes.

Q    What is a covenant default?

A    A covenant default would occur if the client or borrower failed to adhere to a particular covenant. Covenants are generally set at the loan's origination as guardrails; an opportunity to come back to the table, so to speak, with the client in the event a covenant default is triggered. A payment default alternatively speaks, again, definitively to client's ability to repay the loan.

Q    Can you describe what you mean by a guaranty that permits the bank to come back to the table?

A    When a borrower or client fails to adhere to a particular financial or reporting covenant, it gives us an opportunity to discuss that with the client, better understand what may have triggered that default, and then determine a course of action going forward.

Q    What, if any, payment default on a credit facility guaranteed by President Trump are you familiar with?

A    I am not aware of any payment defaults.

Q    Or expecting to be repaid in full.

A    Yes.

MR. WALLACE: Objection, leading.

Q    Why is the bank concerned with a repayment on its loans?

A    When a borrower or client fails to adhere to a particular financial or reporting covenant, it gives us an opportunity to discuss that with the client, better understand what may have triggered that default, and then determine a course of action going forward.

Q    What, if any, payment default on a credit facility guaranteed by President Trump are you familiar with?

A    I am not aware of any payment defaults.

Q    What, if any, covenant default are you aware of with respect to a credit facility guaranteed by President Trump?

A    I am not aware of any covenant defaults.

MR. SUAREZ: Let's please pull up Plaintiff's Exhibit 293, previously in evidence.

(Handing)

MR. SUAREZ: Can you please turn to page five of this document? Which is page five of the exhibit, page four of the document. And focus on the section in the bottom of the page labeled "liquidity."

Q    Do you see where it says on December 20, 2011, a structured lending team of Dave Williams and Emily Schroder visited the offices of the guarantor and reviewed bank and brokerage statements that confirmed 178 million in cash balances and 51.8 million marketable securities; totaling 229 million held in the name of the guarantor. In addition, they also reviewed statements for operating companies that were wholly owned by the guarantor, which evidenced another 29 million cash and marketable securities?
Mr. Wallace: Objection, both on foundation and

THE COURT: I don't see the relevance here, but

go ahead, Mr. Suarez.

MR. SUAREZ: He said he was involved in the visit to confirm the cash. And that he is an underwriter familiar with Deutsche Bank's Private Wealth Management Group, now the Wealth Management Division's underwriting guidelines.

THE COURT: I'll overruled myself. I understand. All right. Let's just get an answer.

Do you need a readback?

THE WITNESS: Please.

THE COURT: Read it back, please.

(Whereupon, the record was read back by the court reporter.)

THE COURT: The question was, "did the underwriter," right?

MR. SUAREZ: Correct.

THE COURT: He wasn't the underwriter, correct?

MR. SUAREZ: It is the underwriting of the guaranty by the underwriter. I'll try to rephrase it.

Q What, if any, importance was placed by the underwriter on the fact that the guarantor's stated liquidity was adjusted by 50 percent?

MR. WALLACE: I am going to object again. He is being asked -- it is just not clear to me if he is being asked what another person who was the underwriter placed on the importance of the question. It is just unclear to me what the witness is being asked.

THE COURT: Let's try to get to the heart of the matter.

Were you the underwriter on this loan?

THE WITNESS: No, sir.

THE COURT: Would you know what the underwriter thought about this adjustment?

THE WITNESS: Not necessarily.

THE COURT: Objection sustained.

Q In your experience as an underwriter with the Wealth Management Division, what, if any, reaction would you have to a guarantor's stated liquidity being reduced by 50 percent?

A So, I think it is atypical, but not entirely unusual, just depends on the circumstances.

Q What, if anything, does the adjustment of the stated liquidity, in your experience as an underwriter at Deutsche Bank -- withdrawn.
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<tr>
<td>Are you familiar with that entity?</td>
<td>Yes.</td>
<td>How are you familiar with that borrower?</td>
<td>Yes.</td>
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<td>Is that a loan that the Wealth Management division made to that entity for the purposes of acquiring a golf course in Doral?</td>
<td>Yes.</td>
<td>How, if at all, are step-downs consistent with the Wealth Management Group's approved business strategies?</td>
<td>Yes.</td>
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<td>Is that consistent with your understanding of the Trump Doral loan?</td>
<td>Yes.</td>
<td>How, if at all, is the bank's decision to agree to a step-down impacted by the quality of the collateral?</td>
<td>Yes.</td>
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MR. SUAREZ: Can we please turn to Plaintiff's Exhibit 291?

MR. WALLACE: Objection, leading.

THE COURT: Sustained. It does suggest the answer and it is a yes or no question.

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MR. WALLACE: Objection, leading.

THE COURT: Sustained. It does suggest the answer and it is a yes or no question.
1. A So, again, the lower the loan-to-value, the more inclined we might be willing to consider a partial guaranty or perhaps no guaranty.

2. Q Why is that the case?

3. A Again, because there is arguably less reliance on the personal guaranty, more on the collateral. Is the collateral sufficiently strong enough to support the loan perhaps, without the addition of the personal guaranty.

4. Q And how, if at all, does the likelihood of repayment affect the bank’s decision to agree to a step-down on a guaranty?

5. A That can also be a factor, as determined by, typically, debt service coverage of a particular property type or collateral.

6. Q And how, if at all, is that consistent with the Wealth Management Group’s approved business strategies?

7. A It is consistent.

8. MR. SUAREZ: We can bring up PX-290, which is already in evidence. And turn page four of 20. And zoom in on the section that says "guaranty."

9. Q Do you see where it says: Donald Trump shall continue to personally guarantee a percentage of principal, interest and operating shortfalls. However, the percentage of such guaranty shall be maintained in accordance with the defined LTV range as indicated in the table below?

10. A Yes.

11. Q Is that consistent with your understanding of a step-down?

12. A Yes check

13. Q It says: Any reduction in such guaranty levels will be considered permanent, unless the guarantor elects to increase the guaranty level for purposes of curing any shortfalls in accordance with the max LTV requirement. Do you see that?


15. Q Is that consistent with your understanding of a step-down?

16. A Yes.

17. Q From a lending perspective, why, if at all, are step-downs an appropriate business term?

18. A So I think previously we discussed flexibility of wealth management lending relative to conduit financing, which requires no personal guaranty. So I would consider this as a sort of a hybrid between conduit financing, which requires no personal guaranty, and wealth management lending, which generally requires a personal guaranty.

19. Q How does a reduction in the guaranty level affect, if at all, the minimum net worth covenant on the Doral loan?

20. A It doesn’t affect it.

21. MR. SUAREZ: Can we please turn to page five of the Trump Organization, which is 2014.

22. THE COURT: Couldn’t he know if they were revised later?

23. MR. WALLACE: I am not suggesting that he might not. I am asking if there is a foundation to establish his familiarity with the information contained in the document.

24. THE COURT: Okay. Let’s get a foundation.

25. Q Have you become familiar with the terms of the Trump Doral loan?

26. A Yes.

27. Q How have you become familiar with the terms of the Trump Doral loan?

28. A So, once I got involved in the day-to-day of this relationship in, again as I recall, it was in 2014, it was my responsibility to become familiar with the terms of the entire relationship and the history.

29. MR. SUAREZ: And on that basis I would ask about changes to the loan part of his involvement?

30. THE COURT: Well, I guess there might be one more foundation question.

31. Are you familiar with the history of the loan?

32. MR. SUAREZ: I believe he just said he was.
1 Q Is the change in the required net worth covenant consistent with Deutsche Bank's approved business strategies?
2 MR. WALLACE: Objection. Leading.
3 THE COURT: Sustained.
4 Q What, if anything, is consistent with the change in the required net worth covenant with Deutsche Bank's approved business strategies?
5 A I go back to my earlier answer when I said net worth is typically not a consideration for a step-down. Um, it appears that at some point, the date of this memo, um, it was determined that that was an appropriate change to make.
6 MR. SUAREZ: If we could pull up Plaintiff's Exhibit 2960.
7 (Whereupon, the exhibit was displayed on the screen.)
8 MR. SUAREZ: Previously admitted into evidence.
9 Q If you could take a look at page four of this document, the signature sections. Do you identify the signature above where it says "Dave Williams"?
10 A I do.
11 Q Is that your signature?
12 A Yes.
13 Q Are you familiar with this document?
14 A Yes.
15 Q And what, if anything, does it mean that this document
D. Williams - by Defense - Direct (Mr. Suarez)  Page 5356

1 prime minus .75 percent, with step-up to L plus two percent or
2 prime minus .5 percent, if guaranty level falls below ten
3 percent, see below?
4 A I see that, yes.
5 Q Is that the optionality that you were describing?
6 A Yes.
7 Q What is the affect on the interest rate of terminating
8 the guaranty, if any?
9 A So the interest rate was scheduled to increase from
10 LIBOR plus 1.75 percent to LIBOR plus two percent. So a
11 difference of 25 basis point .25 percent.
12 MR. SUAREZ: Let's turn to Plaintiff's Exhibit 294.
13 MR. SUAREZ: If we could turn to page 11 of this
14 document -- of the exhibit.
15 MR. SUAREZ: If we could turn to page six.
16 (Whereupon, the exhibit was displayed on the
17 screen.)
17 Q Mr. Williams, do you recognize your signature on this
18 page?
19 A I do.
20 Q Does it appear above the line where it says "Dave
21 Williams"?
22 A It does.
23 Q And what does your signature on this credit report
24 mean?
25 A Again, that as a -- someone in lending, or lender, I've
26 signed on in support of this transaction.
27 MR. SUAREZ: If we could go back to page one of the
28 report.
29 (Whereupon, the exhibit was displayed on the
30 screen.)
31 Q What is the purpose of this report?
32 A So in the reason for presentation it describes three
33 things, annual review of the Trump Endeavor loan, annual review
34 -- increase of the Chicago loan, and the approval of the Trump
35 Old Post Office loan.
36 Q And the Trump Old Post Office loan, that's the Trump
37 OPO loan that we discussed earlier; correct?
38 A Yes.
39 Q Was a step-down present in the Chicago loan?
40 A Yes, I believe so.
41 MR. SUAREZ: Can we take a look at page six of
42 Plaintiff's Exhibit 294.
43 (Whereupon, the exhibit was displayed on the
44 screen.)
45 MR. SUAREZ: Actually, let's start at page five.
46 (Whereupon, the exhibit was displayed on the
47 screen.)
48 Q Do you see at the top where it says Loan B, 401 North

D. Williams - by Defense - Direct (Mr. Suarez)  Page 5357

1 Wabash Venture, LLC?
2 A Yes.
3 Q The second column has the original approved terms; is
4 that right?
5 A Yes.
6 Q And the second column -- excuse me, the third column
7 has the proposed revised terms?
8 A Yes.
9 Q Why would the loan terms be revised during the term of
10 the loan?
11 A So one of the reasons for presentation, as mentioned,
12 was to review, but also to increase the loan amount for this
13 particular facility, the Chicago Facility. So at that time it
14 would not be unusual to revisit some of the original terms.
15 MR. SUAREZ: If we could turn to page six.
16 (Whereupon, the exhibit was displayed on the
17 screen.)
18 Q Do you see the section where it says "Guaranty"?
19 A Yes.
20 Q And the second column it says, "Donald Trump to
21 personally guarantee a hundred percent of the principal,
22 interest and operating shortfalls."
23 A Yes.
24 Q And do you see in the third column there is a change to
25 that term?

D. Williams - by Defense - Direct (Mr. Suarez)  Page 5358

1 Why would the bank agree to that change in the loan
2 term?
3 MR. WALLACE: I'm just going to note my objection
4 to the "would" as opposed to why did the bank agree to the
5 change in the loan term.
6 Q I'm happy to restate it.
7 Why did the bank agree to the loan -- the change in the
8 loan term?
9 A I believe it was in response to similar changes that we
10 had made at this point -- by this point on the Doral loan, the
11 Trump Endeavor loan.
12 Q And how, if at all, would providing a step-down on the
13 guaranty be consistent with the bank's approved business
14 strategy?
15 A So, again, it's consistent in certain cases.
D. Williams - by Defense - Direct (Mr. Suarez)  Page 5360

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<td>MR. SUAREZ: And if we could turn to page seven. (Whereupon, the exhibit was displayed on the screen.)</td>
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D. Williams - by Defense - Direct (Mr. Suarez)  Page 5361

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<tr>
<td>1</td>
<td>broader non-credit relationship with a client.</td>
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<td>4</td>
<td>MR. SUAREZ: Can we take a look at Plaintiff's Exhibit 298. (Whereupon, the exhibit was displayed on the screen.)</td>
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<td>5</td>
<td>MR. SUAREZ: At page four. (Whereupon, the exhibit was displayed on the screen.)</td>
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<td>12</td>
<td>MR. SUAREZ: If we turn to page seven of this document.</td>
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D. Williams - by Defense - Direct (Mr. Suarez)  Page 5362

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<td>6</td>
<td>MR. SUAREZ: Your Honor, I'm at a good place in my outline to take our break.</td>
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<td>7</td>
<td>THE COURT: Okay. We'll tack on another two minutes and see you all at 11:35.</td>
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<td>8</td>
<td>(Whereupon, a 15-minute break was agreed upon and taken by all parties.)</td>
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<td>9</td>
<td>THE COURT OFFICER: All rise. Part 37 is back in session. Please be seated and come to order.</td>
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<td>10</td>
<td>THE COURT: Okay. Do we have our witness?</td>
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<td>11</td>
<td>THE COURT OFFICER: Witness entering. (Whereupon, the witness stepped into the witness stand.)</td>
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<tr>
<td>12</td>
<td>THE COURT: At the start of the break I forgot to admonish the witness not to talk to anybody about his testimony, or this case, or anything related. I trust and assume he didn't, so let's just proceed with the direct examination.</td>
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<tr>
<td>13</td>
<td>Q</td>
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</table>
D. Williams - by Defense - Direct (Mr. Suarez)  Page 5364

1 (Whereupon, the exhibit was displayed on the screen.)
2 Q Do you see where it says, "The DSC covenant shall be increased to correspond with the defined step-downs in the guaranty levels as indicated in the chart below." What does that mean?
3 A So it looks like we were just adjusting this covenant so that it was consistent with, um -- it was just adjusted to correspond with adjusted guaranty levels.
4 Q What is the effect of the termination of the guaranty level on the DSC covenant?
5 A Can you repeat the question.
6 Q Sure. What, if any, effect on the DSC covenant results from the termination of the guaranty on the Doral loan?
7 A So it looks like anytime the debt service coverage was in excess of 1.25 times, the guaranty level reduced to zero, if that's what you are asking.
8 Q Yes.
9 MR. SUAREZ: If you could turn to page ten.
10 (Whereupon, the exhibit was displayed on the screen.)
11 MR. SUAREZ: To the section that says "recommendation."
12 (Whereupon, the exhibit was displayed on the screen.)

D. Williams - by Defense - Direct (Mr. Suarez)  Page 5365

1 Q Do you see where it says, "Approval of (i) the annual review for Facility A (Doral), (ii), the modification increase to Facility B (Trump Chicago Hotel)", and then it says (ii) again, "the origination of Facility C (Trump Old Post Office) are being recommended based on"?
2 A Yes, I see that.
3 Q And then it says, "financial strength of the guarantor. The financial profile of the guarantor includes, on an adjusted basis, a net worth of 2.6 billion with 154.5 million in unencumbered liquidity."
4 A Yes, I see that.
5 Q What does "on an adjusted basis" mean?
6 A That refers to our credit underwriting and due diligence process in which we make adjustments to client's financial statements and stated net worth.
7 Q How, if anything, does the adjusted basis -- withdrawn. How, if at all, does the adjusted basis reflect the bank's own analysis of the guarantor's financial strength?
8 A Um, it reflects our analysis.
9 Q And then in operating experience it says, "DJT's extensive experience in operating private golf country clubs. His current portfolio includes 13 such clubs, with a reported value of 1.66 billion, and DB adjusted value of 680.6 million"?
10 A Yes.
11 Q What does "DB adjusted value" mean?

D. Williams - by Defense - Direct (Mr. Suarez)  Page 5366

1 A So that's the value that's reflective of any adjustments that we might have made to the value of those certain assets.
2 Q And how, if at all, was a difference of almost $1 billion between the reported value and the DB adjusted value, impact the underwriting?
3 A So it's part of the underwriting process, as I mentioned earlier. It's a conservative measure to make these adjustments. You might even say it's a stress test to ensure that even after these adjustments, the guarantor exhibits a certain level of financial strength that can support the loan.
4 Q And how, if at all, did you react to the reduction by almost $1 billion of the reported value of the guarantor's club portfolio from the DB adjusted value of 680 million?
5 A I don't recall having any particular reaction. I would say that was not an unusual adjustment.
6 Q Then it says, "DB relationship." It says, "DJT continues to develop his relationship with DB as Facility B will be the fourth credit facility we have originated with him or his family (three with DJT, one with DJT, Jr.) DJT has transferred 40 million in liquidity to DB, and has indicated he is interested in continued -- to grow his noncredit relationship with the firm." Do you see that?
7 A I see that, yes.
8 Q What does "noncredit relationship with the firm" mean?
1. invested."
2. A    I see that, yes.
3. Q    How did that support the recommendation with respect to Facility A, if at all?
4. A    So as noted, this was an annual review of Facility A.
5. It had already been on-the-books, so to speak, for a number of years, and this statement is indicative of the amount of equity.
6. Mr. Trump put into the project, the Doral project, with which we would take some comfort, because that reduces -- would reduce the amount of the loan facility that he would need. Said another way, he is putting more of his own money in and less of ours.
7. (Continued on the next page.)

THE COURT: A technician, technician.

THE WITNESS: Tommy, is there any way to see if -- (Pause)

THE COURT: Thank you.

Q    If you notice, the pagination on the credit report jumps around. Page ten has the recommendations; and then page eleven which has the recommendations and then --

THE COURT: I think he means the screen right in front of him.

THE WITNESS: Yes, there is nothing on it.

MR. SUAREZ: It looks like we lost the cable then. We might need technical help.

THE COURT: A technician, technician.

MR. SUAREZ: Tommy, is there any way to see if -- (Pause)

THE COURT: Thank you.

Q    If you notice, the pagination on the credit report jumps around. Page ten has the recommendations; and then page eleven which has the signatures; and then page twelve, the recommendations appear to continue up top there.

And it says: Facility A and B leverage levels required for step-down of the guaranty.

It says: The LTV levels required for decrease in the guaranty levels are low enough to ensure that the loan is more than adequately collateralized.

What does that mean?

A    So it is a -- like a restatement or reminder, again this is all part of the annual review of these two facilities that have been on the books, I believe, for some time at this point. That is a real meaningful consideration with that.

THE COURT: All right.

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Donald J. Trump, et. al. November 28, 2023

Attorney General of the State of New York v.  

<table>
<thead>
<tr>
<th>Page 5373</th>
<th>Page 5374</th>
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<tbody>
<tr>
<td>1 A</td>
<td>1 And it would also conceivably reduce our loan amount because he</td>
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<tr>
<td>2 B</td>
<td>2 is not borrowing that amount, he is putting that amount in from</td>
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<td>3 C</td>
<td>3 his own proceeds.</td>
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<td>4 D</td>
<td>4 Q And how does that equity injection by the guarantor,</td>
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<td>5 E</td>
<td>5 if at all, impact the risk to the bank on that specific credit</td>
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<tr>
<td>6 F</td>
<td>6 facility?</td>
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<tr>
<td>7 G</td>
<td>7 A It arguably reduces our risk if he has got more</td>
</tr>
<tr>
<td>8 H</td>
<td>8 invested in his own money. He is certainly less inclined to</td>
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<tr>
<td>9 I</td>
<td>9 see the project fail.</td>
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<td>10 J</td>
<td>10 MR. SUAREZ: If we can turn to page 14?</td>
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<tr>
<td>11 K</td>
<td>11 Q Are you familiar with the chart which appears here at</td>
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<td>12 L</td>
<td>12 the center of page 14?</td>
</tr>
<tr>
<td>13 M</td>
<td>13 A Yes.</td>
</tr>
<tr>
<td>14 N</td>
<td>14 Q What does this chart represent?</td>
</tr>
<tr>
<td>15 O</td>
<td>15 A It is illustrative of Mr. Trump's reported financial</td>
</tr>
<tr>
<td>16 P</td>
<td>16 statements, as well as some adjustments that we made as part of</td>
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<tr>
<td>17 Q</td>
<td>17 our standard underwriting and due diligence process.</td>
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<tr>
<td>18 R</td>
<td>18 Q For the year ending June 30, 2013, for the last two</td>
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<td>19 S</td>
<td>19 columns from the right side of the page, what does the column:</td>
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<td>20 T</td>
<td>20 DJT June 30, 2013 client reported, represent?</td>
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<tr>
<td>21 U</td>
<td>21 A That represents information that was provided with</td>
</tr>
<tr>
<td>22 V</td>
<td>22 his June 30, 2013 financial statement, personal financial</td>
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<tr>
<td>23 W</td>
<td>23 statement.</td>
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<td>24 X</td>
<td>24 Q And what does the column: DJT June 30, 2013 (DB</td>
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<td>25 Y</td>
<td>25 adjusted) represent?</td>
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<th>Page 5373</th>
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<tr>
<td>1 A</td>
<td>1 A The same financial statement after we apply our</td>
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<td>2 B</td>
<td>2 standard adjustments, or they are also referred to as</td>
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<td>3 C</td>
<td>3 &quot;haircuts&quot; to the assets and liabilities.</td>
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<td>4 D</td>
<td>4 Q And what, if anything, does that column with the DB</td>
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<td>5 E</td>
<td>5 adjusted values reflect of Deutsche Bank's own analysis of the</td>
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<td>6 F</td>
<td>6 financial statement?</td>
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<td>7 G</td>
<td>7 A Again, it is -- it is after we have made what I would</td>
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<td>8 H</td>
<td>8 say are generally our standard adjustments that we apply to</td>
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<td>9 I</td>
<td>9 really any given high-net-worth individual or</td>
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<td>10 J</td>
<td>10 ultra-high-net-worth individual's provided financial</td>
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<td>11 K</td>
<td>11 statements.</td>
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<td>12 L</td>
<td>12 Q Now, if we start with liquidity, it says that the</td>
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<td>13 M</td>
<td>13 guarantor reports liquidity of 339 million as of June 30, 2013</td>
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<tr>
<td>14 N</td>
<td>14 consisting of 150 million in Mr. Trump's name personally and</td>
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<td>15 O</td>
<td>15 154 million held in various entities.</td>
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<td>16 P</td>
<td>16 THE COURT: I think you misstated the number</td>
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<td>17 Q</td>
<td>17 there. Didn't you say 150 instead of 185?</td>
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<td>18 R</td>
<td>18 MR. SUAREZ: Consisting of -- I can start again</td>
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<tr>
<td>19 S</td>
<td>19 if I was unclear. I don't have the realtime, so I</td>
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<td>20 T</td>
<td>20 I can't --</td>
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<td>21 U</td>
<td>21 THE COURT: I don't either, but I am pretty sure</td>
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<td>22 V</td>
<td>22 you said 150 instead of 185.</td>
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<td>23 W</td>
<td>23 I am correct I am told.</td>
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<td>24 X</td>
<td>24 MR. SUAREZ: All right. I'll withdraw that.</td>
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<td>25 Y</td>
<td>25 Q In the section that says liquidity, it says: The</td>
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Min-U-Script®  
Michael Ranita - Senior Court Reporter  
(14) Pages 5372 - 5375
guarantor reports liquidity of 339 million as of June 30, 2013 consisting of 185 million in Mr. Trump's name personally and 154 million held in various entities which Mr. Trump controls. Do you see that?

Q And then the last paragraph says: DB adjusted liquidity represents the amount of liquidity that was verified via statements by Mr. Sullivan and Ms. Schroder on October 21, 2013?

A I see that, yes.

Q Now, when you describe a standard adjustment, what do you mean by that?

A I don't see a reference to a standard adjustment.

Q I am sorry, I wasn't clear.

Earlier when you said that the chart above reflected standard adjustments made by the underwriters, was it the case that the standard adjustments in connection with your -- with the bank's own analysis, as opposed to fixed adjustments that are made to each asset?

MR. WALLACE: Objection, leading.

THE COURT: Sustained.

Q In reviewing the adjustments to the liquidity, what about them are standard?

A So for liquidity there may be a difference in the client's reported liquidity as of the date of the financial statements versus the client's liquidity as of a date, perhaps, sometime after that.

In this case it appears that it was October when folks in the underwriting team viewed some financial statements and were -- rather, bank and brokerage statements, that might have had a different amount. Which would not be unusual, given it was several months later.

Q When you see an adjustment to the liquidity from the client reported in the chart of 339.1 million to 154 -- 154.5 million, that's not a fixed adjustment that is made, it is a variable adjustment based on the bank's analysis, correct?

A Yes.

Q And with respect to the four trophy properties which appear on page 17 -- I am sorry, page 15 of this memorandum, of this exhibit. Page 14 of the document, page 15 of the exhibit.

It says: The valuation for each of these properties were discussed with DB Valuation Services Group who advised on adjustments for each.

A I see that.

Q What is DB Valuation Services Group?

A It was a group that I believe sat within the investment bank at Deutsche Bank.

Q And how, if at all, did they provide input into the underwriting on the loans reflected in this memorandum?

A So this, again, this predates my involvement. But my understanding is they were consulted in particular with respect to these four, as they were referred to, trophy properties and the valuation of those properties.

Q And how, if at all, were the values reported by the guarantor adjusted by the DB Valuation Services Group?

A Based on the memo I am reminded that in one particular case there was a recent appraisal that we were privy to that resulted in an adjustment. That's one particular example of where or how an adjustment was made.

Q Was that a standard adjustment?

A I think if information was available that could augment our analysis and adjustment of a particular property, then yeah, I would say that that was typical.

Q What judgment, if any, did the underwriters use to adjust the basis of value for client reported assets?

A So I think it was -- the underwriters were particularly relying on the Valuation Services Group, given this is their level of expertise -- rather, their area of expertise.

Q Why was the DB Valuation Services Group's area of expertise relevant to the underwriting of these loan facilities?

MR. WALLACE: Can I just note a foundation objection? I also think this memo is from before the witness was working on the loans. So, it is unclear, he
Donald J. Trump, et. al. November 28, 2023
Attorney General of the State of New York v.

<table>
<thead>
<tr>
<th>Question</th>
<th>Answer</th>
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<tbody>
<tr>
<td>1</td>
<td>that predated my involvement. I believe it was either with the origination of the original credit request or the second credit request, which both predated my involvement.</td>
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Min-U-Script®
Michael Ranita - Senior Court Reporter (16) Pages 5380 - 5383

99 of 316
Q: And what reaction, if any, did you have to the magnitude of the reduction between the guarantor's reported net worth and Deutsche Bank's own adjusted value?
A: My reaction was probably pretty measured, considering it's not unusual or atypical for any client's provided financial statements to be adjusted to this level, or to this extent.
Q: And what, if anything, concerning the basis for the decision to make that adjustment is reflected by this credit memorandum?
A: Can you repeat the question?
Q: Sure.
A: What, if anything, is reflected in this credit memorandum concerning the basis for Deutsche Bank's decision to make the adjustment in the reported net worth?

MR. SUAREZ: I'll withdraw it.
Q: If we could turn to page 16 of this document. (Whereupon, the exhibit was displayed on the screen.)
Q: Do you see the section that says "Net cash flow"? (Whereupon, the exhibit was displayed on the screen.)
Q: And it says, "The guarantor demonstrates a diversified stream of cash flows which are generally recurring by nature"?
A: Yes, I see that.

Q: Why is the guarantor's net cash flow a factor evaluated in this credit memorandum?
A: It would also be looked to as a potential source of repayment for the loan.
Q: And what, if any, adjustments does Deutsche Bank make to the client's reported net cash flow?
A: So, in our analysis, one potential adjustment could be whether or not a source of cash flow is recurring or nonrecurring.
Q: And in this analysis --

MR. SUAREZ: If we could zoom back into the page, the chart below. (Whereupon, the exhibit was displayed on the screen.)
Q: Do you see the second column says "DB adjusted fiscal year June 30, 2013"?
A: Yes.
Q: And "Client reported fiscal year June 30, 2013"?
A: Yes.
Q: What was the client reported fiscal year June 30, 2013 net cash flow?
A: Approximately 150 million.
Q: And what was the DB adjusted net cash flow for the fiscal year ending June 30, 2013?
A: A negative, approximately, 26 million.

Q: What is the difference between the client reported net cash flow and the DB adjusted net cash flow?
A: It appears to be predominantly what is categorized as nonoperating revenue, which was set aside, presumably, as nonrecurring.
Q: And is the magnitude of the change -- withdrawn.
Q: And how, if at all, was the magnitude of the change between the client reported net cash flow and the DB adjusted net cash flow relevant to your analysis of the credit facilities contained in this memorandum?
A: I should think it was a consideration.
Q: And what, if anything, does the change between the client reported net cash flow and the DB adjusted net cash flow reflect the bank's own analysis of the guarantor's financial strength?
A: So, in this particular year, based on our analysis, the client's assets did not generate sufficient recurring cash flow to offset his personal uses. However, I will note, in prior

Q: What is the effect of the LTV on the loan dropping to 35 percent and below?
A: It would have the effect of eliminating Mr. Trump's personal guaranty.
Q: And was the guaranty on the Trump Chicago loan eliminated?

MR. WALLACE: Objection. Asked and answered.
THE COURT: Déjà vu all over again.
<table>
<thead>
<tr>
<th>D. Williams - by Defense - Direct (Mr. Suarez)</th>
<th>Page 5388</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. MR. SUAREZ: I'm sorry.</td>
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<tr>
<td>2. THE COURT: He said, &quot;Asked and answered.&quot; He objected, &quot;Asked and answered&quot;, and I said, &quot;Déjà vu all over again.&quot;</td>
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<tr>
<td>3. I can't remember whether this was the exact same document or different, but it's the same point; right?</td>
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<tr>
<td>4. MR. SUAREZ: I'll make a connection to the question and then I'll move on.</td>
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<tr>
<td>5. A  So ultimately, yes, the personal guaranty was reduced to zero on the Chicago loan.</td>
<td></td>
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<tr>
<td>6. Q  And moving onto page seven of this document for the minimum liquidity covenant.</td>
<td></td>
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<tr>
<td>7. (Whereupon, the exhibit was displayed on the screen.)</td>
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<tr>
<td>8. Q  What was the effect of reducing the guaranty level to zero on the Trump Chicago loan?</td>
<td></td>
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<tr>
<td>9. A  Mr. Trump would have no longer been required to maintain any unencumbered liquidity, um, even, um, that he held at Deutsche Bank.</td>
<td></td>
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<tr>
<td>10. Q  What was the effect of the guaranty level, the reduction of the guaranty level to zero, if anything, with respect to the net worth covenant?</td>
<td></td>
</tr>
<tr>
<td>11. A  Once the guaranty reduced to zero, the net worth covenant was reduced to zero. Or said another way, it was eliminated or deleted.</td>
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<thead>
<tr>
<th>D. Williams - by Defense - Direct (Mr. Suarez)</th>
<th>Page 5389</th>
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</thead>
<tbody>
<tr>
<td>1. MR. SUAREZ: Okay. We could take this down.</td>
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<tr>
<td>2. (Whereupon, the exhibit displayed on the screen was taken down.)</td>
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<tr>
<td>3. Q  What responsibilities does a lending officer have for determining the interest rate that is included in a credit facility?</td>
<td></td>
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<tr>
<td>4. A  It's one of the considerations that a lending officer makes, or takes into consideration when making a loan.</td>
<td></td>
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<tr>
<td>5. Q  And what obligation, if any, does a lending officer have to ensure that the approved exposures with respect to a credit facility are in accordance with the approved business strategies of the bank?</td>
<td></td>
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<tr>
<td>6. A  A lending officer has some responsibility in that regard.</td>
<td></td>
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<tr>
<td>7. MR. SUAREZ: If we could please pull up Defendant's Exhibit 205, previously admitted.</td>
<td></td>
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<tr>
<td>8. (Whereupon, the exhibit was displayed on the screen.)</td>
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<tr>
<td>9. (The witness was handed the exhibit.)</td>
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<tr>
<td>10. Q  Are you familiar with the pricing grid that appears on Defendant's Exhibit 205?</td>
<td></td>
</tr>
<tr>
<td>11. A  Yes.</td>
<td></td>
</tr>
<tr>
<td>12. Q  What does this pricing grid reflect?</td>
<td></td>
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<tr>
<td>13. A  It reflects recommended pricing for various locations where Deutsche Bank does business, including the Americas, and</td>
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<tr>
<th>D. Williams - by Defense - Direct (Mr. Suarez)</th>
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<tbody>
<tr>
<td>1. Q  How can it be a factor?</td>
<td></td>
</tr>
<tr>
<td>2. A  If while we are underwriting or performing our due diligence and we are recommending or suggesting pricing that falls within this grid, at some point we'll propose that to the client, or prospective client, and the feedback we might receive from the client is that maybe his existing loans with another institution are priced below what we are proposing; that would be one example, the feedback that we would receive that would indicate perhaps our pricing is above what's considered market.</td>
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<tr>
<td>3. Q  Would that be a basis to deviate downwards from the pricing grid?</td>
<td></td>
</tr>
<tr>
<td>4. A  Yes, perhaps.</td>
<td></td>
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<tr>
<td>5. Q  Are you aware of any circumstances where there was an upward deviation from the pricing grid?</td>
<td></td>
</tr>
<tr>
<td>6. A  It can happen, yes.</td>
<td></td>
</tr>
<tr>
<td>7. Q  Can you think of any time since you've been at Deutsche Bank where an upward deviation from the pricing grid has been imposed?</td>
<td></td>
</tr>
<tr>
<td>8. A  Yes.</td>
<td></td>
</tr>
<tr>
<td>9. Q  How frequently?</td>
<td></td>
</tr>
<tr>
<td>10. A  It happens from time to time.</td>
<td></td>
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<tr>
<td>11. Q  Are there any criteria that affect the range provided in the pricing grid?</td>
<td></td>
</tr>
<tr>
<td>12. A  Yeah, so in addition to competitive forces, um, a client's relationship with the bank, noncredit relationship, for</td>
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</table>
example, investable assets could be a factor, as well as our internal risk rating of a client. So it's definitely a factor, as illustrated here by the grid, given that the grid shows a number of different collateral types, and within each of those collateral types is a range. Where on this grid did the Trump Doral loan fall? So they were all commercial real estate secured transactions, which would fall under that column on the pricing grid with the recommended pricing of between two percent and two-and-a-half percent. And when you say they were all, to move things along, would that mean the Trump Chicago, Trump OPO and Trump Doral loans? Yes, all three loans were commercial real estate secured. Would the financial wherewithal of the guarantor play a role in determining where on the range identified in this pricing grid a loan would fall? Yes. That's a determinant in the risk rating, the internal risk rating that we arrive at. And how would the financial wherewithal of the guarantor affect the point within this range where a loan would be priced?

A So, I guess to begin, if we were even at this point in our analysis, um, the presumption is that the client meets our target market minimum requirements for investable assets, stated net worth. Beyond that, if the client exhibits a certain amount of financial strength, well above or in excess of those minimum requirements, that could be a factor. How would you determine circumstances in which the financial strength of the guarantor would merit pricing at the low end of the range? So, again, it would be a factor of risk rating, strength of the collateral, strength of the guarantor as reflected in the risk rating, also external market factors, competitive factors.

And what, if anything, about President Trump's financial condition supported pricing at the lower end of the range? He reported both a net worth and investable assets that were well in excess of our minimum requirements. For commercial real estate it's a hundred million net worth, 10 million of investable assets. Did President Trump qualify for this pricing range with a net worth as adjusted by Deutsche Bank of approximately $2.6 billion?

MR. WALLACE: Objection. Leading.

THE COURT: Sustained.

Q How, if at all, did Deutsche Bank's decision to price the loans we previously discussed reflect the bank's own adjusted net worth value of 2.5 billion for the guarantor? It was a consideration or a factor.

Q How, if at all, was an adjusted net worth of 2.5 billion -- withdrawn. How, if at all, was a net worth of approximately 2.6 billion? A net worth as adjusted by Deutsche Bank of approximately $2.6 billion?

A It was a consideration or a factor. How, if at all, did Deutsche Bank's decision to price the loans we previously discussed reflect the bank's own adjusted net worth value of 2.5 billion for the guarantor? It was a consideration or a factor.

Q How, if at all, was an adjusted net worth of 2.5 billion -- withdrawn. How, if at all, was a net worth of approximately 2.6 billion? A net worth as adjusted by Deutsche Bank of approximately $2.6 billion?

Q What, if anything, to your knowledge, concerning President Trump's financial condition, would have qualified him for this pricing grid? Some exceptions could be made if the client does not meet those minimums, but certainly in this case, even on an adjusted basis, Mr. Trump met those minimums. Q If Mr. Trump's adjusted basis net worth was 2 billion, would he have met these minimums? Yes.

MR. WALLACE: Objection. Calls for speculation.

THE COURT: Overruled. 
THE WITNESS: I'm sorry?

THE COURT: That was overruled. Please answer. A Yes. Even if his net worth was $2 billion, he would have met our minimum requirements. 

Q If his net worth was in excess of a billion dollars on an adjusted basis, would he have met these minimums? Yes.

Q If his net worth was in excess of 500 million on an adjusted basis, would he have met these minimum requirements? Yes.

Q If his net worth was in excess of a hundred million, would he have met these minimum requirements? Yes.

Q In fact, if he had, on an adjusted basis, at least $100 million in cash, in marketable securities, would he have met these requirements? Yes.

THE COURT: Mr. Wallace, I consider those hypotheticals, not speculations, and I believe that the hypotheticals are admissible.

MR. WALLACE: Noted, your Honor.

Q What is the bank's goal in pricing a credit facility? Well, again, if we are even considering the loan, a client has to meet our stated minimums. When I say "has to meet", that's the target. Some exceptions could be made if the client does not meet those minimums, but certainly in this case, even on an adjusted basis, Mr. Trump met those minimums. Q If Mr. Trump's adjusted basis net worth was 2 billion, would he have met these minimums? Yes.

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Q If his net worth was in excess of a hundred million, would he have met these minimum requirements? Yes.

Q In fact, if he had, on an adjusted basis, at least $100 million in cash, in marketable securities, would he have met these requirements? Yes.

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**November 28, 2023**

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

**WILLIAMS - BY DEFENDANT - CROSS (GABER)**

<table>
<thead>
<tr>
<th>1</th>
<th>Q  Good afternoon, Mr. Williams. My name is Sherief Gaber. We met briefly at your deposition. It is good to see you again.</th>
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<tbody>
<tr>
<td>2</td>
<td>So I wanted to start with, hopefully get you through this quickly, I am going to pull up and hand you a copy of what has been marked as PX-498.</td>
</tr>
</tbody>
</table>
MR. GABER: I think that's a fair assumption.

I didn't think it was hypothetical.

I'll do my best to get into the
microphone.

I'll say, this memo doesn't mention your going to Trump Tower to
to check liquidity. That's because you didn't go in this year
to check liquidity; is that correct?

A    That's correct.

If I can now direct you, Mr. Williams, to page two of
this document. And we will pull it up on the screen as well.

Under that last block where it says "Recommendation."

It says: Approval of the annual review for Facility A (Doral);
Facility B (Chicago) and Facility C (OPO). And for all
facilities you will note the first item there says:

Financial strength of the guarantor. The financial
profile of the guarantor includes a stated net worth of
6.12 billion which remains above the 2.5 billion minimum
requirement, even on an adjusted basis. The guarantor
maintains a strong unencumbered liquidity position of 76.2
million, a marginal increase from the previous year.

The $6.12 billion number here, that came from the
Statement of Financial Condition of Donald J. Trump, correct?

A    I believe so, yes.

Q    And the 76.2 million dollars liquidity position, that
also came from the Statement of Financial Condition?

A    It doesn't specify as such here. I would assume so.

And you are phrasing that "signed in support,"
that's because you didn't have credit approval authority; is
that correct?

A    Correct.

Q    And it was Credit Risk Management that had credit
approval authority at Deutsche Bank?

A    Yes, correct.

Q    In the Private Wealth Division?

A    And who are the Credit Risk Management officers who
signed and ultimately approved this review?

...
MR. GABER: So if we can go to page four of the document now?

Q  So, under Endeavor, that's the Doral loan, correct?
A  Yes.

Q  Okay. So it says there in the paragraph starting Facility A: Facility A's DSCR breach was identified in a letter prepared by internal legal and sent to borrower June 5, 2019.

The letter noted the breach and DBTCA's intention to conduct an appraisal in order to test the loan-to-value in accordance with the loan agreement.

Appraisal detail is noted in the sections that follow, but the results LTV (34.7 percent) clears the DSCR breach and does not trigger any guaranty-level changes called for in the below chart.

So Mr. Williams, can you tell me what it means when it says a DSCR breach?
A  So, it suggests there was a breach of the Debt Service Coverage Covenant.

Q  Can you explain that covenant and that concept for me?
A  So, the calculation there on the document just above where it says actual DSC of 1.19 shows the inputs for the calculation: Income, less expenses, should equal the net operating income figure. Divide that by the debt service figure for that year, equals the 1.19 times calculation.

Q  Okay. And what is the affect of a breach of the DSCR covenant?
A  So, it would have had an impact on the step-down percentage of the guaranty.

Q  Can you elaborate what sort of impact it could have on the step-down percentage?
A  So the chart there in the middle of the page outlines what occurs if and when a debt service coverage ratio exceeds -- meets or exceeds various multiples.

Q  And so can you just explain then what it means that -- that the appraisal, the resulting LTV of the appraisal clears the DSCR breach? What does it mean that the appraisal or LTV clears the DSCR breach?
A  So, depending on the results of the calculation, it looks like you compare that to various levels of debt service coverage relative to the percentage of guaranty that is required.

Q  And so if the loan-to-value ratio had been above 35 percent, it could have increased the guaranty to 10 percent from zero?
A  That appears to be correct, yes.

Q  Okay. And I just want to clarify briefly, when you were speaking with Mr. Suarez you said that you were not aware of any covenant defaults in any of the loans guaranteed by President Trump. I think you described this DSCR breach as a DSCR covenant default or a breach. Is there a difference in your mind between the DSCR breach and covenant default?
A  It depends on the nature of the breach. In this case the breach was considered also in conjunction with the loan-to-value of the property. And ultimately was determined that the loan-to-value cleared the debt service coverage breach.

Q  Okay. And I will just ask that you recall that even though the loan-to-value came in below 35 percent, the Trump Org had, in fact, elected to maintain a 10 percent guaranty in order to keep a more favorable interest rate?
A  I recall that he did that on at least one loan, yes.

Q  It might refresh your recollection if we can take a quick look at page six of this document.

Under guaranty type, if you just take a look at that paragraph. The last sentence just says, or the last two sentences: As outlined below, the guaranty level at or below a 35 percent LTV was originally contemplated to be zero percent, at which time pricing was scheduled to increase to L plus two percent. Retaining a 10 percent guaranty level, clearly strengthens the credit.

Does that refresh your recollection that they maintained the guaranty in order to keep a more favorable pricing on the loan?

So, similar to the Doral or Endeavor loan, the guaranty, Mr. Trump's personal guaranty step-down, depending on the loan-to-value of the collateral.

Q  And if -- are there situations in which DSCR breach could trigger a level change upwards?
A  So, similar to the Doral or Endeavor loan, the guaranty, Mr. Trump's personal guaranty step-down, depending on the loan-to-value of the collateral.

MR. KISE: Objection, calls for a legal conclusion.

THE COURT: Overruled. I don't think that's a legal question. I think that's an accounting question.

Q  Do you need a readback?
Donald J. Trump, et. al. November 28, 2023
Attorney General of the State of New York v. 

THE COURT: Okay. How certain or uncertain are you?

THE WITNESS: I would say actually I am not certain, because I do recall earlier in my testimony some discussion of once the guaranty comes off, it stays off.

Q  Maybe we can come back to that.
A  Yes.

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A  Yes.

THE COURT: Okay. How certain or uncertain are you?

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Q  Maybe we can come back to that.
A  Yes.

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Q  Maybe we can come back to that.
A  Yes.

THE COURT: Okay. How certain or uncertain are you?
**Williams - by Defendant - Cross (Gaber)**  
**Page 5412**

<table>
<thead>
<tr>
<th>Line</th>
<th>Text</th>
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<tbody>
<tr>
<td>1</td>
<td>give answers about what rights or responsibilities would</td>
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<td>2</td>
<td>be triggered under certain legal documents that also</td>
</tr>
<tr>
<td>3</td>
<td>aren't before him. So on that basis, we would object to</td>
</tr>
<tr>
<td>4</td>
<td>the admission of this document.</td>
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<tr>
<td>5</td>
<td>MR. GABER: He gave foundation. He said that</td>
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<tr>
<td>6</td>
<td>this is the letter that was referenced in the credit</td>
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<tr>
<td>7</td>
<td>report that he prepared and signed.</td>
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<tr>
<td>8</td>
<td>THE COURT: So he is obviously aware of it.</td>
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<tr>
<td>9</td>
<td>Overruled.</td>
</tr>
<tr>
<td>10</td>
<td>(Whereupon, the document referred to was deemed</td>
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<tr>
<td>11</td>
<td>marked for evidence as Plaintiff’s Exhibit 521 by the</td>
</tr>
<tr>
<td>12</td>
<td>Court.)</td>
</tr>
<tr>
<td>13</td>
<td>Q So I am going to hand you, Mr. Williams, what has</td>
</tr>
<tr>
<td>14</td>
<td>been marked as PX-522.</td>
</tr>
<tr>
<td>15</td>
<td>This is the same as the previous two exhibits.</td>
</tr>
<tr>
<td>16</td>
<td>In this case the mailing receipts are at the</td>
</tr>
<tr>
<td>17</td>
<td>beginning of the exhibit. The letters begin on page six of the</td>
</tr>
<tr>
<td>18</td>
<td>document, if that’s helpful.</td>
</tr>
<tr>
<td>19</td>
<td>Again, this letter is dated June 21, 2019. This one</td>
</tr>
<tr>
<td>20</td>
<td>is addressed to Trump Old Post Office LLC. Is this the notice</td>
</tr>
<tr>
<td>21</td>
<td>of DSCR breach for the Old Post Office loan that is referenced</td>
</tr>
<tr>
<td>22</td>
<td>in the credit report we were just looking at?</td>
</tr>
<tr>
<td>23</td>
<td>A It appears to be, yes.</td>
</tr>
<tr>
<td>24</td>
<td>Q And this letter, likewise, is copied to Donald J.</td>
</tr>
<tr>
<td>25</td>
<td>Trump as guarantor?</td>
</tr>
</tbody>
</table>

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**Williams - by Defendant - Cross (Gaber)**  
**Page 5413**

<table>
<thead>
<tr>
<th>Line</th>
<th>Text</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>A Yes.</td>
</tr>
<tr>
<td>2</td>
<td>MR. GABER: I ask that this letter or this</td>
</tr>
<tr>
<td>3</td>
<td>exhibit PX-522 be admitted into evidence.</td>
</tr>
<tr>
<td>4</td>
<td>MR. KISE: Your Honor, one additional objection.</td>
</tr>
<tr>
<td>5</td>
<td>I know you are going to overrule the other objection, but</td>
</tr>
<tr>
<td>6</td>
<td>I’ll make the same objection that Mr. Suarez made.</td>
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<tr>
<td>7</td>
<td>But, what is the relevance of these DSCR breach</td>
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<tr>
<td>8</td>
<td>letters? I mean, it is not an issue in the case. And by</td>
</tr>
<tr>
<td>9</td>
<td>the very documents that Mr. Gaber has put up, it was cured</td>
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<tr>
<td>10</td>
<td>automatically by the loan-to-value ratio being acceptable.</td>
</tr>
<tr>
<td>11</td>
<td>So the breach itself was cured by the very documents. So</td>
</tr>
<tr>
<td>12</td>
<td>I am not sure what is the point of all of this.</td>
</tr>
<tr>
<td>13</td>
<td>THE COURT: Well --</td>
</tr>
<tr>
<td>14</td>
<td>MR. KISE: Is it academic?</td>
</tr>
<tr>
<td>15</td>
<td>THE COURT: That a breach was cured doesn't mean</td>
</tr>
<tr>
<td>16</td>
<td>there wasn't a breach.</td>
</tr>
<tr>
<td>17</td>
<td>MR. KISE: What does that have to do with their</td>
</tr>
<tr>
<td>18</td>
<td>case is the question. Not that there was a breach, what</td>
</tr>
<tr>
<td>19</td>
<td>does that have to do with the underlying case is the</td>
</tr>
<tr>
<td>20</td>
<td>question, respectfully.</td>
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<td>21</td>
<td>THE COURT: I think it went to credibility of</td>
</tr>
<tr>
<td>22</td>
<td>the witness somewhat. Maybe I missed something there.</td>
</tr>
<tr>
<td>23</td>
<td>But anyway, Mr. Wallace, let's give the official</td>
</tr>
<tr>
<td>24</td>
<td>explanation.</td>
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<td>25</td>
<td>MR. WALLACE: I'll try to avoid going too deep</td>
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</tbody>
</table>

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**Williams - by Defendant - Cross (Gaber)**  
**Page 5414**

<table>
<thead>
<tr>
<th>Line</th>
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<tbody>
<tr>
<td>1</td>
<td>in this with the witness on the stand.</td>
</tr>
<tr>
<td>2</td>
<td>The defendants have made representations</td>
</tr>
<tr>
<td>3</td>
<td>relevant to their defenses that these loans were</td>
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<td>4</td>
<td>performing, never had any problems, were paid off. I</td>
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<tr>
<td>5</td>
<td>think this is just going to the performance and the life</td>
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<td>6</td>
<td>of the loans, which they have tracked through many</td>
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<td>7</td>
<td>different iterations, including with this witness, when</td>
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<tr>
<td>8</td>
<td>various guaranties are written down. I think this is part</td>
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<tr>
<td>9</td>
<td>and parcel of what happened over the course of these</td>
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<td>10</td>
<td>loans, which defendants have introduced as relevant to</td>
</tr>
<tr>
<td>11</td>
<td>their defense.</td>
</tr>
<tr>
<td>12</td>
<td>MR. KISE: So we are debating whether or not</td>
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<tr>
<td>13</td>
<td>something was self-cured within the documents? Again, I</td>
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<tr>
<td>14</td>
<td>don't see the relevance to the cause of action.</td>
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<tr>
<td>15</td>
<td>MR. WALLACE: We are presenting facts and we can</td>
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<tr>
<td>16</td>
<td>debate at the end of the case when we make closing</td>
</tr>
<tr>
<td>17</td>
<td>statements and put in our briefs.</td>
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<tr>
<td>18</td>
<td>MR. KISE: I guess I shouldn't object because</td>
</tr>
<tr>
<td>19</td>
<td>these facts are helpful, but what are we wasting time for</td>
</tr>
<tr>
<td>20</td>
<td>because they don't seem to have relevance. If there is an</td>
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<tr>
<td>21</td>
<td>internal mechanism within the documents where there is</td>
</tr>
<tr>
<td>22</td>
<td>some default and it is automatically cured by some other</td>
</tr>
<tr>
<td>23</td>
<td>provision in the documents, then the net effect of all of</td>
</tr>
<tr>
<td>24</td>
<td>it is zero, none. There is no -- just like it said in the</td>
</tr>
<tr>
<td>25</td>
<td>Exhibit PX-498, it says that the breach was cured,</td>
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</tbody>
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**Williams - by Defendant - Cross (Gaber)**  
**Page 5415**

<table>
<thead>
<tr>
<th>Line</th>
<th>Text</th>
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<tbody>
<tr>
<td>1</td>
<td>whatever DSCR breach may or may not have occurred, was</td>
</tr>
<tr>
<td>2</td>
<td>cured by the low loan-to-value ratio. So again, I just</td>
</tr>
<tr>
<td>3</td>
<td>don't see the relevance of this to any fact at actual</td>
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<td>4</td>
<td>issue in the case. It doesn't go to the Statements of</td>
</tr>
<tr>
<td>5</td>
<td>Financial Condition. It doesn't have anything to do with</td>
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<tr>
<td>6</td>
<td>the Statements of Financial Condition. Yes, it has</td>
</tr>
<tr>
<td>7</td>
<td>something loosely to do with the loans, but there is not a</td>
</tr>
<tr>
<td>8</td>
<td>problem with the loans based on the PX-498.</td>
</tr>
<tr>
<td>9</td>
<td>MR. WALLACE: How about I try to shorten the</td>
</tr>
<tr>
<td>10</td>
<td>back and forth on this. The defendants opened the door by</td>
</tr>
<tr>
<td>11</td>
<td>asking the witness to testify that, no, there were no</td>
</tr>
<tr>
<td>12</td>
<td>covenant breaches. We are exploring that testimony now.</td>
</tr>
<tr>
<td>13</td>
<td>THE COURT: Overruled.</td>
</tr>
<tr>
<td>14</td>
<td>MR. KISE: If that's the reason, okay.</td>
</tr>
<tr>
<td>15</td>
<td>MR. GABER: Judge, can I get a ruling on</td>
</tr>
<tr>
<td>16</td>
<td>admission into evidence of this document?</td>
</tr>
<tr>
<td>17</td>
<td>THE COURT: It is in evidence.</td>
</tr>
<tr>
<td>18</td>
<td>MR. GABER: Thank you, Judge.</td>
</tr>
<tr>
<td>19</td>
<td>(Whereupon, the document referred to was deemed</td>
</tr>
<tr>
<td>20</td>
<td>marked for evidence as Plaintiff’s Exhibit 522 by the</td>
</tr>
<tr>
<td>21</td>
<td>Court.)</td>
</tr>
<tr>
<td>22</td>
<td>Q Mr. Williams, can I now hand you an exhibit that has</td>
</tr>
<tr>
<td>23</td>
<td>been marked as Plaintiff’s PX-519?</td>
</tr>
<tr>
<td>24</td>
<td>(Handing)</td>
</tr>
<tr>
<td>25</td>
<td>Q So there is a cover e-mail here from Gaston Allegre</td>
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</tbody>
</table>
Q. Can you describe what this document is?
A. Credit Approval Report and end review of the entire Trump credit relationship.
Q. And this is dated June 30th, 2020; right?
A. It appears to be July.
Q. July. Excuse me.
Q. The dates all run together sometimes in this room.
A. So, Mr. Williams, this was produced by Deutsche Bank as the final version of the credit memo for 2020. I'll represent to you that this document doesn't have the signature block that we've seen in previous memos. Is it consistent with your experience of Deutsche Bank during 2020 that documents could be approved without physical signature?
A. Yes.
Q. Is that because people were working remotely or in different conditions due to the pandemic?
A. I think that was a factor, yes.
Q. So -- but you've got no reason to believe this version isn't the final version of the credit report for 2020?
A. No reason to believe it's not the final version, no.

MR. GABER: I would ask that this document be admitted in evidence.

THE COURT: Granted. It's in.
(Plaintiff's Exhibit 519 was admitted in evidence.)
1. Quickly, before we move to the next point, the next bullet point says "The guarantor’s personal net worth has decreased about $500 million year-over-year due to small fluctuations in real estate, equity, liquidity and the values of some his joint real estate -- some of his real estate joint ventures,” excuse me.

2. So is it fair to conclude from this bullet point that Deutsche Bank is still tracking the net worth of Donald J. Trump as guarantor over the life of these loans at this point?

A. Yes, that's correct.

Q. And the cure in this case was increasing the guaranty level from zero percent to 10 percent based on the presumed increase in loan-to-value; correct?

A. Yes, that appears to be correct.

Q. Okay.

Mr. Gaber: First, I ask that this be admitted into evidence.

THE COURT: Granted. It's in.

(Plaintiff’s Exhibit 561 was deemed marked and admitted in evidence.)

Q. Again, we see the language, "Approval of the annual review for Facility A, Doral; Facility B, Chicago and Facility C OPO" under all facilities. The first bullet point is "Financial strength of the guarantor."

A. I believe that's correct, though I will add 500M would indicate --

Q. 500,000?

A. Yes, 500,000.

Q. I'm still learning the nomenclature.

Mr. Williams, I'm going to hand you, now, a document that's been marked as Plaintiff’s Exhibit 561 for identification.

(The witness was handed the exhibit.)

(Whereupon, the exhibit was displayed on the screen.)

Q. If you could just take a look at this and let me know if you are familiar with this document?

A. Yes, this is familiar.

Q. Can you tell me what this document is?

A. It's a credit report and end review for the Trump credit relationship dated July 30th, 2021.

Q. And Mr. Williams, you had a role in preparing this report; correct?

A. I think my role was predominantly as a reviewer for this credit report.

Q. Okay.

Mr. Williams, I also say that Deutsche Bank produced this as a final version of the 2021 credit report. This one doesn't have a signature block on it.

Q. 500M would you have any reason to believe this isn’t the final version of the 2021 credit report?

A. I don’t have any reason to believe it’s not the final version.

Q. So Mr. Williams, can I direct your attention to page four of this document.

(Whereupon, the exhibit was displayed on the screen.)

Q. Under "Recommendation."
So under the heading, "Relationship, facility highlights, changes since last review", the first bullet point says, "All required monthly loan payments have been made in a timely manner."

So you would expect a borrower would make all of their loan payments in a timely manner?

A  Yes.

Q  Okay.

The next bullet point -- sorry, not the next one. The fourth bullet point says, "Metrics surrounding the performance of the collateral properties are discussed below. The financial performance of each property resulted in DSCR levels deemed to be below the required thresholds, resulting in updated appraisals being required at all three properties, the specifics of which are discussed herein."

So am I to understand from this that in 2021, in addition to the breaches that we had seen in prior years of the DSCR covenant, each of these three loans breached the DSCR covenants in 2021?

A  Yes. That appears to be the case.

Q  Okay.

And then in this case, updated appraisals were commissioned to test the loan-to-value to those properties?

A  Correct, because there was this built-in mechanism in which we would order updated appraisals should the debt service coverage levels drop below the requirements.

Q  Okay. That's fine. Thank you.

Can I ask you to now look at the same page here, last bullet point there, "Protocol surrounding the relationship remains supervised by the covered client policy, business Risk Management, RM, and the ASC Group. A variety of precautionary measures are in place to maintain confidentiality and any business decisions surrounding the relationship are handled by the Reputational Risk Committee and senior bank management given the guarantor's status as former President of the United States. This population would also be responsible for advising of any additional measures to be taken as a result of any criminal charges regarding guarantor's company and related business entities."

Can you explain the protocols here described in this paragraph?

A  So as described here is a variety of precautionary measures that were put in place around the time Mr. Trump was elected to office of the presidency in order to maintain confidentiality.

Q  Now, moving -- sorry, I'm jumping around in the section here, but moving to the second bullet point, it says, "Delivery of all required reporting concerning the collateral properties and guarantor have been supplied in a timely manner. However, additional clarifications that have been requested from the client related to legal cases the client is facing have gone unanswered, and at present the client is tagged as an orderly exit."

What does it mean that "the client was tagged as an orderly exit"?

A  So the decision was made internally by senior levels of bank management to exit the client's relationship on an orderly basis.

Q  To the extent it says "There are additional clarifications that had been requested", were you involved in that process of trying to obtain updated information from the client?

A  No, I was not.

Q  Okay.

Can you tell me what it means to have "an orderly exit" in terms of the bank's policy or practice?

A  So I would describe that in a context of a credit facility. As the loan matures, we would be opting not to renew or extend that credit facility, and we would advice the client with some advanced notice of that.

Q  A single facility or all facilities related to that client?

A  So in this case it says the client is to act as an orderly exit, so that would apply to all credit facilities as they matured.

Q  Okay. Thank you?

MR. GABER: We could take that down.

(Whereupon, the exhibit displayed on the screen was taken down.)

Q  Mr. Williams, you testified in speaking with Mr. Suarez that you would expect a client would provide you with truthful and accurate information; is that correct?

A  Yes.

Q  Okay.

Not just in a financial statement, but in all documents and information that a client submits to the bank; correct?

A  Yes.

Q  And as a lending officer, you have a regulatory obligation to make a report in circumstances where you believe counterparty has engaged in fraudulent conduct; correct?

A  Um, there are internal procedures, steps that we would take if we ever determined that that was the case.
Donald J. Trump, et. al. November 28, 2023

Attorney General of the State of New York v.

1. Q Can you describe your understanding of those procedures?
   A Um, honestly, I can't recall in my entire career that that's ever happened. So it would probably just start with my manager or senior management within my division, and we would elevate as necessary.

2. Q Okay.
   A So in any case, what you are telling me is that a transaction couldn't just continue undisturbed, business as usual, if the counterparty had engaged in fraudulent conduct towards the bank; correct?

3. MR. KISE: Object. Mischaracterizes the testimony.

4. THE COURT: That question depends on testimony?
   MR. GABER: Withdrawn.

5. MR. KISE: He said you were with.
   MR. GABER: Mr. Kise, I withdrew the question.

6. Thank you.

7. THE COURT: Withdrawn.

8. MR. GABER: I just want to save you the speech.

9. Q Mr. Williams, you testified that the net worth of Mr. Trump was a significant factor in the underwriting process of these loans; correct?
   A Yes. It was definitely a factor.

10. Q And you also testified that you would have recommended that Private Wealth Management declare an event of default if you had determined that President Trump's net worth fell below the $2.5 billion net worth covenant in the loan agreements?

11. A So I think consistent with my testimony earlier today, a covenant breach gives you an opportunity to come to the table with the client and consider a course of action from there.

12. Q I'm just going to pull up your deposition testimony really quickly, page 190.

D. Williams - by Defense - Cross (Mr. Gaber) Page 5428

D. Williams - by Defense - Cross (Mr. Gaber) Page 5429

D. Williams - by Defense - Redir (Mr. Suarez) Page 5431

Q MR. SUAREZ: Yes.

REDIRECT EXAMINATION

BY MR. SUAREZ:

Q Mr. Williams, good afternoon.
   A Welcome back.

THE COURT REPORTER: I don't think your microphone is on.

Q Mr. Williams, good afternoon.
   A Good afternoon.

Q What does it mean when a loan fails a DSCR test?
   A That the loan is in breach of that particular covenant.

Q Were DSCR test failures common during COVID?
   A Yes.

Q With respect to the loans that we've discussed today, the Trump Old Post Office, Trump Chicago and Trump Doral, was Deutsche Bank ultimately satisfied with the resolution of any failures in the debt service coverage ratio, the DSCR?
   A Yes, the bank was satisfied with the resolution.

Q Why is that?
   A So I believe in most cases there was a built-in mechanism that called for a reappraisal of property if the appraisal came in at an acceptable level, then that was determined to be an acceptable outcome.

In other instances, the client provided a capital infusion to the borrowers that otherwise enabled them to remain
MR. SUAREZ: And if we could turn to page 13 of the exhibit, which is page 11 of the credit report, and focus in on the net cash flow at the bottom of this page.

Q Do you see it says, "Net cash flow, the guarantor demonstrates a diversified stream of cash flows which is generally recurring by nature. The following table summarizes the sources and uses of cash for the period of 2010 to 2018."

What does this credit report reflect with respect to the guarantor’s cash flow for the period reviewed?

A So it demonstrates a history of the client's, guarantor's net cash flow over the period of which we had our credit relationship with the client.

Q Was the -- were the credit decisions reflected in this credit report based on Deutsche Bank's own analysis of the client reported figures?

MR. WALLACE: Objection. Leading.

THE COURT: Sustained.

MR. SUAREZ: If we could turn to page 14.

(Whereupon, the exhibit was displayed on the screen.)

MR. SUAREZ: And zoom in where it says "unpledged adjusted liquid assets."

(Whereupon, the exhibit was displayed on the screen.)

Q What does the term "unpledged adjusted liquid assets" mean?

A That would represent the liquid assets that the guarantor had on hand that were not pledged in support of any loans, and then after any bank adjustments.

Q Were the bank adjustments -- withdrawn.

A How did the bank adjust the liquid assets reported by the guarantor?

Q It doesn't appear that there were any adjustments that year.

A Does the -- what of it all is the effect of the unpledged adjusted liquid assets used here in the key ratios section of the credit report higher than the client reported liquidity of $78.2 million?

MR. WALLACE: Objection, your Honor. At this point I think we are beyond the scope of cross.

THE COURT: Well, the rule is redirect is limited to the scope of cross. Was this covered in cross examination?

MR. KISE: The liquidity certainly was, yes, your Honor. And this goes directly to the liquidity.

Mr. Gaber pointed out -- attempted to point out that the bank relied on the reported cash flow without doing any of its own analysis, and Mr. Suarez is simply exploring that with documentary evidence, the same exhibit that they introduced.
THE COURT: Overruled.
(Continued on the next page.)

Q So looking back to exhibit page 11, 98.9, would appear to be the total of cash and marketable securities plus escrow and deposits 76.2 plus 22.7.
A It doesn't appear there were any adjustments.
Q What analysis, if any, did Deutsche Bank conduct to assess the available net cash flow of the guarantor during this period?
A I don't see on page 13 of the document that there were any, necessarily, any adjustments to cash flow in this particular year.
Q What analysis, if any, was conducted with respect to the guarantor's cash flow by Deutsche Bank?
A I suspect some -- there were -- there was some review of the cash flow in terms of the recurring and non-recurring sources and uses. If we had determined any of the sources were non-recurring, we might have excluded those.
Q What, if anything, is -- withdrawn.
How, if at all, does the credit report reflect an inconsistency between the client reported liquidity and what Deutsche Bank thought the adjusted liquidity ought to be?
A Well, in this particular year we determined no adjustments to the client's reported or stated liquidity were necessary.
THE COURT: Any cross? Honor?

MR. SUAREZ: A No.

The Trump Organization? default ever declared by Deutsche Bank on the loans made to the

A I believe so, yes.

THE COURT: It worked before.

THE COURT: It worked. It did.

THE COURT: I would have given the five minute warning. All right, 15 minute break.

I will direct the witness not to discuss the case or his testimony.

(Pause in the proceedings.)

COURT OFFICER: All rise. Part 37 is back in session. Please be seated and come to order.

THE COURT: Well, Mr. Suarez, did Mr. Kise deliver on his promise to condense?

MR. KISE: I believe so, Your Honor. It won't be long.

THE COURT: We need a witness.

(Whereupon, the witness resumed the stand.)

THE COURT: Okay. Let's continue.

Q Mr. Williams, do you see this document, the second exhibit? And if we could focus in on the section that says: If borrower is not in compliance.

MR. ROBERT: Your Honor, I think the witness needs water.

THE COURT: We don't want him to dehydrate.

(Handing)

Q Mr. Williams, do you see this document, the second amendment to the term loan agreement with Trump Endeavor 12 as borrower and Deutsche Bank Trust Company Americas as lender?

A Yes.

MR. SUAREZ: Could you turn to page six of the exhibit? And if we could focus in on the section that says: If borrower is not in compliance.

Q And if you could please read the section that says: If borrower is not in compliance on such DSCR test date.

A If borrower is not in compliance on such DSCR test date with the applicable required debt service coverage ratio and the step-down percentage is 40 percent, 20 percent or 10 percent, such failure shall not constitute an event of default, but rather lender shall only have the right to conduct an appraisal at borrower's expense, in order to test the loan-to-value ratio in accordance with section 4.6(B).

Q Is this section of the loan agreement consistent with what actually happened?

A I believe so, yes.

Q To the best of your knowledge, was an event of default ever declared by Deutsche Bank on the loans made to the Trump Organization?

A No.

MR. SUAREZ: I have no further questions, Your Honor?

THE COURT: Any cross?
THE COURT: Very quick reply.

MR. KISE: Just briefly, Your Honor.

The question of whether or not the bank was lied to is not an abstract question. It is a question of whether the bank itself determined that the information submitted was satisfactory. None of us here, including respectfully, Your Honor, are here to supplant your own judgment, insert your own judgment as to what is accurate and what isn't for the parties to the transaction. This is not a situation where you have a complainant who is saying, I was defrauded, that there is an issue here. This is a highly sophisticated international financial institution which conducted significant due diligence. It is fully satisfied with the deal it struck. You have not heard anyone say to the contrary. We are just basically guessing and the Attorney General is substituting her own judgment for the parties'. There cannot be materiality if the party to the transaction, whose role it is to determine what is material to them and what isn't, this witness and Mr. Haigh have testified that the fluctuations in the numbers are not unusual. They are anticipated. Because, as you heard Dr. Laposa testify, as you heard me say, I am sure more times than you care to hear, this is a subjective exercise. There isn't a right answer. There isn't an, ah-ha, you picked the wrong number. The
Donald J. Trump, et. al.
November 28, 2023

Pereless - by Defendant - Direct (Suarez) Page 5448

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 represent certain of the defendants in this case.
14 Ms. Pereless, have you ever been employed by Deutsche Bank?
15 A Yes.
16 Q While you were employed by Deutsche Bank, were you known under any other name?
17 A Yes.
18 Q What name?
19 A Emily Schroder.
20 Q What positions did you hold during your time at Deutsche Bank?
21 A Can you -- can you explain the question? Like
22 Q When did you leave Deutsche Bank?
23 THE WITNESS: Thank you.
24 A About 2015.
25 Q When did you leave Deutsche Bank?

Pereless - by Defendant - Direct (Suarez) Page 5449

1 corporate positions or?
2 Q Are you familiar with the contents of this document?
3 A Yes.
4 Q How long did you retain the title of vice president?
5 A I do not recall.
6 Q Were you promoted from the position of vice president?
7 A Yes.
8 Q When were you promoted from the position of vice president?
9 A I do not recall.
10 Q Were you an analyst in any particular division?
11 A Yes.
12 Q What role, if any, did you have in the lending group for the entirety of your time at Deutsche Bank?
13 A I was -- I worked in the structured lending group.
14 Q During the time that you were employed by Deutsche Bank, were you ever employed within the Private Wealth Management group?
15 A Yes.
16 Q Were you employed with the Private Wealth Management Group were you familiar with its policies and procedures?
17 A No.
18 Q Was your -- what were your responsibilities as executive director at Deutsche Bank?
19 A Working on loans for the structured lending group.
20 Q And were those loans extended through the Private Wealth Management group?
21 A Yes.
22 Q And were you promoted from the position of executive director?
23 A No.
24 Q When did you leave Deutsche Bank?
25 A March of 2015.

Pereless - by Defendant - Direct (Suarez) Page 5450

1 A March of 2015.
2 Q What role, if any, did you have in the lending group of the Private Wealth Division of Deutsche Bank?
3 A I was an analyst and I worked on loans for the structured lending group.
4 Q Okay.
5 A At the time was I familiar with them or am I now?
6 Q At the time.
7 MR. SUAREZ: If we could pull up -- during your time employed with the Deutsche Bank Private Wealth Management Group were you familiar with its policies and procedures?
8 A I think so.
9 MR. SUAREZ: Okay. Let's pull up what has been previously marked as Defendant's Exhibit 62.
10 (Handing)
11 Q Do you recognize this document?
12 A I do not.
13 Q Have you ever seen this document before?
14 A I think I was shown it during a deposition.
15 Q Are you familiar with the contents of this document?
16 A I am not.
17 Q Did this document ever inform your work at Deutsche Bank?
18 A Not that I recall.
MR. SUAREZ: We will set this document aside then.

If we could please turn to what has previously been marked as Plaintiff's Exhibit 293 and previously admitted into evidence.

(Handing.)

Do you recognize this document?
A I do.

Do you see on the upper right-hand page where it says: Lenders, supporting lenders Stafford/Schroder?
A Yes.

What would it mean for you to be identified as a supporting lender in this document?
A It means that I was one of the analysts who worked on a loan.

And is -- I know it is a little blurry, but do you recognize -- this is a document that you would have signed?
A Yes.

(Whereupon the following proceedings were stenographically recorded by Senior Court Reporter Michael Ranita.)

Q And what does it mean when you append your signature to a credit report?
A I prepared it.

Would that mean that you are responsible for the text that is in this document?
MR. WALLACE: Objection. Leading.
THE COURT: Sustained. It's leading.
MR. SUAREZ: If we could turn to the lower section of this document.

Q Do you see where it says "liquidity" on December 20, 2011? "A structured lending team of Dave Williams and Emily Schroeder visited the offices of the guarantor and reviewed bank and brokerage statements that confirmed $178 million in cash balances and 51.8 million marketable securities, totalling 229 million held in the name of the guarantor."
A What, if anything, do you recall about the meeting identified in this credit report?
A That Dave and I went to the offices and reviewed the statements as noted.

Q Was that consistent with your practice in -- was that consistent with your general practice?
A I don't understand the question. Sorry.

Q Was that consistent with the manner in which you would memorialize underwriting activities in the credit report?
A Yes.

And why would you have gone to the office of the guarantor to view bank and brokerage statements?
A At the request of the client.

Excuse me?
A At the request of the client.

And is that an action that -- withdrawn.
Q And is that an action that -- withdrawn.
A What is generally contained in a credit memo?
A The analysis of the collateral and the supporting sponsors.

Q Who drafts the credit memo?
A It's a compilation of a number of people.

Q What is the purpose of drafting the credit memo?
A To present it to credit risk for approval.

Q Are you familiar with an entity named DB Valuation Services Group?
A Yes.

Q What is the DB Valuation Services Group?
A It was the group at Deutsche Bank that was responsible for ordering and reviewing appraisal reports.

Q What, if any role, did the DB Valuation Services Group play in your preparation of this credit report?
A They were consulted with regards to some of the information.
E. Pereless - by Defense - Direct (Mr. Suarez)   Page 5456

1 Q Can you describe, generally, the ways that you would consult with the DB Valuation Services Group with respect to your analysis of commercial real estate assets?
2 A They would be consulted with regards to market information that they would provide.
3 Q What type of information would the Valuation Group review?
4 A I don't recall specifically.
5 Q What is your general understanding of how the Private Wealth Management Group verified guarantor's stated net worth during the time that you were at Deutsche Bank?
6 A Can you ask that again.
7 Q What is your understanding of how the Private Wealth Management Group verified a guarantor's stated net worth?
8 A It was based on statements provided by a client.
9 Q And what, if any, steps did you undertake to review information provided by a client?
10 A I don't recall.

E. Pereless - by Defense - Direct (Mr. Suarez)   Page 5457

1 Q Do you recognize this as an e-mail sent to you?
2 A Yes.
3 Q Do you see the date is December 13, 2011?
4 A Yes.
5 MR. SUAREZ: If you could pull up Defendant's Exhibit 185.
6 (Whereupon, the exhibit was displayed on the screen.)
7 (The witness was handed the exhibit.)
8 Q Do you see the two fields at the top of this e-mail?
9 A I do.

E. Pereless - by Defense - Direct (Mr. Suarez)   Page 5458

1 Q What do you recall concerning the reason that this due diligence items list was prepared?
2 A I don't recall.
3 Q Why would it be necessary for the bank to conduct due diligence on personal tax returns and cash flow?
4 A In general?
5 Q In general.
6 A Or in this case?
7 Q In general.
8 A Um, it may be used if they are looking for some sort of a loan.
9 Q And in this case, why was it necessary to review personal tax returns and cash flow?
10 A I don't recall.
11 Q What does "DT" mean there at the top?
12 A I don't recall specifically.
13 Q What would the purpose of "reviewing the deposit membership agreements" as indicated in line five?
14 A I don't recall.
15 Q What would it mean -- what would the purpose be of "reviewing the deposit membership agreements" as indicated in line five?
16 A I don't recall specifically, unless it was in relation to the Doral Facility.

E. Pereless - by Defense - Direct (Mr. Suarez)   Page 5459

1 Q Do you recognize this document?
2 A I do.
3 Q What does it mean -- do you see where it says that you are identified as the lender, Schroeder?
4 A I do.
5 Q Is that a reference to you?
6 A Yes.
7 Q What responsibilities did you have as the lender in connection with preparing this credit report?
8 A Analyzing the information provided, and compiling the report.
Donald J. Trump, et. al. November 28, 2023
Attorney General of the State of New York v.

### E. Pereless - by Defense - Direct (Mr. Suarez)

<table>
<thead>
<tr>
<th>Page 5460</th>
<th>Page 5461</th>
<th>Page 5462</th>
<th>Page 5463</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>MR. SUAREZ: And if you could turn to page six of this document.</td>
<td>1</td>
<td>THE COURT: Sustained.</td>
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<td>2</td>
<td>(Whereupon, the exhibit was displayed on the screen.)</td>
<td>2</td>
<td>Q</td>
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<tr>
<td>3</td>
<td>Q</td>
<td>Is that your signature?</td>
<td>3</td>
</tr>
<tr>
<td>4</td>
<td>A</td>
<td>Yes.</td>
<td>4</td>
</tr>
<tr>
<td>5</td>
<td>Q</td>
<td>What does the fact that this document contains your signature mean?</td>
<td>5</td>
</tr>
<tr>
<td>6</td>
<td>A</td>
<td>That I was part of the group that compiled it.</td>
<td>6</td>
</tr>
<tr>
<td>7</td>
<td>(Whereupon, the exhibit was displayed on the screen.)</td>
<td>7</td>
<td>A</td>
</tr>
<tr>
<td>8</td>
<td>Q</td>
<td>It says &quot;Liquidity. On October 19, 2012, Tom Sullivan and Emily Schroeder visited the offices of the guarantor and reviewed bank and brokerage statements that confirmed 146.3 million in cash balances and marketable securities representing 86 percent of the client reported amount, and of which 118.4 million was held in the name of the guarantor and 27.9 million -- excuse me, &quot;27.9 is held in operating accounts of entities that are wholly-owned by the guarantor. The client reported balance has decreased by 89.2 million from the prior year primarily due to the client's investment in property development, retirement of debt and asset acquisition.&quot; What was the purpose of analyzing the client's liquidity in this credit report?</td>
<td></td>
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<tr>
<td>9</td>
<td>A</td>
<td>To my knowledge, yes.</td>
<td>9</td>
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<td>10</td>
<td>MR. SUAREZ: If we could turn to Plaintiff's Exhibit 290.</td>
<td>10</td>
<td>A</td>
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<td>11</td>
<td>(Whereupon, the exhibit was displayed on the screen.)</td>
<td>11</td>
<td>A</td>
</tr>
<tr>
<td>12</td>
<td>(The witness was handed the exhibit.)</td>
<td>12</td>
<td>Q</td>
</tr>
<tr>
<td>13</td>
<td>MR. SUAREZ: Which is already in evidence.</td>
<td>13</td>
<td>A</td>
</tr>
<tr>
<td>14</td>
<td>Q</td>
<td>Do you recognize this document?</td>
<td>14</td>
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<tr>
<td>15</td>
<td>A</td>
<td>Yes.</td>
<td>15</td>
</tr>
<tr>
<td>16</td>
<td>Q</td>
<td>What does your signature mean on this document?</td>
<td>16</td>
</tr>
<tr>
<td>17</td>
<td>A</td>
<td>I do not recall.</td>
<td>17</td>
</tr>
<tr>
<td>18</td>
<td>Q</td>
<td>Do you recognize this document?</td>
<td>18</td>
</tr>
<tr>
<td>19</td>
<td>A</td>
<td>I do not recall.</td>
<td>19</td>
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<tr>
<td>20</td>
<td>Q</td>
<td>Do you see the date of this document is July 24, 2013?</td>
<td>20</td>
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<td>21</td>
<td>A</td>
<td>Yes.</td>
<td>21</td>
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<tr>
<td>22</td>
<td>Q</td>
<td>And are you the lender that's identified in the upper box in the upper right-hand corner of this page?</td>
<td>22</td>
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<tr>
<td>23</td>
<td>A</td>
<td>Yes.</td>
<td>23</td>
</tr>
<tr>
<td>24</td>
<td>Q</td>
<td>What role did you have, if any, in preparing this credit report?</td>
<td>24</td>
</tr>
<tr>
<td>25</td>
<td>A</td>
<td>Analyzing compiling the information provided. And in doing so, did you comply with the bank's policies and procedures?</td>
<td>25</td>
</tr>
<tr>
<td>26</td>
<td>MR. WALLACE: Objection leading.</td>
<td>26</td>
<td>MR. WALLACE: Objection leading.</td>
</tr>
</tbody>
</table>
Q: Why would your signature appear on this document?
A: Because I was part of the group that compiled the memo.

Q: Why would your signature -- withdrawn.
A: I was part of the group that compiled the memo.

Q: Does it mean anything else?
A: No.

MR. SUAREZ: If we could pull up Plaintiff's Exhibit 2960.

(The witness was handed the exhibit.)

(The witness was handed the exhibit.)

Q: On the upper right-hand corner, do you see the date of this memo?

Q: And do you appear on the upper right-hand corner of this memo?
A: Do I?

Q: Yes.
A: No, I do not.

Q: What date did you leave the bank?
A: I do not recall.

Q: When you joined Deutsche Bank, what, if any, training did you receive concerning its internal policies and procedures?
A: The same thing, only from the deposition.

Q: Prior to being shown this document in a deposition, had you done anything to make yourself familiar with the contents of this document?
A: No.

MR. SUAREZ: Okay. If we could pull up Plaintiff's Exhibit 378.

(Whereupon, the exhibit was displayed on the screen.)

(The witness was handed the exhibit.)

MR. SUAREZ: I'm sorry, defendant's 378.

(Whereupon, the exhibit was displayed on the screen.)

Q: Do you recognize this document?
A: No.

Q: How is it that you recognize this document?
A: Because I saw this in a deposition.

Q: Prior to being shown this document in a deposition, had you done anything to make yourself familiar with the contents of this document?
A: No.

THE COURT: Of course.

May I have a moment to confer with my colleagues?

MR. SUAREZ: I'm sorry, defendant's 378.

(Whereupon, the exhibit was displayed on the screen.)

Q: Earlier we looked at Plaintiff's Exhibit 293.
A: Mm-hmm.

Q: Can you walk me through the mechanics of how this document would have been created?
A: We would have been provided with financial statements regarding whatever the collateral is, and the sponsor, or the guarantor, and it would have been analyzed and presented in the memo form.

Q: What role would you have had in that process?
A: I would have taken the information and probably filled out some of the boxes and worked with the senior person to put together the terms and put them in the memo.

Q: And in preparing the memo, would you have any reason to be inaccurate?
A: Not that I recall.

Q: How is the information -- withdrawn.
A: I do not recall.

Q: What interaction, if any, would you have with the individuals identified as relationship manager?
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 the credit facility identified by this credit report?
5 A She was the banker for the client.
6 Q Who is the client?
7 A Donald Trump.
8 Q Is that the beneficial owner that you pointed to up there, Donald J. Trump?
9 A Yes.

THE COURT: Mr. Suarez, how much longer?
Obviously, we are reaching the end of the day.
MR. KISE: Your Honor, maybe if we break now we will truncate what we have. Once again, we may be able, tomorrow morning, to make this very brief.
THE COURT: No way to finish?
MR. KISE: I don't think he is going to finish today.
THE COURT: Okay.
MR. KISE: But I'm just thinking --
THE COURT: So we'll break now.
MR. WALLACE: Your Honor, if this is going to continue, I will note our objection at this point. This testimony is cumulative. This is the third witness that's been asked about these documents. There's no new information coming in. We are getting the same questions that we've gotten from Mr. Haigh and from Mr. Williams. So if it could be truncated to new information, I think that would be appropriate.
MR. KISE: We are certainly going to do that. And I appreciate Mr. Wallace recognizing that yet another bank employee is coming in and being asked the same questions, so back to my directed verdict motion. We'll leave it there.
Thank you, Judge.
THE COURT: All right. 10:00 tomorrow, everyone. I'll direct the witness not to discuss the testimony or the case overnight, because you'll be a witness tomorrow.
THE WITNESS: Okay.
(Whereupon, the case on trial was adjourned to Wednesday, November 29, 2023, at 10:00 a.m.)
5405:19;5418:11; 5432:14;5438:11; 5439:5
absent (1) 5380:18
absolutely (1) 5322:5
abstract (1) 5413:14
academic (1) 5420:14;5446:24
Actually (7) 5357:22;5403:14; 5408:13;5414:17; 5444:12;5446:25; 5447:11
add (4) 5335:14,15,16;5411:10
added (1) 5405:8
addition (6) 5339:22;5438:8; 5372:17,19;5391:24; 5424:17
additional (8) 5332:10;5345:19; 5380:10;5390:21; 5413:4;5425:20; 5426:8,17
address (2) 5323:5;5448:3
addressed (3) 5410:1;5411:11; 5412:20
adequately (1) 5370:21
adhere (5) 5335:21;5336:17; 5337:10;5338:13,25
adhered (3) 5343:19,23;5355:11
adjourned (2) 5396:22;5469:15
adjust (3) 5378:15;5435:6; 5439:12
adjusted (59) 5328:11;5341:5,10; 5343:4;5436:4,9; 5365:8,12,16,17,23,25; 5366:5,14;5374:25; 5375:5;5376:6;5378:5; 5380:13,23;5382:18, 21;5383:9;5384:3,6; 5385:15,23;5386:2,8, 15,20;5387:2;5393:23; 5394:6,9,16,17; 5395:1,4,9;5401:17; 5418:12,5432:15,18; 5433:3,8,16,24; 5434:22,25,5435:11; 5437:4,22;5438:12,13; 22;5439:5,19
adjusting (1) 5364:7
adjustment (23) 5431:13,20;5434:15, 23;5366:16;5376:11,
...
Min-U-Script®

Michael Ranita - Senior Court Reporter

November 28, 2023

8 evidenced - financing
find (1)
5416:1
Fine (4)
5345:9;5416:4;5425:9;5446:22
follow (1)
5322:9;5398:22;5468:17,18
fiscal (4)
5385:15,18,20,24
five (13)
5331:12,5336:5;5339:13,14,5349:25;5352:8,5357:22;5360:15,5363:23;5407:3,5440:5,5453:2;5458:19
flexible (4)
5331:21,23,5332:8;5349:16
flexible (1)
5332:7
flip (2)
5409:23,23
Florida (2)
5344:15,5419:6
flow (34)
5384:10;5385:1,6,8,21;5391:2,5,8,12,15,16,20,24;5395:2;5398:9,11;5435:22;5437:8,11,14,16;5457:17,5458:4,12
funds (1)
5402:15
further (5)
5408:20,5423:15;5425:5,5430:24;5441:23
furtherst (1)
5432:22
G
GABER (27)
5379:15,5399:19,21;5401:2,5402:6,8;5403:15,5404:1;5407:2,5411:19;5412:5,5413:2,9;5415:15,5417:22;5421:5,5427:10;5428:15,17,20,5429:8,13;5430:11,24;5435:21
Gain (2)
5443:9,19
Gaston (2)
5401:1,5415:25
gather (1)
5324:25
gave (3)
5380:10,5412:5;5464:24
general (15)
5324:19,5327:17;5379:2,8,5397:24;5412:23,5445:16;5466:12,24,5454:23;5456:9,5458:6,8
generally (14)
5324:21,5325:8,14;5326:1,5328:21;5336:13,5337:15;5338:14,5349:21;5375:8,5384:24;5434:6,5455:9,5456:1
General's (1)
5443:25
generate (2)
5371:13,5386:24
generated (1)
5371:18
generates (1)
5386:11
gets (1)
5335:10
given (11)
5354:3,5373:25;5375:9,5377:6;5378:17,5381:19;5382:7,5392:6;5420:15,5425:17;5440:5
goes (7)
5330:15,5331:19;5340:20,5345:19;5365:9,5371:25;5435:20
Golf (8)
5344:15,24,5345:5,18,19,20,5365:21;5369:21
Good (12)
5322:7,11,5323:11;12,5362:8,5399:20,21;5411:2,5434:1,4,8,9;5448:13
govern (1)
5443:14
government (4)
5403:9,13,5442:10;5443:11
Granted (7)
5333:10,5336:22;5401:4,5410:8;5417:24,5423:3;5459:2
greater (1)
5420:12
greatly (1)
5396:13
GREENFIELD (6)
5398:10,14,18,23;5399:6,11
grid (20)
5389:20,23,5390:4,8,9,12,16,19,24;5391:4,11,14,17,23;5392:6,8,11,20;5394:10
Group (42)
5324:6,5342:12;5347:12,5377:17,20;21,5378:5,17,5380:8,19,25,5381:2,4,9,10,13,23,5382:9,5396:7,10;5425:14,5449:19;23,5450:1,18,20;5451:2,5,9,5455:17,19,20;5456:2,5,6,10,14;5460:9,5462:14;5464:2,6
Group's (5)
5347:5,8,5348:16;5378:20,5382:7
grow (1)
5366:22
growing (1)
5367:19
Guarantee (12)
5334:8,5348:22;5354:11,13,23;5355:16,19,5358:21
Guaranteed (9)
5331:16,5333:5;5335:22,5336:17;5339:5,8,5340:3;5355:12,5405:25
guaranties (1)
5414:8
guarantor (76)
5332:2,5338:23,25;5339:19,22,24,5341:2;5342:2,5349:6,5350:2;5352:9,5355:15;5359:8,5360:5,10,14;5365:7,8,5366:10;5367:22,5369:1;5371:21,5373:7,8;5374:4,5375:13;5376:1,5378:5;5380:12,5383:8,8;5384:23,5392:18,24;5393:8,11,5394:4;5401:14,15,17;5402:13,5409:14;5410:17,18,5411:17;5412:25,5418:9,10,12,22,5419:11,14,5421:9;5423:9,15,19,5426:7;5430:15,5432:13,15;5433:16,5434:4;5435:3,7,5437:8;5438:9,10,5445:14,17;5455:4,5460:15,19,21;5467:11
guarantor/principal (1)
5373:22
guarantors (1)
5330:13
guarantor's (26)
5341:16,22,5343:3;20,5360:12,22;5365:18,5366:13;5383:2,5384:2,5385:1;5386:21,5387:6;5420:10,5421:2;5425:18,21,5434:9,11;5437:14,5439:4,10;5462:10,5464:1;5462:19
guaranty (77)
5332:6,5343:1;5346:6,5347:16,19,22;5348:2,3,6,8,11,20,24;5349:5,7,18,20,21,22;5350:4,5354:8,15,23;25,5355:18,5356:2,8;5358:18,5359:7,9,23;5360:8,12,5361:2,11,13,14,5363:21,5364:5,9,10,14,16,5370:18,20;5371:24,5387:21,22;5388:9,15,20,21,23;
Donald J. Trump, et. al. November 28, 2023

131 of 316
November 28, 2023

mortgage (1) 5344:14
most (4) 5419:9,5431:20; 5443:7,9
motion (5) 5442:8,5444:5;11; 5447:5,5469:9
motions (2) 5399:4,9
mouth (1) 5379:22
move (11) 5333:8,5363:20; 5388:8,5392:13; 5403:11,5407:2,3; 5408:7;5421:1; 5423:22,5428:52
moving (8) 5332:10,5371:6; 5388:8,5392:13; 5403:11,5407:2,3; 5408:7,5421:1; 5423:22,5428:52
multiples (1) 5405:10
must (3) 5330:22,23,5352:9

memorandum (32) 5350:19,5353:10; 5362:7,5378:6,24; 5379:1,7,11,24,5380:5,9,5381:5,8,12; 5402:22,5403:6,21; 5410:4,5417:10,17; 5452:23,24,5455:9,12,14,5463:11,5464:2,6,15,18,5467:12,16,17
memorandum (12) 5373:20,5377:14,24; 5384:9,13,5385:2; 5386:10,17,5387:10; 5438:19,20,5467:22
memorize (1) 5455:1
memorialized (1) 5463:13
memos (1) 5417:12
mention (3) 5402:22,5403:4,18
mentioned (3) 5358:11,5366:8;

Min-U-Script® Michael Ranita - Senior Court Reporter

134 of 316
November 28, 2023

Michael Ranita - Senior Court Reporter

(14) non-recurring - page
party (1)
5445:18

Patrick (1)
5398:7

Pause (4)
5370:11;5396:10;5440:9;5465:10

pay (1)
5372:22

payment (9)
5336:25;5337:2,6;14,15;5338:11,17;5339:4,6

payments (3)
5424:3,6;5432:1

people (2)
5417:16;5455:13

percent (60)
5332:12;5341:6,8;20;5342:2;5343:4,20;5354:10;13,14,15,21;21;5355:1,16,25;5356:1,2,3,10,11,111;5358:21;5360:13,13;17;5361:15,17;5372:5,15;20;5380:20;5382:24;5387:19;5392:11,12;5395:24;5404:13;5405:20;20;5406:11,19,19,21;51;5407:12;5419:9,12;15;5420:11,12,13,22;22;5441:11,11,12;5460:18

Pereless (4)
5397:21;5398:2;5448:1,5

performance (3)
5414:5;5424:10,12

performed (3)
5352:5;5380:24;5452:22

performing (2)
5391:2;5414:4

perhaps (12)
5338:8;5347:16;5348:3;5377:1;5379:17;5382:8;5391:9,12;5409:14;5440:2;5443:8

period (5)
5419:20;5434:7,9;11;5437:9

permanent (2)
5349:6;5359:8

permission (1)
5327:9

permits (1)
5338:20

permitted (2)
5322:4;5409:3

person (4)
5340:14;5343:7;5397:9;5467:15

personal (24)
5332:6;5340:17;5346:6;5347:16,19;5348:6;5349:18,20;21;51;5381:11,23,25;5355:18;5361:13;5374:22;5386:25;5387:21;5388:9;5392:20;5407:17;5421:2;5458:4,12

personally (9)
5348:22;5358:21;5359:2;5369:17;5375:14;5376:2;5402:20;5413:7,22

perspective (4)
5257:5;13;5262:24;5419:14

pertain (1)
5334:17

pertainning (1)
5334:7

perts (3)
5336:11;5346:6;5350:19

PGA (1)
5369:8

phones (2)
5322:3,4

photography (1)
5322:5

phrasing (1)
5400:16

physical (2)
5417:14;5422:12

picked (1)
5445:25

place (5)
5342:2;5350:21;5362:8;5425:15;5426:1

placed (2)
5343:2,7

Plaintiff (1)
5448:8

Please (25)
5335:4;5339:10;21;5333:13,22;5335:24;5339:10,13;5342:17,18;5346:7;5349:25;5362:15,25;5389:15;5394:22;5397:3;5416:1;5430:18;5440:11;5441:7;5448:2;5452:3;5459:5

pledged (3)
5372:6,21;5435:3

plus (8)
5354:14;5355:25;5356:10,10;5406:20;5413:7,23

point (35)
5322:13;5353:10;5356:11;5359:20,20;5371:1;5388:6;5391:4;5392:24;5393:1;5397:15;5398:3,6,12;5413:12;5419:5,18;5420:6;5421:1,2,7,9;5423:8;5424:2,9,10;5425:11;5426:5;5435:14;5443:22;5444:11;5447:14;5449:9;5468:24

pointed (2)
5435:21;5468:9

points (2)
5336:5;5355:1

policies (6)
5451:9;5461:24;5462:3,8;5466:20,24

policy (4)
5340:20;5382:4;5425:13;5426:1

political (1)
5323:17

population (1)
5425:19

portfolio (2)
5365:22;5366:14

portion (2)
5360:11;5379:15

position (18)
5401:18,23;5408:25;5409:9;5416:3;5418:13,20;5423:16;5442:25;5449:4,10,12,14,14;5450:5,8,13,22

positions (2)
5448:23;5449:1

positive (3)
5387:2,4;5419:8

possible (10)
5323:21;5327:3,22;5369:25;5372:23;5382:6;5408:4,9;5442:24;5448:7

Post (11)
5334:21;5357:12,13;5365:4;5373:4;5379:20,21;5419:18;20;5431:15;5444:1

potential (3)
5385:3;5386:13

potentially (2)
5387:9;5410:23

practice (3)
5426:24;5454:22,23

practices (1)
5379:9

precautionary (2)
5415:24,15

predated (6)
5341:11;5377:25;5379:16,21;5380:1,3

Predictiv (1)
5457:21

predominantly (2)
5386:3;5422:4

prefer (1)
5336:13

preliminary (1)
5327:13

pre-marked (2)
5329:10;5333:13

preparation (5)
5329:8;5379:17;5455:23;5462:7

prepare (1)
5325:1

prepared (8)
5404:7;5407:5,7;5408:23;5412:7;5447:13;5454:3;5457:21;5458:1

preparing (7)
5422:2;5439:23;5461:20;5462:2,15;5463:6;5467:17

prepayments (1)
5332:3

present (3)
5337:16;5426:10;5455:15

presentation (2)
5357:9;5358:11

presented (1)
5467:11

presenting (1)
5414:15

presidency (1)
5426:2

President (32)
5326:5,13,14;
attorney general of the state of new york v.
donald j. trump, et. al.
INDEX NO. 452564/2022

November 28, 2023

Michael Ranita - Senior Court Reporter

140 of 316
Donald J. Trump, et. al. November 28, 2023

Weisselberg (2) 5340:14,5348:7
welcome (2) 5422:16,5431:5
weren't (1) 5447:17
what's (3) 5328:15,5390:21,5391:9
wherein (1) 5354:24
Whereupon (81) 5322:18,5329:12,23,5333:15,24,5334:3,13,5335:25,5337:3,13,5338:19,23,5340:14,5342:17,14,5343:11,5344:10,21,5345:10,14,5346:10,13,5348:2,5349:4

V

valuation (23) 5377:16,17,20; 5378:3,5,17,20,5380:8,19,24,5381:2,4,9,10,23,5382:7,9,5455:16,19,22,5456:2,6,5457:21
valued (2) 5399:15,5428:10
utilized (1) 5334:9

W

willing (1) 5348:2
withdraw (4) 5375:24,5380:22; 5384:18,5465:26

Without (5) 5348:7,5403:14; 5417:14,5420:13; 5435:22
whereith (3) 5327:1,5392:18,23
whole (2) 5322:23,5447:14
wholly (1) 5339:24
wholly-owned (1) 5460:21
whose (2) 5443:24,5458:15
wide (1) 5430:25

Michael Ranita - Senior Court Reporter

(22) updated - witnesses
<table>
<thead>
<tr>
<th>work (5)</th>
<th>3524:5;5325;5;451:23;546:1;3;5462:19</th>
</tr>
</thead>
<tbody>
<tr>
<td>worked (9)</td>
<td>3524:8;5440:3;4;5449:19;5451:4;3542:16,19;5465:25;5467:15</td>
</tr>
<tr>
<td>world (1)</td>
<td>5367:9</td>
</tr>
<tr>
<td>worth (81)</td>
<td>5324:17,19;5356:2;8,10,12,14;5326:2,14;18,20,24;5327:4,24;5329:6,6;5330:17;5338:24;5349:23;5350:2,6;5352:10,15;5353:1,6,8;5365:9;5382:19,24;5384:3,14;5387:3;5388:22,23;5393:4,17,21,23;5394:6,8,17,23,25;5395:3,6;5401:15;5418:10,18;5421:2,8;5423:10,13;5428:21;5429:2,3,19,1943:0;5342:14,5343:8,16,24;5348:10,16,22;5349:1;5442:17,5443:6;5456:10,14</td>
</tr>
<tr>
<td>writing (1)</td>
<td>5336:2</td>
</tr>
<tr>
<td>written (1)</td>
<td>5414:8</td>
</tr>
<tr>
<td>wrong (2)</td>
<td>5333:4;5445:25</td>
</tr>
<tr>
<td>wrote (1)</td>
<td>5381:7</td>
</tr>
<tr>
<td>year (28)</td>
<td>5369:8,22;5374:18;5382:22;5385:16,18;20,24;5386:23;5387:4;4,5401:19;5402:17,23;5405:1;5418:14;5419:7,14,19,21;5420:7,8;5425:2;5435:9,5437:12,23;5443:8,5460:23</td>
</tr>
<tr>
<td>year-over-year (1)</td>
<td>5421:3</td>
</tr>
<tr>
<td>years (14)</td>
<td>5324:1,9;5330:10;5331:12,20;5368:7;</td>
</tr>
<tr>
<td>Page</td>
<td>Reference</td>
</tr>
<tr>
<td>------</td>
<td>-----------</td>
</tr>
<tr>
<td>3rd</td>
<td>5464:16</td>
</tr>
<tr>
<td></td>
<td>6.425 (1)</td>
</tr>
<tr>
<td></td>
<td>5409:16</td>
</tr>
<tr>
<td></td>
<td>6/30/18 (1)</td>
</tr>
<tr>
<td></td>
<td>5402:14</td>
</tr>
<tr>
<td></td>
<td>6/30/2019 (1)</td>
</tr>
<tr>
<td>4</td>
<td>5438:22</td>
</tr>
<tr>
<td></td>
<td>60 (1)</td>
</tr>
<tr>
<td></td>
<td>5369:22</td>
</tr>
<tr>
<td></td>
<td>62 (1)</td>
</tr>
<tr>
<td></td>
<td>5451:15</td>
</tr>
<tr>
<td></td>
<td>622-acre (1)</td>
</tr>
<tr>
<td></td>
<td>5345:18</td>
</tr>
<tr>
<td></td>
<td>65 (1)</td>
</tr>
<tr>
<td></td>
<td>5420:13</td>
</tr>
<tr>
<td></td>
<td>66 (3)</td>
</tr>
<tr>
<td></td>
<td>5333:9,11;5465:13</td>
</tr>
<tr>
<td></td>
<td>680 (1)</td>
</tr>
<tr>
<td></td>
<td>5366:14</td>
</tr>
<tr>
<td></td>
<td>680.6 (1)</td>
</tr>
<tr>
<td></td>
<td>5365:23</td>
</tr>
<tr>
<td>5</td>
<td>5356:2;5360:18;</td>
</tr>
<tr>
<td></td>
<td>5404:7;5407:6;5410:1;</td>
</tr>
<tr>
<td></td>
<td>5411:10</td>
</tr>
<tr>
<td></td>
<td>85 (1)</td>
</tr>
<tr>
<td></td>
<td>5332:12</td>
</tr>
<tr>
<td></td>
<td>86 (1)</td>
</tr>
<tr>
<td></td>
<td>5460:18</td>
</tr>
<tr>
<td></td>
<td>87 (3)</td>
</tr>
<tr>
<td></td>
<td>5418:13;5439:18,20</td>
</tr>
<tr>
<td></td>
<td>89.2 (1)</td>
</tr>
<tr>
<td></td>
<td>5460:22</td>
</tr>
<tr>
<td></td>
<td>890 (1)</td>
</tr>
<tr>
<td></td>
<td>5323:7</td>
</tr>
<tr>
<td>6</td>
<td>5339:21;5454:16</td>
</tr>
<tr>
<td></td>
<td>5417:25;5438:4</td>
</tr>
<tr>
<td></td>
<td>5410:10</td>
</tr>
<tr>
<td></td>
<td>90 (1)</td>
</tr>
<tr>
<td></td>
<td>5340:12</td>
</tr>
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<td>92 (1)</td>
</tr>
<tr>
<td></td>
<td>5372:20</td>
</tr>
<tr>
<td></td>
<td>94 (2)</td>
</tr>
<tr>
<td></td>
<td>5341:7,7</td>
</tr>
<tr>
<td></td>
<td>98.9 (1)</td>
</tr>
<tr>
<td></td>
<td>5437:1</td>
</tr>
<tr>
<td>7</td>
<td>75 (1)</td>
</tr>
<tr>
<td></td>
<td>5356:1</td>
</tr>
<tr>
<td></td>
<td>76.2 (3)</td>
</tr>
<tr>
<td></td>
<td>5401:18,23;5437:3</td>
</tr>
<tr>
<td>8</td>
<td>85 (1)</td>
</tr>
<tr>
<td></td>
<td>5332:12</td>
</tr>
<tr>
<td></td>
<td>86 (1)</td>
</tr>
<tr>
<td></td>
<td>5460:18</td>
</tr>
<tr>
<td></td>
<td>87 (3)</td>
</tr>
<tr>
<td></td>
<td>5418:13;5439:18,20</td>
</tr>
<tr>
<td></td>
<td>89.2 (1)</td>
</tr>
<tr>
<td></td>
<td>5460:22</td>
</tr>
<tr>
<td></td>
<td>890 (1)</td>
</tr>
<tr>
<td></td>
<td>5323:7</td>
</tr>
<tr>
<td>9</td>
<td>90 (1)</td>
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<td>5340:12</td>
</tr>
<tr>
<td></td>
<td>92 (1)</td>
</tr>
<tr>
<td></td>
<td>5372:20</td>
</tr>
<tr>
<td></td>
<td>94 (2)</td>
</tr>
<tr>
<td></td>
<td>5341:7,7</td>
</tr>
<tr>
<td></td>
<td>98.9 (1)</td>
</tr>
<tr>
<td></td>
<td>5437:1</td>
</tr>
<tr>
<td>6.1</td>
<td>5418:10;5438:10</td>
</tr>
<tr>
<td>6.12</td>
<td>5401:16;5432:14</td>
</tr>
</tbody>
</table>
In The Matter Of:

NYS Attorney General v.

Donald J. Trump et al.

November 29, 2023

Ny Supreme Court- Civil
THE COURT: All rise.

Part 37 is now in session. The Honorable Judge Arthur Engoron presiding.

Make sure all cell phones are on silent. Laptops and cell phones will be permitted, but only guests of the press. There is absolutely no recording or photography of any kind allowed in the courtroom.

Now please be seated and come to order.

THE COURT: Good morning, everyone.

And we are going to continue with Ms. Perless, correct?

MR. KISE: Well Judge, three in a row now. As I told you yesterday on the break, we might be able to truncate it. So I think at this point to avoid cumulative testimony and prolong the proceedings, we are going to forego asking Ms. Pereless anymore questions. I don't know if the government has any questions. But, given that they said it was very cumulative, I am not sure they do. But we don't have -- in the interest of moving things along, we are prepared to proceed with Ms. Vrablic.

THE COURT: Well, we have a mutual interest.

Okay. Plaintiff, would you like to?

MR. WALLACE: If Ms. Perless is here we might have five to ten minutes of questions for her and we could get those out of the way.

THE COURT: Let's do it.

MR. ROBERT: Your Honor, while we are waiting for the witness, to try to streamline things more. I have Jack Weisselberg ready to come in this afternoon. In going through things last night, he was coming in as a custodian to introduce the Trump Tower loan agreement. So if the Attorney General would stipulate to these three documents, we don't need to bring Jack Weisselberg in this afternoon and can dispense with that as well.

MR. WALLACE: If you want to hand them to us we can take a look, and I think we can resolve it by the break.

MR. ROBERT: Sure. Just for the record, I am handing the Attorney General and I will hand up a copy to the Court Defendant's Exhibit 508, which is the loan agreement between Trump Tower Commercial and Ladder Capital, dated August 30, 2012.

THE COURT: With that in mind, D-1059, which is the guaranty of property expenses for that loan. And D-1060, which is the guaranty of recourse obligations.

I'll give one copy to the Attorney General and one to the Court. And if they could let us know during the first break so I can let Mr. Weisselberg and his
CROSS-EXAMINATION

BY MR. LADOV:

Q    Good morning, Ms. Pereless.

A    You as well.

Q    I want to ask a few minutes worth of questions to follow up on a couple of questions Mr. Suarez asked yesterday.

So you were shown a list of due diligence items on the Doral loan. Actually I'll bring it up. It was marked as Defendant's Exhibit 185. And you will see on the second page, we can look at it on the screen I think. On the second page of the list of due diligence items --

MR. LADOV: You know what, it is D-185 corrected.

Q    Well, just to move things along I'll represent to you that one of the items on that list was an appraisal on Doral Resort. I know you testified yesterday that you did not have a specific recollection about that appraisal. But I wanted to walk you through a couple of documents to see if we can refresh your recollection and ask some follow-up questions about Deutsche Bank's review of that appraisal and how it related to the Doral underwriting.

So I would like to ask to show you a -- a document that was marked as Exhibit -- Plaintiff's Exhibit 378. (Handing)

Q    And Ms. Pereless, if you could take a moment to look at that document. Do you recognize this?

A    Yes.

Q    And at a very high level, can you just explain what you are looking at?

A    This is an e-mail from Tom Sullivan to Marc Mitchell. THE COURT: If you can look and talk into the microphone.

THE WITNESS: Look and talk.

A    An e-mail from Tom Sullivan to Marc Mitchell asking him to focus on the conclusion in the last two paragraphs. I guess regarding the appraisal of the Doral Resort.

MR. LADOV: Your Honor, I move this document into evidence.

THE COURT: Granted, it is in.

MR. KISE: Statute of limitations objection.

THE COURT: Objection acknowledged and overruled.

Q    If you can look at the second page of the document?

MR. LADOV: And we can scroll down on the screen.

Q    You will see an e-mail from Mr. Phil Ribolow at Deutsche Bank to yourself, and the subject is CBRE Appraisal of the Marriott Doral Golf Resort and Spa. Do you recall who Phil Ribolow is?

A    Yes.

Q    And who is he?

A    He worked in Evaluation Services Group.

Q    And at the beginning of the e-mail it says: Dear Emily "At your request, 1) I am detailing the areas of objection with the greatest impact are items number 1, 3, 7, 11, 13, 15, and 16. 2) I am detailing the areas of objection with the CBRE appraisal below. 2) Providing my estimate of value. And also 3) A guide to what range of value might be obtained if this property were to be appraised by a knowledgable appraiser who is well-versed in the South Florida Golf Resort Market."

Does this refresh your recollection at all about what, if anything, you had done with regard to an appraisal on Doral?

A    No, just that we provided it to the Appraisal Services Group to review.

Q    And do you recall why you would have done that?

A    I think it was due diligence when we were looking to do the loan.

Q    And so in the next sentence Mr. Ribolow writes: "The objections have been written in the order presented within the report. In the interest of saving busy readers some time, the areas of objection with the greatest impact are items number 1, 3, 7, 11, 13, 15, and 16."

MR. LADOV: I will hand that up and whenever you have that for us, Kevin.

MS. FAHERTY: Our document is PX-1275. I'll hand it up to the Court and over to Counsel, and we can confer and then come back and confirm with the Court that these are okay, Judge.

THE COURT: Such collegiality; am I in the right courtroom?

Are we ready?

COURT OFFICER: Ready for the witness?

THE COURT: Yes, ready.

COURT OFFICER: Witness entering.

Whereupon the witness resumed the stand.

THE COURT: I'll remind the witness, good morning, that she is still under oath.
Donald J. Trump et al. November 29, 2023

1. And I am not going to go through the whole e-mail, but in paragraph one Mr. Ribolow objects that, quote -- that the, quote, "appraiser states that his value includes a buyer's assumption of the cash liability of the refundable memberships, but presents no data or analysis as to how much that liability might actually cost."

2. If you look down to paragraph three, he talks a bit about the land use analysis in the appraisal. And he objects that the, quote, "area surrounding the subject is a new area of development, consisting primarily of industrial uses."

3. And then at the end of that paragraph he says that this is, quote, "hardly conducive to the appraiser's utilizing trophy hotel property return parameters to value Doral. Resorts located in industrial zones alongside airport flight paths rarely achieve premium pricing."

4. And then it goes on.

5. MR. LADOV: Actually, if we can just scroll down.

6. Q. There are about three pages worth of objections to the appraisal.

7. MR. LADOV: And then if you scroll all the way down to the end.

8. Q. After about 16 paragraphs Mr. Ribolow writes to you that: Based on his objections and adjustments that he is, quote, "comfortable with concluding a value for the property in the range of 110 to $115 million."

9. And then again, I think you mentioned this before, but it states, quote -- that: Based on his objections and adjustments that he is, quote, "hardly conducive to the appraiser's utilizing trophy hotel property return parameters to value Doral. Resorts located in industrial zones alongside airport flight paths rarely achieve premium pricing."

10. And then if you scroll all the way down.

11. MR. LADOV: Actually, if we can just scroll down.

12. Q. There are about three pages worth of objections to the appraisal.

13. MR. LADOV: And then if you scroll all the way down to the end.

14. Q. After about 16 paragraphs Mr. Ribolow writes to you that: Based on his objections and adjustments that he is, quote, "comfortable with concluding a value for the property in the range of 110 to $115 million."

15. And then if you scroll all the way down.

16. MR. LADOV: Actually, if we can just scroll down.

17. Q. There are about three pages worth of objections to the appraisal.

18. MR. LADOV: And then if you scroll all the way down to the end.

19. Q. After about 16 paragraphs Mr. Ribolow writes to you that: Based on his objections and adjustments that he is, quote, "comfortable with concluding a value for the property in the range of 110 to $115 million."

20. MR. LADOV: And then actually scrolling down for a second to look at Mr. Ribolow's signature.

21. Q. It says that he is in CIB/Credit Risk Management. Do you have an understanding of what that refers to?

22. A. I think CIB stood for Corporate Investment Bank, but I am not positive. And Credit Risk Management is Credit Risk Management.

23. Q. Okay. And then scrolling back up to the first page of the document. And you forwarded this e-mail from Mr. Ribolow to Tom Sullivan. Correct?

24. A. Yes.

25. Q. And who was Tom Sullivan?

26. A. Tom Sullivan was my boss.

27. Q. And what was his role in the underwriting process for the Doral facility?

28. A. He was the senior lender.

29. Q. And then again, I think you mentioned this before, but at the very top Mr. Sullivan forwarded this conversation to Marcus Mitchell. Who is Marcus Mitchell?
### Vrablik - by Defendant - Direct (Suarez) Page 5484

1. COURT OFFICER: Please have a seat.
2. Please state your name and either home or business address for the record.
4. THE COURT: Okay Mr. Suarez, please proceed.
5. DIRECT EXAMINATION
6. BY MR. SUAREZ:
7. Q Ms. Vrablic, good morning. My name is Jesus Suarez. I represent certain of the defendants in this case.
8. A I believe I hold several positions. I was a relationship manager. I was a team leader. And a I was an office manager.
9. Q What were your job responsibilities as a relationship manager?
10. A Primary responsibility was servicing high-net-worth individuals. Bringing the customers in and meeting all of their banking needs.
11. Q What division of Deutsche Bank were you employed by?
13. Q What is the Private Wealth Management Division at Deutsche Bank?
14. A It is a division that caters to high-net-worth individuals, domestic, in terms of banking investment services, depository lending and trust services.
15. Q What were your responsibilities as a team leader at Deutsche Bank?
16. A I had a team of four or five bankers that reported to me doing the same type of business.
17. Q And how did your responsibilities change, if at all, when you became an office manager?
18. A I had more budgetary responsibilities. There was some mentoring and training of the staff.
19. Q What is the business of the Private Wealth Management Division at Deutsche Bank?
20. A Again, to service high-net-worth individuals for the

### Vrablik - by Defendant - Cross (Suarez) Page 5485

1. THE COURT: Overruled, but understood.
2. So it is in evidence.
3. Whereupon, the document referred to was deemed marked for evidence as Plaintiff's Exhibit 1836 by the Court.
4. MR. LADOV: Thank you, Your Honor. We have no further questions for Ms. Pereless.
5. THE COURT: Okay. Anything for redirect?
6. MR. SUAREZ: Nothing further on redirect, Your Honor.
7. THE COURT: Okay. Thank you. The witness is excused.
8. (Whereupon the witness stepped down from the stand and exited the courtroom.)
9. THE COURT: Defense, would you like to call your next witness?
10. MR. SUAREZ: The defense calls Rosemary Vrablic.
11. COURT OFFICER: All set, Judge?
12. THE COURT: Yes, all ready.
14. (Whereupon the witness took the stand.)
15. COURT OFFICER: Please raise your right hand.
16. R O S E M A R Y   V R A B L I K, after having first been duly sworn was examined and testified as follows:
<table>
<thead>
<tr>
<th>Vrablik - by Defendant - Direct (Suarez)</th>
<th>Page 5486</th>
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<tbody>
<tr>
<td>1. various banking services.</td>
<td></td>
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<tr>
<td>Q. How, if at all, did your responsibilities with the Private Wealth Management Division involve loan origination?</td>
<td></td>
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<tr>
<td>A. That was one of the core products.</td>
<td></td>
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<tr>
<td>Q. And what responsibility, if any, did you have in negotiating the terms of loans?</td>
<td></td>
</tr>
<tr>
<td>A. I was an intermediary between the customer and/or prospect and the credit and lending parts of the bank.</td>
<td></td>
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<tr>
<td>Q. What, if any, professional relationship did you have while at Deutsche Bank with President Donald Trump?</td>
<td></td>
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<tr>
<td>A. He was a customer of the bank.</td>
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<tr>
<td>Q. And to be clear, there are a number of parties in this case with the last name Trump, so I refer to Donald J. Trump as President Trump, as an honorary. I understand your relationship, your professional relationship with him began before he was elected as president.</td>
<td></td>
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<tr>
<td>A. That's correct.</td>
<td></td>
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<tr>
<td>Q. How did President Trump become a client of the bank?</td>
<td></td>
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<tr>
<td>A. I received a phone call from Jared Kushner saying that the Trump Organization was bidding on an auction for a piece of property in Florida, and they might be in need of financing to acquire that property.</td>
<td></td>
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<tr>
<td>Q. As part of your relationship with President Trump as a Deutsche Bank employee, what loans did you originate for him?</td>
<td></td>
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<tr>
<td>A. There were three: There was one loan for Doral in Florida. There was a loan for a property in Chicago. And the last one was the Old Post Office in Washington DC.</td>
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<tr>
<th>Vrablik - by Defendant - Direct (Suarez)</th>
<th>Page 5487</th>
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<tbody>
<tr>
<td>1. Florida. There was a loan for a property in Chicago. And the last one was the Old Post Office in Washington DC.</td>
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<tr>
<td>MR. SUAREZ: If we could please pull up premarked Defendant's Exhibit 291 for identification.</td>
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<td>(Handing)</td>
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<td>THE WITNESS: Thank you.</td>
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<tr>
<td>Q. Ms. Vrablic, do you recognize your e-mail at the top of this page?</td>
<td></td>
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<tr>
<td>A. Yes.</td>
<td></td>
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<tr>
<td>Q. Do you recognize the date of November 29, 2011 at the top of the page?</td>
<td></td>
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<tr>
<td>A. Yes.</td>
<td></td>
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<tr>
<td>Q. Is this an e-mail that you sent to Marcus Mitchell and copied to Dominic Scalzi?</td>
<td></td>
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<tr>
<td>A. It appears so.</td>
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<tr>
<td>Q. Who was the reference, DT? Was that a reference to President Trump?</td>
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<tr>
<td>MR. WALLACE: Objection, leading.</td>
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<tr>
<td>A. Yes.</td>
<td></td>
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<td>THE COURT: Sustained.</td>
<td></td>
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<tr>
<td>THE WITNESS: Sorry.</td>
<td></td>
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<tr>
<td>Q. What was the reference to DT?</td>
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<tr>
<td>A. Donald Trump.</td>
<td></td>
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<tr>
<td>Q. Do you see where you wrote: &quot;We are whale hunting&quot;?</td>
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<tr>
<td>A. Yes.</td>
<td></td>
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<tr>
<th>Vrablik - by Defendant - Direct (Suarez)</th>
<th>Page 5488</th>
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<tbody>
<tr>
<td>1. Q. What does that mean?</td>
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<tr>
<td>A. It is a term used when there is a very high-net-worth individual that's a potential prospect.</td>
<td></td>
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<tr>
<td>Q. Was President Trump a potential prospect of the bank at this time?</td>
<td></td>
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<tr>
<td>A. Yes.</td>
<td></td>
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<tr>
<td>Q. Why?</td>
<td></td>
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<tr>
<td>A. There was the request for financing for the Doral property.</td>
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<tr>
<th>Vrablik - by Defendant - Direct (Suarez)</th>
<th>Page 5489</th>
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<tbody>
<tr>
<td>1. introduction of the subscription finance lending capability for financial sponsors in the U.S. in 2006, the focus of this initiative is to develop a broader real estate lending capability for PWM clients.</td>
<td></td>
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<tr>
<td>Do you see that?</td>
<td></td>
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<tr>
<td>A. Yes.</td>
<td></td>
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<tr>
<td>Q. Were you familiar with the Wealth Management Division's initiative to develop a broader real estate lending capability for PWM clients?</td>
<td></td>
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<tr>
<td>A. Yes.</td>
<td></td>
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<tr>
<td>Q. Then it goes on to say: Real estate entrepreneurs and investors represent an important component of our client base and U.S. wealth creation capacity. Do you see that?</td>
<td></td>
</tr>
<tr>
<td>A. Yes.</td>
<td></td>
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<tr>
<td>Q. What, if anything, was the Private Wealth Management division encouraging with this initiative for commercial real estate loans?</td>
<td></td>
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<tr>
<td>A. I am sorry, I don't understand the question.</td>
<td></td>
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<tr>
<td>Q. We can keep going.</td>
<td></td>
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<tr>
<td>MR. SUAREZ: Let's to turn page two in the second paragraph.</td>
<td></td>
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</tbody>
</table>
| Q. It says in the middle of the second paragraph, we will focus on clients for whom PWM U.S. will be a primary financier with the intention of developing lasting broad
private banking relationships --

MR. SUAREZ: I am sorry. That's on page three.

A Yes.

(The following proceedings were stenographically recorded by Senior Court Reporter Michael Ranita.)

Q How, if at all, did President Trump fit into that description?

A He would have been one.

MR. SUAREZ: Can we turn to page five.

(Whereupon, the exhibit was displayed on the screen.)

Q Do you see the section that says "client segmentation and coverage"?

A Yes.

Q And it says, "PWM US will target well-established real estate entrepreneurs and investors with a proven, successful track record in the primary US commercial real estate markets. In addition to their capital raising and financing requirements, these entrepreneurs represent tremendous potential for broad Wealth Management relationships with the firm."

A Yes.

Q How would developing a relationship with President Trump, if at all, fit into this -- into this directive?

A Yes, he would have fit the category of entrepreneur and the investor with the successful track record.

Q And then it goes on, "Our target client base", one paragraph down, "for this initiative will have the following general characteristics: Individuals or families actively investing in US commercial real estate properties, with proven, successful track records in this sector. As a Private Wealth Management business, we will review the principals and their families as our primary clients" -- excuse me. I said "we will review." It says, "We will review the principals and their families as our primary clients."

A Yes.

Q How, if at all, did developing a relationship with President Trump advance this directive?

A Again, he was in the US commercial real estate market and had a successful track record.

Q And then it goes on, "The target clients will have a net worth of over $50 million, and we expect most will have family net worth of over $100 million. Their consolidated financial position will demonstrate existing liquidity and/or cash flow and an effective strategy towards managing their personal liabilities and real estate debt."

A Yes.

Q How did the transactions that you described earlier fit into the directives set forth here?

A The first loan that was done was for the acquisition of the property in Florida, in addition, there were cross selling opportunities into the other products, deposits, investments as well.

MR. SUAREZ: Your Honor, I move defense Exhibit 62 into evidence.

Q Ms. Vrablic, do you recognize this document?

A Yes.

Q What is the date of this document?

A Date. I'm sorry, February 12, 2013.
MR. SUAREZ: If we could turn to page three of this e-mail. (Whereupon, the exhibit was displayed on the screen.)

Q Do you see where it says "Subject: The Donald"?
A Yes.
Q May I assume that Mr. Byrne was referring to Donald J. Trump?
A Yes.
Q He goes on to write "Hi Rosemary, I hope you are well. I hear that Anshu is scheduled to meet with Trump in two weeks. Did you set this up? Are you taking him?" Who is Anshu?
A That was Anshu Jain. He was of the CEO, Chairman of Deutsche Bank at the time.
Q And then on page two, if we could scroll up? (Whereupon, the exhibit displayed on the screen was scrolled through.)
Q It says "Anshu asked for a briefing of our banking activity with DJT. I will write up something and give it to him. Do you have any business agenda for the meeting, or is it just a meet and greet?"
A Yes.
Q And that was an e-mail from Mr. Byrne to you on February 12, 2013. Do you see that?
A Yes.

MR. SUAREZ: Your Honor, I move Defendant's Exhibit 296 into evidence. (Defendant's Exhibit 296 was deemed marked and pre-marked for identification, Exhibit D-297.)

THE COURT: Granted. It's in. (Whereupon, the exhibit was displayed on the screen.)

Q Do you see at the top, Ms. Vrablic, that you were copied on this e-mail on February 19, 2013? Copied on this e-mail on February 19, 2013?
A Yes.
Q What is this e-mail enclosing?
A From reading it, it looks as if it's a briefing for -- on Mr. Trump.
Q Do you see where it says, "Subject: Briefing for Anshu"?
A Yes.
Q Why would Mr. Jain have been provided a briefing on Mr. Trump before the meeting?
A It was pretty standard for all meetings with the chairman that briefings like this would be done.
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Q Why would Mr. Jain have been provided a briefing on Mr. Trump before the meeting?
A It was pretty standard for all meetings with the chairman that briefings like this would be done.
1. Do you recognize this document?
   2. Yes.

Q What is this document?
A This would have been the briefing that would have been provided to Mr. Jain.

Q If you see on the bottom of this second page of this document.
A Yes.

Q Do you see where it says, "Mr. Trump's personal financial statement reveals a net worth of over $2.5 billion as adjusted by DB Lending with liquidity of $100 million plus, and limited liabilities. He is risk rated A"?
A Yes.

Q Why would that have been relevant to include in a briefing for your meeting with President Trump and Mr. Jain?
A Again, I think it was standard practice for the financial listing to be there.

Q And do you see in "Background" it says, "The Trump relationship with AWM began in 2011 when Donald Trump, Jr. was introduced to Rosemary Vrablic by Jared Kushner, husband of Ivanka Trump." And then it goes on to describe the relationship.
A Yes.

Q And then towards the end of that paragraph it says, "As can be seen on the below chart, we have excess of 200 million in loans, 30 million in investable assets, and closed on an asset interest rate swap generating capital markets income."
A Yes.

Q Was this consistent with the goal of developing a relationship with President Trump?
A Yes.

Q And you see a chart that appears in the following, um, below the paragraph that we were just discussing?
A It would be revenue to the bank.

Q Revenue to the bank.
A Yes.

Q And in year end 2011 it showed revenue of 13,447; is that correct?
A Yes.

Q How did the revenue change in year end 2012?
A Primarily, from the loan increase there would be interest income plus the capital markets income.

Q What does pro forma 2013 mean?
A Based upon loans that had been closed in 2013, that would be the projected revenue that would be generated by all of the facilities.

Q What was the projected revenue in 2013 from the relationship with President Trump?
A Six million.

Q How did the relationship grow from 2011 to 2013?
A We had done three loans, Doral, Chicago and OPO, plus the depository and the capital markets business.

Q What does "loans AUM" mean?
A Assets under management.

Q And how do loans AUM affect the revenue generated by the bank?
A There is interest income earned on loans.

Q And how did the loans assets under management change from 2011 to 2012?
A As I said, we closed on Doral, um, Chicago, and then OPO would have been closed subsequently.

Q And what do deposits/IA AUM mean?
A They were deposits maintained at the bank, plus investment management accounts.

Q How, if at all, is that a source of revenue for the bank?
A The bank is earning money or deposits, plus investment management fees.

Q Was it an objective of the bank to increase assets and deposits under management from President Trump?
A Yes.

Q Was the bank successful in doing that?
A Yes.

Q And then it says, "asterisk, top five relationships in terms of revenue for Rosemary Vrablic and her team."
A Yes.

Q What did that mean?
A In terms of my client base, he would have been a top five name in terms of profitability.

Q And then it -- the bottom, it says, "Going forward we expect to continue to grow the relationship in all asset categories."
A Yes.

Q What, if anything, would that indicate about the bank's interest in further developing a relationship with President Trump?
A Yes.
The court: Exhibits 297 and 298 into evidence.

Q Why would you say it "went very well"?

A The meeting went very well.

Q Trump?

A No.

Q What was the second ask?

A The primary source of customers usually is referrals from existing customers.

Q And how could Mr. Trump, President Trump assist the bank in developing referrals?

A He would know other people who would be potentially fitting in the high net worth category, or DB's real estate department.

Q What, if any, benefit did Deutsche Bank have to gain from leveraging President Trump's personal and professional network?

A As I said, existing customers were the best source of additional customers.

Q Was this consistent with the bank's approved business strategies?

A Yes.

Q What, if anything, was communicated to President Trump concerning the bank's desire to continue doing business with him at the meeting with Mr. Jain?

A Just that we were -- again, the introduction to Mr. Jain, and to see if there was any other additional business to be done together.

Q How did Mr. Jain react to the meeting with President Trump?

A The meeting went very well.

Q Why would you say it "went very well"?

A Well, they got along, um, and it was a very, very nice productive lunch.

Q As a result of the meeting, what, if any actions, were taken to further the relationship with President Trump?

A I don't remember anything specifically.

Q Did Mr. Jain express that President Trump was under leveraged?

A No.

Q What, if any, professional relationship did you maintain with Ms. Ivanka Trump prior it -- excuse me, while you were employed at Deutsche Bank?

A Yes.

Q Do you have any reason to doubt that you sent this e-mail to Ms. Trump?

A No.

Q Do you see where it says, "Ivanka hi! My direct boss, Michele Fassiola, he's Italian -- "Michele", I'm sorry, "Fassiola (he's Italian) would like to call you and your dad to thank you for being such great clients and for all the business we have been doing together. Your family is in the top ten revenue generating names of Asset and Wealth Management now, and he is thrilled with how it's grown."

A Yes.

Q Is that statement accurate?

A Yes.

MR. SUAREZ: Objection. Leading.

Q Who was Michele Fassiola?

A Michele Fassiola was my boss and head of Asset Wealth Management.

Q Do you recognize this e-mail?

A Yes.
Mr. Suarez: If we take a look at page three of this document.

(Whereupon, the exhibit was displayed on the screen.)

Q: It says "This meeting is a lunch with Donald Trump, to which he invited you during your phone call on August 8th. He would like -- he would first like to visit with you in his office and then head downstairs for lunch in the Trump Tower Grill." Do you see that?

A: Yes.

Q: And then the third bullet point says, "Rosemary Vrablic has covered Donald, Ivanka and redacted, since 2011. Since then, our relationship has grown significantly with 2013 revenues of about $6 million."

Do you see that?

A: Yes.

Q: Why was that a key ask and discussion point for this meeting?

A: The obtaining of additional business was one of the key jobs.

Q: Whose key jobs?

A: Mine.

Q: Were you successful in doing your job?

A: In general?

Q: Sure.

A: Yes.

Q: Were you successful in developing the bank's relationship with President Trump?

A: Yes.

(Continued on the next page.)
1 Vrablik - by Defendant - Direct (Suarez) Page 5510
2 MR. SUAREZ: Your Honor, we move Defendant's 300 into evidence.
3 THE COURT: Granted, it is in.
4 (Whereupon, the document referred to was deemed marked for evidence as Defendant's Exhibit 300 by the Court.)
5 MR. SUAREZ: I would like to pull up premarked for identification Defendant's Exhibit 302.
6 (Handing)
7 THE WITNESS: Thank you.
8 Q And I would like to turn your attention to an e-mail dated February 27, 2013. On page three of this document at the top of the page, do you see -- do you recognize this as an e-mail you sent to Tom Sullivan?
9 A Yes.
10 Q And do you see where it says: He said we would be paid off shortly on the condos and I thought he was nuts. Marc told me we will be five weeks. Wow.
11 Do you see that?
12 A Yes.
13 Q What did you mean by that?
14 A Yes.
15 Q And do you see where it says: He said we would be paid off shortly on the condos and I thought he was nuts. Marc told me we will be five weeks. Wow.
16 Do you see that?
17 A Yes.
18 Q What did it mean that Charlie Burrows was putting together other options to present for them?
19 A 20 million to us. He has another 200 million at a variety of other banks.
20 Q And then you respond: The other business is also an important category.
21 A The intent was to cross sell all of our customers, so the additional other business is also an important category.
22 Q And then if we scroll up to the e-mail on page two.
23 A Kushner saying that they were going to be bidding on the Doral Golf Course and were looking for financing.
24 Q How, if at all, did you participate in the negotiation of that loan?
25 A I would be the intermediary between the credit and lending department and the customer.

Vrablik - by Defendant - Direct (Suarez) Page 5512
1 Kushner saying that they were going to be bidding on the Doral Golf Course and were looking for financing.
2 Q How, if at all, did you participate in the negotiation of that loan?
3 A I would be the intermediary between the credit and lending department and the customer.
4 MR. SUAREZ: If we could pull up Defendant's Exhibit 311 and start with page three of the document.
5 Q Do you recognize this e-mail?
6 A Yes.
7 Q What does subject "Eagle" mean?
8 A That was the code name given for the deal.
9 Q And who is Thomas Bowers?
10 A He was my boss at the time.
11 Q And then he writes: Didn't realize LTV is 83 percent. Realize strength of the guarantor, but this definitely needs to be shown to PDW and BP. Can you give me an e-mail that discusses opportunity for additional business, both related to the deal and otherwise? Important to have PDW and BP on board.
12 A Why would an e-mail discussing opportunities for additional business be relevant to this transaction?
13 Q The intent was to cross sell all of our customers, so the additional other business is also an important category.
14 A The intent was to cross sell all of our customers, so the additional other business is also an important category.

Vrablik - by Defendant - Direct (Suarez) Page 5513
1 Do you recognize this as your response to Mr. Bowers e-mail?
2 A Yes.
3 Q And you write: Tom, it is 83 percent of purchase price of 150 million, what does mmm mean?
4 A 150 million.
5 Q The CBRE appraisal -- which was done for another bank -- that we will review -- is at 180 million, which could result in an LTV of 69. We expect this report right after Christmas. The environmental was clean.
6 A Why would the bank consider an appraisal prepared for another bank?
7 Q And then you respond: The other business is significant deposit business. DJT has already moved in 20 million to us. He has another 200 million at a variety of other banks.
8 A How is that relevant to this transaction?
9 Q And then: Charlie Burrows is putting together the DBAG options to present to them in January.
10 A What is DBAG?
11 Q And what did it mean that Charlie Burrows was putting together other options to present for them?
12 A He provided products for cash management.
THE COURT: They are trying to make money. Why wouldn't they want to do more business with someone that they are already making money with?

MR. SUAREZ: I realize some of my questions sound a little obvious. I have to ask them this way because Your Honor wants me to not ask anything that is in the ballpark of a leading question. But I would be happy to move this along if the Court would grant me a little leeway.

THE COURT: How about we do this. I'll sustain the objection, asked and answered.

Q. Do you see where it says: New clients/referrals?

A. Yes.

Q. Why, if at all, were new clients and referrals relevant to this transaction?

A. Again, we like referrals coming from existing customers.

Q. How, if at all, does that affect the bank's profitability?

A. They would buy and use some of our services which would generate profitability for the bank.

Q. And then it says: Given the circles this family travels in, we expect to be introduced to the wealthiest people on the planet.

Was that consistent with -- withdrawn.

How, if at all, was that consistent with the bank's objective to develop additional business through its relationship with President Trump?

A. To get, you know, referrals to become new clients.

Q. And how, if at all, was this consistent with your job responsibilities at the bank at that time?

A. It was consistent.

Q. And then if we scroll to the top of the document, which I believe is another e-mail, you wrote to Mr. Bowers in response to an e-mail from him. It says: Tom, they are ecstatic with your performance, so I think we will get tremendous business from them. I think we can become the lead bank in short order.

MR. SUAREZ: Your Honor, I move Defendant's Exhibit 311 into evidence.

(Whereupon, the document referred to was deemed marked for evidence as Defendant's Exhibit 311 by the Court.)

MR. SUAREZ: If we could pull up premarked Defendant's Exhibit 312.

(Handing)

THE WITNESS: Thank you.

MR. SUAREZ: And if we could scroll down to the e-mail at the bottom of this page.

Q. Do you see where it says: I would conclude first paragraph by saying, we recommend on the basis that it is a sound credit and even in the absence of a personal guaranty, but that the PG makes it a remarkably safe deal given the strength of the g-tor.

What does that mean?

A. G-tor is guarantor.

Q. And what was the import, if any, of Mr. Bowers concluding that it was a sound -- he would recommend it on the basis of sound credit, even in the absence of a personal guarantee?

A. I think Tom's intent would have been that the transaction itself was a very sound credit deal.
<table>
<thead>
<tr>
<th>Q</th>
<th>A</th>
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<tbody>
<tr>
<td>1</td>
<td>Do you recognize this as your response to Mr. Bowers?</td>
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<td>2</td>
<td>Yes.</td>
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<tr>
<td>3</td>
<td>And it says: As told MM to discuss the DJT's expertise in successfully running world class assets like -- as demonstrated by his extensive hotel, condos, clubs, golf courses -- makes this asset purchase and repositioning a realistic and high probable success story.</td>
</tr>
<tr>
<td>4</td>
<td>What did you mean by that?</td>
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<td>5</td>
<td>A The Doral asset was a combination of all of those things hotel, condo, golf course, spa. And so it took a unique person or individual to be able to manage that kind of extensive property. And I thought that with Mr. Trump's expertise in all of those categories that it would be a realistic story for him to be able to do that.</td>
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<td>6</td>
<td>And was he able to do that?</td>
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<td>7</td>
<td>Yes.</td>
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<td>8</td>
<td>MR. SUAREZ: Your Honor, I move Defendant's Exhibit 312 into evidence.</td>
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<td>9</td>
<td>THE COURT: Granted, it is in.</td>
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<td>10</td>
<td>(Whereupon, the document referred to was deemed marked for evidence as Defendant's Exhibit 312 by the Court.)</td>
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<td>11</td>
<td>MR. SUAREZ: And we will move to Defendant's Exhibit 66.</td>
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<td>12</td>
<td>(Handing)</td>
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<tr>
<td>13</td>
<td>THE WITNESS: Thank you.</td>
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<tr>
<td>14</td>
<td>Q Are you familiar with this document?</td>
</tr>
<tr>
<td>15</td>
<td>A Yes.</td>
</tr>
<tr>
<td>16</td>
<td>Q What is this document?</td>
</tr>
<tr>
<td>17</td>
<td>A The credit guidelines from Credit Risk Management.</td>
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</table>
| 18 | Q And if I could direct your attention to page 17 of the exhibit -- page 16 of the document. Towards the bottom of the page. It says: Commercial real estate. The commercial real estate lending team with PWM will consider commercial
Donald J. Trump et al. November 29, 2023

Min-U-Script®

Ny Supreme Court- Civil

(14) Pages 5522 - 5525

160 of 316
Ny Supreme Court- Civil

Donald J. Trump et al. November 29, 2023

INDEX NO. 452564/2022
RECEIVED NYSCEF: 01/04/2024

1. Q And what were your impressions after visiting The Trump Doral?
2. A That the work had been done quite well, and that it was moving along so quickly.
3. Q And what was the purpose of sending this e-mail to Ivanka?
4. A Just a thank you.
5. MR. SUAREZ: Your Honor, I would move defendant's 324 into evidence.
6. THE COURT: Granted. It's in.
7. (Defendant's Exhibit 324 was deemed marked and admitted in evidence.)
8. Q I would like to next show you an e-mail pre-marked for identification as Plaintiff's Exhibit 325?
9. (Whereupon, the exhibit was displayed on the screen.)
10. MR. SUAREZ: If we could turn to the bottom of the first page.
11. Q Who is Emily Schroeder?
12. A She was an employee of the lending group at Deutsche Bank.
13. Q What, if any, role did she play in the Doral transaction?
14. A She was one of the underwriters.

1. Q Do you see in the middle of page you forwarded an e-mail of Ms. Schroeder to Ivanka Trump on June 12, 2013?
2. A Yes.
3. Q And if I could direct your attention to paragraph two, labeled two. It says, "We had a great meeting today with Credit Risk, and they are very open to the extension and the burn off of your dad's guarantee. It was quite remarkable and a testament to you and your family in what you have achieved with us so quickly."
4. What is the reference to the "burn off of your dad's guarantee" referring to?
5. A There had been a request by Ivanka for her dad's full recourse guarantee to be either limited, or none, at some point.
6. Q And how does the bank evaluate those requests?
7. A The credit and underwriting team would do a full analysis and come up with a conclusion.
8. Q And what did you mean, "It was quite remarkable and a testament to you and your family in what you have achieved with us so quickly on our projects"?
9. A It was -- the request for something like that to be considered by the bank is somewhat unique, and so it was a testament to how fast they had progressed with all the properties.
10. Q Was it consistent with -- withdrawn.
11. Was the progression of the -- withdrawn.

What was Ms. Trump referring to?
2. A It was a financing opportunity on the Chicago property that she was sending to Dave Goodman.
3. Q Who is Dave Goodman?
4. A He was a real estate banker.
5. Q And what, if anything, ultimately happened with that financing opportunity?
6. A Um, the loan was done in PWM.
7. Q Why was the loan done in PWM?
8. A Mr. Trump was willing to personally guarantee it.
9. Q And did the bank receive the personal guaranty that it requested?
10. A Yes.
11. Q And at the top it says "Ivanka, I will reach out to Dave today and make sure he is aware of the expansive PWM relationship and how important you and your family's business have become to the bank."
12. Do you see that?
13. A Yes.
14. Q And what was the purpose of reaching out to Dave Goodman with that information?
15. A Well, the -- Ivanka wanted to have, um, a potential deal, loan from both us and the real estate bank. And so it was important for him to see the full breadth of what was going on with the Trump family and the bank.
<table>
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<tr>
<th>R. Vrablic - by Defendant - Direct (Mr. Suarez)</th>
<th>Page 5530</th>
<th>R. Vrablic - by Defendant - Direct (Mr. Suarez)</th>
<th>Page 5532</th>
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<tr>
<td>1 Q And what was the full breadth of was what was going on</td>
<td>1 In general terms, what is your role in facilitating</td>
<td>discussions on terms between your client and the bank?</td>
<td>3 A The process usually works that credit and lending will</td>
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<td>2 with the Trump family and the bank at this time?</td>
<td>4 review all the material. They will come back with a term sheet.</td>
<td>5 They, or I, will send that to the customer or prospect. The</td>
<td>7 or don't like, um, and then a dialogue is taking place between</td>
</tr>
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<td>3 A I don't know exactly.</td>
<td>8 customer or prospect will come back with things that they like</td>
<td>9 the two groups, three groups. And it's my job to sort of</td>
<td>10 don't like, um, and then a dialogue is taking place between</td>
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<td>4 Q And it says, &quot;I will tell Dave that he has our full</td>
<td>11 mediate, if, in fact, there is a big gap between the two</td>
<td>12 the two groups, three groups. And it's my job to sort of</td>
<td>13 positions.</td>
</tr>
<tr>
<td>5 support behind this deal. It looks sensational, by the way.</td>
<td>14 the two groups, three groups. And it's my job to sort of</td>
<td>15 mediate, if, in fact, there is a big gap between the two</td>
<td>16 positions.</td>
</tr>
<tr>
<td>6 And to call me if I can be of any help.&quot;</td>
<td>17 the two groups, three groups. And it's my job to sort of</td>
<td>18 mediate, if, in fact, there is a big gap between the two</td>
<td>19 positions.</td>
</tr>
<tr>
<td>7 Do you see that?</td>
<td>19 mediate, if, in fact, there is a big gap between the two</td>
<td>20 positions.</td>
<td></td>
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<tr>
<td>8 A Yes.</td>
<td>20 positions.</td>
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<tr>
<td>9 Q Were you ultimately of help on this deal?</td>
<td>20 positions.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>10 A It ultimately got done in the private bank.</td>
<td>21 A The entire structure is set by the bank to, A, protect</td>
<td>22 the assets of the bank. And then to generate appropriate</td>
<td>23 A The entire structure is set by the bank to, A, protect</td>
</tr>
<tr>
<td>11 Q What role, if any, did you have in facilitating that</td>
<td>24 the assets of the bank. And then to generate appropriate</td>
<td>25 the assets of the bank. And then to generate appropriate</td>
<td>26 the assets of the bank. And then to generate appropriate</td>
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<td>12 deal getting done in the private bank?</td>
<td>26 the assets of the bank. And then to generate appropriate</td>
<td>27 the assets of the bank. And then to generate appropriate</td>
<td>28 the assets of the bank. And then to generate appropriate</td>
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<tr>
<td>13 A I was the intermediary between customer and lending and</td>
<td>28 the assets of the bank. And then to generate appropriate</td>
<td>29 the assets of the bank. And then to generate appropriate</td>
<td>30 the assets of the bank. And then to generate appropriate</td>
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<td>14 credit.</td>
<td>30 the assets of the bank. And then to generate appropriate</td>
<td>31 the assets of the bank. And then to generate appropriate</td>
<td>32 the assets of the bank. And then to generate appropriate</td>
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</tbody>
</table>

R. Vrablic - by Defendant - Direct (Mr. Suarez) | Page 5531

| Q you sent to Balaji Prasanna. Who is Balaji Prasanna?  | 1 A Yes.  |
| 2 A Balaji was the head of lending at that time.  | 2 MR. SUAREZ: Your Honor, we move Defendant's  |
| 3 Q And at the bottom it says, "Subject: Re: Trump  | 3 Exhibit 331 into evidence.  |
| 4 Chicago revised terms." Do you see that?  | 4 THE COURT: Granted. It's in.  |
| 5 A Yes.  | 5 (Defendant's Exhibit 331 was deemed marked and  |
| 6 Q Is this the same transaction that you were discussing  | 6 admitted in evidence.)  |
| 7 earlier with Dave Goodman?  | 7 MR. SUAREZ: I would like to show the witness  |
| 8 A Yes.  | 8 what's been pre-marked as Defendant's Exhibit 331.  |
| 9 Q And you write, "Balaji, you seem to ignore that we now  | 9 (Whereupon, the exhibit was displayed on the  |
| 10 have 36 percent LTV where we -- where we were willing to go up  | 10 screen.)  |
| 11 to 60 percent on the hotel and you have shortened her term on  | 11 (The witness was handed the exhibit.)  |
| 12 the condos from five years to five years. The pricing is  | 12 Q I would like to draw your attention to an e-mail that  |
| 13 appropriate for the risk. I will ask for the additional AUMs."  | 13 A Yes.  |
| 14 What did you mean by that?  | 14 Q Do you see where it says "this is a superb deal."  |
| 15 A I think this was just my response to the new terms and  | 15 Do you see that?  |
| 16 conditions that lending and credit risk wanted.  | 16 A Yes.  |
| 17 Q And then it says "This is the deal she wants and will  | 17 Q Do you see where it says "this is a superb deal."  |
| 18 take. If you are not comfortable, we need to pass."  | 18 A Yes.  |
| 19 Do you see that?  | 19 Q Do you see where it says "this is a superb deal."  |
| 20 A Yes.  | 20 A Yes.  |
| 21 Q And was the bank ultimately comfortable with making  | 21 Q Do you see where it says "this is a superb deal."  |
| 22 this deal?  | 22 A Yes.  |
| 23 A Yes.  | 23 MR. WALLACE: Objection. Again, the "would" versus  |
| 24 Q And in general terms, how does the negotiation between  | 24 did, do.  |
| 25 the credit side -- let me withdraw that.  | 25 THE COURT: Sustained.  |
 Donald J. Trump et al. November 29, 2023

INDEX NO. 452564/2022

RECEIVED NYSCEF: 01/04/2024

NYSCEF DOC. NO. 1659
FILED: NEW YORK COUNTY CLERK 01/04/2024 11:10 PM

R. Vrablic - by Defendant - Direct (Mr. Suarez) Page 5534

1 Q Did you agree at the time with Mr. Bowers’ assessment of the deal?
2 A I thought it was a good deal, yes.
3 Q Was that from the perspective of the bank?
4 A Yes.
5 MR. SUAREZ: I would like to show the witness what has been pre-marked as Defendant’s Exhibit 335.
6 (Whereupon, the exhibit was displayed on the screen.)
7 (The witness was handed the exhibit.)
8 MR. SUAREZ: If we could turn to the e-mail dated October 15th, 2012, from you to Ivanka Trump.
9 (Whereupon, the exhibit was displayed on the screen.)
10 MR. SUAREZ: On the second page.
11 MR. SUAREZ: I apologize, the e-mail dated October 15th, 2012.
12 (Whereupon, the exhibit was displayed on the screen.)
13 Q Do you recognize this as an e-mail you sent to Ivanka Trump?
14 A Yes.
15 Q What is the subject matter of the e-mail?
16

R. Vrablic - by Defendant - Direct (Mr. Suarez) Page 5535

1 A Pricing update.
2 Q Is the discussion you had with Ms. Trump consistent with your general practice in negotiating deal terms for the bank?
3 A Yes.
4 Q And then you go on to provide pricing on a loan, and at the bottom you write, "Please review this revised pricing offer. I hope this is acceptable to you. And we look forward to closing this on Halloween."
5 Do you see that?
6 A Yes.
7 Q Was this e-mail consistent with the manner in which you helped the bank and clients bridge loans, loan terms in your capacity at the bank?
8 A Yes.
9 MR. SUAREZ: And then if we scroll up to the e-mail that you wrote Ms. Trump on October 15th.
10 (Whereupon, the exhibit was displayed on the screen.)
11 Q The subject matter regarding pricing update, it says, "I try to be fair and I think in this case both you and the bank are happy."
12 Do you see that?
13 A Yes.
14 Q What did you mean by that?

R. Vrablic - by Defendant - Direct (Mr. Suarez) Page 5536

1 A I think back to me mediating between the customer and the bank, that both of them were happy and that it’s a fair deal for both.
2 Q Was this consistent with your objective to develop business for the bank?
3 A Yes.
4 MR. SUAREZ: Your Honor, we move Defendant’s Exhibit 335 into evidence.
5 THE COURT: Granted. It’s in.
6 (Defendant’s Exhibit 335 was deemed marked and admitted in evidence.)
7 MR. SUAREZ: I would like to show the witness a document that’s been marked Defendant’s Exhibit 338 for identification.
8 (Whereupon, the exhibit was displayed on the screen.)
9 (The witness was handed the exhibit.)
10 Q Who is Dominic Scalzi?
11 A He was a banker at Deutsche Bank.
12 Q What role, if any, did Mr. Scalzi have on your team?
13 A We were both bankers on the same team.
14 Q What role, if any, did Mr. Scalzi have in connection with the loans made by the Private Wealth Management Group to the Trump Organization?
15 A He would be involved. We had -- the two of us would be on all loans of -- and either I was the lead and he was the backup on it, or he would be a lead and I would be a backup. So he was technically my backup on this.
16 Q Do you see this e-mail was sent on Friday, November 9th, 2012, to Ivanka Trump?
17 A Yes.
18 Q And with respect to Ms. Trump, you were copied on this e-mail. Do you see this?
19 A Yes.
20 Q You see where it says, "Hi Ivanka. I want to thank you and your dad for once again giving us the opportunities to meet your financing needs. The professionalism and efficiency of both organizations has made for a smooth and timely closing of this transaction. Your organization is great to work with. Thanks again for the confidence you have in us, and we are very appreciative of receiving this additional business. Have a great weekend."
21 Q Was this e-mail sent in reference to the Chicago transaction that we’ve discussed?
22 A I would think so.
23 Q And was this e-mail consistent with your own opinions of that transaction?
24 A Yes.
25 MR. SUAREZ: Your Honor, I move Defendant’s Exhibit 338 into evidence.
THE COURT: Granted. It's in.

Q Ms. Vrablic, what role, if any, did you have in the loan transaction made in connection with the Old Post Office property?

A I had received a phone call from The Trump Organization that they were potentially one of the bidders for that property, and potentially would need financing for that.

Q What interest did the bank have in participating in that project?

A It was a potential financing facility.

MR. SUAREZ: I would like to show the witness what's been marked for identification as Defendant's Exhibit 340.

(Whereupon, the exhibit was displayed on the screen.)

(The witness was handed the exhibit.)

Q If you see the e-mail all the way at the beginning of this page, which is the bottom of the document. (Whereupon, the exhibit was displayed on the screen.)

Q On page two. (Whereupon, the exhibit was displayed on the screen.)

Q Do you recognize this e-mail sent from Ivanka Trump to you on February 8th, 2012?

A Yes. (Continued on the next page.)

Q And it says: Subject Matter. Forward final THC OPO release?

A Yes.

Q And she writes, Ms. Trump writes to you: We won! We are very excited!

Did you know what she was referring to?

A Yes.

Q How did you know what she was referring to?

A We had known that they were in the bidding process for the OPO. So by her statement of this it just meant they won.

Q So you see Mr. Sullivan responds to an e-mail that you appear to have sent him a little further up the page on February 8. And he writes: You beat me to the punch. Sounds like she was also very active in this project.

Why had you forwarded that e-mail to Mr. Sullivan?

A Just to tell them that they had won.

Q Was that indicative of the bank's interest in participating in the financing?

A Yes. If they hadn't won the bid there would have been no financing.

Q Do you see your response -- you respond to Mr. Sullivan: Yes, she was. I guess they can pass the government's KYC too.

Q Do you see that?

A Yes.

Q What did you mean by that?

A The deal had a long-term lease with the Post Office or some governmental agency. So, I was being funny that they had a KYC process like ours.

MR. SUAREZ: Your Honor, I move Defendant's Exhibit 340 into evidence.

THE COURT: Granted it is in.

(Whereupon, the document referred to was deemed marked for evidence as Defendant's Exhibit 340 by the Court.)

Q I would like to show the witness what has been previously marked as Defendant's Exhibit 779 for identification.

 handing)

Q Who is Darrell Gustafson?

A I don't remember.

Q Do you see your e-mail address at the top?

A Yes.

Q Do you see an e-mail that you sent Darrell Gustafson on July 16, 2013?

A Yes.

Q And it is: Subject OPO.

Do you see that?
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<tr>
<th>Page 5542</th>
<th>Vrablik - by Defendant - Direct (Suarez)</th>
<th>Page 5542</th>
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<tr>
<td>1</td>
<td>A Yes.</td>
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<td>Q And you write: Hi. I just spoke with Ivanka Trump about your group taking a look at the above transaction. We have quite a robust and great relationship with the family in the private bank and can provide you with a good amount of background and exposure to senior management for your underwriting.</td>
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<th>Vrablik - by Defendant - Direct (Suarez)</th>
<th>Page 5543</th>
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<td>1</td>
<td>Q And what, if any, interest would Private Wealth Management have had to obtain the business as opposed to another division of the bank?</td>
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<td>2</td>
<td>A Well certainly from our profitability it would be better for it to be booked in the Private Wealth Management. But ultimately we would just want to see a happy customer. So if it was done in another part of the bank that would be fine as well.</td>
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</table>
1. When the bank issues a client a term sheet, is the client required to consummate that deal?
2. A. No.
3. Q. And what, if anything, can occur between the issuance of the term sheet and the ultimate -- and ultimately a transaction being consummated or not consummated?
4. A. From a client's side they may find the transaction being done at another institution, if they find another deal somewhere else. From the bank's standpoint they may or may not like the additional information they get. Or the bank and the customer can't come to an agreement on terms and conditions.
5. Q. Is that an ordinary description of a banking relationship between a client and the bank?
6. MR. WALLACE: Objection.
7. THE COURT: I am not sure what "that" was. Was that your objection?
8. MR. WALLACE: Yes.
9. THE COURT: It doesn't have to be.
10. Q. Is your description of the process to go from loan to term sheet, generally speaking, consistent with banking practices between a bank and a client?
11. A. Yes.
12. Q. Then the e-mail goes on to state: One question that was raised was on disclosure -- since the GSA or some government entity is involved -- will our terms and conditions
13. MR. SUAREZ: Your Honor, I move Defendant's Exhibit 342 into evidence.
14. THE COURT: Granted, it is in.
15. (Whereupon, the document referred to was deemed marked for evidence as Defendant's Exhibit 342 by the government entity is involved -- will our terms and conditions
1. Do you see that?
2. A Yes.
3. Q What does that 850,000 represent?
4. A That would be the -- excuse me, the loan fee.
5. Q Would that be -- excuse me, would that be revenue generated from the closing of the OPO transaction?
6. A Yes.
7. Q And then it says: Spread of 225 for eight months --
8. 2.5 million equals 3.3 million.
9. Q What does the spread of 225 for eight months 2.5 million mean?
10. A That would be the spread that is on the loan that is paid, the profitability that's generated to the bank for the eight-month period that the loan would have been outstanding in 2014.
11. Q And then do you see where it says 3.3 million? Is that just adding up the math of the 850 and the 2.5?
12. A Yes.
13. Q And then it goes on to say: Total 2014 revenue should exceed 6.8 million.
14. Q What does that mean?
15. A That would be the addition of the 2.5 million and the 3.3 for total revenue for 2014.
16. Q Would that reflect revenue generated by the Deutsche Bank Wealth Management Division from the Trump Organization in 2014?
17. MR. SUAREZ: Your Honor, we move Defendant's Exhibit 343 into evidence. THE COURT: Granted, it is in. (Whereupon, the document referred to was deemed marked for evidence as Defendant's Exhibit 343 by the Court.)
18. Q What, if any, knowledge do you have concerning the performance of the OPO loan?
19. A When I was working at the bank it was current.
20. Q When, if at all, did you visit the OPO property?
21. A I was there for the first time to see it in its "as is" condition before they did all of the work. There was another visit midway when the work was being done. And I believe there was a third for the ground breaking, something of that nature. And then I was there during the inauguration.
22. Q And what view, if any, do you have -- withdrawn.
23. What was your opinion at the time concerning the repositioning of the hotel project?
24. A Well, it was an empty shell, so it was neglected for a period of time. And it needed a wholesale redoing of the whole thing for it to become the vision that the Trumps had for it.
25. Q Was the performance of the OPO project consistent with your expectation for that project when the loan was originated?
26. A Yes. They took it from a shell to a fully operational hotel and event space.
27. Q Do you see the date at the top right-hand corner of this document?
28. A Yes.
29. Q And were you employed at the bank on July 20, 2015?
30. A Yes.

1. Q Do you see at the bottom there below the date it says: Relationship manager Vrablic/Scalzi?
2. A Yes.
3. Q What does that mean?
4. A We were both involved from the relationship management side on this transaction.
5. Q And do you see: Lender Williams/Frank?
6. A Yes.
7. Q Does that mean anything to you?
8. A Yes.
9. Q What does that mean?
10. A The two lenders were Dave Williams and Josh Frank.
11. Q And what is the role of the lender in the client relationship?
12. A They would be responsible for the underwriting of the transaction and working with the credit risk to get it approved.
13. Q And if you look at: Group. The Trump Family in the box to the left. Do you know what that grouping refers to?
14. A I would assume all of the deals that were done for the Trump family.
15. Q And then it identifies: Borrowers A, Trump Endeavor LLC. B, 401 North Wabash Venture LLC. C, Trump Old Post Office LLC.
16. Q Do you see that?
17. A Yes.
Vrablik - by Defendant - Direct (Suarez)

Q: Are those the three loans that we have been discussing today?
A: Yes.
Q: Do you -- then there is a -- it goes on to be a reason for presentation. Are you aware that the loans were reviewed by the bank on an annual basis?
A: Yes.
Q: What role, if any, did you have in the annual review of these three loans?
A: I would not be involved in the preparation of or doing of the annual review. The only thing would be if credit or lending needed something that they would like me to get from the customer, I would be the intermediary to get it for them potentially.
Q: And if we could turn to the second page of this document. Do you see where it says: Assets Under Management?
A: Yes.
Q: And this reflects assets under management by Donald J. Trump of 31.295 million in cash deposits. Do you see that?
A: Yes.
Q: Was this consistent with your objective to develop the bank's relationship with President Trump?
A: Yes.
Q: Why is the bank interested in developing assets under management?
A: It would generate more revenue and profitability for the bank.
Q: Was that revenue captured in the prior analysis that we reviewed concerning revenue generated by the relationship with President Trump?
A: I would think so.
Q: Do you see where it says Associated Entities?
A: Yes.
Q: 86.49 million in cash deposits?
A: Yes.
Q: Were those additional deposits generated from your development of the relationship with President Trump?
A: I would assume so.
Q: Are you aware if those cash deposits were in excess of the cash deposits required of President Trump under the loan documents?
A: That I don't know.
MR. SUAREZ: If you could turn to page six of this document.
Q: And see the section that says, Recommendation. At the bottom, under All Facilities, it says: DB relationship. In connection with the addition of Facility C DJT transferred 40 million in liquidity to DB. He has also indicated he is interested in continued to grow his non-credit relationship with the firm. The AWM banking team has been introduced to each of DJT's three adult children and two have established relationships with the firm.
Q: What role, if any, would you have been involved with in developing the relationship in this matter?
A: I would have brought the banking teams to the customer to see if it was a good match for them to do business with them.
Q: And then it says: In addition the CB and S real estate team has had a successful history with the family.
A: Do you see that?
Q: And what role, if any, would you have had to develop the relationship for the AW and banking team, as opposed to the CB and S real estate team?
A: The CBS would be a separate division. The only thing, as I had written earlier on some of the memos, would be to provide them any information if they needed it from the private bank.
Q: Were there other credit facilities that you worked with the Trump Organization in developing that didn't close?
A: I am sorry, could you say that again?
Q: Sure. Were you involved with proposing other credit facilities to the Trump Organization that ultimately did not close?
A: Yes.
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R. Vrablic - by Defendant - Direct (Mr. Suarez)  Page 5558

1   Q Are you aware as to why the bank did not want to increase his exposure to then president-elect Trump at that time?
2   A Yes.
3   Q What was that reason?
4   A At that time, because he was president-elect and/or candidate, at that time I don't recall which one, but the bank felt that the increased exposure, scrutiny, it was an unprecedented situation to have a customer who was going to become President of the United States. And the bank's position was that it was not appropriate to go up in exposure, given the circumstances.
5   MR. SUAREZ: And if we could turn back to Plaintiff's Exhibit D-298.
6   (Whereupon, the exhibit was displayed on the screen.)
7   Q This document, would you agree, Ms. Vrablic, is dated February 27, 2012, -- or was prepared in advance of a meeting with Donald Trump on February 27, 2012?
8   A Yes.
9   Q And that was before President Trump entered the political arena?
10  A Yes.
11  Q And at that time, if we turn to the second page.
12  (Whereupon, the exhibit was displayed on the screen.)
13  Q This document, would you agree, Ms. Vrablic, is dated February 27, 2012, -- or was prepared in advance of a meeting with Donald Trump on February 27, 2012?
14  A Yes.
15  Q And that was before President Trump entered the political arena?
16  A Yes.
17  Q And at that time, if we turn to the second page.
18  (Whereupon, the exhibit was displayed on the screen.)
19  Q Are you aware, approximately, when the loan to Trump Endeavor 12, LLC closed?
20  A No.
21  Q Ms. Vrablic, good afternoon.
22  A I would like to show you a document that's been previously admitted into evidence as Defendant's Exhibit 212.
23  (Whereupon, the exhibit was displayed on the screen.)
24  Q Are you aware, approximately, when the loan to Trump Endeavor 12, LLC closed?
25  A Yes.
26  Q And that was the first loan Deutsche Bank made to an entity that was personally guaranteed by President Trump and his family until such time as he was elected president?
27  A Yes.
28  Q Was that consistent with how the relationship ultimately played out with President Trump and his family until such time as he was elected president?
29  A Yes.
30  MR. SUAREZ: Your Honor, I know we are nearing the lunch break. I think if we could take the lunch break now, I would be in a position to greatly reduce the amount of time that I have left.
31  MR. KISE: I was going to suggest that we do that because maybe --
32  THE COURT REPORTER: I'm sorry, because? I can't hear you.
33  THE COURT: Sure. We could do that. How much longer do you have on direct? I know you don't know.
34  MR. KISE: I know, maybe if we have the time now to consult, maybe 30 minutes or so. No more than an hour. So we could substantially -- I think we could substantially --
35  THE COURT REPORTER: I'm sorry, you just turned the mic off.
36  MR. KISE: I think we can reduce it substantially based on what I've heard.
37  By the way, for the record, a hole-in-one might be an eagle, but it also can be an albatross. It could also be an albatross. I heard that before, there was a discussion when I was out of the courtroom.
38  THE COURT: I'm going to have to Google this.
39  Okay. See you all at 2:15. I'll direct the witness not to talk to anybody.
40  (Whereupon, the witness stepped down from the witness stand.)
41  (Whereupon, the case on trial was adjourned until 2:15 for the luncheon recess.)
42  A F T E R N O O N   S E S S I O N
43  A L L   R I S E
44  (Whereupon, the witness stepped into the witness stand.)
45  THE COURT OFFICER: All rise. Part 37 is back in session. The Honorable Judge Arthur Engoron presiding. Please be seated and come to order.

R. Vrablic - by Defendant - Direct (Mr. Suarez)  Page 5559

1   screen.)
2   Q One of the purposes of the meeting was "To continue to build out the existing AWM relationship of loans, deposits and investment management."
3   Do you see that?
4   A Yes.
5   Q And then in the background section it says, "Rosemary Vrablic, WM" -- "WM" means Wealth Management -- "developed over the last 12 months a very strong relationship with Donald Trump, Donald Trump, Jr., Ivanka Trump, and Jared Kushner."
6   Do you see that?
7   A Yes.
8   Q Was that consistent with how the relationship ultimately played out with President Trump and his family until such time as he was elected president?
9   A Yes.
10  MR. SUAREZ: Your Honor, I know we are nearing the lunch break. I think if we could take the lunch break now, I would be in a position to greatly reduce the amount of time that I have left.
11  MR. KISE: I was going to suggest that we do that because maybe --
12  THE COURT REPORTER: I'm sorry, because? I can't hear you.
13  THE COURT: Sure. We could do that. How much longer do you have on direct? I know you don't know.
14  MR. KISE: I know, maybe if we have the time now to consult, maybe 30 minutes or so. No more than an hour. So we could substantially -- I think we could substantially --
15  THE COURT REPORTER: I'm sorry, you just turned the mic off.
16  MR. KISE: I think we can reduce it substantially based on what I've heard.
17  By the way, for the record, a hole-in-one might be an eagle, but it also can be an albatross. It could also be an albatross. I heard that before, there was a discussion when I was out of the courtroom.
18  THE COURT: I'm going to have to Google this.
19  Okay. See you all at 2:15. I'll direct the witness not to talk to anybody.
20  (Whereupon, the witness stepped down from the witness stand.)
21  (Whereupon, the case on trial was adjourned until 2:15 for the luncheon recess.)
22  A F T E R N O O N   S E S S I O N
23  A L L   R I S E
24  (Whereupon, the witness stepped into the witness stand.)
25  THE COURT OFFICER: All rise. Part 37 is back in session. The Honorable Judge Arthur Engoron presiding. Please be seated and come to order.

R. Vrablic - by Defendant - Direct (Mr. Suarez)  Page 5560

1   longer do you have on direct? I know you don't know.
2   MR. KISE: I know, maybe if we have the time now to consult, maybe 30 minutes or so. No more than an hour. So we could substantially -- I think we could substantially --
3   THE COURT REPORTER: I'm sorry, you just turned the mic off.
4   MR. KISE: I think we can reduce it substantially based on what I've heard.
5   By the way, for the record, a hole-in-one might be an eagle, but it also can be an albatross. It could also be an albatross. I heard that before, there was a discussion when I was out of the courtroom.
6   THE COURT: I'm going to have to Google this.
7   Okay. See you all at 2:15. I'll direct the witness not to talk to anybody.
8   (Whereupon, the witness stepped down from the witness stand.)
9   (Whereupon, the case on trial was adjourned until 2:15 for the luncheon recess.)
10  A F T E R N O O N   S E S S I O N
11  A L L   R I S E
12  (Whereupon, the witness stepped into the witness stand.)
13  THE COURT OFFICER: All rise. Part 37 is back in session. The Honorable Judge Arthur Engoron presiding. Please be seated and come to order.

R. Vrablic - by Defendant - Direct (Mr. Suarez)  Page 5561

1   THE COURT: I believe the witness is on her way.
2   MR. KISE: Judge, I'm going to take credit for four for four. We are going to keep this pretty short.
3   THE COURT OFFICER: Witness entering.
4   THE COURT: Great.
5   (Whereupon, the witness stepped into the witness stand.)
6   Q Ms. Vrablic, good afternoon.
7   A I would like to show you a document that's been previously admitted into evidence as Defendant's Exhibit 212?
8   (Whereupon, the exhibit was displayed on the screen.)
9   Q Are you aware, approximately, when the loan to Trump Endeavor 12, LLC closed?
10  A Based upon this, I would say June 11th, 2012. And that's The Trump Doral loan; right?
11  A Yes.
12  Q And that was the first loan Deutsche Bank made to an entity that was personally guaranteed by President Trump and the Wealth Management Division?
13  A Yes.
14  MR. SUAREZ: I would like to go back to Defendant's Exhibit 312.
15  (Whereupon, the exhibit was displayed on the screen.)

Ny Supreme Court- Civil

(23) Pages 5558 - 5561

169 of 316
R. Vrablic - by Defendant - Direct (Mr. Suarez) Page 5562

1 screen.)
2 (The witness was handed the exhibit.)
3 Q And again, I direct your attention to the e-mail from
4 Marcus Mitchell to Thomas Bowers. Do you see that e-mail in --
5 beginning in the second page of the exhibit?
6 A Yes.
7 Q What is the date of this e-mail?
8 A December 23rd, 2011.
9 Q Was this e-mail sent to Mr. Bowers before the Doral
10 loan closed?
11 A Based upon the dates, yes.
12 Q Who is Mr. Bowers?
13 A He was my boss and head of Private Wealth Management
domestic.
14 Q I would like to draw your attention to the middle of
15 this paragraph, which says "The facility will be supported by a
16 full and unconditional guarantee (the PG) provided by DJT."
17 Do you see that?
18 A Yes.
19 Q And is that a reference to the guarantee that was
20 ultimately provided by President Trump?
21 A Yes.
22 Q And then it says "Through our due diligence, we have
23 concluded that DJT has an exceptionally strong financial profile
24 consisting of a reported net worth of $4.2 billion, which we
25 have adjusted to $2.4 billion, including 230 million in
unencumbered liquidity, an extensive real estate portfolio
including one billion in adjusted net equity held in four
wholly-owned low leveraged class A New York City properties,
only 2 million in personal debt and 114 million in secured
contingents."
26 Do you see that?
27 A Yes.
28 Q What basis, if any, do you have to disagree with the
29 characterisation of President Trump's financial condition in
30 this e-mail?
31 A This would have been written by Marc Mitchell. I would
32 have no reason to think differently.
33 Q Who is Marc Mitchell?
34 A He was the head of lending.
35 Q Was this information aware to the bank before it
36 accepted a guarantee from President Trump?
37 MR. WALLACE: Objection. The formulation of the
38 question.
39 Q I'm sorry. Was the bank aware of this information
40 before it accepted a guarantee from President Trump?
41 A Yes.
42 Q And what does it mean, to your knowledge, the
43 statement, "Through our due diligence, we have concluded that
44 DJT has an exceptionally strong financial profile"?
R. Vrablic - by Defendant - Direct (Mr. Suarez) Page 5563

1 well diversified across his interests in real estate, licensing,
2 entertainment, golf clubs, speaking, and several other forms of
3 miscellaneous revenues."
4 Do you see that?
5 A Yes.
6 Q And what basis, if any, do you have to disagree with
7 Mr. Mitchell's analysis of that?
8 A Again, I would not -- I would assume he did his work.
9 Q And then it says, "We are recommending the facility
10 based on the strength of DJT's PG."
11 Do you see that?
12 A Yes.
13 Q And would that have been the strength -- withdrawn.
14 Would your -- the strength of the facility was
15 recommended based on the strength of Donald's PG reflected in
16 this document; is that your understanding?
17 A I'm sorry. I don't follow that.
18 Q It says, "We are recommending the facility based on the
19 strength of DJT's PG." Is that a personal guarantee?
20 A Yes.
21 Q And would that follow based on the analysis that the
22 bank conducted of President Trump's financial condition?
23 A Yes.
24 Q And then if you keep going it says --
25 MR. SUAREZ: Scroll down.

R. Vrablic - by Defendant - Direct (Mr. Suarez) Page 5564

1 A This would have been based upon the analysis of the
2 credit and lending team.
3 Q And what, if any, reaction did the bank have to the
4 adjustment in President Trump's net worth from 4.2 billion to
5 2.4 billion, by the bank's own analysis?
6 MR. WALLACE: Objection, in terms of the reaction
7 of a bank. Is he asking about the reaction of a person?
8 MR. SUAREZ: Happy to rephrase it.
9 Q What reaction did you have to the adjustment of
10 President Trump's net worth by the bank from 4.2 billion to
11 2.4 billion?
12 A Well, the lending and credit departments would always
13 adjust people's net worths, so whatever they would conclude was
14 the adjusted number would be the adjusted number to me.
15 Q And what concern, if any, did you have that the
16 $2.4 billion adjusted net worth was less than the 2.5 billion
17 net worth covenant in this loan?
18 A You would have to talk to credit about that. I'm
19 sorry.
20 Q What concern, if any, did you have?
21 A I wouldn't. If they were comfortable with it, I would
22 be comfortable with it.
23 Q And if we continue on it says, "We have calculated
24 DJT's annual net recurring cash flow after personal expenses and
25 other disbursements to be approximately $48 million, and it is

R. Vrablic - by Defendant - Direct (Mr. Suarez) Page 5565

1 DJT has an exceptionally strong financial profile"?
A    I would have no basis to disagree.

Q    And then a few lines down, do you see it says, "Total real estate debt of 302 million resulting in approximately 18 percent leverage on RE portfolio."

A    Yes.

Q    What basis, if any, do you have to dispute that the bank had that knowledge in its possession before accepting President Trump's guarantee?

A    I would have no reason to disagree with Mr. Bowers' assessment of President Trump's personal balance sheet? 

MR. WALLACE: I'm just going to raise an objection.

THE COURT: It's an unusual approach, do you have any reason to disagree with a certain statement. I mean, I didn't stop it. And --

Q    Do you have any reason to disagree with Mr. Bowers' assessment of President Trump's personal balance sheet?

A    Yes.

Q    Did she agree.

THE COURT: Did she agree.

A    Yes.

Q    And, in fact, at the top.

A    Yes.

Q    Do you see that?

A    Yes.

Q    Q And what, if any, basis do you have to dispute that the bank was -- that the bank had adjusted President Trump's net worth from 4.2 billion to 2.4 billion prior to accepting his guarantee?

A    I would have no basis to dispute it.

Q    And if this analysis was acceptable to Mr. Bowers would it have been acceptable to you?

A    Yes.

Q    And then if we scroll up to page one, you see an e-mail on December 23rd, 2011, from Mr. Bowers to Marcus Mitchell, that you, Dominic Scalzi and Thomas Sullivan are copied on?

A    Yes.

Q    (Whereupon, the exhibit was displayed on the screen.)

Q    Q And Mr. Bowers, you could see, is responding to Mr. Mitchell, with a copy to you, and it says, "I would conclude".

A    Yes.

Q    What does "CF" mean?

A    Cash flow.

Q    What does "CF" mean?

A    Cash flow.

Q    And do you have any -- at the time, withdrawn.

A    Do you have any reason to disagree with Mr. Bowers assessment of President Trump's personal balance sheet?

A    Yes.
Q: And was this information contained in this e-mail available to the bank before it accepted President Trump's guarantee?
A: Yes.

MR. SUAREZ: I have no further questions.

THE COURT: Will there be any cross examination?

MR. WALLACE: A brief bit of cross examination.

CROSS EXAMINATION

BY MR. WALLACE:

Q: Good afternoon, Ms. Vrablic. I'm Kevin Wallace from the Attorney General's Office. We met at your deposition.

MR. WALLACE: If we could put back up on the screen Defendant's 312, which we were just looking at. I believe, and if we could put next to it Defendant's Exhibit 313.

(Whereupon, the exhibit was displayed on the screen.)

Q: Obviously you just discussed Defendant's 312 with Mr. Suarez. Do you recall that testimony? And you earlier, with him, discussed Defendant's Exhibit 313.

A: Yes.

Q: If I could just direct your attention on the first page. You had talked about the e-mail dated December 23rd, 2011, at 9:10, from Mr. Bowers to Mr. Mitchell, that had the language about, "we recommend this on the basis that it is a sound credit, and even in the absence of a personal guarantee..."

A: I believe so.

Q: Now, when we looked at this language from Mr. Bowers about, I would -- about recommending the loan -- I'll double-check to make sure. "It is a sound credit, and even in the absence of a personal guarantee" do you know if that made it into the final presentation that went to Mr. De-Weck?

A: I don't know.

Q: If we look at the first bullet point after the introductory paragraph from Mr. McAvoy, the first bullet says, "The strength of Trump's full and unconditional personal guarantee, which includes significant liquidity, $230 million, low leverage on diverse real estate holdings, diversified and consistent cash flow, and an absence of personal debt. As detailed further below, based on our due diligence, we have calculated an adjusted net worth of 2.4 billion."

A: Correct.

Q: It is a sound credit independent of a guarantee; is that correct?

A: Yes.

Q: And if we look back at the response from Mr. De-Weck, you looked at this with Mr. Suarez as well. It's on the prior page, page three.

A: Yes.

Q: Mr. De-Weck writes, "I support the transaction, but we need ironclad, full recourse under all circumstances. PDW." So we recommend to Mr. De-Weck is highlighting the personal guarantee that Donald Trump is going to provide on this facility; correct?

A: Yes.

Q: But in the basis here, the loan was, in fact, not recommended on the basis that it was a sound credit in the absence of a personal guarantee; correct?

MR. KISE: Objection. Is he asking her to read what's written there or is he asking her what her understanding is?

THE COURT: I'll ask for a clarification.

Q: Based on the e-mail to Mr. De-Weck and his response, the loan was, in fact, not recommended on basis that it was a sound credit independent of a guarantee; is that correct?

A: That's correct.

Q: Can we give the witness Plaintiff's Exhibit 1129.

A: Yes.

Q: (Whereupon, the exhibit was displayed on the screen.)

A: That's correct.

Q: (The witness was handed the exhibit.)

A: Yes.
Donald J. Trump et al. November 29, 2023

NYS Attorney General v. Donald J. Trump et al.

R. Vrablic - by Defendant - Cross (Mr. Wallace) Page 5574

1 marked as Plaintiff's Exhibit 1129. It's an e-mail thread from 2 September 2011. You are not on the top e-mails on the thread, 3 but I would like to direct your attention to a message you wrote 4 that appears on page three of the document.

5 MR. WALLACE: If we could flip there.

6 (Whereupon, the exhibit was displayed on the 7 screen.)

8 Q And if you want to flip through the e-mails that come 9 below that one, just in the order of the thread, I'm happy for 10 you to take a moment to just familiarize yourself with that. 11 (Whereupon, there is a brief pause in the 12 testimony.)

13 A Okay.

14 Q You are all set. So directing your attention to the 15 top message here, the one sent at 7:17 a.m. on September 29th, 16 2011, this is a response from you, after an introductory e-mail 17 from Jared Kushner, in response from Donald Trump, Jr.

18 But my question is going to be about your note. You 19 write that it would be a pleasure to meet with Don Trump, Jr. 20 and write, "Sorry about the recourse issue. A dirty word, I 21 know, but it is a requirement for private banking." 22 First, why did you describe "recourse" as a "dirty word"?

23 A Most real estate owner, developer, operators don't 24 particularly like giving recourse to their lenders, so they 25 usually prefer to have nonrecourse type of financing.

R. Vrablic - by Defendant - Cross (Mr. Wallace) Page 5575

1 Q And these are your clients are the kinds of developers 2 you are talking about?

3 A Yes.

4 Q Do you have a sense of why your clients don't like 5 recourse?

6 A I think most clients done like recourse.

7 Q What is the reason for not liking recourse?

8 A At the end of the day their personal assets are also 9 basically standing behind the credit facility, so should a 10 project or a real estate project not work out, the bank could 11 sue each person individually as well.

12 Q And their individual assets beyond the project could be 13 at risk?

14 A That's correct.

15 Q So why is recourse a requirement for private banking?

16 A Usually because we are financing an asset that requires 17 a personal guaranty, meaning it's a transitional type of asset, 18 or because we are the private bank, we deal with people and we 19 prefer them to have recourse for their facilities.

21 Q Okay.

22 MR. WALLACE: If we could go down to the 23 introductory note from Mr. Kushner. I believe it's on the 24 next page, actually.

25 (Whereupon, the exhibit was displayed on the

R. Vrablic - by Defendant - Cross (Mr. Wallace) Page 5576

1 screen.)

2 Q And Mr. Kushner is addressing the message to Don Trump, 3 Jr. And he writes, "While Rosemary only lends with recourse, 4 the flexibility rates and service you get is unparalleled, so I 5 would recommend you consider this highly."

6 First of all, can I ask, do you agree with that 7 statement from Mr. Kushner?

8 A Yes.

9 Q And so why was the flexibility that you offered 10 unparalleled?

11 A The -- I think based upon because people would give 12 recourse, that we do have the flexibility on terms and 13 conditions where if somebody is doing a nonrecourse loan, they 14 are really just looking at the property or the business 15 themselves. So it does give -- gives us the flexibility to be 16 creative on some conclusions, because the person is standing 17 behind it.

18 Q I think you kind of touched on this a little bit in 19 your last answer, but why is the rate also unparalleled?

20 A Usually because, again, they are putting something up 21 that is a little bit different than a nonrecourse loan. You do 22 have the guarantee and the assets of the individual behind it, 23 so that, um, the rate usually does reflect that.

24 MR. WALLACE: If we go up to the response from 25 Donald Trump, Jr.

R. Vrablic - by Defendant - Cross (Mr. Wallace) Page 5577

1 (Whereupon, the exhibit was displayed on the 2 screen.)

3 Q He writes to you, "I fully understand the recourse 4 position and don't have an issue with that."

5 May I ask, did any of the Trump family members you 6 dealt with -- let me withdraw that question and I'll restate the 7 question.

8 In your experience, did all of the Trump family members 9 that you dealt with understand the recourse position of your 10 lending from the Private Wealth Group at Deutsche Bank?

11 A Yes.

12 Q And what Trump family members did you deal with?

13 A Um, Don, Jr. directly, in terms of his loan. And then 14 I would work with Ivanka and Mr. Trump.

15 Q Donald Trump, Sr?

16 A Yes.

17 Q Did you ever have to explain to any of those 18 individuals why recourse was necessary for a Private Wealth 19 loan?

20 A No.

21 MR. WALLACE: We could take that document down.

22 (Whereupon, the exhibit displayed on the screen was 23 taken down.)

24 Q Ms. Vrablic, I just want to make sure that I understand 25 your role in the origination process correctly.

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Ny Supreme Court- Civil

(27) Pages 5574 - 5577

173 of 316
1. At the time of origination of a loan, your role was limited to recommending a transaction to lending; is that correct?
   4. A  Yes.
   5. Q  And you had no role in trying to persuade the bank to make a loan; is that fair?
   7. A  I had my opinion, but I had no authority.
   8. Q  And you would stay involved in the deal and try to make sure that it got done; is that fair?
   10. A  Yes.

11. Q  But if lending made a decision that they did not want to proceed with a loan, you would honor the bank’s decision at that point; is that correct?
   15. Q  And as part of the underwriting of a loan, it was not your responsibility to review the financial statement of any of your borrowers; is that correct?
   18. A  That’s correct.

19. Q  So you never saw Mr. Trump’s Statement of Financial Condition during the course of your entire banking relationship with Mr. Trump; is that correct?
   22. A  I saw it as a document, but I did not review it. (Continued on next page.)

Vrablik - by Defendant - Cross (Wallace)  Page 5579

1. Q  I believe you testified during your investigative examination that the first time you saw his Statement of Financial Condition was when you were preparing to testify in front of the Attorney General during the investigation that led to this action; is that correct?
   7. Q  It is in general not your practice to look at the annual financial updates of your clients; is that correct?
   9. A  That’s correct.

10. Q  So during your time at Deutsche Bank, you were not specifically aware that Mr. Trump was required to assert the accuracy of his Statement of Financial Condition; is that correct?
   14. A  Well, I know customers had to do that. All customers had to do that.
   16. Q  Okay. And you have had an expectation that a borrower like Mr. Trump would represent their financial position fairly to the bank; is that correct?
   19. A  That’s correct.

20. Q  And that they would not include false or misleading information in their presentations to the bank; is that correct?
   23. A  That’s correct.
   24. MR. WALLACE: I have no more questions, Your Honor.

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Vrablik - by Defendant - Cross (Wallace)  Page 5580

1. But I failed to move in Plaintiff's Exhibit 1129, so I ask that he moved into evidence.
   2. MR. ROBERT: Exhibit what?
   4. MR. WALLACE: 1129, the only one we introduced with this witness.
   6. MR. ROBERT: It is in.
   7. MR. WALLACE: I didn’t think it was in. No objection?

9. MR. ROBERT: Objection, statute of limitations.
10. THE COURT: Overruled.
11. (Whereupon, the document referred to was deemed marked for evidence as Plaintiff's Exhibit 1129 by the Court.)
14. THE COURT: I have one quick question for the witness. Is there a difference between a loan and a facility? If there isn’t, why do they call loans facilities?
16. THE WITNESS: A facility can be a line of credit or a loan. And so a line would go up and down like your credit card; and the loan would be a one-time loan.
19. THE COURT: Thank you. I have been wondering for weeks now.
23. Any redirect?
24. MR. ROBERT: Just a second, Your Honor, please.
25. THE COURT: And I am curious, where do you work now, if you work?

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Vrablik - by Defendant - Cross (Wallace)  Page 5581

1. I have one quick question for the witness. Is there a difference between a loan and a facility? If there isn’t, why do they call loans facilities?

2. THE COURT: Well, you won’t have to face anymore of these, I guess.
5. MR. SUAREZ: Your Honor, I failed to move in Defendant’s Exhibit 297. I would like to move that in.
7. MR. WALLACE: No objection.
9. THE COURT: Granted, it is in evidence.
11. (Whereupon, the document referred to was deemed marked for evidence as Defendant’s Exhibit 297 by the Court.)
12. MR. SUAREZ: With that we have no further questions.
14. THE COURT: Anything else by anybody? You are free to go.
16. THE WITNESS: Thank you, sir.
18. (Whereupon the witness stepped down from the stand and exited the courtroom.)
19. THE COURT: Is Mr. Birney here?
20. MR. ROBERT: He should be coming in.
22. MR. ROBERT: He is, Your Honor.
23. COURT OFFICER: Witness entering.
24. (Whereupon the witness resumed the stand.)
25. THE COURT: Okay. Let’s continue with the
<table>
<thead>
<tr>
<th>Question</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>Q: And what do the highlights indicate on this page?</td>
<td>A: The highlights indicate figures that were used in the calculation of the 40 Wall supporting data spreadsheet valuation.</td>
</tr>
<tr>
<td>Q: And how were these figures used?</td>
<td>A: An average price per square foot was calculated. And then...</td>
</tr>
<tr>
<td>Q: Mr. Birney, can you tell us a little bit about the 40 Wall Street property?</td>
<td>A: It is an office and retail commercial real estate building.</td>
</tr>
<tr>
<td>Q: And was that sent to Mazars?</td>
<td>A: Yes.</td>
</tr>
<tr>
<td>Q: Mr. Birney, do you recognize PX-762?</td>
<td>A: Yes.</td>
</tr>
<tr>
<td>Q: Could you briefly describe the Vornado Partnership for us, Mr. Birney?</td>
<td>A: Mr. Trump owns a 30 percent limited partnership interest in two office buildings in New York and San Francisco: one at 555 California Street and one at 1290 Sixth Avenue.</td>
</tr>
<tr>
<td>Q: And how was the Vornado Partnership valued in 2017?</td>
<td>A: In 2017?</td>
</tr>
<tr>
<td>Q: What is reflected on the adding tape there?</td>
<td>A: What is reflected on the right on PX-762? Yeah.</td>
</tr>
<tr>
<td>Q: What is reflected on the adding tape?</td>
<td>A: Correct.</td>
</tr>
<tr>
<td>Q: And what is this document?</td>
<td>A: It is the backup to the 555 California Street section of the supporting data spreadsheet.</td>
</tr>
<tr>
<td>Q: And how were these figures used?</td>
<td>A: An average price per square foot was calculated. And then...</td>
</tr>
<tr>
<td>Q: And what is the first page of this document, Mr. Birney?</td>
<td>A: It is a list of recent downtown sales at this time.</td>
</tr>
</tbody>
</table>
MS. HERNANDEZ: Your Honor, I would like to move Plaintiff's Exhibit 764 into evidence.

THE COURT: Granted, it is in.

(Whereupon, the document referred to was deemed marked for evidence as Plaintiff's Exhibit 764 by the Court.)

Q What does the star in the middle of the first page indicate, Mr. Birney?

A It indicates that figure was used in the supporting data spreadsheet for the calculation of the valuation for 555 California Street.

Q And what is figure?

A 62,482,000.

Q And what is that figure?

A The operating income in -- for the year ending December 31, 2016.

Q And was -- was that used in the valuation for 555 California Street in 2017?

A Yes.

Q And looking to page three and four of PX-764, what -- let's start with page three, what is page three of this document?

A One of the sales that were used for the cap rate for the valuation of 555 California Street.

Q And what is page four?

A The other sale that was used for the cap rate for the valuation of 555 California Street.

MS. HERNANDEZ: And so if we can look at the note on row 808 of PX-758?

Q What is being reflected by that note?

A Do you want me to just read the note?

Q You can read it or summarize what it is saying.

A 555 cap rate based on information provided by Brian Hegarty and Michael Papagianopoulos of Cushman & Wakefield in San Francisco, which contained comps for Class A office buildings. Cap rates for these buildings were 3.7 percent and 3.9 percent for an average of 3.8 percent.

Q And that's reflected in the backup of the two pages we just looked at of PX-764? Right?

A Yes.

MS. HERNANDEZ: Nate, if you could replace PX-764 with PX-765?

(Handing)

Q Mr. Birney, have you seen PX-765 before?

THE WITNESS: Can you scroll out on the spreadsheet a little bit, or up?

Q What is PX-765?

A The backup to the supporting data spreadsheet for 1290 Avenue of the Americas.
<table>
<thead>
<tr>
<th>Page 5590</th>
<th>Page 5591</th>
<th>Page 5592</th>
<th>Page 5593</th>
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<tbody>
<tr>
<td>1  marked for evidence as Plaintiff's Exhibit 766 by the Court.</td>
<td>1  sent Mazars the remaining units and inventory for the Las Vegas property?</td>
<td>1  MS. HERNANDEZ: Scroll up to where you see the year.</td>
<td>1  of the condo owned by Mr. Trump. And there is a piece of paper used in the backup that verifies the square footage is 10,996.</td>
</tr>
<tr>
<td>2  Q So what does the red box on that first page indicate?</td>
<td>2  A Because it was used in the valuation of Las Vegas in 2017.</td>
<td>2  THE WITNESS: Just down a couple of rows, please. Up a couple of rows, please.</td>
<td>2  Q We will get to that, the backup. Was that article and those conversations the first time you became aware that the square footage was 10,996 square feet?</td>
</tr>
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<td>3  A It is a lot less.</td>
<td>3  Q Why is that?</td>
<td>3  MR. WALLACE: Objection, leading.</td>
<td>3  MR. WALLACE: Objection, leading.</td>
</tr>
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<td>4  Q Did you write that note?</td>
<td>4  A Because the inputs are different, specifically the square feet.</td>
<td>4  THE COURT: Sustained.</td>
<td>4  THE COURT: Sustained.</td>
</tr>
<tr>
<td>5  A I didn't have it.</td>
<td>5  Q Why did you have to ask Ms. Cook for this information?</td>
<td>5  Q When was the first time you became aware of the 10,996 square footage being the right square footage?</td>
<td>5  Q When was the first time you became aware of the 10,996 square footage being the right square footage?</td>
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<tr>
<td>6  Q And why do you say that?</td>
<td>6  A Because I didn't have it.</td>
<td>6  A When Stephanie Lennig confirmed it.</td>
<td>6  A When Stephanie Lennig confirmed it.</td>
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<td>7  A It was either Jeff McConney or Allen Weisselberg who did it.</td>
<td>7  Q Why would you have had it?</td>
<td>7  THE COURT: This was also recorded by Senior Court Reporter Michael Ranita.)</td>
<td>7  THE COURT: This was also recorded by Senior Court Reporter Michael Ranita.)</td>
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<td>8  A Because I would have asked Jeff if he had it. And Jeff would have probably said no, and reach out to Jennifer Cook, who does have it.</td>
<td>8  Q Why would you have had it?</td>
<td>8  Q That was the first time you became aware of the 10,996 square footage being the right square footage?</td>
<td>8  Q That was the first time you became aware of the 10,996 square footage being the right square footage?</td>
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<td>9  MS. HERNANDEZ: Okay. So now we are going to look at the triplex property, which is row 969.</td>
<td>9  A Mr. Birney, can you describe how the triplex was valued in 2017?</td>
<td>9  A When Stephanie Lennig confirmed it. (The following proceedings were stenographically recorded by Senior Court Reporter Michael Ranita.)</td>
<td>9  A When Stephanie Lennig confirmed it. (The following proceedings were stenographically recorded by Senior Court Reporter Michael Ranita.)</td>
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<td>10 A Can you scroll up, please?</td>
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</tbody>
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Ny Supreme Court- Civil

(31) Pages 5590 - 5593

177 of 316
MS. HERNANDEZ: And so, we are just going to pull up Plaintiff's Exhibit 767. And this is already in evidence.

(Whereupon, the exhibit was displayed on the screen.)

Q You mentioned Stephanie Lennig confirmed it. What does that note on the first page of 767 reflect?

A It shows the square footage, for the units added up, for a combined square footage of 10996.39.

Q And who -- I guess, who made this note?

A I really don't know. I think it was Stephanie Lennig.

Q And was this note sent to Mazars?

A Yes.

MS. HERNANDEZ: I think that's a good place for a break.

THE COURT: Okay. It's time. All right.

MR. WALLACE: Your Honor, if we are about to break.

I just want to say, no objection to the lines of questioning, but we are happy to stipulate to the entry of the supporting information for the spreadsheets, to the extent, you know, not trying to cut off any lines of questioning, but we are happy to stipulate to the entries of some of these documents, if part of what this witness is testifying to is just to you, know, get documents in evidence. We are happy to do stipulations.

MS. HERNANDEZ: Thanks, Mr. Wallace, we'll take that into consideration at the break.

THE COURT: Ten-minute break. See you all at 3:35.

THE COURT OFFICER: All rise.

(Whereupon, the witness stepped down from the witness stand.)

(Whereupon, the exhibit was displayed on the screen.)

Q You mentioned Stephanie Lennig confirmed it. What does that note on the first page of 767 reflect?

A It shows the square footage, for the units added up, for a combined square footage of 10996.39.

Q And who -- I guess, who made this note?

A I really don't know. I think it was Stephanie Lennig.

Q And was this note sent to Mazars?

A Yes.

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MR. WALLACE: Objection.

Trump Organization did not provide any information or documentation that Whitley Penn requested?

A No.

Q And do you recall any instance where The Trump Organization did not provide any information or documentation that Whitley Penn requested?

A No.

Q In general, did you provide Mazars with all of the relevant information you used in preparing the Statement of Financial Condition?

A Yes.

Q And did you provide Whitley Penn with all of the relevant information you used in preparing the Statement of Financial Condition?

A Yes.

Q Were there various drafts every year of the Statement of Financial Condition support data?

A Yes.

Q Okay. And so, we walked through some of the support data and backup for 2017. How, if at all, did this process of submitting support data with accompanying backup change, for the years 2018 to 2020, that Mazars was compiling the Statement of Financial Condition?

A The only major difference I could think of as we started sending Mazars information through a portal instead of via e-mail.

Q Okay.

Q And did the process change at all with Whitley Penn in 2021?

A I don't think so. There was a different portal being used.

Q What was the first year you recall discussing the Statement of Financial Condition with Eric Trump?

A 2011.

Q And what was the first year you recall discussing the Statement of Financial Condition with Donald Trump, Jr?

A 2021.

Q And Mr. Birney, do you recall any instance where The Trump Organization did not provide any information or documentation that Mazars requested?

MR. WALLACE: Objection.
witness. I understand the defendants don't have a witness available, so.

THE COURT: So it doesn't matter. We get a break.

Okay, class dismissed.

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

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

MR. ROBERT: Thank you, sir.

(Whereupon, the case on trial was adjourned to Thursday, November 30, 2023 at 10:00 a.m.)
<table>
<thead>
<tr>
<th>Facet</th>
<th>Term</th>
<th>Page Numbers</th>
</tr>
</thead>
<tbody>
<tr>
<td>face (1)</td>
<td>5581:3</td>
<td></td>
</tr>
<tr>
<td>facility (1)</td>
<td>5530:11</td>
<td></td>
</tr>
<tr>
<td>facilities (9)</td>
<td>5530:11, 5532:1</td>
<td></td>
</tr>
<tr>
<td>feel (1)</td>
<td>5602:5</td>
<td></td>
</tr>
<tr>
<td>fees (1)</td>
<td>5501:5</td>
<td></td>
</tr>
<tr>
<td>feet (4)</td>
<td>5584:6, 5592:13, 18, 5593:6</td>
<td></td>
</tr>
<tr>
<td>felt (1)</td>
<td>5558:8</td>
<td></td>
</tr>
<tr>
<td>few (7)</td>
<td>5475:5, 5544:16, 5567:2, 5589:7, 5595:24, 5597:17</td>
<td></td>
</tr>
<tr>
<td>Fifteen (1)</td>
<td>5597:13</td>
<td></td>
</tr>
<tr>
<td>fight (1)</td>
<td>5596:23</td>
<td></td>
</tr>
<tr>
<td>figure (3)</td>
<td>5586:9, 12, 14</td>
<td></td>
</tr>
<tr>
<td>figures (3)</td>
<td>5583:13, 5584:2, 5588:13</td>
<td></td>
</tr>
<tr>
<td>financial (27)</td>
<td>5489:2, 5492:14, 5498:15, 22, 5563:10, 25, 5565:22, 5566:3, 5578:16, 19, 5579:3, 8, 12, 17, 5583:15, 5588:2, 5597:24, 22, 5597:17, 20, 5600:20, 24, 5601:3</td>
<td></td>
</tr>
<tr>
<td>financier (1)</td>
<td>5489:25</td>
<td></td>
</tr>
<tr>
<td>financing (17)</td>
<td>5486:22, 5488:8, 22, 5491:13, 5512:2, 5522:2, 5529:2, 5537:12, 5538:9, 12, 5540:20, 22, 5542:24, 5575:17</td>
<td></td>
</tr>
<tr>
<td>find (2)</td>
<td>5546:7, 8</td>
<td></td>
</tr>
<tr>
<td>fine (1)</td>
<td>5543:7</td>
<td></td>
</tr>
<tr>
<td>firm (3)</td>
<td>5491:15, 5555:25, 5556:2</td>
<td></td>
</tr>
<tr>
<td>fit (5)</td>
<td>5491:19, 20, 2, 5492:18, 5493:1</td>
<td></td>
</tr>
<tr>
<td>fitting (1)</td>
<td>5503:3</td>
<td></td>
</tr>
<tr>
<td>five (9)</td>
<td>5472:24, 5485:17, 5491:4, 5501:11, 17, 5510:18, 5531:12, 12, 5592:19</td>
<td></td>
</tr>
<tr>
<td>Five-minute (1)</td>
<td>5522:19</td>
<td></td>
</tr>
<tr>
<td>flexibility (4)</td>
<td>5576:4, 9, 12, 15</td>
<td></td>
</tr>
<tr>
<td>flight (2)</td>
<td>5478:14, 5543:25</td>
<td></td>
</tr>
<tr>
<td>flip (2)</td>
<td>5574:5, 8</td>
<td></td>
</tr>
<tr>
<td>Florida (5)</td>
<td>5477:11, 5482:14, 5486:21, 5487:1, 493:4</td>
<td></td>
</tr>
<tr>
<td>flow (5)</td>
<td>5492:15, 5564:24, 5568:22, 5572:13, 5588:22</td>
<td></td>
</tr>
<tr>
<td>focus (4)</td>
<td>5476:13, 5492:24, 5497:13</td>
<td></td>
</tr>
<tr>
<td>follow (3)</td>
<td>5475:9, 5565:17, 21</td>
<td></td>
</tr>
<tr>
<td>following (8)</td>
<td>5490:4, 5491:23, 5499:19, 5506:15, 5522:18, 5523:12, 5557:9, 5593:12</td>
<td></td>
</tr>
<tr>
<td>follows (1)</td>
<td>5483:25</td>
<td></td>
</tr>
<tr>
<td>follow-up (2)</td>
<td>5475:22, 5547:14</td>
<td></td>
</tr>
<tr>
<td>foot (5)</td>
<td>5582:24, 5584:12, 12, 21, 5592:7</td>
<td></td>
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<tr>
<td>footage (16)</td>
<td>5582:23, 5583:1, 5584:11, 23, 24, 5592:7, 21, 24, 25, 5593:2, 5, 10, 10, 5594:8, 9</td>
<td></td>
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<tr>
<td>Fordham (1)</td>
<td>5484:12</td>
<td></td>
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<tr>
<td>forego (1)</td>
<td>5472:16</td>
<td></td>
</tr>
<tr>
<td>forma (1)</td>
<td>5500:5</td>
<td></td>
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<tr>
<td>forms (1)</td>
<td>5565:2</td>
<td></td>
</tr>
</tbody>
</table>
profile (3)
5562:4;5563:25;5566:3
profitability (6)
5501:17;5515:14,16;5543:4;5550:13;5512:7;5517:7;
5519:23;5582:7;5583:6;5584:9,9;5585:16;5594:1;
5589:10
project (11)
5496:25;5518:10;
5519:25;5538:11;5540:16;5552:7,12,13;
5575:11,12
projected (3)
5000:7;5510:23
projects (1)
5527:19
prolong (1)
5472:15
properties (6)
5491:25;5492:24,25;
5522:1;5527:23;
5563:4
property (23)
5473:19;5477:10;
5478:13;25;5481:13;
5482:4;5486:21,22;
5487:1;5488:9;5493:4;
5519:12;5529:2;
5538:6;8;5551:24;
5576:14;5582:15;
5583:1;5589:3,5;
5591:22
proposing (1)
5556:22
prospect (5)
5486:8;5488:3,4;
5532:5,6
prospects (1)
5547:9
protect (1)
5532:13
proud (1)
5524:5
proven (3)
5491:11,25;5522:12
provide (10)
5521:5;5535:6;
5542:5,4;5556:17;
5572:18;5599:23;
5600:15,18,22
provided (9)
5477:16;5482:2;
5497:21;5498:9;
5504:10;5513:25;
5562:17;21,5587:8
Providing (1)
5477:8
public (2)
5547:1,7
pull (18)
5487:3;5488:16;
5493:12;5497:25;
5504:12;5507:6;
5510:7;5511:14;
5512:7;5517:7;
5519:23;5582:7;
5583:6;5584:9,9;
5585:16;5594:1;
5598:10
punch (1)
5540:14
purchase (3)
5513:3;5519:6;
5563:23;
5569:20
purpose (5)
5522:20;5526:5;
5529:20;5535:13;
5595:21
purposes (4)
5513:18;5528:10;
5548:5;5559:2
put (5)
5474:3;5551:7;
5570:12,14;5595:18
putting (3)
5513:19,23;5576:20
PVM (10)
5489:4,9,24;
5491:10;5492:23;
5491:25;5492:8,9,15;
5566:7
PX-1275 (1)
5474:11
PX-758 (3)
5582:7;5584:10;
5587:4
PX-762 (3)
5583:6;5584:18,22
PX-764 (5)
5585:16,19;5586:20;
5587:14,17
PX-765 (5)
5587:17,19,23;
5588:1,12
PX-766 (2)
5589:12;5591:6
quote (5)
5478:2,3,9,12,25
raise (3)
5482:22;5569:1;
5596:8
raised (1)
5546:24
raising (1)
5491:13
range (3)
5477:9;5479:1,4
Ranita (4)
5490:5;5523:13;
5557:10;5593:13
rarely (1)
5478:15
rate (12)
5499:12;5532:12,16,
18;5549:13,18;
5576:19,23;5585:14;
5586:23;5587:1,8
rated (1)
5498:17
rates (4)
5547:8,10;5576:4;
5587:11
rather (1)
5520:4
RCM (2)
5514:4,5
re (3)
5531:3;5542:3;
5567:4
reach (2)
5529:14;5591:19
reached (1)
5542:25
reaching (1)
5529:20
react (1)
5503:19
reaction (4)
5564:3,6,7,9
read (11)
5511:20,22;5573:12;
5587:6;7;5598:25;
5599:1,2;5600:7,8,11
readers (1)
5477:23
reading (2)
5497:16;5498:18
read (1)
5590:4
ready (5)
5473:4;5474:17,18,
19;5483:19
real (32)
5488:21;5489:3,8,
11,17;5491:10,12,25;
5492:10,17;5494:12;
5502:19;5503:3;
5521:24,25;5522:13;
5529:5,23;5542:24;
5556:8,14;5563:2;
5565:1;5566:13,25;
5567:3;5568:16;
5572:12;5574:24;
5575:11;5582:16,20
realistic (3)
5519:7;14,5569:21
realize (3)
5512:15,16;5514:22
realizes (1)
5582:13
relocation (1)
5482:1
really (4)
5525:21;5576:14;
5594:11;5596:15
Realty (1)
5591:13
Reason (15)
5481:15,25;5482:3;
5505:6;5506:2;
5520:20;5545:4;
5558:5;5563:13;
5567:10;5568:24;
5569:3;5575:8;
5590:19
reasonable (1)
5590:8
recall (16)
5477:2;18;5480:9;
5481:24;5482:3,6;
5544:8,11;5558:7;
5570:18;5573:7;
5597:16;5599:16,19,
22;5600:14
receive (1)
5529:11
received (4)
5484:16;5486:19;
5511:25;5538:7
receiving (1)
5537:16
recent (1)
5583:25
recess (1)
5560:19
recognize (20)
5476:4;5480:12;
5487:7,10;5493:18;
5498:4;5504:25;
5507:12;5510:13;
5512:9;5513:1;5519:1;
5525:13;5528:15;
5534:22;5539:1;
5543:20;5548:7;
5583:9;5585:19
recollection (6)
5470:5,22;5477:13;
5480:7;5481:22;
<table>
<thead>
<tr>
<th>300 (3)</th>
<th>301 (1)</th>
<th>302 (3)</th>
<th>306 (1)</th>
<th>31 (1)</th>
<th>31.295 (1)</th>
<th>311 (4)</th>
<th>312 (7)</th>
<th>313 (6)</th>
<th>324 (3)</th>
<th>325 (3)</th>
<th>326 (3)</th>
<th>331 (3)</th>
<th>333 (3)</th>
<th>335 (3)</th>
<th>338 (3)</th>
<th>340 (3)</th>
<th>342 (3)</th>
<th>343 (3)</th>
<th>36 (1)</th>
<th>37 (4)</th>
<th>378 (1)</th>
</tr>
</thead>
<tbody>
<tr>
<td>5507:7;5510:2,5</td>
<td>5511:12</td>
<td>5510:8;5511:8;5567:3</td>
<td>5511:15</td>
<td>5586:16</td>
<td>5554:19</td>
<td>5511:15;5512:8;5517:2,5</td>
<td>5517:8;5519:18,21;5561:24;5570:13,17;5571:23</td>
<td>5521:9,12;5570:14,19;5571:16,25</td>
<td>5525:8;5526:9,11</td>
<td>5526:14;5528:4,7</td>
<td>5528:11;5530:16,18</td>
<td>5530:21;5533:3,5</td>
<td>5534:7;5536:8,10</td>
<td>5536:13;5537:25;5538:2</td>
<td>5538:15;5541:8,11</td>
<td>5543:16;5547:22,25</td>
<td>5548:4;5551:16,19</td>
<td>5531:10</td>
<td>5472:2;5524:1;5560:23;5595:9</td>
<td>5476:1</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>401 (2)</th>
<th>42nd (1)</th>
<th>452564/2022 (1)</th>
<th>4600 (1)</th>
<th>50 (4)</th>
<th>50BP (1)</th>
<th>526 (1)</th>
<th>53 (1)</th>
<th>555 (7)</th>
<th>6 (1)</th>
<th>6.8 (1)</th>
<th>60 (3)</th>
<th>62 (3)</th>
<th>62,482,000 (1)</th>
<th>66 (1)</th>
<th>69 (1)</th>
<th>6th (1)</th>
<th>7 (2)</th>
<th>7:17 (1)</th>
<th>720 (1)</th>
<th>750 (1)</th>
<th>758 (1)</th>
<th>762 (2)</th>
<th>764 (2)</th>
<th>765 (2)</th>
<th>766 (4)</th>
</tr>
</thead>
</table>

| 5589:14,16,23; | 5590:1 | 767 (3) | 5594:2,7;5596:15 | 779 (3) | 5541:14;5543:10,13 | 781 (1) | 5585:4 | 5505:4 |

| 8 (1) | 808 (1) | 821 (1) | 83 (2) | 850 (1) | 850K (1) | 86.49 (1) | 8th (2) | 8 (1) | 5540:14 | 5587:4 | 5589:4 | 5512:16;5513:3 | 5550:17 | 5550:3 | 5549:25 | 5555:9 | 5508:6;5539:2 |

| 9:10 (1) | 969 (1) | 9th (1) | 5570:22 | 5591:22 | 5537:5 |

| 7 (2) | 5477:25;5484:19 | 7:17 (1) | 5574:15 | 720 (1) | 5484:4 | 750 (1) | 5471:4 | 758 (1) | 5585:4 | 762 (2) | 5583:19,22 | 764 (2) | 5586:2,5 | 765 (2) | 5588:5,9 | 766 (4) | 5570:22 | 5591:22 | 5537:5 |
In The Matter Of:

Attorney General of the State of New York v.

Donald J. Trump, et. al.

November 30, 2023

Michael Ranita - Senior Court Reporter
November 30, 2023

THE COURT OFFICER: All rise. Part 37 is now in session. The Honorable Judge Arthur Engoron presiding.

Make sure all cell phones are on silent. Laptops and cell phones will be permitted, but only to members of the press. There's absolutely no recording or photography of any kind allowed in the courtroom. Now be seated and come to order.

THE COURT: Would defendants like to call their next witness?

MR. WALLACE: Apologies, your Honor, but plaintiffs had a couple of housekeeping issues we wanted to raise.

THE COURT: Okay.

MR. WALLACE: And we are springing this on the defendants a little bit, but I wanted to talk about the scheduling for the week of December 11th, which is currently scheduled for Mr. Trump’s testimony, which I believe will be the last witness for the defendants.

I think our view is is that to the extent plaintiffs have any rebuttal case, it could be presented on the 12th. I think it would, at most, be two witnesses, both of whom --

THE COURT: Just be one day.

MR. WALLACE: One day. Each witness would be an hour or less, would be our expectation, but that depends on a little bit what we have here from Mr. Bartov on the seventh and eighth. That would be our expectation. So we could propose that closing arguments be held on the 13th and that we follow the process we did on openings, with 90 minutes for the government and two hours for the defense, with leave for them to ask for more time, if needed, since they are sharing.

THE COURT: Go ahead.

MR. KISE: So Mr. Robert, as you know, is the CPLR expert and/or procedural. One thing that we had thought about proposing the Court, which in a case like this seems to make, at least to me, and I’ll let Mr. Robert speak.

THE COURT: Yes.

MR. KISE: It seems to make, at least to me, far more sense for us to provide our posttrial submissions simultaneously, and then after the Court has a chance to look at those, we would come back for argument on those and you could provide -- Mr. Robert will do a better job on this than me. I’m sure in the interim you could provide us questions that you want us, after you’ve seen both parties’ submissions. In most bench trials, for what it’s worth, that I’ve ever handled have been done that way, where because a closing right after we are done with the evidence on a two-month trial, it’s not like there is a jury here. You’ve got what’s going to be probably a 9,000 page record. There’s just an awful lot of ground to cover. I mean we can certainly make arguments on the 13th. I just don’t know,
Donald J. Trump, et. al. November 30, 2023

**Procedures**

<table>
<thead>
<tr>
<th>Page 5608</th>
<th>Proceedings</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>in a jury trial just wouldn't fit in a trial like this.</td>
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<tr>
<td>2</td>
<td>It's certainly not something that we contemplated, because</td>
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<td>3</td>
<td>we figured it would be the normal route of a bench trial,</td>
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<td>4</td>
<td>which is findings of fact, conclusions of law, a period of</td>
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<td>time then, after that, and then form a formal presentation</td>
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<td>to the court.</td>
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<td>7</td>
<td>So I guess at this point, whatever Mr. Wallace is</td>
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<td>8</td>
<td>saying, what I would ask for is when the close of evidence</td>
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<td>9</td>
<td>closes, that the Court then give us 60 days or so to submit</td>
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<td>10</td>
<td>it to the Court, and we could put a date on the calendar at</td>
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<td>that point, or now, as to when the Court would want us to</td>
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<td>12</td>
<td>come back to argue that. And then obviously, totally up to</td>
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<td>13</td>
<td>the Court, whether you want to key us to certain issues you</td>
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<td>want us to specifically answer at that argument date.</td>
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<td>15</td>
<td>MR. KISE: We'll also, of course, have to have time</td>
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<td>16</td>
<td>for another directed verdict motion.</td>
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<td>17</td>
<td>THE COURT: Well, good luck with that.</td>
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<td>18</td>
<td>MR. WALLACE: I'll say, your Honor, I have done</td>
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<td>19</td>
<td>closings in bench trials in this courthouse in matters where</td>
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<td>20</td>
<td>there is public interest, and people have a desire to hear</td>
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<td>21</td>
<td>both sides summarize the case. So I don't know that there's</td>
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<td>22</td>
<td>a typical process. I do think it is typical, often not, to</td>
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<td>23</td>
<td>have openings or closings in bench trials, but, you know,</td>
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<td>24</td>
<td>each judge does as they see fit.</td>
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<td>25</td>
<td>I certainly don't think we need 60 days to prepare</td>
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</tbody>
</table>

**Procedures**

<table>
<thead>
<tr>
<th>Page 5609</th>
<th>Proceedings</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>a posttrial briefing. This case has been extensively</td>
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<td>2</td>
<td>briefed and argued by all sides. Everyone is familiar with</td>
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<td>3</td>
<td>the record. I think -- we think a two-week period after the</td>
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<td>4</td>
<td>close of evidence is more than sufficient. I don't know</td>
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<td>5</td>
<td>that we have an objection to having an argument on -- after</td>
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<td>6</td>
<td>simultaneous briefing in lieu of closing, but I think</td>
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<td>7</td>
<td>60 days, so stretching this out into, I guess, February at</td>
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<td>8</td>
<td>some point doesn't make sense from our perspective, but in</td>
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<td>9</td>
<td>terms of process, no objection from us to close the</td>
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<td>10</td>
<td>evidence, submit our findings of fact and conclusions of</td>
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<td>11</td>
<td>law, and if the Court wants argument, we could do argument.</td>
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<td>12</td>
<td>MR. KISE: So the only thing I'll add, and I'll let</td>
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<td>13</td>
<td>Mr. Robert add, if your Honor is not interested in 60 days,</td>
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<td>14</td>
<td>I would try and maybe find somewhere between two weeks and</td>
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<td>15</td>
<td>60 days, because the two weeks, as you know, happens to</td>
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<td>16</td>
<td>fall, most particularly on my birthday, but sort of the end</td>
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<tr>
<td>17</td>
<td>of the year where it's going to be pretty compressed for</td>
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<tr>
<td>18</td>
<td>everyone, particularly having been for those of us that have</td>
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<tr>
<td>19</td>
<td>been a way for quite some time.</td>
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<td>20</td>
<td>So if you are not interested in 60, which I think</td>
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<td>21</td>
<td>is a reasonable time period, but I understand the Court may</td>
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<tr>
<td>22</td>
<td>have a different view, certainly something beyond the</td>
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<tr>
<td>23</td>
<td>two-week period, maybe two weeks into January, maybe 30 or</td>
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<td>24</td>
<td>45 days as opposed to -- and then the entire process would</td>
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<td>25</td>
<td>be wrapped up by the last week of January if we did that.</td>
</tr>
</tbody>
</table>

**Procedures**

<table>
<thead>
<tr>
<th>Page 5610</th>
<th>Proceedings</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>We wouldn't be into February, as Mr. Wallace is saying, and</td>
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<tr>
<td>2</td>
<td>I understand what he is saying.</td>
</tr>
<tr>
<td>3</td>
<td>Keep in mind, also, that we do have, as we've had</td>
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<td>4</td>
<td>for 14, 15 months now, there's no public exigency because</td>
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<td>5</td>
<td>there is a monitor in place. Everything is still operating</td>
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<td>6</td>
<td>pursuant to the Court's direction and supervision.</td>
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<td>7</td>
<td>THE COURT: Give me one second. Okay. That's a</td>
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<td>8</td>
<td>second. I like the idea of the briefs then the argument;</td>
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<td>9</td>
<td>there seems to be an agreement on that. Two weeks seems</td>
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<td>10</td>
<td>very short and a month seems very long -- two months seems</td>
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<td>11</td>
<td>very long. I feel like -- what is the -- Goldilocks and the</td>
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<td>12</td>
<td>Three Bears; too hot, too cold, just right. So we'll come</td>
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<td>13</td>
<td>up with a just right. Let me sit on this. Obviously we</td>
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<td>14</td>
<td>have time. I think we'll all come to an accommodation.</td>
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<td>15</td>
<td>Mr. Wallace.</td>
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<td>16</td>
<td>MR. WALLACE: So two additional issues. These</td>
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<td>17</td>
<td>relate to expert testimony. First, tomorrow, in addition to</td>
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<td>18</td>
<td>our renewing our motion to preclude Mr. Shubin, we are also</td>
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<td>19</td>
<td>going to renew our applications to Mr. Moens. So these are</td>
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<td>20</td>
<td>two witnesses who both deal with Mar-a-Lago. We already</td>
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<td>21</td>
<td>submitted our briefs on this. We are not going to submit</td>
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<td>22</td>
<td>any new briefing, but we'll just raise it when we make the</td>
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<td>23</td>
<td>motion tomorrow.</td>
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<td>24</td>
<td>THE COURT: Okay.</td>
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<td>25</td>
<td>MR. WALLACE: The other issue we wanted to raise is</td>
</tr>
</tbody>
</table>
Donald J. Trump, et. al. November 30, 2023

Attorney General of the State of New York v.

Proceedings Page 5611

1 the -- we received a number of updates last night to
2 Mr. Unell's opinions in this matter. And we do not think
3 that they have been timely disclosed and that they should
4 not -- should not be allowed to include these opinions. In
5 particular -- can we put up defendant's demonstrative
6 Exhibit 5.
7
8 (Whereupon, the exhibit was displayed on the screen.)
9
10 MR. WALLACE: So this is a chart that I believe is
11 an adjustment that Mr. Unell prepared on the calculations
12 prepared by Mr. McCarty. We got this last night around 9:30
13 at night -- Mr. Unell is here, maybe he should not --
14 THE COURT: Oh.
15 MR. WALLACE: -- be in the courtroom while we are
16 testifying. Sorry, sir.
17 (Mr. Unell exited the courtroom.)
18 MR. SUAREZ: I could see why.
19 MR. WALLACE: So I was just going to say that the
20 -- well, let me see if I could -- it appears to now
21 calculate interest differential based on a 25 basis points
22 increase. I assume this is due to a guarantee. It appears
23 that this is based on testimony from Mr. Williams about an
25
26 The testimony simply confirmed what's in the
27 documents that the defendants have had the entire time. The
28 defendants could've prepared this rebuttal to Mr. McCarty as
29 part of Mr. Unell's expert rebuttal report. Those were due
30 in June. So for them to now introduce this the night before
31 he's going to testify, um, is untimely and inappropriate.
32 So we think the demonstrative and the new opinions should be
33 struck.
34
35 MR. KISE: So, your Honor, a couple of things, and
36 Mr. Robert may have things to add.
37 First of all, the supplement --
38 THE COURT: Mr. Kise, it might be easier if you sat
39 or just --
40 MR. KISE: I'll hold it up here. Usually no one
41 has a problem. Maybe I'm in a calm mood today. Usually
42 they could hear me without the microphone.
43 So a couple of items on this. First of all, I
44 believe the government, I'm pretty sure 11:00 on a Friday,
45 before Mr. McCarty took the stand on Monday, provided a
46 supplemental report as well, for Mr. McCarty, which modified
47 his opinions to take into account events subsequent to his
48 initial opinions. So back to the goose/gander proposition.
49 Um, that's one, but I don't think necessarily controls, although it's certainly in our favor.

Proceedings Page 5612

1 Two, if you look at Mr. Unell's report, he spends a
2 considerable amount of time talking about the pricing of the
3 loans and Mr. McCarty's analysis, and so on and so forth.
4 So for him to now make observations -- this is a
5 demonstrative exhibit. It's not being introduced as
6 substantive evidence. It's just a demonstrative. For him
7 to now make observations about documents in the record, he's
8 reviewed all these documents before. He's not limited to
9 the words that are exactly in the page. No expert is. It's
10 the subject matter. He's fully covered on the subject
11 matter about the pricing of the -- the loans about
12 Mr. McCarty's analysis. And every expert is entitled to --
13 to adjust based on what is presented at trial and make
14 comments on what is presented at trial, and to offer
15 rebuttal to what is presented at trial, as long as it's
16 within the scope of the initial opinion.
17 And so if you look at pages -- I mean, there's so
18 many pages here in this report. This would be Mr. Unell's
19 June 30th report, just this one. Starting on pages six and
20 going through 7, 8, 9, 10, I mean, there's all manner of
21 discussion throughout this report about the credit pricing,
22 the loan pricing. Mr. McCarty's then analysis, different
23 from Mr. McCarty's analysis now, because as you heard me
24 say, they changed their theory of the case. So
25 Mr. McCarty's analysis is now morphed to fit that theory.

Proceedings Page 5613

1 His original analysis was based on the loans, and
2 now much of it was based on the certifications. And so just
3 like they have done in terms of their numbers, we are doing
4 the same thing. We are just challenging that analysis, and
5 we are challenging his fundamental assumptions.
6 We don't -- as long as we've covered the subject
7 matter, they were certainly free to ask in his deposition
8 about the subject matter and so forth. So I don't know --
9 again, I'll let Mr. Robert speak to New York specific
10 issues, but all of this is covered, the subject matter and
11 the scope, abundantly. The supplemental report wasn't even
12 necessary. We did it more as an accommodation to them so
13 that they would have a better understanding.
14 The demonstrative exhibit is just that. It's a
15 demonstrative exhibit, and we are entitled to allow the use
16 of demonstrative exhibits. It's not substantive evidence.
17 And they could fully explore on cross examination.
18 The same documents that were available to us and
19 Mr. Unell are also available to the government. So I don't
20 see any prejudice, any basis to exclude any testimony in
21 that regard.
22 MR. ROBERT: Just echoing on what Mr. Kise said,
23 the government, as it was the business day before, sent us a
24 supplement where they, as Mr. Kise said, changed, in theory,
25 of what Mr. McCarty was going to testify about. This is
Michael Ranita - Senior Court Reporter

Donald J. Trump, et. al.

November 30, 2023

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

Proceedings

1. just our expert with a demonstrative exhibit commenting on events that happened in the testimony that came out during the trial. So, again, we could've very easily just had the witness testify with it without incident. Candidly, we have this rule where we have to exchange demonstratives the night before, which is what we did, just as they did. They did more than that. They changed the substance of it the night before, and our expert is free to comment on it and comment on the testimony that he heard or that he read about from Mr. Williams and others during the course of the trial. So I truly think this is a nonissue.

MR. WALLACE: So, your Honor, I'll say the change in opinion is nothing of the kind. On the left is the demonstrative that we produced the night before. On the right is the demonstrative that was contained in Mr. McCarty's opening report produced on May 30th of this year. And what he did is he eliminated interest for 2012 and 2013, and then extended for the amount of time that it continues from his report in May until the time of his testimony in November. You'll see this calculations remain the same. He is using the same process. He is using the same calculation to come up with a disgorgeable amount. The defendants --

MR. WALLACE: If we could just have DD5 alone. So let's pull up, if we could, DD5, which is their new opinion. (Whereupon, the exhibit was displayed on the screen.)

MR. WALLACE: If we could just have DD5 alone. So the 25 plus basis points, I assume, is their new opinion that this is the pricing difference between a loan with a guarantee and a loan without a guarantee. And I challenge anyone to find somewhere in their expert reports an opinion -- in Mr. Unell's expert reports from May and June, an opinion that the pricing difference between a loan with a guarantee, and a loan without a guarantee is 25 basis points. It's not in there. And I don't think this is just -- you know, it's the subject matter. And we need to, um, you know, inquire of him if his opinion is -- his reports are more than a hundred pages. So to say, well, he is discussing the topics and so the topics are fine. They had the report from Mr. McCarty. If his opinion was that Mr. McCarty had priced the interest difference improperly, and that the proper basis was to use 25 basis points, he should have disclosed it in the rebuttal report in June. We could have deposed him about it. We could've had our own experts look at it. We could have spent the last five months thinking about it. Instead we get it the night before.

I would say there's nowhere in the reports that says the price difference between a guaranteed loan and an unguaranteed loan is 25 basis points. It's not in there.

THE COURT: Nevertheless, plaintiff's objection is overruled. There's no jury. Let's just hear the evidence.

You could question him on his conclusions. So --

MR. WALLACE: I would just note, your Honor, that the issue isn't just cross examination, the issue is notice. And we agreed to a process where we were supposed to have notice of everything the experts thought by the end of June. That was -- extra time was provided at the defendant's request because they were going to need to build in so much in their rebuttal reports, and we would then have a chance to examine, in detail, over seven hours, the experts' opinions. I guess we'll do it live now. It's not a question of do we get to examine the witness. It was a matter that we were supposed to have notice of his opinion many months ago.

THE COURT: I understand that. I'm not justifying or accepting everything defendants position is, but I'm letting it in, so.

MR. WALLACE: Understood, your Honor.

THE COURT: A few words.

DIRECT EXAMINATION

Q. Good morning.

A. Good morning.

THE COURT OFFICER: Witness entering.

THE COURT OFFICER: Please raise your right hand.

THE COURT OFFICER: Do you solemnly swear or affirm that any testimony you give will be the truth, the whole truth and nothing but the truth?

THE WITNESS: I do.

THE COURT OFFICER: Please have a seat.

THE WITNESS: Thank you.

ROBERT Evan Unell, called by and on behalf of the Defendant, having been first duly sworn, was examined and testified as follows:

THE COURT OFFICER: State your name and either home or business address for the record.

THE WITNESS: Robert Evan Unell. 5470 East Idlewood Lane, Atlanta, Georgia.

DIRECT EXAMINATION

BY MR. SUAREZ:

Q. Mr. Unell, good morning.

A. Good morning.

Q. Please describe your educational background after high school.
<table>
<thead>
<tr>
<th>Proceedings</th>
<th>Page 5619</th>
<th>Proceedings</th>
<th>Page 5621</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>A Yes. I attended the University of Georgia where I majored in real estate, which is part of the Terry College of Business. I graduated in 2000, and then subsequently went to go into the workforce.</td>
<td>1</td>
<td>as two and a half million dollars up to large syndicated facilities upwards of $500 million plus, encompassing all aspects of real estate collateral.</td>
</tr>
<tr>
<td>2</td>
<td>Q What did you study at the University of Georgia of Business?</td>
<td>2</td>
<td>Q And what role, specifically, did you have on those deals?</td>
</tr>
<tr>
<td>3</td>
<td>A In the Terry College of Business, I majored in real estate, which is a program that combines the risk management side as well as finance and practical real life real estate experience and development.</td>
<td>3</td>
<td>A On those deals, both as a relationship manager and in the Credit Risk Management side at Special Assets, I was involved in the structuring, underwriting. And then as a Credit Risk Management side at Special Assets, I also did have a signatory for a small approval authority.</td>
</tr>
<tr>
<td>4</td>
<td>Q Where did you work after you graduated from the University of Georgia?</td>
<td>4</td>
<td>Q What training, if any, have you received in the private sector?</td>
</tr>
<tr>
<td>5</td>
<td>A I began may career at Wachovia Bank, and was there until the merger with First Union. I then went to Bank of America, and I spent approximately 12 years there, or so, at Bank of America in the Commercial Real Estate Finance Group, as well as the Credit Risk Management Group of Special Assets, which handled real estate, specifically.</td>
<td>5</td>
<td>A In the private sector. So at Wachovia, there was not necessarily a formal training program, but I shadowed senior lenders. I took classes that were internal as it related to risk as is related to financial underwriting. And the same at Bank of America with continuing education that was required, both from an compliance perspective, as well as continuing to refine tools for underwriting and other trends in commercial real estate.</td>
</tr>
<tr>
<td>6</td>
<td>Q Let's go back to your time at Wachovia. What was your title at Wachovia?</td>
<td>6</td>
<td>Q After you left Bank of America, where were you employed?</td>
</tr>
<tr>
<td>7</td>
<td>A I started out as analyst, and then eventually rose to title of AVP, assistant vice president, but I'm not certainly of the exact title.</td>
<td>7</td>
<td>A Alvarez &amp; Marsal.</td>
</tr>
<tr>
<td>8</td>
<td>Q What was your job function a Wachovia?</td>
<td>8</td>
<td>Q What responsibilities did you have at Alvarez &amp; Marsal?</td>
</tr>
<tr>
<td>9</td>
<td>A At Wachovia, I began in the underwriting process of commercial real estate loans, and income producing, as well as homebuilder. And then eventually moved into the relationship management side of it, which would encompass more of the structuring of the deals, the client management, and the overall relationship with the entire bank.</td>
<td>9</td>
<td>A At Alvarez &amp; Marsal, I was part of the REAS Group, which is Real Estate -- I don't know what it stood for. It was the real estate group at Alvarez &amp; Marsal. The practice there consisted of a multitude of things. We liked to say we would take a real estate and we were able to go from essentially cradle to grave, which means from the beginning on the cradle side, um, we assisted multiple national lenders, both on the CMBS and the balance sheet side, with their underwriting, their valuation management, um, and we also have done a lot of advisory work for developers and real estate professionals. And then also a tremendous amount of restructuring work, which involved, both from a lender perspective and a developer/borrower perspective of analyzing loans that were in distress or already in default.</td>
</tr>
<tr>
<td>10</td>
<td>Q And how did your responsibilities change when you moved over to Bank of America, if at all?</td>
<td>10</td>
<td>Q What is the difference between your experience on CMBS loans and balance sheet loans?</td>
</tr>
</tbody>
</table>
| 11 | A The responsibilities when I first moved over to Bank of America did not change because I was hired as a relationship manager and managed a portfolio of builders, developers and commercial real estate developers. And in approximately late 2007 to early 2008, I was asked to move over to the Real Estate Special Assets Group, which was a function of Credit Risk Management, and was done in conjunction with the downturn in the commercial real estate markets. In that role I performed analysis and review and restructuring of deals that were in default or were stressed. | 11 | A CMBS loans are nonrecourse loans that are originated by, typically, investment banks. They are then bundled up and securitized with other similar loans, or sometimes they are done what's called a "single asset" or "single borrower." That would be for a large asset. And they are a commoditized, very kind of fit in the box. If it doesn't fit in the box, move on. And that's because when they do bundle them together, they like to bundle similar assets so that they have similar cash flows and can also minimize risk through a multitude of diversified
| 12 | Q And while at Bank of America, what industries did you service? | 12 | |
| 13 | A I serviced the commercial real estate industry, homebuilders -- homebuilders, cash flowing properties, as well as construction. | 13 | |
| 14 | Q What type of deals did you work on when you were at Bank of America? | 14 | |
| 15 | A At Bank of America I worked on deals that were as small as two and a half million dollars up to large syndicated facilities upwards of $500 million plus, encompassing all aspects of real estate collateral. | 15 | |
| 16 | | 16 | |
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Donald J. Trump, et. al. November 30, 2023
Attorney General of the State of New York v.

Proceedings  Page 5623

<table>
<thead>
<tr>
<th>Q</th>
<th>Please elaborate on your experience working on loan restructuring?</th>
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</table>
| A | Loan restructuring can take on a multitude of different kinds of work. We worked on primarily assets that were already in default. They may not have been noticed of default, but there was an inherent risk of loss for the bank. At that time those assets are transferred over to the Special Assets Group where we are trained and able to restructure deals, analyze deals, and assist in trying to come to a satisfactory agreement to restructure the loan on terms satisfactory, not only to the borrower, but also to the lender. And often times that worked out, and often times it did not. If it did not, role also included the exercising of remedies to include foreclosure, as well as collection on guarantees and enforcement of other loan documents.

Proceedings  Page 5624

| A | Approximately five years ago or four and a half years ago. Myself and several colleagues left and we established the real estate practice at Ankura. And also at the end of it perhaps trying to negotiate settlements as it would relate to various loan documents and guarantees of, you know, the interested parties.

Proceedings  Page 5625

<table>
<thead>
<tr>
<th>Q</th>
<th>What industries did you serve at Alvarez &amp; Marsal?</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Strictly commercial real estate.</td>
</tr>
</tbody>
</table>

Proceedings  Page 5626

<table>
<thead>
<tr>
<th>Q</th>
<th>What was your title at Alvarez &amp; Marsal?</th>
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</thead>
<tbody>
<tr>
<td>A</td>
<td>I started as a director, and when I left I was a senior director.</td>
</tr>
</tbody>
</table>

Q And how did your responsibilities change from director to senior director, if at all?

A They did not change.

Q When did you leave Alvarez & Marsal?

A Strictly commercial real estate.

Q What was your title at Alvarez & Marsal?

A Managing director.

Q What is your title at Ankura?

A Managing director.

Q What are your responsibilities as a managing director at Ankura?

A Very similar to what we did at Alvarez & Marsal. The practice was designed to be the exact same. So both front end, from what we call "cradle to grave", which is origination through advisory, and then ultimately the restructuring disposition of commercial real estate finance assets.

Q Please elaborate on the origination section of your experience?

A So as part of the origination side of it, our team is contracted by several large lenders, insurance companies, balance sheet and CMBS lenders, to perform either the full underwriting and due diligence process, or it could be just a subset including the valuation management side of it, which is done by my peers, or environmental due diligence and engineering due diligence as well.

Q What does the advisory side consist of?

A The advisory side consists of helping operating real estate businesses become more efficient. We are able to help, I would say, in times of where they have large, heavy lifts where we can come in and assist where they may not need full time personnel for special projects; that could be an acquisition.

Q What does the advisory side consist of?

A It could be a joint venture. It could be a very large project where they just need additional assistance.

Q And what is your title at Ankura?

A Managing director.

Q What was your title at Alvarez & Marsal?

A I started as a director, and when I left I was a senior director.

Q And how did your responsibilities change from director to senior director, if at all?

A They did not change.

Q When did you leave Alvarez & Marsal?

A Strictly commercial real estate.

Q What were your responsibilities as a managing director at Ankura?

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Q It could be a joint venture. It could be a very large project where they just need additional assistance.

Q (Continued on the next page.)
Mr. Unell?

THE WITNESS: Yes, sir. As spending nearly approximately 15 years in the banking field, I have worked across multiple lines of business and collaborated with associates in multiple different fields at various institutions that I have worked at.

THE COURT: Okay. We will call you -- we will deem you a banking expert in the -- within the fields that you just mentioned.

So granted, and let's go ahead.

Q Mr. Unell, what is the scope of your engagement in this case?

A I was retained to provide opinions as it related to the loans -- the four subject loans and their process and how they were underwritten; and, I guess, the submission and the ordinary course of business as to how loans are originated and processed.

Q What do you mean by "the four subject loans"?

A The four subject loans would be Doral; the Old Post Office; 40 Wall Street and Chicago.

Q And just to be clear, Trump Chicago, Doral, and OPO were loans made by Deutsche Bank; and 40 Wall Street was a loan made by Ladder Capital, correct?

A Correct.

Q Generally, what information did you review to reach your opinions in this case?

A I reviewed a multitude of documents, including Statements of Financial Condition, credit reports, appraisal reports, underwriting reports, annual reviews, as well as internal memos that were prepared by Deutsche Bank and Ladder Capital. Along with other correspondence, as well as, it related to these four subject loans.

Q Have you reviewed any of the proceedings in this case?

Yes, sir.

Q What have you reviewed from the proceedings in this case?

A I have reviewed the initial complaint as well as some of the subsequent filings as well, including the motions for summary judgment by both sides.

Q Have you reviewed any of the testimony given in this case?

Yes, sir.

Q I have reviewed the deposition -- excuse me, not the deposition. I did review the depositions of several folks. But at trial I have read the transcript of Mr. Haigh. And then I was able to view the testimony of Mr. Williams and Ms. Vrablic and Ms. Pereless.

Q And are you able to offer opinions today to a reasonable degree of certainty in the field of commercial real estate finance and --

Unell - by Defendant - Direct (Suarez)
THE COURT: Wait. The answer is yes, you have reviewed it. You should wait until they ask you the next question.

THE WITNESS: I thought it was a compound question. Sorry about that.

Go ahead.

THE COURT: (Handing)

THE WITNESS: Thank you, sir.

Q And I would like to draw your attention to page three of this exhibit. And specifically to the last paragraph, which states:

Because the significance and pervasiveness of the matters discussed above make it difficult to assess their impact on the Statement of Financial Condition, users of this financial statement should recognize that they might reach different conclusions about the financial condition of Donald J. Trump if they had access to a revised Statement of Financial Condition prepared in conformity with accounting principles generally accepted in the United States of America.

Do you see that?

A Yes, sir.

Q Based on your experience in the banking industry, how...
### Unell - by Defendant - Direct (Suarez) Page 5635

<table>
<thead>
<tr>
<th>1</th>
<th>would a lender view that disclosure?</th>
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<tbody>
<tr>
<td>2</td>
<td>A disclosure of that type is typical in financial statements, whether it be -- or excuse me, personal financial statements, whether it be compiled or if it is even on -- a lot of times there will be forms that banks provide. And there is typical language in there even on those that would state that it is, you know, up to the user to determine exactly what they would like to do out of this.</td>
</tr>
<tr>
<td>3</td>
<td>And it is -- I wouldn't say it is a &quot;beware&quot; but it does give notice to the user that it is, as it states, you know, that things could change and they may reach different conclusions. So it is typical.</td>
</tr>
<tr>
<td>4</td>
<td>Q And who is the user of a financial statement, of a personal financial statement in a lending transaction?</td>
</tr>
<tr>
<td>5</td>
<td>A In a commercial real estate transaction the user would be the financial institution, the lender.</td>
</tr>
<tr>
<td>6</td>
<td>Q And what affect, if any, does this disclosure have on a lender's ability to use a borrower or guarantor-provided financial statement?</td>
</tr>
<tr>
<td>7</td>
<td>A It doesn't change the ability to use it. What it does is, as I mentioned earlier, it provides the roadmap and the information to a user to be able to conduct their own commercial analysis.</td>
</tr>
<tr>
<td>8</td>
<td>Q And in your analysis of the four loans at issue, in your opinion, how, if at all, was the process followed by the lenders different from what is traditionally used in the industry?</td>
</tr>
<tr>
<td>9</td>
<td>A From my review of the documents as well as the various items I have also reviewed, it is consistent with how I have seen it done throughout my career and in my experience.</td>
</tr>
<tr>
<td>10</td>
<td>Q Why is that?</td>
</tr>
<tr>
<td>11</td>
<td>A They, they being Deutsche Bank, as a user, took this information and conducted their own analysis, formed their own opinions, and utilized those opinions that they conducted and analysis themselves, to make a decision. And that is what the intent of this document is. And they followed that through and did, in my opinion, conduct their own analysis and formed their own opinion.</td>
</tr>
<tr>
<td>12</td>
<td>Q How about Ladder Capital?</td>
</tr>
<tr>
<td>13</td>
<td>A Ladder Capital the same. They were also provided this and were able to form their own opinions and conduct their own analysis on the contents of this statement.</td>
</tr>
<tr>
<td>14</td>
<td>THE COURT: I can't help but jump in. Maybe this is obvious, but how do you know what you just testified to? How do you know what Ladder did and what Deutsche Bank did with this information?</td>
</tr>
<tr>
<td>15</td>
<td>THE WITNESS: I have been able to review the credit memos. And in those credit memos there is analysis of -- writeup of their review of the various assets and...</td>
</tr>
</tbody>
</table>

### Unell - by Defendant - Direct (Suarez) Page 5636

| 1 | how they viewed them. As well as a fairly large writeup about President Trump and his financial wherewithal. So, in reviewing those documents you are able to see that the analysis that went into it, as well as any adjustments that were made by the users of those statements. |
| 2 | THE COURT: Okay. Thank you. |
| 3 | MR. WALLACE: Your Honor, I wanted to raise a belated objection to the witness's response about what the intent of the document was. I don't think he is being offered as an expert about the intent of Mazars and the Trump Organization, or any of the people that prepared the document. |
| 4 | THE COURT: Well, I wish it hadn't been so belated. |
| 5 | MR. WALLACE: Apologies, Your Honor. |
| 6 | THE COURT: You are objecting to his testimony about what the intent of Mazars and the defendants; is that right? |
| 7 | MR. WALLACE: He testified as to what the intent of the document was. That's the piece I object to. |
| 8 | THE COURT: Overruled. I'll allow it as part of what he would understand about these things. |
| 9 | Q Was the analysis conducted by Deutsche Bank on President Trump's Statements of Financial Condition consistent with what you have seen in the lending industry? |
| 10 | A Yes. It is consistent with what I have seen in my experience. |
| 11 | Q Same with Ladder Capital? |
| 12 | A Yes, sir. |
| 13 | Q What is the Office of Comptroller of Currency? |
| 14 | A The Office of Comptroller of Currency, also known as the OCC, is a federal agency that is one of the oversight for federally chartered banks. |
| 15 | Q What guidance, if any, does the OCC provide with the respect -- with respect to a lender's analysis of a proposed guarantor's financial statement? |
| 16 | A The OCC provides guidance in -- guidance for lenders, and in all aspects of underwriting to include guarantors. So there is guidance that they provide, and that guidance is expected to be incorporated into the various institutions that they regulate into their policies and procedures. And that is how it gets filtered down. |
| 17 | So the OCC guidance is guidance for how the institution should handle it. And the institutions are then charged with creating their own policies and procedures that would be in accordance with OCC guidelines. |
| 18 | Q And how, if at all, are the policies and procedures implemented at Deutsche Bank consistent with the OCC guidelines? |
| 19 | A In my review and experience I believe that the... |
Deutsche Bank policies and procedures are consistent with the guidance that is provided by the OCC.

Q And were the Deutsche Bank policies and procedures in your evaluation applied with respect to the three loans that they made at issue in your report?

THE COURT: Objection, leading.

THE COURT: Sustained.

Q How, if at all, were the Deutsche Bank lending procedures applied in connection with the three loans at issue in your report that were made by them?

A In my review and experience I believe they were applied correctly and as prescribed in the OCC documents.

Q And is that opinion -- would your opinion be the same for 40 Wall?

A Yes, sir.

MR. SUAREZ: Your Honor, I would like to show the witness Defendant's Exhibit 390 premarked for identification.

MR. WALLACE: I am just going to note an objection. I guess I am unclear as to whether the witness is saying that the OCC guidelines applied to Ladder Capital's loans? He mentioned Deutsche Bank, I just wasn't sure if that also encompassed Ladder Capital.

THE WITNESS: Ladder Capital, to my knowledge, is not under the purview of the OCC.

---

MR. SUAREZ: My question was a little different.

It was whether the process was consistent.

Q Mr. Unell, do you recognize this document?

A Yes, sir.

Q What is this document?

A This is the Safety and Soundness Commercial Real Estate Lending Handbook that is issued by the OCC dated March 2022.

Q How, if at all, did you rely on this document in recommending your expert opinions in this case?

A I reviewed it and took it into consideration when forming my opinions in my reports.

Q If you turn to page 34 of the exhibit, which is the number on the lower left-hand corner, I would like to turn your attention to the section titled: Analysis of Borrowers' and Guarantors' Financial Condition.

A Mm-Hm.

Q How, if at all, does this guidance affect Deutsche Bank's underwriting of the three loans at issue in this case?

A This is the guidance that they would have followed in putting together their own policies and procedures. And in my review, it is my opinion that it was followed correctly.

MR. WALLACE: Again, note an objection to foundation. If we are talking about guidance from 2022, how it applies to loans that were made earlier than 2014.
service itself, it would never have taken the next steps
because it would have been a waste of everybody's time. If you
don't like the collateral, that's the first step. And then you
move on to looking at the other supports of credit such as a
guaranty or other items that may support the credit in a time
of need.
7  Q  And how, if at all, did this concept apply to the
loan made by Ladder Capital on 40 Wall?
8  A  The same exact thing. It would look to the
underlying collateral first to make sure they were comfortable
with that, and make sure that they were comfortable with that
as their collateral, because that's the primary source of
repayment. And then from there they would look for other
credit support items, anything from a personal guaranty, as it
was in this case, or some of these loans, to letters of credit
are sometimes posted; and sometimes cash escrow. There are
multiple forms of credit support that can be provided out
there.
9  Q  Was the credit support provided to the collateral in
the 40 Wall loan different than the credit support provided in
the Deutsche Bank loans?
10  A  Yes. The guaranties were different in that there was
a full guaranty on the Deutsche Bank loans.
11  Q  And how was that different in the 40 Wall loan?
12  A  The 40 Wall had a limited guaranty.

---

MR. SUAREZ: If you can turn to the next page of
the document?

Q  Looking to the second paragraph, it says: When
evaluating guarantor support, examiners should consider whether
the guarantor has both the willingness and ability to provide
support for the credit, and whether the guaranty is legally
enforceable.

A  Do you see that?

Q  How was this concept -- withdrawn.

A  Was this concept consistent with your analysis of the
Deutsche Bank underwriting process?

Q  How so?

A  They received -- they being Deutsche Bank, received
the Statements of Financial Condition. They conducted their
own analysis. They had conversations with the borrower and
guarantor, which would indicate the willingness and the ability
to do so. You know, the guaranty is beyond just the actual
numbers behind it. It provides a level of engagement for the
lender. And that level of engagement keeps them where, in a
time like today, where we have office buildings all over that
are going back on non-recourse loans. It is very easy for
somebody without any personal recourse just to hand the keys
back. And banks do not want that.
<table>
<thead>
<tr>
<th>Page</th>
<th>Question</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>So when you look at a guaranty, and that is 1</td>
<td>Organization in repositioning assets, and was highlighted throughout their credit memos.</td>
</tr>
<tr>
<td>2</td>
<td>typically a tertiary or beyond, sort of, repayment, but it is mainly there for engagement, you know. 2</td>
<td>(The following proceedings were stenographically recorded by Senior Court Reporter Michael Ranita.)</td>
</tr>
<tr>
<td>3</td>
<td>The term &quot;comfort guaranty&quot; is there because the lender has comfort that there is somebody standing behind it. And it necessarily -- doesn't necessarily mean how much they have behind it. I mean, we have had guarantors that sign on the deals that have minimal net worth. But at the end of the day their engagement and their expertise and their ability to complete the project and keep the project generating cash flow, and cash flow is what the services the debt, is what is important. And without that individual, the asset is not as valuable to the lender. 3</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>So, that level of engagement and comfort is almost, in my opinion, as important as the actual financials behind the guaranty. 4</td>
<td></td>
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<td>5</td>
<td>THE COURT: I still don't think that answers the question. How do you enforce it if there is non-cooperation? 5</td>
<td></td>
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<tr>
<td>6</td>
<td>THE WITNESS: You would enforce it through litigation. 6</td>
<td></td>
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<tr>
<td>7</td>
<td>THE COURT: That answers the question. Thank you. 7</td>
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<td>8</td>
<td>THE WITNESS: And I would say as a last resort. 8</td>
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<td>9</td>
<td>In my experience as a lender, litigation is not something that you lead with. It would come after multiple attempts at negotiating a non-litigious outcome. 9</td>
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<td>10</td>
<td>THE COURT: I think all of the lawyers in this room understand that it is a last resort. 10</td>
<td></td>
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<tr>
<td>11</td>
<td>Q When the collateral is being repositioned, what value, if any, does the guaranty have? 11</td>
<td></td>
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<tr>
<td>12</td>
<td>A Well, in underwriting any deals, as I mentioned earlier, you have to feel comfortable with the actual project. And the project not only includes what it is doing, but who is doing it and their experience and their view of the market. And what the market view of them is. 12</td>
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<td>13</td>
<td>And also just an overall vision that real estate developers have. Lenders do not have the vision of a real estate developer. So that real estate developer, for lack of a better term, becomes their partner in the deal. It is not a financial partner but it is their completion partner. And without that partner or a guarantor -- who is most of the time a guarantor, they need them in order to complete a very complex repositioning project from a construction standpoint, from a marketing standpoint and from a PR perspective. 13</td>
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<tr>
<td>14</td>
<td>Q How, if at all, did you observe that concept with respect to the Deutsche Bank location? 14</td>
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<tr>
<td>15</td>
<td>A It was very clear in my review of the various Deutsche Bank credit memos that the -- it was a high reliance upon the experience of President Trump and the Trump Organization in repositioning assets, and was highlighted throughout their credit memos. (The following proceedings were stenographically recorded by Senior Court Reporter Michael Ranita.)</td>
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</tbody>
</table>
Min-U-Script®

Michael Ranita - Senior Court Reporter
(13) Pages 5651 - 5654

November 30, 2023

1 credit memos?
2 A Yes, sir.
3 Q How so?
4 A If there was a focus and highlight of the amount of equity that was placed in the deals, the loan-to-value of those deals as well, and the structuring of those deals where there were various changes and loan terms based off of loan-to-value would really show how that economic incentive is tied to a guarantor.
10 Q Then it goes on to say "Examiners should consider weather a guarantor has demonstrated a willingness to fulfill previous obligations, has sufficient economic incentive, and has a significant investment in the project."
14 Do you see that?
15 A Yes, sir.
16 Q Was that factor evaluated in Deutsche Bank's underwriting of President Trump's guarantee?
18 A Yes. In my review, I did see that the willingness to fulfill the economic incentive and the investment was all acknowledged in the various credit memos.
21 Q Then the following sentence says, "Analysis should consider the liquidity of any assets that collateralize the guarantee."
24 A Yes, sir.
25 Q Was that analysis conducted by Deutsche Bank in its underwriting of President Trump's guarantee?

R. Unell - by Defendant - Direct (Mr. Suarez) Page 5652

1 underwriting of President Trump's guarantee?
2 MR. WALLACE: Objection. Leading.
3 THE COURT: Sustained.
4 Q How, if at all, was that analysis conducted by Deutsche Bank in its analysis of President Trump's guarantee?
5 A Deutsche Bank completed, in their credit memos, a full analysis of the guarantor's liquidity, all of their assets, and went above and beyond additional kind of diligence on various items, including the verification of liquidity, which is extremely important, amongst other things.
11 Q Then it goes on to say "guarantor's unpledged assets should not be considered a substitute for project equity."
13 What does that mean?
14 A It means that assets that are on the guarantor's Statement of Financial Condition balance sheet that do not have a liability assigned to them, or tied to them, that is not a substitute for the collateral. The collateral stands on its own, which would be what the project is; that those non-collateral assets are -- should not -- they go on, but not tied to this particular loan or asset, but they are part of the whole guarantor's financial picture as -- and would be analyzed as such.
23 Q And how, if at all, was that concept implemented by Deutsche Bank in it's underwriting of President Trump's financial condition?

R. Unell - by Defendant - Direct (Mr. Suarez) Page 5654

1 Q And how, if at all, were these concepts that we just discussed implemented by Ladder Capital in it's underwriting of the limited guarantee provided in that transaction?
4 A In similar fashion.
5 Q In the real world, Mr. Unell, how are these factors implemented in underwriting guarantees and the Statements of Financial Condition of guarantors?
8 A In the real kind of concept here is, that if, as I said earlier, it provides a road map, the Statement of Financial Condition does. And allows for a lender or a user, in this case being Ladder Capital and Deutsche Bank, to make their own determination, whether it is the willingness, the sufficient economic incentive, or the investment in the project.
14 The Statement of Financial Condition allows for those various items to be analyzed on a deal-by-deal basis as it relates to the investment in the project, as well as the history of the borrower, um, to be able to know about their ability to fulfill previous obligations. And the liquidity, as I mentioned earlier, being one of the most important factors of analyzing a Statement of Financial Condition.
21 Q What, if anything, did you observe in connection with the underwriting of the Deutsche Bank loans was inconsistent with the way that it normally works in the real world?
24 A In my experience and my review, I believe that Deutsche Bank acted consistently with how I have seen it done at various
Donald J. Trump, et al. November 30, 2023
Attorney General of the State of New York v.

R. Unell - by Defendant - Direct (Mr. Suarez)  Page 5655

1. Q Lending institutions that I have worked at and worked with over the years.
2. A The same answer. Would be the exact same, acted in a similar fashion.
3. MR. SUAREZ: Your Honor, I move Defendant's Exhibit D390 into evidence.
4. THE COURT: Granted. It's in.
5. (Defendant's Exhibit D390 was deemed marked and admitted in evidence.)
6. MR. SUAREZ: I would like to show the witness what's been previously admitted into evidence as Defendant's Exhibit 62.
7. (Whereupon, the exhibit was displayed on the screen.)
8. MR. SUAREZ: May I take the opportunity to commend the court officers for the fantastic job in keeping track of all of our exhibits?
9. THE COURT: You may. And I'm sure we all agree with you.
10. MR. SUAREZ: With your Honor's permission, I could start moving through the document that's on the screen.
11. THE COURT: I think that's perfectly reasonable.
12. (The witness was handed the exhibit.)

THE COURT: Thank you sir.

R. Unell - by Defendant - Direct (Mr. Suarez)  Page 5656

1. Q Mr. Unell, do you recognize this document?
2. A Yes, sir.
3. Q What is this document?
5. Q And how, if at all, was this document relevant to the formulation of your opinions in this case?
6. A I reviewed this document and I took what was in it and applied it to kind of the underwriting and standards that were put forth in the credit memos by Deutsche Bank.
7. MR. SUAREZ: Let's take a look at the second page of this document.
8. (Whereupon, the exhibit was displayed on the screen.)
9. MR. SUAREZ: In the middle of the first paragraph.
10. Q It says, "Real estate entrepreneurs and investors represent an important component of our client base and US wealth creation capacity."
11. A Yes, sir.
12. Q Is that consistent with your experience in banking?
13. A Yes, sir.
14. Q And how, if at all, is the contents of this memo reflective of your experience in -- in banking?

R. Unell - by Defendant - Direct (Mr. Suarez)  Page 5657

1. A It's very similar to banks that I've worked at and their private wealth groups. There is a very good relationship with the institutions I worked at between the commercial real estate bank and the private wealth bank. And the same guidelines that apply from a regulatory standpoint that apply to a commercial real estate group, would also apply to the Private Wealth Group, if real estate is the main form of collateral.
2. Q Then it goes on to say "The offering of this product on competitive terms is a central aspect of PWM's initiative to expand our business with selected, proven and successful real estate entrepreneurs and investors."
3. A Do you see that?
4. Q Were the loans extended by Deutsche Bank, in your experience, those at issue here in the report, consistent with the objectives set forth in this memo?
5. MR. WALLACE: Objection. Leading.
6. THE COURT: Sustained.
7. Q How, if at all, in your experience were the loans extended by Deutsche Bank consistent with the objectives set forth in this report?
8. A Very consistent. In with -- in my experience of dealing with high net wealth and ultrahigh net wealth developers, that credit is one of very -- it was one of -- is a leading item. And in order to expand the share of wallet, is...
Donald J. Trump, et. al. November 30, 2023
Attorney General of the State of New York v.
Mr. R. Unell - by Defendant - Direct (Mr. Suarez) Page 5659

<table>
<thead>
<tr>
<th>Q</th>
<th>Do you see the section that says &quot;Guarantees&quot;?</th>
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<tbody>
<tr>
<td>A</td>
<td>Yes, sir.</td>
</tr>
<tr>
<td>Q</td>
<td>Then it says, &quot;Although it is not standard in the industry, PWM will require personal guarantees, or a guarantee, from an acceptable creditworthy entity.&quot;</td>
</tr>
<tr>
<td>A</td>
<td>Yes, sir.</td>
</tr>
<tr>
<td>Q</td>
<td>How is the use of guarantees by the Private Wealth Management Group different than the standard in the industry, if at all?</td>
</tr>
<tr>
<td>A</td>
<td>Private Wealth Management is -- it's a relationship business, and the private individual is typically where that relationship is driven. And so as Ms. Vrablic also said, that is one of the factors that's in there, that the relationship is with that individual, which is why the guarantee is there.</td>
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Mr. R. Unell - by Defendant - Direct (Mr. Suarez) Page 5660

<table>
<thead>
<tr>
<th>Q</th>
<th>What do you understand that to mean?</th>
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<tr>
<td>A</td>
<td>That the underwriting team and the deal structuring can range from, as it says 25 to a hundred percent, so either a limited to a full guarantee. In my experience, it has usually started off as a full guarantee and then burn off, as it did in the case of several of the subject ones.</td>
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Mr. R. Unell - by Defendant - Direct (Mr. Suarez) Page 5661

<table>
<thead>
<tr>
<th>Q</th>
<th>Do you see the section that says &quot;Guarantees&quot;?</th>
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</thead>
<tbody>
<tr>
<td>A</td>
<td>Yes, sir.</td>
</tr>
<tr>
<td>Q</td>
<td>How, if at all, was this concept reflected in the underwriting of the loans extended -- the facilities extended by Deutsche Bank in this case?</td>
</tr>
<tr>
<td>A</td>
<td>Deutsche Bank had mechanisms in several of the loans that would allow for the guarantee to stepdown from a full guarantee to various levels based off of, whether it be debt service coverage or LTV's.</td>
</tr>
<tr>
<td>Q</td>
<td>In your experience in the industry, how, if at all, is that consistent with the use of guarantees in commercial real estate transactions?</td>
</tr>
<tr>
<td>A</td>
<td>It's very consistent. Guarantor's, you know, they are -- would like to reduce their liability and contingent liabilities as much as possible. So a reduction from a hundred percent to 75 percent to 50 percent or 25 percent gives them that comfort. But on the flip side, a ten percent or 25 percent guarantee for the lender also provides them the comfort that they have engagement and a tertiary or beyond source of -- additional source of repayment.</td>
</tr>
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</table>

THE COURT: Before we break, which we are about to, I want to -- I'll admonish the witness not to discuss this case, or his testimony, or anything related to it during the break. We usually take ten minute breaks, but they take 15 minutes. I want to make sure Counsel, all Counsel are aware, and they probably already are, that this morning the Appellate Division, First Department issued a decision vacating the stay on the two gag orders that I imposed earlier on this case. So I intend to enforce the gag orders rigorously and vigorously, and I want to make sure that Counsel inform their clients of the fact that the stay was vacated.

Mr. KISE: We are aware, your Honor. It's a tragic day for the rule of law, but we are aware.

MR. WALLACE: Objection.

THE COURT: It is what it is to a state of tautology. See you all at 11:35.
**THE COURT:** Just before we resume, I've considered
1 the request for the scheduling of the posttrial briefs and
2 the oral argument, and I'll let the person sitting alongside
3 of me announce what I've decided.
4
5 **MS. GREENFIELD:** Okay. Given both parties seem to
6 be comfortable with doing closing arguments after the briefs
7 being due, so we are going to adopt that strategy.
8
9 The briefs are going to be due by noon on
10 January 5th, and then we'll hold oral argument, or closing
11 arguments, whatever you want to call it, January 9th at
12 10:00 a.m. We will no longer have access to this courtroom,
13 so that will be in our normal courtroom, 418, and the space
14 will just be limited.
15
16 **THE COURT:** And I will issue a decision a few weeks
17 after the ninth. I would hope this month, but no
18 guarantees.
19
20 Mr. Kise.
21
22 **MR. KISE:** Your Honor, is there --
23 **THE COURT:** January. Sorry.
24
25 **MR. KISE:** I have conflicts on other cases. Is
26 there any way we could have until the 8th, and then have the
27 hearing the following week, the 15th, sometime that
28 following week? I just have -- everything, as you might
29 imagine, in my professional life has been on hold for
30 months, and I have those weeks -- I'll do whatever the Court
31 decides, but is there any way to get until the 8th to file
32 something, and then have the hearing sometime the week of
33 the 15th? Really, the 16th, because I believe Monday, the
34 15th, is a holiday.
35
36 **THE COURT:** I certainly appreciate we've all put
37 things on hold. The schedule I tentatively announced is --
38 that was intended, very precisely, to shaving days here and
39 there. Give me a moment.
40
41 **MR. KISE:** Even the end of that week would help,
42 like the 11th or 12th would be better than the ninth.
43
44 **THE COURT:** Mr. Kise, and everyone, is there any
45 way to have -- would it help to have oral argument the first
46 week in January instead of the second week?
47
48 **MR. KISE:** No, that would be even worse. I guess
49 all I'm really asking is instead of the 9th, like the 11th
50 or 12th.
51
52 **MS. HABBA:** I'm out of state, your Honor.
53 **THE COURT:** Let's do this. Let me think about
54 this. We have plenty of time.
55
56 **MR. KISE:** That's fine.
57
58 **THE COURT:** Maybe we'll consult again.
59
60 **MR. KISE:** I'm talking about a two-day shift. The
61 submission date is not really the problem; that's not really
62 the issue, but the argument date, if there is any way I
63 might be able to shift around things later in that week.
Q    Mr. Unell, do you recognize this document?
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
approved, and it was in conjunction with the risk profile of the
transaction improving for the lender.
15 Q    What, if anything, would Deutsche Bank's agreement to
16 extinguish the guarantee in two of the transactions at issue in
17 this case mean in the real world?
18 A    Ideally, it would mean that the guarantor is off the
hook, if you wanted to call it that. It would also mean that
Deutsche Bank would have lost a tertiary, or beyond, source of
repayment, or the ability to have the engagement as the -- what
I would go back and say, of the guarantor, in the event that
they needed it.

Q    What is the concept that the borrower, that the information
that is being presented is submitted it, in this case it is the
guarantor and the
1 Q    What does this language mean in the real world, in all
material respects?
2 A    Yes, sir. Deutsche Bank. Deutsche
4 Q    Can I draw your attention to the middle of the first
5 page where it says, "The foregoing presents fairly in all
material respects the financial condition of guarantor at the
period presented."
6 A    Yes, respect.
7 (Continued on the next page.)

MR. WALLACE: Not an objection. Can the witness
clarify when he says that "they're in the business of
assessing risk", who he is referring to?
Bank, and banks in general.
MR. SUAREZ: Your Honor, if I may show the witness
what's been previously admitted into evidence as Plaintiff's
Exhibit 515.
(Whereupon, the exhibit was displayed on the
screen.)
(The witness was handed the exhibit.)
Q    Mr. Unell, do you recognize this document?
A    Yes, sir.
Donald J. Trump, et. al. November 30, 2023
Attorney General of the State of New York v.

Unell - by Defendant - Direct (Suarez)  Page 5671

1 in the loan documents. And what this allows a lender to do is 1 to see if there have been any significant changes in the 2 financial profile of both the borrower and the guarantor 3 throughout the period of time. And allow for them to, as I 4 said earlier, to see if there has been any positive or negative 5 trends over the time period and able to allow them to compare 6 them to each other.
7
8 Q And why do banks require this information?
9 A Banks require this information so that they can 10 perhaps see a leading indicator if there is a decline. Even 11 though it may not be a breach or a default of a covenant, 12 allows to see if there are potential weaknesses and allow, 13 potentially, for conversations.
14
15 On the flip side, it also can show that there has 16 been improvement in the condition of a guarantor, whether it be 17 liquidity, whether it be a reduction of liabilities, etc. etcetera. 18 It gives, as I said, an updated snapshot to make sure that they 19 were in compliance.
20
21 Q And in your review of Deutsche Bank's underwriting of 22 the loans at issue in this case, how, if at all, were the 23 compliance certificates utilized by the bank?
24 A They were utilized as I would expect, and throughout 25 my experience, in the manner that I just described, to monitor 26 the condition of the borrower and the guarantor throughout the 27 life of the loan.

Unell - by Defendant - Direct (Suarez)  Page 5672

1 Q What factors would you expect a bank to consider in 2 determining whether the compliance certificate presents fairly 3 in all material respects, the financial condition of the 4 guarantor?
5 A Would you mind repeating that?
6 Q What factors?
7 A The factors? Whether the presentation is the same as 8 it has been over the years for consistency, the sources, the 9 information provided in their Statements of Financial 10 Condition, and most importantly whether or not it provides 11 ample information for the user to conduct their own analysis.
12 Q Are you aware in this case of a discrepancy in the 13 reporting of the size of President Trump's triplex?
14 A Yes, sir.
15 Q And would a change in the reporting of the size of 16 the guarantor's triplex, for example, be something that would 17 factor into the bank's evaluation as to whether the guarantor's 18 financial condition is presented fairly in all material 19 respects?
20 A In my opinion it would not be material based on the other 21 information and the amount of assets and liabilities 22 that are included on the Statement of Financial Condition.
23 Q Why is that?
24 A Because when you look at it, it is a personal 25 residence. It is -- was a minor portion of the overall

Unell - by Defendant - Direct (Suarez)  Page 5673

1 financial profile of the guarantor. And also, you know, in my 2 experience it would be very rare for a lender to try to 3 exercise any sort of remedy upon a personal residence. 4 Q Are you familiar with the net worth covenants 5 contained in the loan documents on the four transactions that 6 you have evaluated in this case?
7 A Yes, sir.
8 Q Can you briefly describe your understanding of the 9 net worth covenant in the Deutsche Bank loans?
9 A Yes. The net worth covenant was $2.5 billion and was 10 to be determined based off of the guarantor's submission as is 11 usual practice.
12 Q What does the term adjusted net worth mean in the 13 lending context?
14 A Adjusted net worth is a calculation that is 15 undertaken once a lender has an analysis. And there are 16 various adjustments that are made throughout in order to 17 provide a conservative view of how the bank looks at a 18 Statement of Financial Condition.
19 Q And in underwriting a guaranty, what is the purpose 20 of the bank utilizing an adjusted net worth, if any?
21 A The adjusted net worth provides, as I said, a 22 conservative view of what the assets are on there. 23 More importantly, it also does not adjust liability, 24 so the liabilities remain. However, assets are analyzed

Unell - by Defendant - Direct (Suarez)  Page 5674

1 individually and are determined by the lender in their sole 2 discretion as to where they would like that from a conservative 3 basis. And it is done in order to, as I said, as banks are in 4 the business of analyzing risk, and from a conservative 5 approach, that is what is done on these sort of statements.
6 Q And how is the concept of an adjusted net worth used 7 with respect to the determination of a minimum net worth 8 covenant by a lender, if at all?
9 A They are unrelated.
10 Q Why is that?
11 A Because the covenant is based on the net worth of the 12 guarantor, and is not the adjusted net worth. If the adjusted 13 net worth were to be the determinant, because it is done by a 14 lender, in their own discretion and under their own analysis, 15 it would be unfair to a borrower because a lender could 16 manufacture a default. If it is in their sole discretion and 17 for whatever reason -- and there have been, I have worked on 18 several deals where there have been claims by borrowers that 19 defaults were manufactured -- it would result in very dirty 20 litigation and lengthy litigation as it results to what is the 21 value.
22 Q What options are available to a lender if there is a 23 violation of a net worth covenant?
24 A There are several options. You know, first, it could 25 be whether or not you want to issue a default; whether or not
1. how you approach the client. Typically in my experience, no
2. matter what the relationship is with the borrower, whether it
3. be adverse or whether it be in the form of a very good bank
4. customer Private Wealth, that you would have a conversation
5. with them to understand exactly what is going on. And that
6. information would inform how the potential breach or covenant
7. default would impact the loan and the ability for the loan to
8. be repaid. And the ability for the loan to be debt serviced.
9. From there, conversations would then also then say,
10. okay, well what caused that default. Is there a -- is this a
11. long-term situation that will result in the net worth being
12. lower than it had been prescribed previously? Or, is it a
13. short-term blip because of a cash need for another project or
15. But it opens up the conversation. And typically if
16. it does not impact the repayment performance of a loan, it
17. would be forbear-ed against or would perhaps even be readjusted
18. downward if there was an indication that the net worth was
19. going to be lower on an ongoing basis.
20. Q    And how, if at all, was the use of minimum net worth
21. covenants by Deutsche Bank consistent with your experience in
22. the real world?
23. A    In my experience, in my review of the Deutsche Bank
24. credit memos, it is consistent with that.
25. Q    Why is that?

Unell - by Defendant - Direct (Suarez) Page 5676

1. A    Because they -- they relied upon the -- their
2. knowledge and their information to set the net worth covenant.
3. And then consistent with my experience, the net worth covenant
4. was determined by the guarantor submitted statements.
5. Q    I just want to clarify one point. You said
6. "inconsistent with" or "in consistency with"?
7. A    In consistency with.
8.    THE COURT: It is an important distinction.
10. Q    Why is that?
11. A    Are you asking why they are consistent?
12. Q    Yes.
13. A    Because that's -- that is how every single loan that
14. I have worked on that has a net worth covenant is done. As I
15. mentioned earlier, if you were to rely on an adjusted net
16. worth, which is out of the control of the borrower or
17. guarantor, that would create a multitude of problems down the
18. line. But if it is in somebody's sole and absolute discretion,
19. typically a borrower and guarantor are not given a peek behind
20. the curtain to see what adjustments and analysis are done by a
21. lender. Those are proprietary documents that, in this case,
22. were obviously produced. But that is a behind the scenes
23. approach in what a lender does. You know, every lender kind of
24. has their own special sauce, if you will, as to what metrics
25. they weigh differently. And that typically comes out in their

Unell - by Defendant - Direct (Suarez) Page 5678

1. the answer. Even if I say, how is it different, that's
2. not a leading question.
3. THE COURT: How was it different, not a leading question. Overruled, on the basis of common
4. sense.
5. A    In my review of the documents it is consistent with
6. the other loans.
7. Q    In the event of a violation of a minimum net worth
8. covenant, what is the focus of the lender's analysis?
9. A    What caused that it potential decline in net worth.
10. Q    And why would that be the focus of that analysis?
11. A    Because you want to, as I said earlier, figure out
12. exactly what is causing it. Is it a one-time deal? Is it
13. additional liabilities that came on which would have,
14. obviously, decreased it? Is it a lack of liquidity or decline
15. in liquidity? Is it a decline in assets? It could be a
16. multitude of things. But that is -- it is important to see
17. what exactly is causing it to then determine, as I said
18. earlier, if it would impact repayment of the loan.
19. Q    And in the real world what is bank practice when
20. there has been a breach of a covenant that is not related to
21. payment?
22. A    That's typically known as what we call, little d,
23. default. And would not be something that would really raise
24. the eyebrows of the lending institution. It would certainly
MR. SUAREZ: Your Honor, I would like to show the witness what has previously been marked as demonstrative DD-4.1.

Q Mr. Unell, do you recognize this chart?
A Yes, sir.

Q What is this chart?
A This chart is a chart of average mortgage terms that was sourced from Realty Rates which investor survey. Which shows the average spread for loans over the period of Q-1, 2011 to Q-4, 2012, based on various different asset classes:

MR. McCARTY: And we could please pull up Mr. McCarty's chart? PX-3302.
Q Mr. Unell, are you familiar with this chart?
A Yes, sir.

Q And how have you become familiar with this chart?
A I received it as part of Mr. McCarty's report and then ultimately this version was updated and I am not sure when it was received. But I looked at it.

Q And what -- what work, if any, have you done to review this chart?
A I have gone through and reviewed to make sure that the -- it was accurate from a mathematical standpoint. As well as I have gone through and reviewed the -- the hypothetical CRE interest percentages that are contained in this document.

Q And what, if any, opinion do you have concerning the use of the hypothetical CRE interest rates?
A I do not agree with the rates that are the CRE interest percentage rates here.

Q Why is that?
A They are vastly different than the data that I have seen provided by Realty Rates, other data sources has shown commercial mortgage, as well as the actual loans and the loan...
Unell - by Defendant - Direct (Suarez)  Page 5683

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<tr>
<td>1</td>
<td>pricing grid that was -- that was prescribed and part of the Deutsche Bank Private Wealth Management practice.</td>
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<td>2</td>
<td>Q</td>
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<tr>
<td>3</td>
<td>A</td>
</tr>
<tr>
<td>4</td>
<td>And there was also no other support that I was able to find in Mr. McCarty's report to support that number. The others were -- was based off of a non-binding term sheet that was non-negotiated and took it as it would be done.</td>
</tr>
<tr>
<td>5</td>
<td>And I am not sure of where the others came from. I know there was some discussion about others. But in general, I did not see any support for those numbers.</td>
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<tr>
<td>6</td>
<td>And also, you know, saying that what the CRE interest percentage is, to be able to state what a bank that does their own pricing CRE would be, would have to have knowledge of how their pricing would work internally to know, okay, this is 10 percent, it would not be negotiated. And the term sheet for the 10 percent was provided to show -- I am not exactly sure what it was provided. But it would not be atypical for a lender to issue a term sheet at rates or terms that were obtuse, because they were trying to push business elsewhere or trying to contain it in the Private Wealth Group.</td>
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<td>7</td>
<td>Q</td>
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<td>8</td>
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<td>9</td>
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<td>10</td>
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<td>11</td>
<td>MR. SUAREZ: If you pull up DD-4.1 next to Mr. McCarty's analysis.</td>
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<td>12</td>
<td>Q</td>
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<td>13</td>
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Unell - by Defendant - Direct (Suarez)  Page 5684

<table>
<thead>
<tr>
<th>Line</th>
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<tbody>
<tr>
<td>1</td>
<td>These are actual deals that are surveyed by people in the market across the country that are living and breathing these deals daily. And it would indicate that the rate would be well below the 10 percent that Mr. McCarty has established in his exhibit.</td>
</tr>
<tr>
<td>2</td>
<td>Q</td>
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</table>
| 3    | A    | Credit support are other items outside of the collateral. So a guaranty could be considered credit support. Credit support could be the other assets of the borrower. It could be a multitude of items. It could be letters of credit. But, you know, it is, like I said, it is an average. Unfortunately, because loan terms are by and large confidential, and we saw that yesterday in Ms. Vrablic's with the OPO thing, that banks are very guarded on giving out their terms. This, because it is a survey of two to 300 people on a quarterly basis, is the best indication for value. And it is used across the commercial real estate industry to benchmark rates, especially when we are having to go back in time to determine whether or not a rate was -- was applicable; whether it was within a range of what would be considered acceptable. It is nearly impossible to place an exact interest rate on this looking back in time, because none of us have worked for Deutsche Bank. And the best indication as to what this rate would be, would be Deutsche Bank, because Deutsche Bank is the
Donald J. Trump, et. al. November 30, 2023

Unell - by Defendant - Direct (Suarez) Page 5687

1 evaluator of risk. They are the evaluator of materiality. And
2 they are the ultimate user and the one where this matters. And
3 it is their sole determination, based on their analysis, as to
4 how they want to price the loan.
5
6 This also would not factor in any sort of
7 relationship value and other products that the family of
8 President Trump may have had with Deutsche Bank. And it is
9 important to note that it is not just -- when a bank looks at
10 it, they look at it as a relationship like a family. And it
11 would consist not only of President Trump but his children as
12 well. So any other loans -- that would fall off and we would
13 all get credit for that relationship and the other items in
14 their total relationship value.
15
16 Q And how is the analysis that you just described for
17 the Doral loan -- how does that analysis apply to the Chicago
18 loan?
19 A The same could be said. So Chicago, when you look at
20 Chicago it would fall within on the Office side as well. And
21 that would be on the lower spread. Spreads are obviously based
22 on risk profile of various assets at various times.
23
24 For instance, during COVID spreads on Hospitality
25 went through the roof because everybody thought that
26 Hospitality was dying. Spreads on Retail went up dramatically.
27 On the flip side, spreads on Industrial went down because of
28 the large amount of -- there are a multitude of factors outside
29

Unell - by Defendant - Direct (Suarez) Page 5688

1 of just what is on the paper and on this loan, that also play
2 into the determination of what a rate is. There are macro
3 level things. There are also individual items that the bank
4 may have.
5
6 And also, banks may want to have a diversification of
7 asset classes. Where if they do not want to have 100 percent
8 of their commercial real estate in Office; or they want an even
9 balance between Hospitality, between Retail, between Office,
10 between Multi-family. And so without having the knowledge of
11 what the actual business plan was at Deutsche Bank, but hearing
12 their testimony, feel that they were within their right, as all
13 banks are, to set the pricing based on the multitude of
14 factors. Factors that are unknown to any of us, except for
15 those at Deutsche Bank because it was their decision.
16
17 Q And how does your analysis of these loans apply to
18 the OPO transaction?
19 A Same thing. OPO being a lodging facility. The
20 closest examples that you would come to find in the
21 marketplace would be the green line on there, which would
22 indicate a spread of, you know, approximately 400 basis points
23 there. Which would be, you know, while the loan at OPO was
24 lower, that also doesn’t factor in the 400 basis points here.
25 The various other items that would consist of total
26 relationship value, which would assist in garnering competitive
27 pricing from Deutsche Bank as outlined in their own memo on the
28

R. Unell - by Defendant - Direct (Mr. Suarez) Page 5690

1 MR. SUAREZ: If we could replace DD4.1 with DD4.2.
2 (Whereupon, the exhibit was displayed on the
3 screen.)
4 Q Do you recognize this chart, Mr. Unell?
5 A Yes, sir.
6 Q Did you prepare this chart?
7 A Yes, sir.
8 Q What does this chart represent?
9 A This is a similar chart. However, the data came from
10 the Commercial Mortgage Commitments database. And the
11 Commercial Mortgage Commitments database is compiled by the
12 Association of Life Insurers, and it is done so -- life insurers
13 place a lot of real estate debt. This is how they are able to
14 benchmark each other to see how each individual life co is
15 pricing various loans, and provides industry data not only for
16 those individuals, but for banks to remain competitive with life
17 cos, as life cos are typically a very good competitor to banks
18 on the real estate lending side.
19 Q What, if anything, does this analysis reflect with
20 respect to Mr. McCarty's selection of an eight percent rate on
21 the OPO transaction?
22 A The data on this chart from Commercial Mortgage
23 Commitments would refute that and be, um, not support that eight
24 percent. It would be the spread plus approximately anywhere
25 from 250 to -- at the lowest, um, call it from 300 basis points
Donald J. Trump, et. al. November 30, 2023

Attorney General of the State of New York v.

Q    How does this chart relate to the pricing of
8    loan-to-value for full-service lodging facilities by lenders
9    during this time period.
A    It would be the same.  Once again, it would be much
10   lower than the ten percent that was utilized by Mr. McCarty
11   during this exercise.

Q    And with respect to the Chicago transaction, why is
12   that?
A    Because the Chicago transaction, Mr. McCarty used a
13   fixed 7.5 percent rate.  Once again, this was not a fixed rate
14   loan.  It did go -- fluctuate based on the index.  And not only
15   that, the index plus the spread would have been below the
16   7.5 percent utilized as a fixed rate by Mr. McCarty.

Q    And how does this analysis apply to the Doral loan?
A    It would be the same.  Once again, it would be much
17   lower than the ten percent that was utilized by Mr. McCarty
18   during this exercise.

Q    And with respect to the Chicago loan?
A    The Chicago loan, it would be the same, you know,
19   fallen, and once again, below 7.5 percent.

MR. SUAREZ: If we could pull up DD4.3.
(Whereupon, the exhibit was displayed on the
screen.)

Q    Does this -- does the analysis
20   contained within this chart inform your evaluation of the rates
21   selected by Mr. McCarty?
A    Yes, sir.  This is a chart of -- of -- from reality
22   rates, once again, but this focuses on the average mortgage
23   spread from Q1 2013 to Q4 2015, and focuses solely on
24   full-service lodging facilities.

Q    How, if at all, does this -- does the analysis
25   equate to less risk, and if there's less risk, then the
26   risk-based pricing would indicate that it would be lower.

Q    And how is your analysis of market rates consistent, if
27   at all, with the manner in which Deutsche Bank priced the loans
28   at issue in your analysis?
A    It was consistent, but it's also -- these are guidance.
29   And once again, the pricing is in the sole discretion of the
30   lender.

Q    And with respect to the Chicago loan?
A    Yes, sir.

Q    And how about Doral?
A    The same.  It would show that the figures utilized by
32   Mr. McCarty are not indicative to actual terms that were
33   available in the market at the time.

MR. SUAREZ: If we could pull up what's been
previously admitted into evidence as Defendant's
Exhibit 205.
(Whereupon, the exhibit was displayed on the
screen.)

Q    (The witness was handed the exhibit.)
THE WITNESS: Thank you, sir.

Q    Mr. Unell, do you recognize this document?
A    Yes, sir.

Q    What is this document?
A    This document is the pricing grid that was utilized by
36   the Private Wealth Management at Deutsche Bank.

Q    And how was this grid utilized in determining the
37   pricing on the three Deutsche Bank loans at issue in your
38   analysis?
A    Based on my review of documents and testimony, and the
depositions I've read, that this was a chart that was used as
guidance for all clients of the Private Wealth Management bank,
and the pricing that was provided to the defendants was
consistent with the 2.0 to 2.5 percent of commercial real estate
as it states in the Americas line for commercial real estate.

Q    And in the case of Deutsche Bank, how would someone
qualify for this pricing grid?
A    Based on documents and testimony, um, my understanding
is that qualification of the Private Wealth Management would be
a $50 million net worth.

Q    And was President Trump qualified as a member of the
Private Wealth Management Group at Deutsche Bank?
A    Yes, sir.

Q    What does the term "high net worth individual" mean in
the banking industry?
A    The "high net worth individual" typically is somebody
that has a threshold of assets and/or liquidity, and at times
there is also the ability for lenders to make exceptions for the
MR. KISE: papers, it didn't say he had no money.

MR. WALLACE: that's why he had to go to the banks.

MR. KISE: position that President Trump doesn't have any money and that's why he robbed the banks. And his answer was, "Because that's where the money is."

MR. WALLACE: Q Do you recognize this demonstrative?

A Yes, sir.

Q What is demonstrative?

A This is a chart that I prepared utilizing data from Forbes that shows the number of billionaires, worldwide and in the United States, by year.

Q And in the period of 2010 to 2012, approximately how many billionaires were there in the world?

A Just over 400.

Q In the world?

A In the world? Between a 1,000 and 1,200.

Q And how many were there in the United States?

A Between 400 and 424.

Q According to Deutsche Bank's own analysis, would President Trump qualify as one of those 400 or so billionaires in the United States?

MR. WALLACE: Objection. Leading.

THE COURT: Sustained.
country that are billionaires, would have lent credit support to
the transactions entered into by Deutsche Bank in this case?
A  It would have carried a lot of weight for their ability
to grow the relationship and increase the share of wallet.
Q  Why is that?
A  Because of as I mentioned earlier, leading with credit
is typically a good way to win over the hearts and minds of high
net worth real estate developers, or any real estate developer
in that matter, but with that comes, as I mentioned earlier, the
other opportunities to generate revenue from a high net worth
individual, or in this case, an ultrahigh net worth individual.
And I also believe that, as stated by Ms. Vrablic, that
it also presented an opportunity for introductions, which would
also help Deutsche Bank grow their Private Wealth business.
Q  What, if anything, about the financial characteristics
of a billionaire would make them attractive to a bank as a
guarantor?
A  You know, when there is only 400 or so of them in the
United States, it really kind of puts them up there in what I
consider rare air.  And when you look at the security and the
ability to support a credit, it would place them in, you know,
the top quarter percent of individuals in the United States in
their ability to support a credit.

MR. SUAREZ: Going back to your Honor's analogy
about why banks like billionaires, I think that's where the
money is.
THE COURT: If there is one thing we've learned in
the last eight weeks, or whatever it's been, is that banks
love billionaires.  It could be a motto.
MR. SUAREZ: If we could pull up defendant's
demonstrative 4.5.
(Whereupon, the exhibit was displayed on the
screen.)
Q  Do you recognize this chart, Mr. Unell?
A  Yes.
Q  Did you prepare this chart?
A  Yes, sir.
Q  What does this chart represent?
A  This chart represents President Trump's net worth as
shown on the blue line.  It also represents what the Deutsche
Bank minimum requirement was for net worth.  It also then has
the Deutsche Bank adjusted net worth as determined by them.
And then finally the red line down on the bottom shows
the Ladder Capital minimum liquidity requirement -- net worth,
excuse me, requirement, not liquidity.
Q  What, in your experience, does it mean that the DB
adjusted net worth and the DB minimum requirement on certain of
the loans are so close together?
A  That's not indicative of it.  What would be indicative
of what Deutsche Bank would look at and also as collaborated by
their testimony is that when you are looking at, it would be the
blue line versus the purple line and not the green line.
Q  And would Deutsche Bank -- withdrawn.
A  It is very typical to have a deviation between the net
worth reported by a borrower and the adjusted net worth as
determined by a lender in their sole discretion.
Q  And is that consistent with what you observed in the
relationship between Deutsche Bank and President Trump, if at
all?
A  Yes, sir.  It would be consistent with all real estate
loans that I've worked on, whether somebody is worth one hundred
thousand dollars, a million dollars, one hundred million
dollars, or several billion dollars, that this would still
remain the same as to what to look at, which would be the net
worth versus the requirement, and not the adjusted net worth.
Q  How would you describe the difference between the
Ladder Capital minimum requirement and President Trump's net
worth?
A  Close to about -- in 2010 there was about a $4 billion
gap, and by 2015, that gap had increased to approximately
$6 billion difference.

Q  And what, if any, conclusions do you draw from that
gap?
A  That there was a wide margin there.  Um, that it was --
that the -- also that the net worth requirement imposed by
Ladder was not something that they felt very strongly on.  To
place it at such a low minimum, it was probably put in there, in
my opinion, as to, "Hey, we've got to have a net worth
requirement.  Let's just put something in there."  But it was
based off of its low -- it's not something that was factored
into their overall decision.
MR. SUAREZ: If we could pull up D-205 next to this
chart.
(Whereupon, the exhibit was displayed on the
screen.)
Q  What opinion do you have, if any, as to whether
President Trump's net worth qualified him for the pricing grid
on D-205?
A  Based on the net worth, the adjusted net worth, the
Deutsche Bank minimum requirement that the threshold would have
been met to qualify for the 2 to 2.5 percent, as prescribed in
this document.
Q  And how, if at all, would a decrease in the
loan-to-value of the loans, throughout their course, affect the
pricing?
A  A lower loan-to-value equates to a more secure loan for
Mr. Suarez: Go forward.

The witness was handed the exhibit.

Q Mr. Unell, is this a document that you reviewed in connection with your -- in connection with preparing your opinions in this case?

A Yes, sir.

MR. SUAREZ: Can we turn to the recommendations.

(Whereupon, the exhibit was displayed on the screen.)

MR. SUAREZ: Which may be at page five of the document, not the exhibit.

(Whereupon, the exhibit was displayed on the screen.)

MR. SUAREZ: Go forward.

Guarantor on an adjusted basis, based off of their own independent analysis of the Statement of Financial Condition submitted by President Trump.

MR. SUAREZ: If we could turn to page four of the exhibit.

(Whereupon, the exhibit was displayed on the screen.)

Q Do you see the section that says “financial analysis”?

A Yes, sir.

Q With respect to the guarantee actually provided by President Trump, what does this analysis represent?

A This analysis represents Deutsche Bank’s independent analysis of the Statement of Financial Condition submitted by President Trump, and it’s consistent with transactions and credit memos that I have worked on and reviewed in my experience.

Q And what, if anything, in your experience would explain the difference between the client reported net worth of $4.2 billion, approximately, and the DB adjusted net worth of $2.365 billion?

A You know, if you look at this in detail, the -- you know, the main differential there is the net equity in real estate. There is a change between the adjusted, downward, however, the other assets is adjusted upward by approximately 100 million.

A Yes, sir.

Q Have you reviewed this credit memo?

A Yes, sir.

Q Have you seen the recommendations made by Deutsche Bank in this credit memo?

A Yes, sir.

Q And what was the basis for recommending this facility, according to the credit memo?

A The financial strength of the guarantor, the nature of the guarantee, the operating experience, and the expected enhanced value due to Capex.

Q Is this consistent with your experience in the real world?

A With one exception. I think it goes without saying, the facility would not be recommended at all if Deutsche Bank was not comfortable with the actual collateral.

So I think that this is additional comfort, because there is a whole section on collateral, and I think it’s important to note that none of this comes into play if the lender is not satisfied with the actual project that they are lending on as collateral. So beyond that, it would be consistent.

Q What does the credit memo reflect concerning the strength of the guarantor with respect to Deutsche Bank’s own analysis?

A It actually, from this it shows that it is on an adjusted basis. That it shows that the unencumbered liquidity, and then it clearly states on adjusted basis the $2.4 billion of net worth is what the financial strength of the guarantor was, per this document.

Q Is that consistent with your experience in the real world?

A Yes, sir.

Q How so?

A Once again, going back to what I stated earlier about adjusted net worth, you know, banks have their own internal kind of things, and that’s what we are looking at here. But on the outside, borrowers don’t know about the adjusted net worth. So this is the conservative of view placed forward by the bank showing how they feel about the financial strength of the guarantor on an adjusted basis, based off of their own independent analysis of the Statement of Financial Condition submitted by President Trump.
R. Unell - by Defendant - Direct (Mr. Suarez) Page 5707

1 So the lenders don't necessarily make adjustments all 2 downward. It's their own independent analysis that allows them 3 to arrive at their own decision based off of, not only the 4 document, but their own experience and various other sorts of 5 assets, and also in discussions with the provider of this so 6 that they can better understand the statements.
7 Q With respect to the guarantee, regardless of whether 8 there's a difference in the value of the assets that support the 9 guarantee, does that change the nature of the assets that 10 support the guarantee?
11 A Absolutely not. The guarantee stands on its own, 12 despite what is behind it. And that goes whether or not 13 somebody looses everything. The guarantee still remains in 14 place. It's not necessarily tied to any particular asset. 15 There's no portion of the guarantee that says, you have to have 16 this, you have to have that. The guarantee remains in place no 17 matter what the ultimate financial profile is of the guarantor.
18 Q And how, if at all, does the guarantee change depending 19 on the adjustments to the value of the assets of the guarantor?
20 A It does not change. It still provides the same level 21 of guarantee that was -- no matter -- that was submitted. The 22 guarantee does not change.
23 As I mentioned, it still keeps the engagement of the 24 borrower, of the guarantor. Um, it makes them, you know, want 25 to be engaged in the event, as I mentioned earlier, that there

R. Unell - by Defendant - Direct (Mr. Suarez) Page 5708

1 was a COVID situation where there was cash flow light. If you 2 don't have the guarantor there, if they've got a dollar or a 3 hundred million dollars, they are going to potentially find a 4 way to help you if they have a dollar, versus trying to be 5 dragged through a legal proceeding to try to enforce a 6 guarantee.
7 They are going to cooperate. In my experience, it may 8 not be an ultimate cooperation, but you will get a seat at the 9 table with somebody, where if you do not have that guarantee, 10 you are not guaranteed, pun intended, to get a seat at the table 11 to restructure a loan.
12 Q And in your experience in the real world, what does it 13 mean that Deutsche Bank accepted President Trump's guarantee, 14 even after having a different view of his financial condition?
15 A That after conducting their own analysis and review, 16 that they felt comfortable with the Statement of Financial 17 Condition and the strength of the guarantor to support the 18 credit as proposed in this document.
19 Q And in your review of the Deutsche Bank's analysis of 20 these credit facilities during their lifetime, what, if 21 anything, changed about those conclusions?
22 A None. That the guarantee would still remain in place 23 no matter what the adjusted net worth was.
24 Q And in the real world, what does that mean?
MR. SUAREZ: Now, if we could turn to page four of the RUC presentation?

Q And if I could direct your attention to the occupancy rate for the collateral.

How does the collateral -- withdrawn.

MR. SUAREZ: If we could turn to page three of

Q If I could turn your attention to the third full exhibit?

A Yes, sir.

Q What is an RUC memo?

A It is a credit memo in the term utilized by Ladder Capital.

MR. SUAREZ: If we could turn to page three of

MR. SUAREZ: If we could turn to page six of the

Q Now, if we could turn to page four

How does a -- how does the occupancy rate in 40 Wall, at the time this memorandum was prepared, affect pricing?

Q How does an LTV of 29.6, how would that factor affect the quality of the collateral in a real estate loan?

A That is an extremely good loan-to-value and would represent that 30 percent, approximately, loan-to-value, so that the loan would be approximately 30 percent of the appraised value of their collateral, therefore providing the lender with a very large margin for a slippage in value. And this would be the primary source of repayment, therefore providing a much larger than normal spread.

Q And how would a loan -- a low loan-to-value affect pricing?

A The lower the loan-to-value, the more secure the loan. The more secure the loan, the less risky. And the less risky then equates to lower pricing based off of risk-based pricing.

MR. SUAREZ: If we could turn to page six of the exhibit?
Donald J. Trump, et. al. November 30, 2023

Attorney General of the State of New York v.

Unell - by Defendant - Direct (Suarez)  Page 5715

1 paragraph. It says: Loan proceeds will be utilized to  
2 refinance an existing first mortgage originated by Capital One  
3 Bank, defined as the prior loan, which featured a principal  
4 balance of $160 million ($137.31 per square foot). In  
5 connection with the refinance of the prior loan, the borrower  
6 will pay a swap breakage fee, currently estimated at  
7 $6 million, inclusive of closing costs, and upfront reserves,  
8 the borrower will invest a total of $8.6 million in cash equity  
9 at closing in order to effect the refinancing of the prior  
10 loan.  

What does that mean?  

12 A It means that prior to the loan at Ladder Capital, in  
13 order to pay off Capital One Bank, there would be a $6 million  
14 fee that would need to be paid to break that swap. In  
15 addition, it states that the borrower will invest $8.6 million  
16 in cash equity, therefore lowering the amount of the balance  
17 owed. Which is an equity infusion, thereby lowering the loan  
18 amount that was issued by Ladder Capital.  

Q Is that reflected in Mr. McCarty's analysis?  

20 A I did not see where it is reflected in Mr. McCarty's  
21 analysis.  

Q If Mr. McCarty had reflected it in his analysis, how  

23 would that affect the conclusions that he offers with respect  
24 to 40 Wall?  
25 A The dynamics of the loan would certainly change. And

Unell - by Defendant - Direct (Suarez)  Page 5716

the dynamics of the loan with an $8.6 million cash equity  
infusion would improve the bank's position from a collateral  
and a credit standpoint, which would really make the loan  
features in the terms of the loan very different than the  
existing Capital One loan, because the existing Capital One  
loan had the swap breakage fee and the $8.6 million is in cash  
equity infusion, which also would make the Ladder Capital loan  
more secure than the Capital One loan, and not make them where  
they can be compared, because the principal balances would be  
different. And the characteristics of the loan at origination,  

despite the fact that they were done approximately ten years  
apart, the actual loan dynamics are different between 20 --  
2005 and the time of origination of the Ladder Capital loan.  

MR. SUAREZ: And if we could turn to page nine  
of Defendant's Exhibit 552?  

Q What is represented in this page, Mr. Unell?  

17 A This is what I would typically see or you would  
typically see in a credit memo that would outline the strengths  
of a credit -- typically a credit memo would outline the  
strengths, the weaknesses, the opportunities and the threats,  
kind of a squad analysis, as it is typically called. And  
anything that is not mitigated by the strengths would need to  
be also addressed by the lender in this. And this is typical  
deal strengths that looks very familiar to what I have seen  
throughout my experience with highlighting the various loan

Unell - by Defendant - Direct (Suarez)  Page 5717

metrics of the loan-to-value.  

The dark value is of interest as well. That is  
something that has, over the years, become a more applicable  
metric, as especially when you look at assets that have a --  
a high, I guess, concentration of occupancy.  

So a large tenant, for example, you would look at  
that analysis and say, well, if the large tenant left.  

The cash in refinancing is another thing where the  
sponsor investing $8.6 million into the transaction in closing  
is providing not only the support of the borrower, but also  
lowering the risk by reducing the principal amount.  

The loan structure, once again, very similar in that  
the low interest -- the -- excuse me, the interest rate of  
3.665 percent and then also the rent-roll, as we talked about  
with the occupancy.  

And then finally, on number six, it looks like they  
are really addressing what the market is, and looking at the  
property and its ability to continue to perform at a high level  
of occupancy. And utilizes its historical occupancy as well as  
talking about where the activity is. And that is important  
because while the occupancy still may be 94.5 percent, strong  
interest in a building shows that when you are looking at,  
obviously, when you are looking at where the future value may  
be, and when it says, kind of, is this thing going to be able  
to maintain where it is at. And all indications are, based off

Unell - by Defendant - Direct (Suarez)  Page 5718

of this, and in my experience this writeup would indicate that  
this asset was performing strong and had a bright future ahead.  

Q How would these factors affect the evaluation of the  
collateral for purposes of pricing alone?  

A These are all very, very, very important factors of  
pricing when it comes to the collateral. Just as it was the --  
as I said, you would never go down and make a loan if you  
didn't feel comfortable about the asset itself and your  
underlying collateral. That is what is this displaying here,  
and the comfort level that Ladder Capital had with the metrics  
of the collateral.  

Q The seventh item here that we -- that we see on this  
page: High quality landmark collateral. What is the affect of  
this characteristic of 40 Wall on the quality of the collateral  
for purposes of loan pricing?  

A It is -- it does have some historic value to it. It  
is something that cannot be replaced in its current condition.  

And there are users, i.e. tenants, out there that look to be in  
trophy office buildings, to have trophy addresses, et cetera.  

And this asset, in the opinion of Ladder Capital, was a trophy  
asset that was highly desirable in the market for multiple  
reasons.  

Q And in the following page, you see reference to  
experienced and well-capitalized sponsorship?  

A Yes, sir.
MR. SUAREZ: Okay. If we could turn to
Plaintiff's Exhibit 293 on the right.

(Handing)

THE WITNESS: Thank you, sir.

Q If you see here, this is a credit report in
connection with the first mortgage lien and first priority
security interest in the Doral Golf Resort by Deutsche Bank?

A Yes, sir.

Q It was the initial credit report on the Deutsche Bank
loan, correct?

A Yes, sir, dated 12/20/2011.

Q If you look on the second page of the commitment fee,
you see a commitment fee. And it says .25 percent of facility
commitment, which shall be fully earned and payable on the
execution date of this commitment letter.

A Yes, sir.

Q What is the purpose of the commitment fee from the
bank's perspective?

A That is really where the loan documentation process
would begin, where the bank would have to start spending
dollars for appraisals, engineering, environmental reports, and
other items. So it is, I don't want to call it a posit, but it
is the commitment of the borrower to move forward, which
therefore allows the lender to feel comfortable to go spend
some of those out-of-pocket expenses. You know, there have
been cases where a facility commitment, in my experience, was
not required, and ultimately a borrower would pull out of a
transaction, therefore leaving the lender with expenses that
they have sought to be reimbursed. And in my experience that's
very difficult, because nobody wants to go litigate over
$100,000 on something they would just probably decline to do
business with that person further.

Q Do you see a little further down it says: Facility
fee. 1 percent of facility commitment payable on the closing
date of the facility?

A Yes, sir.

Q How does the payment of the 1 percent facility fee
affect the pricing of the loan, if at all?

A It is factored into, as I mentioned in prior
testimony, that one of the things that is looked at is the
total relationship value in RAROC, Risk Adjusted Return on
Capital. So when a lender is looking at the RAROC, one of the
factors is what the fee is, because that fee is direct income
to the bottom line of the bank and is factored into the returns
that they are looking at when measuring what the profitability
of not only a loan is, but also what the overall relationship
value is.

MR. SUAREZ: And if you turn to the next page of
this document? In the recommendation box. The fourth
bullet.
Donald J. Trump, et. al. November 30, 2023
Attorney General of the State of New York v.

1 Q Do you see where it says: Expected enhanced value due to Capex?
2 A Yes, sir.
3 Q It says: The resort is a world class location that has been home to a PGA event every year since the resort opened in 1962. As DJT expects to invest approximately $50 million on capital improvements, it is expected that the value of our collateral will increase significantly over the term of the loan?
4 A Yes, sir.
5 Q How would that feature in the transaction affect loan pricing, if at all?
6 A It would have a factor into the loan pricing. It would also have a factor into how the lender would look at the additional capital. The additional capital is a commitment. As we mentioned, as I mentioned earlier I should say, the capital is one of the things that is looked at heavily. And what the investment is, the equity investment. The more equity investment that an individual or an entity has into a project, the more likely they are to continue to spend on that project, whether it is to increase the value, or perhaps in a distress situation continue to support the project so that they may recoup a portion of their previous investment, as opposed to just walking away.
7 Q And what affect, if at all, does it have on the quality of the collateral?
8 A It de-risks the transaction.
9 Q What do you mean what you say de-risks, for us non-finance folks?
10 A It makes the transaction less risky with that capital infusion than it otherwise would.
11 MR. SUAREZ: If we could move on to Plaintiff's Exhibit 291?
12 THE WITNESS: A little housekeeping here. Thank you.
13 Q Do you recognize this document?
14 A Yes, sir.
15 MR. SUAREZ: If we could turn to page five of the exhibit? Which is also page five of the document.
16 Q Do you see at the top there are two facility fees?
17 A Yes, sir.
18 Q A fee of .625 percent of Facility A payable on the closing date. And .75 of Facility B payable on the closing date of that facility?
19 A Yes, sir.
20 Q What affect, if any, does the payment of that facility fee have on the profitability of this transaction for the lender?
21 A Similar to the other transactions, it would have an impact on the overall return and to the lender and their overall pricing strategy.
22 Q What affect, if any, does it have on the pricing of the transaction?
23 A It would have an impact on the pricing because that would be factored into the overall returns that the bank would be expecting to receive for the risk that they are under taking as part of this transaction.
24 MR. SUAREZ: And if we turn to Plaintiff's Exhibit -- actually before we do that. Yeah, if we turn to Plaintiff's Exhibit 294.
25 THE WITNESS: Thank you, sir.
26 Q And on the first page can we take a look at the Trump International Hotel and Tower Chicago. Do you see that?
27 A Yes, sir. Collateral B?
28 Q Collateral B.
29 A Yes, sir.
30 Q And you see at the bottom it has a loan-to-value of 51 percent?
31 A Yes, sir.
32 Q How would the -- how would a loan-to-value of 51 percent on that collateral affect the risk of the loan secured by the Trump Chicago?
33 A Loan-to-value of 51 percent would be below normal, as illustrated, actually, by the Realty Rates data presented earlier. And being below the average, which is not only on Realty Rates, but in my experience of 50 percent value being low, would once again de-risk or make this collateral -- this collateral would make the loan less risky based off of that

Michael Ranita - Senior Court Reporter (31) Pages 5723 - 5726

Min-U-Script®
Donald J. Trump, et. al. November 30, 2023


Unell - by Defendant - Direct (Suarez) Page 5727

1. Q Do you see for All Facilities, it lists in the recommendations --

2. MR. SUAREZ: The next box on down.

3. Q Here it is recommending the approval of the annual review for Doral modification to the Trump Chicago and the origination of the Trump Old Post Office. But specifically I would like to draw your attention to the section that says:

4. All Facilities.

5. The third bullet point says DB relationship. And it says: DJT continues to develop his relationship with DB as Facility C will be the fourth credit facility we have originated with him or his family (three with DJT, one with DJT Jr.) DJT has transferred 40 million in liquidity to DB and has indicated he is interested in continued to grow his non-credit relationship with the firm.

6. A Do you see that?

7. Q How would that affect the pricing on the credit facility for the Old Post Office?

8. A It would have a direct impact on pricing. As stated earlier, the relationship value to a bank is an important factor. And as it states here, and consistent with the testimony that I heard from Ms. Vrablic, that the goal was to continue to increase the share of business with President Trump and his family from deposits and other items, including, as I...
Q    And over the life of the OPO Facility, was the risk to
10 the bank increasing or decreasing?
11 A    Decreasing.
12 Q    Why is that?
13 A    Um, the asset was continuing to be repositioned in a
14 positive manner. The infusion of capital, as well as the
15 operating expertise of the borrower and the entities that are
16 running it, improved the overall value, which, once again,
17 improved value results in a lower loan-to-value. A lower
18 loan-to-value results in a more secure and less risky loan for
19 the lender.
20 Q    And are these characteristics of the OPO Facility
21 reflected in Mr. McCarty's analysis?
22 A    I do not see where they were reflected.
23 Q    What is the effect of the failure to reflect these
24 characteristics in Mr. McCarty's analysis on his analysis?
25 A    That the lender felt that they were secured and that

MR. WALLACE: Objection. Leading.

MR. WALLACE: I'm going to renew my objection at
this point, your Honor, that the opinions Mr. Unell is
expressing here, including his prior opinions about the
failure to account for the fees in the loans, were not
disclosed in his expert reports.
opinion, were contained in the -- either the expert report or the rebuttal expert report, either. We are sort -- we are sort of live checking as we go through this.

Mr. Kise: So, your Honor, again, the subject matter, every last detail of every last opinion that the expert has is never disclosed. As the trial comes forward, you have evidence that needs to be considered by the expert in the context that has been presented at trial; that's what's happened here.

Mr. McCarty adjusted his position. I know they have a different description of it, but he, in fact, adjusted his position and offered a supplemental report, which was accepted by this Court, and his testimony reflected that supplemental report and his supplemental analysis. So -- and some of that was based on testimony that had happened during the trial, and events that had taken place subsequent, including your Honor's decision. So to say, now, that the defense can't make necessary adjustments to address the evidence that they are faced with at trial, evidence that -- that was available to the government, just as much as it's available to us, about the same subject matter that forms the basis for this expert's opinion, he's opining on -- he's saying the same thing. He is just offering relevant justifications based on the testimony that's been educed at trial, based on the documents that have been introduced at trial, and based on the scope of the issues that are now before us at trial.

So as you said earlier, and I think it was the correct ruling, you can allow this in in a bench trial -- there's no opportunity for confusion -- and you can decide what to give weight to and what not to give weight to, but to exclude it wholesale when they've had the opportunity to have an expert come in and modify his opinions, we would have to get into a whole ground war over exactly how he modified it, what he did, which is what we did before.

And I think the more efficient and more balanced approach in a bench trial is to do what your Honor has already decided to do, which is allow it in and then give it the weight that you determine.

MR. WALLACE: I will just note that this is not a question of relevance or repetitiveness, or anything. This is question of whether we had fair notice of this expert's opinion.

I will reiterate that it is very clear from what we did, that Mr. McCarty simply changed the time frame of his analysis. The analysis stayed the same.

If there is an issue with a criticism of Mr. McCarty's report, or if this witness had an opinion about the actual spread on the guaranty based on this step-down, all of that information was available at the time of his reports in May and June. He has not disclosed -- if the defendants can show me where this opinion is covered in either of the two reports, I'm happy to withdraw the objection.

But it is simply, this step-down, .25 analysis does not appear in this -- either of this witness's reports.

THE COURT: Objection overruled for the same and usual reasons. There's no jury. I'll decide what weight to give it. You could cross examine him. If you need a little time before the cross examination to consult, and I also, to a certain extent, accept Mr. Kise's point that you could never finalize things. And there's been a trial since expert disclosure. And I understand the value of expert disclosure so you can prepare, et cetera, but it's in. Let's just move on.

MR. SUAREZ: Can you repeat the last question.

THE COURT: The last question.

MR. SUAREZ: I'm sorry, your Honor, may I have a read back.

THE COURT: A read back of the last question.

(Whereupon, the requested question was read back by the court reporter.)

A I don't believe it is reflected in his analysis.

Q What is the result of any of his failure to consider the step-down in the opinions that he gives?

A Similar to utilizing a fixed spread, it would not render the analysis as accurate, because it would change throughout the life of the loan, or have the opportunity to, based on the election of the guarantor.

Q What, if any -- withdrawn.

The -- if I could turn your attention to page three of the Exhibit 2960 down to the section where it says "Expected enhanced value due to Capex" again.

(Whereupon, the exhibit was displayed on the screen.)

A Mm-hmm.

Q And then the last sentence says "As noted, DJT has invested nearly $250 million on capital improvements since 2012, and the results has been an increase in collateral value to $366 million. This value should continue to increase significantly over the term of the Facility." Do you see that?

A Yes, sir.

Q How did the risk of the collateral that secured the Doral Facility change over time, if at all?

A Just as on the other loans where there was an injection of capital for improvements, it improved the bank's collateral position, therefore, making the loan less risky because the collateral had more value.

Q And how, if at all, is the lower risk nature of the Facility over time reflected in Mr. McCarty's analysis?
Facility reflected in Mr. McCarty's analysis?
  2  A  Not that I can tell.
  3  Q  What is the result of the prelude of -- reflect that in
  4  his analysis?
  5  A  That the increased interest rate does not account for
  6  that -- excuse me. The interest rate throughout the life of the
  7  loan remains the same, in his analysis, at 7.5 percent, which
  8  would not reflect the terms of the loan and the reduction of the
  9  guaranty and the improvement of the collateral.
  10  Q  And in each of the three credit facilities that we have
  11  discussed today with respect to Deutsche Bank, did the value of
  12  the collateral increase or decrease over time?
  13  A  The value of the collateral increased over time.
  14  Q  And what effect did the increase in the value of the
  15  collateral over time have on the risk to the bank in connection
  16  with the loan?

  THE COURT: Oh, come on. Even I could answer that
  at this point. We've had a whole tutorial on that every
day. The more value the collateral, the less risk, the
lower the interest rates. Okay, we get it already.

  Q  Do you see the date up there at the top?
  Q  Yes.
  Does this refresh your recollection as to when the
  guaranty of the credit facility secured by The Trump Chicago was
  extinguished?
  A  Yes, sir.
  MR. SUAREZ: If we could turn to the first page of
  this exhibit.
  (Whereupon, the exhibit was displayed on the
  screen.)
  Q  Do you see the date up there at the top?
  Q  Yes.
  A  In July of 2015.
  Q  And how, if at all, did the -- how, if at all, did the
  collateral securing The Trump Chicago credit Facility from
  Deutsche Bank change over the course of that Facility?
  A  Do you mind repeating the question.
  Q  Sure, how, if at all, did the risk of the collateral
  securing The Trump Chicago property change over the life of that
  Facility?
  A  The collateral improved, therefore, making the loan to
  value lower, which ultimately made the loan less risky for the
  lender.
  Q  And is the de-risking of the loan of the Chicago credit
  1  conclusion.
  2  I don't want to talk about this with the witness
  3  present, but, I mean, I think -- I would think within the
  4  next question or two he's going to connect it up. I could
  5  be wrong, but I think that's where we are headed, and then
  6  we'll move on.
  7  But that proposition forms the foundation. I'm
  8  glad you are accepting that proposition, but it forms the
  9  foundation for something to follow.

  So I would ask the Court to just let him ask a
couple of more questions, or we could have a more wholesome
debate --

  MR. SUAREZ: That was last question I had before I
  moved on.

  THE COURT: Okay.

  MR. KISE: There you go.
  THE COURT: As usual, I'm not looking to, and I'm
  not restricting. I'm just pointing out it's déjà vu all
  over again, times 20.

  So anywhere, where are we Mr. Suarez? Do you need
  the question or do you want a read back?

  MR. SUAREZ: Yes, please.

  THE COURT: Read back the last question.

  MR. SUAREZ: Yes, please.

  THE COURT: That was Yogi Berra, "Déjà vu all over
again"?
THE COURT: He was from New Jersey.

A The increase in the value of the collateral would result in a lower loan-to-value, which would make the loan less risky for the lender.

MR. SUAREZ: If we could, please, pull up what's been marked as Defense demonstrative 5?

(Whereupon, the exhibit was displayed on the screen.)

MR. SUAREZ: If we could zoom in a little bit so it's centered there on the page.

(Whereupon, the exhibit displayed on the screen was enlarged.)

Q Do you recall this demonstrative?

A Yes, sir.

Q Who prepared this demonstrative exhibit?

A I did.

Q And what does this demonstrative exhibit represent?

A This demonstrative exhibit -- excuse me there -- represents the differential in interest if there was no guaranty, in a hypothetical situation.

Q With respect to Doral, the Doral credit Facility, can you walk us through the analysis that you undertook to reach the rebuttal to Mr. McCarty's opinion?

From there we calculated the delta between the actual interest rate, and what the hypothetical interest rate would be with the additional 25 basis points, and have run that out throughout from origination of the loan through the pay off of the loan.

Q And what hypothetical differential and interest rate results over that period of time if you increase it by the 25 basis points that you suggested is appropriate?

A For this loan in particular, $2,458,048.

Q And with respect to the Old Post Office credit Facility could you please walk us through your analysis on that transaction?

A Okay. Similar to Doral, we did the exact same exercise utilizing the same format as Mr. McCarty, however, instead of utilizing his assumed interest rates, we added the 25 basis points from a hypothetical situation of no guaranty being in place, and ran that out throughout the life of the loan from origination through pay off, and that resulted in a hypothetical lost amount of $2.567 million.

Q And why was it appropriate to do that?

A Why was it appropriate to do that? Because we believed, and based off of the testimony that the value of the guaranty as shown in the mind of Deutsche Bank, and in my experience, would be 25 basis points.

Q And in the case of the Old Post Office Facility, was that guaranty in place throughout this entire time horizon?

A Yes.

Q And if the bank had called that guaranty, would the bank have had the benefit of that guaranty in place on that facility?

A Absolutely. It would have had the benefit of that guaranty. And Mr. McCarty's analysis did not take into account any guaranty at all.

Q And if the values of assets owned by the guarantor were to change, would that, in any way, reduce the credit support available to the Facility?

MR. WALLACE: Objection. Leading.

MR. SUAREZ: I could rephrase it.

THE COURT: Withdrawn.

Q How, if at all, would a change in the values of the assets owned by the guarantor change the credit support available to Deutsche Bank in connection with this Facility?

A In this case it wouldn't, because it would be immaterial.

Q Why is that?

A Because as referenced earlier, part of the reason for a guaranty is not only the financial support, but also the ongoing and continual support for the operation, and ongoing ability to operate the asset in a manner that would maintain value, and enable it to provide enough cash flow for debt service.

Q Would your answer be the same for the Doral Facility during the periods of time that that guaranty was in place?

A Yes, sir.

Q Would your answer be the same for the Chicago Facility during the periods of time when the guaranty was in place?

A Yes, sir.

Q All right.

Moving onto 40 Wall, how, if at all, would the analysis -- would the analysis that you performed change with respect to 40 Wall, to that performed by Mr. McCarty?

A Utilizing the same 25 basis points, it would result in a $2,966 million delta.

Q And what was the basis for doing so?

A The basis was similar to the other assets, that if there was not a guaranty, even though at some points the lower...
Donald J. Trump, et. al. November 30, 2023
Attorney General of the State of New York v.

1 thresholds and minimum net worth, um, erring on the side of 1 suggesting that a law enforcement investigation is improper 2 conservatism, we applied the same methodology here as we did to 3 or something, it seems well beyond the scope of his 4 the Deutsche Bank ones. 5 expertise.

4 Q Was a limited guaranty, in fact, in place during the 6 MR. SUAREZ: I don't think that's what he said.
5 life of the 40 Wall transaction with Ladder Capital? 6 THE COURT: Can I just say, point duly noted.
6 A Yes. 7 MR. WALLACE: Fair enough, your Honor.
7 Q And if I were to ask you the same question about the 8 MR. SUAREZ: May I confer with my colleagues, your 8 effect of the credit support for that transaction, would you 9 Honor.
9 give me the same answer? 10 THE COURT: Yes.
10 A Yes, sir. 11 (Whereupon, Counsel conferred off the record.)
12 Q And then if we go to the bottom right hand section. 12 MR. KISE: Your Honor, I'm going to try for, maybe
13 (Whereupon, the exhibit was displayed on the 14 a fifth time now, if we take our afternoon break now and 15 screen.) 15 come back, we may be able to truncate this as well.
16 Q Can you please walk us through your analysis here. 16 THE COURT: AG, okay with you?
17 A Yes, sir. So the $9,006,000 -- $9,006,603 is the 17 MR. WALLACE: I thought he was going to ask for a
cumulative amount of the four loans; the Doral, OPO, Chicago and 18 directed verdict.
19 40 Wall. 19 MR. KISE: That will be after he testifies, after
20 We also have considered the SWAP breakage fee, which 18 he testifies.
21 was a cost of doing business at that point, in order to enter 19 MR. ROBERT: We could do it now if it makes you
22 into the transaction, which they were not required to do so. 20 feel better.
23 There was an out-of-pocket expense of $6 million, and therefore, 21 THE COURT: Perfect timing. See you at 3:30.
24 the hypothetical number that we have derived, or I have derived, 22 (Continued on the next page.)
24 is $3,006,603. And I do note that the SWAP breakage fee is an 25
25 estimate.

1 Q And why do you call it a hypothetical lost interest 1
2 figure? 2
3 A Because I don't believe, in my opinion, that there has 3
4 been any losses to anybody on any of these loan transactions. 4
5 Q And why is that? 5
6 A Because all contractual obligations were paid. 6
7 Deutsche Bank did their own analysis. They derived their own 7
8 interest rates. They negotiated those documents. They executed 8
9 those documents. The borrower and guarantors performed as 9
10 prescribed on those documents. And as the user of the 10
11 information, they were able to make their own informed decisions 11
12 and not have to rely upon outside parties to do so after the 12
13 fact.
14 Q And in your professional experience, is that 14
15 commonplace how transactions operate in the marketplace? 15
16 A Yes, it is, absolutely one hundred percent. Private 16
17 transactions are negotiated between sophisticated parties, and 17
18 in this case both were very sophisticated parties. And 18
19 everybody was able to make their own decisions based off the 19
20 information that was provided to them. And nobody, in the 20
21 process of negotiating or originating a loan, wants to have to 21
22 worry about, after the fact, having a non-party to their 22
23 agreement come in and second guess their decision making, which 23
24 they do for a living. 24
25 MR. WALLACE: Objection. I think if he is

25 MR. KISE: Yes.
THE COURT: Let's ask Mr. Unell back to the stand.

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

THE COURT: I didn't catch that.

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

THE COURT: He has a pristine record.

(Whereupon the witness resumed the stand.)

CROSS-EXAMINATION

BY MR. WALLACE:

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

A Yes, sir.

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

Q And if we look under interest rates. It says there: L plus 1.75 or prime minus 0.75 with step-up to L 2.0 percent or prime minus .5, if guaranty level falls below 10 percent. Am I understanding that this is the calculation that led you to identify the 25 basis points as the appropriate number for the value of the guaranty in the Deutsche Bank loan?

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

Q About this section of the credit memo, correct?

A Yes, sir.

MR. WALLACE: Okay. And if we turn to the next page. And we flip up to the section on guaranty. I am just going to note that, if the guaranty level falls to zero percent at 35 percent or below, and so the situation where this is occurring and the guaranty burns off is where the LTV is down to 35 percent and below; is that right?

A In this instance, yes, sir.

Q Okay.

MR. WALLACE: That was all I needed to clarify.

Thank you.

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

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

THE WITNESS: Yes, sir.

THE COURT: Thank you.

MR. ROBERT: Thank you, Your Honor.

(Whereupon the trial stood adjourned to Friday December 1, 2023 at 10:00 a.m.)
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November 30, 2023

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5703:3
5707:6;5713:21;21,25;
5749:20

5710:12
5624:24;5682:8;
5717:3

5618:13
5619:13,25;5641:13

5721:20

5622:6;5641:10

5713:8

5611:17;5644:20;
5619:21;5647:5,7;
16;5660:3;5661:1;
5667:19;5669:21;
5698:1;5705:9;
5706:12;5708:20;
5716:2;5721:18;
5738:21

5605:24

5656:19;5685:9,9

5612:25;5613:13;
5614:1,2;5632:18;
5634:25;5642:21;
5651:7;5661:16;
5667:2;5670:24;
18;5670:20;5673:11;
5674:11;5680:25;
5683:13;5685:11;
5687:3,9;5688:12;
5689:6;5692:1;
5693:14;5694:7,15;
5698:4;5702:9,18;
5706:1;5707:3;
5714:21;5717:25;
5720:17,24;5726:25;
5735:15,24;5736:1,
24;5738:4;5745:7;
5748:19

5685:20

5656:20

5703:3
basis (39)
5611:23;5614:20;
5616:19,15,23,3;
5617:6;5642:2;
5654:15;5667:7;
5674:3;5675:19;
5678:4;5683:3;
5686:17;5688:20,22;
5690:25;5691:1;
5704:17;5705:12,13;
5706:1;5733:4,8,9;
5735:22;5747:10,13,
18,25;5749:21;
23,24;5750:20;
5751:12,20

5605:27;5628:22,23;
25;5629:3;5631:9;
5632:6;5634:25;
5656:22,25;5658:5;
5681:15;5694:22;
5695:14;5701:5

banks (27)
5622:18;5635:5,5;
5638:8;5644:25;
5657:1;5658:15;
5660:20;5668:16;
5670:9;5671:8,9;
5674:3;5680:5,5;
5686:15;5688:5,12;
5690:16;5705:8,16;
5696:13,19,22;
5699:25;5700:3;
5705:21

bank’s (19)
5628:4;5640:19;
5650:7;5651:16;
5660:18;5666:16;
5667:17;5671:19;
5672:17;5677:7;
5679:7;5697:21;
5698:1;5705:9;
5706:12;5708:20;
5716:2;5721:18;
5738:21

Bartov (1)
5605:24

base (3)
5656:19;5685:9,9

based (44)
5611:23,25;5613:13;
5614:1,2;5632:18;
5634:25;5642:21;
5651:7;5661:16;
5667:2;5670:24;
5672:20;5673:11;
5674:11;5680:25;
5683:13;5685:11;
5687:3,9;5688:12;
5689:6;5692:1;
5693:14;5694:7,15;
5698:4;5702:9,18;
5706:1;5707:3;
5714:21;5717:25;
5720:17,24;5726:25;
5735:15,24;5736:1,
24;5738:4;5745:7;
5748:19

basic (1)
5685:20

basing (1)
enforce (4) 5647:18,20;5662:13; 5708:5
enforceable (1) 5644:7
enforced (4) 5645:12,13;5646:4,7 enforcement (4) 5623:16;5646:24; 5679:5;5749:1
engage (1) 5653:6
engaged (2) 5653:2;5707:25 engagement (14) 5629:11;5631:18; 5644:20,21;5645:2,19; 5647:3,9,14;5650:16; 5662:2;5667:23; 5692:18;5707:23 engineering (2) 5624:20;5721:21 Engoron (1) 5605:2 enhanced (3) 5704:21;5723:1; 5738:8 enlarged (2) 5704:8;5743:14 enough (3) 5739:22;5746:10; 5749:6 ensure (1) 5739:22 enter (1) 5747:20 entered (1) 5699:2 entering (1) 5618:2 entire (5) 5609:24;5612:3; 5620:5;5732:20; 5745:11 entities (1) 5731:7 entitled (3) 5613:12;5614:15; 5750:14 entity (5) 5659:15;5660:2; 5661:1;5679:25; 5732:19 entrepreneurs (2) 5656:18;5657:11 environmental (2) 5624:20;5721:21 equates (5) 5693:3,4;5695:15; 5702:25;5714:21 equity (20) 5650:9,10,12,14,18, 22;5651:5;5652:12; 5706:22;5715:8,16,17; 5716:1;5723:18,18; 5729:12,13,18,20 erring (1) 5747:1 escrow (1) 5643:16 especially (3) 5632:12;5686:19; 5717:4 essence (1) 5750:18 essentially (1) 5622:5 establish (1) 5695:23 established (3) 5624:2;5658:19; 5686:4 estate (65) 5619:2,8,9,16,18; 5620:1,11,12,15,20; 5621:3,20;5622:1,2,4, 9;5623:18,5624:3,12, 24;5627:9,14,18; 5628:20;5630:25; 5631:8;5632:13; 5633:6;5634:1; 5635:15;5640:7, 42;5641:2;5648:12,14, 14,5653:6;5656:8;18, 5674:7,11,5683:9, 17,5661:20;5666:6; 5700:20;5681:15; 5686:18;5687:8; 5689:1;5690:13,18; 5694:11,12;5699:8,8; 5701:14;5706:23; 5713:10;5714:9, 47;5719:4;5729:3,5,5 estates (2) 5658:8;5680:8 estimate (2) 5729:15;5747:25 estimated (3) 5634:3;5715:6; 5729:14 et (10) 5658:9;5671:16; 5675:14;5677:3; 5679:12,13;5680:9; 5713:13;5718:19, 5737:14 evaluate (1) 5633:13 evaluated (4) 5626:18;5642:5; 5651:16;5673:6 evaluating (5) 5626:16;5627:24; 5628:10;5644:4; 5660:20 evaluation (8) 5617:19;5734:18; 5737:9 examined (1) 5618:14 examiners (2) 5644:4;5651:10 example (4) 5642:24;5661:3; 5672:16;5717:6 exceptions (1) 5688:18 except (1) 5688:13 exception (3) 5667:6;5704:24 exceptions (1) 5694:25 excess (1) 5719:14 exchange (1) 5615:6 exclude (2) 5614:20;5736:7 excuse (8) 5630:18;5635:3; 5667:6;5680:6; 5700:20;5717:13; 5741:6;5743:20 execute (1) 5719:10 executed (1) 5748:8 execution (1) 5721:15 exercise (3) 5673:3;5692:7; 5744:23 exercising (2) 5623:14;5646:24 Exhibit (74) 5611:6,7;5613:5; 5614:14,15;5615:1; 5616:6;5634:8,13; 5639:17;5640:13; 5655:6,9,13,14,16,25; 5656:15;5659:9; 5668:19,20,22;5686:5; 5690:2;5691:10; 5692:12;5693:19,20, 22;5697:6;5700:7; 5702:13;5703:9,10,12, 19,22,23;5704:1,4,7; 5706:5;5711:14,15; 5712:1;5714:24; 5716:15;5719:18; 5721:2;5725:3,10; 5726:5;5727:11; 5731:20,21,23;5732:5; 5738:7,9;5739:11,12, 14,19;5740:3,4;5743:9, 13,17,19,20;5747:13; 5751:15 exhibits (2) 5614:16;5655:19 exigency (1)
existence (1) 5733:12
existing (3) 5715:2;5716:5.5
exited (1) 5611:16
expand (2) 5657:10,25
expect (3) 5671:22;5672:1;5710:10
expectation (2) 5605:23,25
expected (6) 5638:15;5704:20;5723:1.7;5727:23;5738:7
expecting (2) 5616:17
experience (67) 5719:3;5720:2;5722:1,3,5,17,20;5727:3,17,20;5728:11,11,19;5729:10,11;5731:1,12;5738:16,19,25;5739:4,7,24;5740:10,16,17,21;5741:1,5;5742:20;5743:23;5744:20;5745:10,15,21;5746:2,11,14
expertise (6) 5627:13,25;5628:19;5647:9;5731:7;5749:3
expert (3) 5617:1,13;5653:6
expert's (3) 5617:17;5735:22;5736:17
explain (2) 5684:25;5706:17
explore (1) 5614:17
expressing (1) 5733:23
extended (5) 5615:20;5657:14,20;5661:12,12
extending (1) 5615:20
extensively (1) 5609:1
extent (3) 5605:17;5642:6;5737:11
extinguished (2) 5638:15;5655:4;5655:5
existing (3) 5687:25;5688:13,13;5652:19;5659:24;5672:25;5727:2,7,8
facts (1) 5607:12
facts (22) 5735:11;5747:4;5731:7;5749:3
factor (13) 5650:6;5651:16;5672:17;5684:10;5687:5;5688:22;5696:1;5713:14;5714:8;5723:13,14;5728:22;5751:22
factored (4) 5702:9;5722:14,19;5726:1
factors (22) 5654:5;5659:24;5762:1,6;5767:19,19;5680:11;5684:9;5687:25;5688:13,13;5693:11;5713:16;5718:3,5;5722:18;5724:25;5727:2,7,8
features (2) 5718:3,5;5722:18;5727:6;5731:15;5724:25;5727:2,7,8
features (2) 5627:13,25;5628:19;5647:9;5731:7;5749:3
feature (1) 5689:17;5695:12;5704:20;5708:15;5710:10;5710:10;5712:11;5713:20;5722:8;5729:1;5731:1;5737:11;5749:3
features (2) 5615:20;5657:14,20;5661:12,12
fit (5) 5621:17;5625:12;5626:12,17;5627:6;5629:12;5630:11;5630:25;5631:8

...
<table>
<thead>
<tr>
<th>word</th>
<th>occurrences</th>
</tr>
</thead>
<tbody>
<tr>
<td>instance</td>
<td>5</td>
</tr>
<tr>
<td>used</td>
<td>2</td>
</tr>
<tr>
<td>instead</td>
<td>1</td>
</tr>
<tr>
<td>introduced</td>
<td>1</td>
</tr>
<tr>
<td>insure</td>
<td>2</td>
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<td>1</td>
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<tr>
<td>intended</td>
<td>2</td>
</tr>
<tr>
<td>intent</td>
<td>2</td>
</tr>
<tr>
<td>interest</td>
<td>39</td>
</tr>
<tr>
<td>involved</td>
<td>5</td>
</tr>
<tr>
<td>informed</td>
<td>1</td>
</tr>
<tr>
<td>information</td>
<td>21</td>
</tr>
<tr>
<td>infer</td>
<td>1</td>
</tr>
<tr>
<td>informal</td>
<td>3</td>
</tr>
<tr>
<td>interested</td>
<td>1</td>
</tr>
<tr>
<td>internal</td>
<td>3</td>
</tr>
<tr>
<td>interm</td>
<td>1</td>
</tr>
<tr>
<td>internal (3)</td>
<td></td>
</tr>
<tr>
<td>interpret</td>
<td>2</td>
</tr>
<tr>
<td>interruption</td>
<td>1</td>
</tr>
<tr>
<td>initiative</td>
<td>1</td>
</tr>
<tr>
<td>justifying</td>
<td>1</td>
</tr>
<tr>
<td>judging</td>
<td>1</td>
</tr>
<tr>
<td>judicial</td>
<td>1</td>
</tr>
<tr>
<td>June (6)</td>
<td></td>
</tr>
<tr>
<td>June 6</td>
<td></td>
</tr>
<tr>
<td>justice</td>
<td>1</td>
</tr>
<tr>
<td>keep</td>
<td>4</td>
</tr>
<tr>
<td>keeping</td>
<td>2</td>
</tr>
<tr>
<td>key</td>
<td>1</td>
</tr>
<tr>
<td>kind</td>
<td>19</td>
</tr>
<tr>
<td>Kise (41)</td>
<td></td>
</tr>
<tr>
<td>knowledge</td>
<td>4</td>
</tr>
<tr>
<td>knowledge (4)</td>
<td></td>
</tr>
<tr>
<td>knowledge (2)</td>
<td></td>
</tr>
</tbody>
</table>
Attorney General of the State of New York v.
Donald J. Trump, et al.

5686:23;5701:1; 5705:22;5717:17,22, 23;5722:17,20; 5742:17

looks (6) 5623:5;5673:18; 5687:8;5696:3; 5716:24;5717:16

looming (1) 5626:8

looses (1) 5707:13

loss (1) 5623:7

losses (1) 5748:4

lost (3) 5667:22;5745:4; 5748:1

lot (11) 5606:24;5622:9; 5626:4;5633:15,20; 5635:4;5690:13; 5693:13;5695:17; 5698:18;5699:3

love (3) 5658:3;5695:16; 5700:4

low (9) 5660:21;5667:7; 5668:7;5702:6,9; 5714:17;5717:13; 5726:24;5739:22

lower (29) 5640:14;5660:22; 5668:10;5675:12,19; 5678:19;5688:22; 5692:6;5693:1,2,5; 5702:25;5703:3,4;5; 5713:23;23;5714:19; 5719:22;23:22;5731:9, 9;5738:24;5740:23; 5741:20;5743:5; 5746:25;5758:18

lowering (3) 5715:16,17;5717:11

lower-to-value (1) 5729:22

lowest (1) 5690:25

LTV (6) 5713:24;5714:8; 5732:20;5739:21,25; 5752:6

LTV's (1) 5617:1

luck (1) 5608:17

lunch (1) 5711:11

luncheon (1) 5710:20

lunchtime (1) 5710:3

5713:1;5717:17; 5718:21

marketing (1) 5648:20

marketplace (3) 5681:18;5688:19; 5748:15

markets (1) 5620:15

Mars (9) 5621:23,24,25; 5622:2;5623:17,19,25; 5624:8;5626:20

massive (1) 5661:4

matches (1) 5744:5

material (11) 5669:6;5670:6,8,9; 11,15,17,17;5672:3,18, 20

Materiality (3) 5670:12;5687:1; 5720:9

mathematical (1) 5682:15

matter (16) 5611:2;5613:10,11; 5614:7,8,10;5616:17; 5620:17;5657:2; 5684:21;5699:9; 5707:17,21;5708:24; 5735:5,22

matters (4) 5608:19;5634:16; 5645:18;5687:2

may (33) 5609:21;5612:11; 5615:18,21;5616:13; 5613:12,63;6; 5625:1;5635:11; 5643:5;5645:7; 5655:17,20;5658:13; 5665:26;5666:12,16; 5668:17;5671:11; 5687:7;5688:4,5; 5703:21;5708:7; 5713:18;5717:21,23; 5723:22;5737:1,19; 5749:7,13;5750:6

maybe (10) 5609:14,23,23; 5611:12,19;5612:16; 5636:19;5664:21; 5695:2;5749:11

Mazars (2) 5637:10,17

McCarty (33) 5611:11;5612:4,20; 21;5614:25;5616:21; 22;5631:4;5684:12,12; 5638:1,8;5661:4; 5689:2,5;5691:4,7,19,21,

24;5692:3,6;5711:13; 5712:22;5715:22; 5724:23;5727:4; 5735:10;5736:20; 5744:2,6;5746:20; 5750:19

McCartys (29) 5613:3,12,22,23,25; 5615:8;5618:2,5,9; 5633:8,12;5684:24; 5685:7;5690:20; 5712:16,18;5715:19; 20;5720:21;5724:18; 5731:13,16;5733:11, 19;5734:25;5736:23; 5738:25;5741:1; 5743:25;5745:17

mean (25) 5606:24;5613:17,20; 5629:18;5641:21; 5647:6,7;5652:13; 5653:12;5660:10; 5667:19,20;5670:1; 5673:13;5686:6; 5694:21;5700:21; 5708:14,25;5715:11; 5724:11,5733:2; 5734:1;5742:3

means (8) 5622:5;5628:6,10; 5652:14;5670:3; 5709:1;5715:12; 5733:3

meant (2) 5646:14,20

measure (1) 5683:9

measuring (1) 5722:20

mechanisms (1) 5661:4

meet (1) 5641:16

member (1) 5694:18

members (3) 5605:4;5653:23; 5659:6

memo (15) 5656:24;5675:16; 5688:23;5704:10,12; 15,18;5703:8;5711:17; 19,22;23;5716:18,19; 5751:24

memorandum (1) 5714:3

memos (14) 5630:5;5636:24,24; 5648:24;5649:2; 5651:1,20;5652:6; 5653:1,22,24;5656:12; 5675:24;5706:15

mentioned (18)

Min-U-Script® Michael Ranita - Senior Court Reporter (14) looks - minor

November 30, 2023

INDEX NO. 452564/2022
RECEIVED NYSCEF: 01/04/2024

254 of 316
Michael Ranita - Senior Court Reporter

(3) prejudice - qualified

(18) prejudice - qualified
INDEX NO. 452564/2022

November 30, 2023

Michael Ranita - Senior Court Reporter

(19) qualify - repayment
Min-U-Script®

Michael Ranita - Senior Court Reporter

(20) repeat - saying
<table>
<thead>
<tr>
<th>Term</th>
<th>Page References</th>
</tr>
</thead>
<tbody>
<tr>
<td>securing (2)</td>
<td>5740:16,20</td>
</tr>
<tr>
<td>securitized (1)</td>
<td>5622:19</td>
</tr>
<tr>
<td>security (5)</td>
<td>5650:3,5693:3;</td>
</tr>
<tr>
<td></td>
<td>5699:20;5720:11;</td>
</tr>
<tr>
<td></td>
<td>5721:7</td>
</tr>
<tr>
<td>seek (2)</td>
<td>5695:8,5696:15</td>
</tr>
<tr>
<td>seem (1)</td>
<td>5663:5</td>
</tr>
<tr>
<td>seems (8)</td>
<td>5606:9,12;5610:9,9;10,10;5665:19;5749:2</td>
</tr>
<tr>
<td>selected (2)</td>
<td>5675:10;5691:19</td>
</tr>
<tr>
<td>sell (1)</td>
<td>5695:12</td>
</tr>
<tr>
<td>selling (3)</td>
<td>5658:5,6,5680:4</td>
</tr>
<tr>
<td>send (1)</td>
<td>5607:22</td>
</tr>
<tr>
<td>senior (6)</td>
<td>5621:14;5623:20,23;5649:4;5689:12;5730:2</td>
</tr>
<tr>
<td>sense (4)</td>
<td>5600:13;5609:8;5678:5;5710:5</td>
</tr>
<tr>
<td>sent (1)</td>
<td>5614:23</td>
</tr>
<tr>
<td>sentence (3)</td>
<td>5642:3;5651:21;5738:12</td>
</tr>
<tr>
<td>series (1)</td>
<td>5734:8</td>
</tr>
<tr>
<td>serve (1)</td>
<td>5623:17</td>
</tr>
<tr>
<td>serves (1)</td>
<td>5724:4</td>
</tr>
<tr>
<td>service (15)</td>
<td>5620:19;5642:2,6;24;5643:1;5651:9,17;5679:22;5681:11,25;5682:1;1;5713:12;5719:6;5746:10</td>
</tr>
<tr>
<td>serviced (2)</td>
<td>5620:20;5675:8</td>
</tr>
<tr>
<td>services (4)</td>
<td>5647:12;5653:3;5698:21;5729:8</td>
</tr>
<tr>
<td>session (4)</td>
<td>5605:2;5662:25;5711:2;5750:2</td>
</tr>
<tr>
<td>set (6)</td>
<td>5657:16,20;5667:2;5676:2;5688:12;5719:10</td>
</tr>
<tr>
<td>sets (1)</td>
<td>5607:20</td>
</tr>
<tr>
<td>settlements (1)</td>
<td>5626:14</td>
</tr>
<tr>
<td>seven (2)</td>
<td>5617:17;5739:11</td>
</tr>
<tr>
<td>seventh (2)</td>
<td>5605:24;5718:12</td>
</tr>
<tr>
<td>several (10)</td>
<td>5624:2;16;5630:20;5653:22;5660:15;5661:14;5674:18;24;5701:17;5709:21</td>
</tr>
<tr>
<td>shadowed (1)</td>
<td>5621:14</td>
</tr>
<tr>
<td>shall (1)</td>
<td>5721:14</td>
</tr>
<tr>
<td>share (4)</td>
<td>5657:25;5659:5;5699:4;5728:24</td>
</tr>
<tr>
<td>sharing (1)</td>
<td>5606:5</td>
</tr>
<tr>
<td>shaving (1)</td>
<td>5664:7</td>
</tr>
<tr>
<td>sheet (9)</td>
<td>5622:7;16;5624:17;5652:15;5653:14;5683:13,22,25;5685:24</td>
</tr>
<tr>
<td>shift (2)</td>
<td>5664:22,25</td>
</tr>
<tr>
<td>ships (1)</td>
<td>5750:19</td>
</tr>
<tr>
<td>short (5)</td>
<td>5610:10;5660:4,24;5661:2,4</td>
</tr>
<tr>
<td>short-term (1)</td>
<td>5675:13</td>
</tr>
<tr>
<td>show (12)</td>
<td>5634:7;5639:16;5651:8;5655:11;5668:17;5671:14;5680:16;5681:23;5683:23;5691:6;5714:4;5737:2</td>
</tr>
<tr>
<td>showing (1)</td>
<td>5705:25</td>
</tr>
<tr>
<td>shown (3)</td>
<td>5682:24;5700:15;5745:8</td>
</tr>
<tr>
<td>shows (6)</td>
<td>5680:24;5697:12;5700:18;5705:11,12;5717:22</td>
</tr>
<tr>
<td>Shubin (1)</td>
<td>5610:18</td>
</tr>
<tr>
<td>side (20)</td>
<td>5619:9;5620:3;5621:7,9;5626:2,6,7;5624:15,19,22,23;5653:22;5661:25;5671:14;5678:18,24;5690:18,5693:2;5720:9;5739:11,7574:1</td>
</tr>
<tr>
<td>solace (7)</td>
<td>5667:2;5674:11,6;5676:18;5687:3;5693:10;5701:10</td>
</tr>
<tr>
<td>solely (1)</td>
<td>5691:15</td>
</tr>
<tr>
<td>solemnly (1)</td>
<td>5610:7</td>
</tr>
<tr>
<td>somebody (9)</td>
<td>5644:24;5645:5;5647:5;5694:3;5695:1;5701:15;5707:13;5708:9;5719:8</td>
</tr>
<tr>
<td>somebody's (1)</td>
<td>5676:18</td>
</tr>
<tr>
<td>someone (1)</td>
<td>5694:13</td>
</tr>
<tr>
<td>sometime (2)</td>
<td>5663:22;5664:2</td>
</tr>
<tr>
<td>sometimes (4)</td>
<td>5607:21;5622:19;5643:16,16</td>
</tr>
<tr>
<td>somewhere (3)</td>
<td>5609:14;5616:12;5685:15</td>
</tr>
<tr>
<td>sophisticated (3)</td>
<td>5698:10;5748:17,18</td>
</tr>
<tr>
<td>Sorry (6)</td>
<td>5611:15;5632:24;5663:19;5665:1;5697:2;5737:18</td>
</tr>
<tr>
<td>sort (10)</td>
<td>5607:3;5609:16;5647:2;5653:8;5673:3;5674:5;5679:4;5687:5;5735:2,3</td>
</tr>
<tr>
<td>sorts (1)</td>
<td>5707:4</td>
</tr>
<tr>
<td>sought (2)</td>
<td>5684:18;5722:14</td>
</tr>
<tr>
<td>sounds (4)</td>
<td>5628:9</td>
</tr>
<tr>
<td>Soundness (1)</td>
<td>5640:6</td>
</tr>
<tr>
<td>source (9)</td>
<td>5643:12;5659:3;5662:2,3;5667:22;5713:11;5714:15;5719:6;5720:16</td>
</tr>
<tr>
<td>sourced (1)</td>
<td>5680:23</td>
</tr>
<tr>
<td>sources (5)</td>
<td>5641:2;22;5672:8;5682:24;5695:11;5696:1</td>
</tr>
<tr>
<td>south (3)</td>
<td>5646:12;16,18</td>
</tr>
<tr>
<td>space (1)</td>
<td>5663:12</td>
</tr>
<tr>
<td>speak (3)</td>
<td>5606:10;5607:5;5614:9</td>
</tr>
<tr>
<td>Special (7)</td>
<td>5619:17;5620:13;5621:7,9;5623:9;5625:2;5676:24</td>
</tr>
</tbody>
</table>

Min-U-Script®

Michael Ranita - Senior Court Reporter

(21) scenes - Special

November 30, 2023

261 of 316
Donald J. Trump, et. al. November 30, 2023

Attorney General of the State of New York v.

still (16)
5610:5;5641:6,9;
5647:17;5656:8;
5677:14,17;5683:7;
5701:17,5670:13,20;
23,5708:23;5711:9;
5717:21;5752:15

stood (2)
5622:1;5752:19

standing (3)
5610:5;5641:6,9;
5647:17;5656:8;
5677:14,17;5683:7;
5701:17,5670:13,20;
23,5708:23;5711:9;
5717:21;5752:15

strength (5)
5704:19;5705:9,14;
25;5708:18

strengths (4)
5716:18,20,22,24

stress (1)
5620:17

stretching (1)
5609:7

Strictly (1)
5623:18

strong (3)
5666:13;5717:21;
5718:2

strongly (1)
5702:5

stuck (1)
5612:9

structure (2)
5660:7;5717:12

structuring (4)
5702:5

substitute (2)
5615:8

substantive (2)
5613:6;5614:16

substitution (2)
5652:12;17

successful (1)
5657:10

sufficient (4)
5690:4;5691:12;
5692:1

suggested (2)
5685:1;5694:18

suggesting (1)
5685:1;5694:18

suggest (2)
5685:1;5694:18

suggesting (1)
5685:1;5694:18

suit (1)
5619:5

SUAZAS (86)
5611:18;20;5618:1;
21;5627:17;5628:3,14;
17,20;5634:7;
5639:16;5640:1;
5641:2;5644:1;
5645:25;5646:19;
5646:3,6,5649:11;
5703:1

step (3)
5632:11;5643:3;
5646:7

stepdown (1)
5611:15

step-down (8)
5732:17;3,5733:18;
5734:23;5736:25;
5737:5,25;5739:17

stepped (1)
5618:3

steps (1)
5643:1

step-up (1)
5751:17

S

supplement (2)
5612:12;5614:24

supplementary (5)
5612:21;5614:11;
5735:12,14,14

support (37)
5638:4,14,17,19,20;
5644:4,5645:6;
5653:17,5668:11;
5683:11,12,17;
5684:21,22;5685:19;
5686:7,8,9,10;5689:10;
5690:23,5691:20;
5699:1,21,23;5707:8;
5708:18;5709:3;
5717:10;5723:22;
5745:20;5746:1,7,8;
5747:9

supported (1)
5691:4

supports (1)
5643:4

supposed (2)
5617:12,20

sure (25)
5605:3;5606:17;
5612:19;5628:6,9;
5631:6;5639:23;
5641:2;5643:10,11;
5653:15;5655:20;
5662:9,14,5671:17;
5682:10,14;5683:15;
23,5689:6;5719:11;
5734:24,5740:19;
5750:7;5751:11

survey (5)
5680:23;5681:12,13;
14,5686:16

surveyed (1)
5686:1

surveys (1)
5681:12

suspenders (1)
5720:15

Sustained (4)
5639:7;5652:3;
5657:18;5697:25

Sutton (1)
5696:10

swap (5)
5715:6,14;5716:6;
5747:19,24

Swaps (1)
5680:9

swear (1)
5618:7

sworn (1)
5618:14

syndicated (1)
5621:1

T

Min-U-Script®
Michael Ranita - Senior Court Reporter
(22) specific - syndicated

262 of 316
The document contains text related to legal proceedings, with references to various legal terms and phrases. It appears to be a court transcript or legal document, with references to dates, times, and other legal citations. The text is dense and technical, typical of legal documents.
In The Matter Of:

NYS Attorney General v.

Donald J. Trump et al

December 1, 2023

Ny Supreme Court- Civil

Original File December 1_2023 NYS Atty General v Donald Trump.txt

Min-U-Script® with Word Index
CROSS-EXAMINATION

BY MR. WALLACE:

Q Good morning, Mr. Unell.

A Good morning.

Q I want to talk first about the engagement through Ankura for the Trump Organization. I believe you testified yesterday that you are around 900, 950 -- your time is being billed at between $900 per hour and $950 per hour, right?

A I believe that's about the range.

Q I think you said you performed about 200 hours of work on this engagement; is that correct?

A Give or take, yes.

Q You also performed other engagements for the Trump Organization while at Ankura, correct?

A Yes.

Q What have those engagements been?

A I have worked on one engagement, and that was on a potential conservation easement valuation of the Doral property.

Q And when did you begin your work on that engagement?

A Sometime probably about a year ago.

Q Okay. So would this have been before you were retained as an expert for this case?

A I am not certain of the exact timing.

Q It might have been close to the same time?

A Around then, yes.

Q Do you have an sense of how much time you spent on that engagement?

A Probably less than 10 or 15 hours.

Q And do you know what your time was billed at for that engagement?

A That's a fixed-fee engagement that is actually led by our valuation team.

Q So your time is not being charged at an hourly rate for that engagement; am I understanding that correctly?
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
26 documents utilizing the 25 basis point differential between a
27 guaranty and a limited guaranty.
28 Q Okay. But it is an analysis of the difference in the
29 pricing of the Deutsche Bank loans with the guaranty -- let me
30 back up.
31 So it is a hypothetical analysis, correct?
32 A It is an illustrative analysis to show a hypothetical
33 and really the differential between Mr. McCarty's analysis and
34 the analysis that would be reflective with the 25 basis points
35 as shown in the documentation and from the testimony of the
36 Deutsche Bank personnel.
37 THE COURT: The question was whether these were
38 hypothetical numbers. I assume the answer is yes?
39 Q Okay. And I'll tell you, I think you described this
40 in detail, I am trying to understand the pieces of it. I'll
41 take it piece by piece. And many of the questions will be yes
42 or no.
43 So, the hypothetical analysis is what the difference
44 might be in the Deutsche Bank loans that were actually extended
45 here with the guaranty and without the guaranty; is that fair?
46 A No. It is -- to some extent it is. But what it is
47 trying to show is, is what the actual interest percentage was,
48 and then without a guaranty, where it would go. And that is
49 based off of the 25 basis points as outlined in the loan
50 between no guaranty and a 10 percent guaranty; is that correct?
51 A You can't look at it that way, because a guaranty at
52 10 percent is still $17 million. You have a 40 some odd
53 percent loan-to-value. You are trying to say that there is one
54 factor that is involved in this. As testified yesterday, there
55 are numerous factors that go into it. And it is not just the
56 guaranty. It is the fact that you have a warm body behind it.
57 Whether it is 100 percent or 10 percent, it doesn't matter.
58 The fact is that, in my experience, and in dealing with loans, a
59 10 percent guarantee at $17 million on a 40 percent LTV is
60 what is called a comfort guaranty. It is there. It is
61 probably never going to be called upon. It is well secured.
62 And that 25 basis points is what they place a premium on it
63 for.
64 But, you know, you are asking to make an assumption
65 here and trying to say that today is Tuesday, when everybody in
66 this courtroom here knows that today is Friday.
67 You can't make that judgment and sit here and say,
68 the documents state what it is and I am not going to deviate
69 from what the documents say. The documents state that with the
70 guaranty it is 25 basis points less. Without a guaranty is 25
71 basis points more. And in my experience, the 10 percent,
72 25 percent, 50 percent or 100 percent of the guaranty based off
73 of the other metrics with the loan, does not change that
74 opinion.
MR. WALLACE: I move to strike the answer as non-responsive.

THE COURT: You know, yesterday not everybody could tell you it was Thursday, but today everybody can tell you it is Friday.

Denied. I think he was trying. I'll determine whether he was successful or not; maybe whether I credit what he said or not.

Q For the purposes of this analysis, you determined that the guaranty was worth 25 basis points; is that correct?

A A guaranty.

Q What is the difference you see between A guaranty and B guaranty?

A There are various levels of a guaranty that are described throughout the loan documents. A guaranty, a limited guaranty, the fact that the guaranty is in place, as I testified yesterday, no matter whether it is a limited guaranty or not, the function of a guaranty as looked at by Deutsche Bank, as looked at by bankers, as looked at in my experience and as looked at in the real world, is that no matter if it is at 10 percent or if it is at 100 percent, that guaranty to them was valuable for 25 basis points for the engagement of a warm body of a billionaire to stand behind the loan in his equity infusion and capital there. So yes, 25 basis points per the documents and my experience.

Q Okay. So to the extent Mr. McCarty was pricing out the market interest rate for a commercial real estate loan on these four properties, with no personal guaranty at the time they were originated, you did not try to recreate his analysis?

A No. I tried to give an illustrative of what it would be based off of the loan documents. I am not trying to recreate what he did.

THE COURT: Let me jump in. Are you testifying that with your experience, your expertise, your knowledge of the facts in this case, you could not possibly estimate what Deutsche Bank would have charged as an interest rate in any particular situation, because it is all up to them?

THE WITNESS: Yes. I can give a range and give historical as to what has been out there and show illustrative examples of it, but at the end of the day as referenced in the Deutsche Bank documents, all of their risk rating, all of their pricing is proprietary. None of us have that information. None of us have that ability. None of us understand the total relationship value. We can try to do our best to understand it based off of the testimony that has been provided, as well as the documents. But the only person that has the ability to determine the risk and the interest rate and the overall relationship value, is the lender.

THE COURT: So you said you could estimate or guesstimate within a certain range, but you just couldn't give an exact?

THE WITNESS: And I did not give an exact. I have provided data to show how the defendants -- excuse me, how the plaintiffs at 10 percent was inaccurate and also not reflective of the actual loan, because the loan contained a guaranty. And the assumption that the loan did not have a guaranty is incorrect. Because at the 10 percent level, the loan had an effective guaranty in all times. At no point in any testimony, in any deposition or any record have I seen that the guaranty was invalid. So running the estimate at 10 percent and stating that there is no guaranty, is an analysis that is worthless.

THE COURT: Well, just as a general point, and the attorneys know this, I allow in my discretion to try to make assumptions as to what the interest rate would be if the guaranty was in place.
hypothetical questions. So, if you are asked a hypothetical, to say: Oh, but that's not the fact.

That's not answering the question.

THE WITNESS: So hypothetically 10 percent is unsupported, as not the way that anybody would do it. It was tied to bonds. Bonds are not loans. It was tied to Dell and Club Corp. which are corporate entities. And the support for it was unfounded and inaccurate in my report.

So yes, I full-heartedly disagree with the 10 percent that Doral would have been at. And I firmly believe it would be closer, if not lower than the 25 basis points as described here and in the loan documents, and in the testimony of Deutsche Bank.

Q So let me clarify one thing. Well, let me ask then, so are you saying that actually the commercial real estate loan, no guaranty, issued by the Commercial Real Estate group at Deutsche Bank or some other Commercial Real Estate division, would have been priced even closer to the private wealth loans than your hypothetical here with the 25 basis points added?

A That's not correct.

Q So what are you saying? I don't understand what you are saying.

A What I am trying to say is that 10 percent is unfounded.

Q And you said, I think it would be closer to the numbers reflected here, even more than the 25 basis points?

A Absolutely. And that's reflected in the loan documents.

Q So, sir, do you have an opinion, one way or the other, as to what the market rate would be for a commercial real estate loan with no personal guaranty for these four properties?

A It would be in the range of where I have it here.

Q So close to the private wealth amounts?

A Yes. As illustrated in the loan documents.

Q So if it is close to the Private Wealth Group -- close to the private wealth amounts, why did Donald Trump agree to a guaranty? Why put his own assets at risk?

A That's a great question. I am happy you asked it. Because real estate developers that believe in their projects, that place a tremendous amount of equity in their projects, it gives credence to their plan. Especially when you are a redevelopment and repositioning assets. That's what President Trump does.

And that is part of what makes his success, is his ability to stand behind his deals, place his name behind it, place extremely large amounts of capital into the deal. And therefore it is looked upon by banks, in my experience, as Deutsche Bank did in their experience, as a well-sounded loan. And guaranties for people that stick behind their deals goes a really long way in a bank. And as we have already said, banks love billionaires because billionaires repay loans.

Billionaires that repay loans with a guaranty makes it more secure.

Q You are telling us that Donald Trump -- when the guaranties were at 100 percent -- when the guaranty was at 100 percent on Doral, how much capital was at risk for Mr. Trump?

A Several hundred million dollars, because he had placed $250 million of capital in there.

Q I am asking on the guaranty. When he had the guaranty on the Doral loan and the guaranty is 100 percent, how much of Mr. Trump's capital was at risk in that guaranty?

A $125 million.

Q You are saying that Mr. Trump put $125 million of his own capital at risk unnecessarily because he could have gotten the same interest rate --

MR. WALLACE: Actually, let me strike that question if I can, or withdraw that question, if I can, Your Honor.

Q Mr. Trump guaranteed the Doral loan for $125 million, for which he was personally responsible, but received no interest rate benefit for that guaranty; is that your testimony?
Unell - by Defendant - Cross (Wallace)  

1. THE WITNESS: We will slow it down a little bit.
2. Q. Did you review any contemporaneous documents from the Trump Organization during the period of negotiation for the Doral loan explaining that these were the reasons for including a guaranty on the loan for a 25 basis-point improvement?
3. A. At which point? That's -- I mean, the loan was originated from 2014 to 2022, had multiple iterations to it. I want to make sure we are at the right time.
5. A. No. But it was -- during that -- the loan documents state what the step-down would be and what the increase of interest would be. It is in the documents.
6. Q. So you are extrapolating Mr. Trump's intent from the loan documents?
7. A. What actually happened, he did decide that he was going to keep a limited guaranty in exchange for a 25 basis-point change.
8. Q. I believe you said you were here for Ms. Vrablic's testimony on Wednesday; is that correct?
9. A. Yes, sir.
10. Q. And do you recall that Ms. Vrablic testified that most of her clients do not like recourse; do you recall that testimony?
11. A. Yeah, that's -- that's correct. Most people don't like recourse.

Unell - by Defendant - Cross (Wallace)  

1. Q. And so it is your professional opinion that a 25 basis-point improvement in interest rates is sufficient for a client to put aside that dislike of recourse?
2. A. Absolutely. If it is that -- if it is their business decision, that's their business decision. And Deutsche Bank obviously felt comfortable with it by approving it and placing it in the loan documents. I can't speak to the business decision of somebody. There is a lot of other factors that go into a decision besides that. And also, if you are a real estate developer, while some don't like it, those that are confident, that have success, they will put their name behind it.
3. Q. In the course of preparing your reports, did you come across any evidence indicating that Donald Trump had decided by 2011 that he never wanted to do a recourse loan again?
4. A. I believe I read some of that, but things change. Metrics change. As I mentioned earlier, within five seconds ago, there are a lot of things that can change, including what is happening with his personal life, what is happening with his professional life, what is happening with his corporate life, as well as what is happening in the overall capital markets.
5. Q. THE COURT: Two things. One, slow down. And two, the question was, did you come across a certain statement. Not your interpretation of what then happened. The other side could redirect you on what your interpretation was.
6. Q. Mr. Unell, if I could hand you a document. It is already in evidence. I think it is easier for everyone.
7. A. MR. WALLACE: If we turn to page two of this document.
8. Q. At the bottom there is an e-mail from Rosemary Vrablic. She is forwarding an attached summary of terms, the proposed acquisition of the Doral resort.
9. A. MR. WALLACE: It is Plaintiff's Exhibit 1251.
10. Q. Ivanka Trump responds -- forwards this on to Mr. Weisselberg, Mr. Greenblatt, Mr. Orowitz. And writes: It doesn't get better than this. Let's discuss ASAP. I want to call Rosemary and thank her, but if there are any asks I would like to give her an indication. I am tempted not to negotiate this, though.
11. A. I have seen that before, yes, sir.
12. Q. And if you look at the response from Jason Greenblatt above, page one. Do you know who Jason Greenblatt is?
13. A. Yes.
14. Q. Okay. So, Ms. Trump believes that the only way to get a great rate and the terms and principal they wanted, were
Unell - by Defendant - Cross (Wallace)  

<table>
<thead>
<tr>
<th>Page</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
<th>6</th>
<th>7</th>
<th>8</th>
<th>9</th>
<th>10</th>
<th>11</th>
<th>12</th>
<th>13</th>
<th>14</th>
</tr>
</thead>
</table>
|      | guarantee the deal. Is that indicative of the benefit that they were going to be able to obtain by guaranteeing the deal? Is that fair? A Yes. Q If you look at the response from Mr. Greenblatt. He states: Obviously this is not my decision, but this is completely inconsistent with what he told me he would ever do again when we had the Chi and Vegas issues, and the magnitude of this is much bigger. He was so angry that he got himself into the Chi/Vegas mess and told me he never wanted to do this again. I understand that he has changed his mind. And that's fine. But he has to recall that banks do sue under payment guaranties and he may have to write a check north of 125 million if there is any default on the loan. I think we can agree though, that despite these concerns of Mr. Greenblatt, Mr. Trump agreed to guarantee these loans, correct? A Yes. He was the ultimate decision maker as the guarantor. Q It is your opinion that he did this to obtain a 25 basis-point improvement in the interest rate on the loans; is that right? A No, that's not it. That's not what I stated. Q What are you saying? A I am stating he did it to obtain a preferential rate in the bank of the Private Wealth Management bank, which would have been in line with its pricing guidelines, which he was aware of. They have a published pricing guideline, and it required a guaranty. And he provided the guaranty. What Deutsche Bank decided was the premium there, that's for Deutsche Bank to decide, not me or you. Q What is your evidence that Deutsche Bank published its pricing guideline? A They didn't publish their pricing guideline. However, in my experience, they would have because there was a guaranty in place. And they retained a guaranty. What McCarty were not measuring the same thing. Q Or the Court, to be fair. I am focused on interest rates. And are you saying that there was a greater benefit to be derived in interest rates beyond the 25 basis points you have been talking about? A There is a benefit to be derived, to be determined based on other deal terms. The guaranty is one of many terms that go with an interest rate. It is not just, oh, guaranty or no guaranty 25 bits. You can't put this in a square box in a vacuum. You are ignoring multiple other facts that go into the pricing of a loan.

Unell - by Defendant - Cross (Wallace)  

<table>
<thead>
<tr>
<th>Page</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
<th>6</th>
<th>7</th>
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<th>12</th>
<th>13</th>
<th>14</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Donald J. Trump et al December 1, 2023</td>
<td>NYS Attorney General v.</td>
<td>25</td>
<td>24</td>
<td>23</td>
<td>22</td>
<td>21</td>
<td>20</td>
<td>19</td>
<td>18</td>
<td>17</td>
<td>16</td>
<td>15</td>
<td>14</td>
</tr>
</tbody>
</table>

Unell - by Defendant - Cross (Wallace)  

<table>
<thead>
<tr>
<th>Page</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
<th>6</th>
<th>7</th>
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|      | Yes. Q If you look at the response from Mr. Greenblatt. He states: Obviously this is not my decision, but this is completely inconsistent with what he told me he would ever do again when we had the Chi and Vegas issues, and the magnitude of this is much bigger. He was so angry that he got himself into the Chi/Vegas mess and told me he never wanted to do this again. I understand that he has changed his mind. And that's fine. But he has to recall that banks do sue under payment guaranties and he may have to write a check north of 125 million if there is any default on the loan. I think we can agree though, that despite these concerns of Mr. Greenblatt, Mr. Trump agreed to guarantee these loans, correct? A Yes. He was the ultimate decision maker as the guarantor. Q It is your opinion that he did this to obtain a 25 basis-point improvement in the interest rate on the loans; is that right? A No, that's not it. That's not what I stated. Q What are you saying? A I am stating he did it to obtain a preferential rate in the bank of the Private Wealth Management bank, which would have been in line with its pricing guideline, and it required a guaranty. And he provided the guaranty. What Deutsche Bank decided was the premium there, that's for Deutsche Bank to decide, not me or you. Q What is your evidence that Deutsche Bank published its pricing guideline? A They didn't publish their pricing guideline. However, in my experience, they would have because there was a guaranty in place. And they retained a guaranty. What McCarty were not measuring the same thing. Q Or the Court, to be fair. I am focused on interest rates. And are you saying that there was a greater benefit to be derived in interest rates beyond the 25 basis points you have been talking about? A There is a benefit to be derived, to be determined based on other deal terms. The guaranty is one of many terms that go with an interest rate. It is not just, oh, guaranty or no guaranty 25 bits. You can't put this in a square box in a vacuum. You are ignoring multiple other facts that go into the pricing of a loan.

Unell - by Defendant - Cross (Wallace)  

<table>
<thead>
<tr>
<th>Page</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
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|      | Q So, I am going to represent to you that what is happening is an effort to figure out how much disgorgement, how much benefit the Trump Organization obtained, and we are just trying to obtain a reasonable approximation. A So, let me ask, is there -- what -- I'll withdraw. I'll restate the question. Q Can you state what the interest rate benefit was from having a guaranteed loan as opposed to a non-guaranteed loan on the Doral property? A No. Q Okay. So Mr. Unell, I will represent to you that as part of the assignment Mr. McCarty received, he was asked to assume that Mr. Trump did not have access to the Private Wealth Management group because Mr. Trump had engaged in fraud in the preparation of his financial statements. Does your interest differential calculation include that assumption? A No, because that's not what my assignment was, because there was a guaranty in place. Q So putting aside the fraud piece. Does your interest differential calculation include an assumption that Mr. Trump does not have access to the Private Wealth Management group at Deutsche Bank? A No, because he did have access to it. Q And so if that was Mr. McCarty's assignment, you two aren't really measuring the same thing, are you? A I can measure that his rates -- Q That's not my question. My question is, you and Mr. McCarty were not measuring, if that was Mr. McCarty's assignment, you and Mr. McCarty were not measuring the same thing. MR. KISE: Objection, Your Honor. I think Mr. Wallace's hypothetical presumes facts contrary to the evidence. This is an improper hypothetical. MR. WALLACE: It is a hypothetical, so. MR. KISE: You can't pose a hypothetical that is squarely contrary. That's like saying assume today is Tuesday. It is not Tuesday, it is Friday. THE COURT: Okay. I am not sure he is doing that.
MR. KISE: But he is. If you want to excuse the
witness, we can, but that's definitely what he is doing.

His hypothetical -- his hypothetical premises in
the first instance that President Trump wouldn't have
qualified for the private wealth bank. He did. You
already heard testimony, 10 million and 100 million,
that's it. 10 million liquidity, 100 million net worth.

Once you are there, you are in the private bank. That's
it, you are in. Period. It doesn't matter beyond that.

So it is like assuming that he didn't qualify.

MR. WALLACE: Now we should excuse the witness.

MR. KISE: That's fine. I offered.

MR. WALLACE: (Whereupon the witness stepped down from the
stand and exited the courtroom.)

MR. WALLACE: That's fine. I offered.

R. Unell - by Defendant - Cross (Wallace) Page 5779

MR. KISE: It's an evidentiary objection. Mr. Kise --

MR. WALLACE: This is -- your Honor, this is not an
evidentiary objection. Mr. Kise --

MR. KISE: It is an evidentiary.

MR. WALLACE: -- he does this all the time. You
argue your case. I would say it also shows, Mr. Kise,
something you never talk about, that the Court found
Mr. Trump committed fraud to get into the --

MR. KISE: No.

MR. WALLACE: To get into Private Wealth, got
committed fraud.

MR. KISE: No.

MR. WALLACE: He did.

MR. KISE: No.

MR. WALLACE: The Court has found that.

MR. KISE: No. The Court has found that he
violated 63(12), which expressly means only that he violated
the statute and not fraud; that's what we are here about.

R. Unell - by Defendant - Cross (Wallace) Page 5780

THE COURT: Mr. Kise, do you need to finish or --

MR. KISE: Yeah, no, it's -- it's like going back
and debating whether the world is round or whether the world
is flat. I mean, the evidence in the record demonstrates he
qualified for the Private Wealth Bank; 10 million liquidity,
100 million in net worth. I mean, that's just undisputed.

So once you are in the Private Wealth Bank, and maybe this
is where the disconnect is. Once you are in the Private
Wealth Bank, your interest rates are different, period, full
stop. They are different. And they are different because,

as you heard the testimony, they are different because the
bank wants you as a client. He's a whale of a client. He's
a billionaire. He is one of -- so they are willing to give
him rates because they are going to get deposits; they are

going to get access to his assets; they are going to write
other loans. You heard all this testimony. So they are

willing to do things for this client that they are not going
to do for just somebody who comes in off the street.

So, yes, you have to give a personal guaranty, but
the pricing to on the personal guaranty is not the pricing
between the regular world and Private Wealth. The pricing
is within the Private Wealth parameters. And that's exactly
what this witness is saying is, okay, there's a range you
heard -- you heard the witness, Mr. Williams, testify to it,

2 percent to 2.5 percent. So that's 25 basis points. So

that's what the guaranty is worth. Once you are in the
private bank, you are in this sort of rarified air and you
get access to these rates. So it's a flawed premise. It's
an improper hypothetical to say, well, no, no, we have to
compare it to the outside world, and this witness has to
accept that premise. I mean, yes, if I assume that today is
Tuesday not Friday, then tomorrow will be Wednesday and not
Saturday. I mean, right --

MR. WALLACE: This is -- your Honor, this is not an
evidentiary objection. Mr. Kise --

MR. KISE: It is an evidentiary.

MR. WALLACE: -- he does this all the time. You
argue your case. I would say it also shows, Mr. Kise,
something you never talk about, that the Court found
Mr. Trump committed fraud to get into the --

MR. KISE: No.

MR. WALLACE: To get into Private Wealth, got
committed fraud.

MR. KISE: No.

MR. WALLACE: He did.

MR. KISE: No.

MR. WALLACE: The Court has found that.

MR. KISE: No. The Court has found that he
violated 63(12), which expressly means only that he violated
the statute and not fraud; that's what we are here about.

This is the problem with the Attorney General's view. They
haven't proven -- in order to establish fraud, intent,
materiality, reliance and damage. I mean, that was what you
have to establish; that's what's at issue with these
remaining counts. They wanted a trial on these remaining
counts. That's what this trial is about.

MR. WALLACE: I believe.

MR. KISE: 63(12) violation, as your Honor has
held, a 63(12) violation doesn't require those elements. So
to call it fraud in the generic sense because we use that
term in association with 63(12), doesn't mean that it's
fraud in the sense of what's at issue in this case.

MR. WALLACE: Your Honor, your Honor,

THE COURT REPORTER: I can't hear when you are
both --

MR. KISE: I'm not arguing a case. It's an
evidence objection. A hypothetical, it's an improper
hypothetical.

THE COURT: Mr. Wallace, do you have anything to
say?

MR. WALLACE: Are you about to strike my
examination of this witness?

THE COURT: Your what?

MR. WALLACE: My examination of this witness.

Mr. Kise is saying I shouldn't be allowed to because they
1 are improper hypotheticals.
2 MR. KISE: It was one question. It wasn't the
3 whole examination. I liked most of the rest of it.
4 THE COURT: Would you like to explain --
5 MR. WALLACE: No, I don't want to rephrase my
6 question.
7 THE COURT: I'm --
8 MR. WALLACE: I'm sorry. I interrupted you.
9 THE COURT: I'm not asking you to rephrase. I'm
10 asking for you to defend it.
11 MR. WALLACE: It is completely consistent with our
12 disgorgement theory, which also relates to 63(12) fraud,
13 that he lied to the Private Wealth Group to get these loans,
14 and therefore, we are looking as to what the interest rates
15 would have been if he had not had access to the group that
16 he lied to. That is the simple measure, and the Court will
17 be free to decide whether it likes that measure or it
18 prefers Mr. Unell's measure at the end of the day.
19 MR. KISE: We are right back to circuitous again.
20 MR. WALLACE: It's less circuitous if I just finish
21 the exam.
22 THE COURT: Objection overruled. We could argue
23 all day. Let's get the witness back. You could ask him
24 hypotheticals. I don't see a problem with that, and I
25 accept Mr. Wallace's explanation.

1 (Whereupon, there is a brief pause in the
2 proceedings as the witness enters the courtroom and steps
3 into the witness stand.)
4 THE COURT: I should explain "I accept his
5 explanation." I think so his explanation is correct. Thank
6 you.
7 Okay. Next question.
8 Q Mr. Unell, I think you said that you did not accept --
9 MR. WALLACE: Why don't we put up DD5 and PDX4 side
10 by side.
11 (Whereupon, the exhibit was displayed on the
12 screen.)
13 Q So this is your analysis, and it should hopefully be
14 Mr. McCarty's analysis, both which are very hard to view on this
15 screen, but I can say that -- we talked about this, but
16 Mr. McCarty uses a ten percent rate for Doral; correct?
17 A Yes, sir.
18 Q And I believe you, yesterday, criticized Mr. McCarty
19 for using a fixed rate rather than a flat rate; is that correct?
20 A Yes, sir.
21 Q And that's because the DB loans had floating rates; is
22 that correct?
23 A Yes, sir.
24 Q You reviewed Mr. McCarty's trial testimony; is that
25 right?
R. Unell - by Defendant - Cross (Mr. Wallace)  Page 5785

1 could pull up -- focus on the chart, I think.  Well, just the chart is fine.
2 (Whereupon, the exhibit was displayed on the screen.)
3 Q  This is the table that you utilized in preparing your analysis of the increases -- the flow of interest rates -- let me rephrase that.
4 This is the information you used in preparing your tables showing the changes in interest rate spreads over time; is that right?
5 A  Actually, I believe that it was taken from the various individual pages throughout here that, for instance, when you would look at page 23 of 41 where it says "lodging facilities, full-service", that that would provide that information.
6 I'm not certain that it ties back out to the overall on this page.  So it -- no, it was not.  It was more so both this, and it ties back to 23.
7 Q  We could pull up --
8 A  11 and 23.  I want to make sure I'm saying that all the data was.  This was a portion of it, but 23, also.
9 Q  So let's pull up page 23.
10 A  Yes.
11 THE COURT: One at a time, and slower.
12 MR. WALLACE: Apologies.
13 A  Mr. Wallace, I'm not saying it wasn't.  I want to make sure this was also placed out there, too.
14 (Whereupon, the exhibit was displayed on the screen.)
15 Q  Presumably the information, the two tables, correlates.
16 A  I believe so.  This is the more detailed table, yes.
17 Q  Why don't we just go to the broad table then.  I'm not going to get into too much detail.
18 A  That's fine.  I want to make sure we are working off of the same numbers.
19 MR. WALLACE: Okay.  So if we go back to page six, the table.
20 (Whereupon, the exhibit was displayed on the screen.)
21 Q  So your analysis, you are using the first row at the top, correct, which is spread over base?
22 A  We've used several of these.  We've used the loan-to-value, we've used interest rate.
23 THE COURT REPORTER: I'm sorry, we've used interest rate and --
24 A  Spread over base, interest rate and loan-to-value.
25 MR. WALLACE: Why don't we pull up DD4, page one, if we could.
26 (Whereupon, the exhibit was displayed on the screen.)
27 Q  For this chart --

R. Unell - by Defendant - Cross (Mr. Wallace)  Page 5786

1 the Doral loan being initiated was for Mr. Trump to do extensive renovations to the resort; is that correct?
2 A  Yes.
3 Q  I believe he had said that the brand had been misaligned and that it had been miss run by the Marriott group; is that correct?
4 A  I believe so, yes.
5 Q  So he eventually spent more than $200 million renovating the property; is that right?
6 A  That's correct.
7 Q  But it's your position that at the time they're initiating this loan, with all that renovation still to come, it was appropriate to price it as a Class A property?
8 A  Absolutely.  It was a first-class facility, and just because it needs renovation does not mean that it is not a Class A facility.
9 THE COURT REPORTER: There are multiple examples and items or projects that I've worked on throughout my career that are renovation projects that are treated as Class A.
10 MR. WALLACE: Exactly.  It was a full-service lodging facility.  It's not certain if it was a Class B, but it would have been factored into Class A based off the renovations that were going to be undertaken by the defendants.
11 Q  I guess that's my question.  Is the plan at the time of

R. Unell - by Defendant - Cross (Mr. Wallace)  Page 5787

1 the Doral loan is that appropriate to price it as a Class A property?
2 A  Yes.
3 Q  -- you looked at yesterday, is this using the spread over base?
4 A  Spread over base for office.  Yes, because this is based off of the average, yes, sir.
5 Q  And if we look at the notations, the two stars next to spread over base, at the bottom it says this is a spread over base over the ten-year treasury rate.
6 A  It would mean the ten-year treasury would be the base rate.
7 Q  And the Doral loan was priced as a spread over LIBOR; is that correct?
8 A  Yes.
9 Q  And these -- the data presented here, and we could open up, are Class A, Class B properties; is that correct?
10 A  Yes.
11 Q  And I believe you testified at your deposition that Doral, at this time, was a Class B property; is that correct?
12 A  It was a full-service lodging facility.  I'm not certain if it was a Class B, but it would have been factored into Class A based off the renovations that were going to be undertaken by the defendants.
13 Q  I guess that's my question.  Is the plan at the time of

R. Unell - by Defendant - Cross (Mr. Wallace)  Page 5788

1 the Doral loan being initiated was for Mr. Trump to do extensive renovations to the resort; is that correct?
2 A  Yes.
3 Q  I believe he had said that the brand had been misaligned and that it had been miss run by the Marriott group; is that correct?
4 A  I believe so, yes.
5 Q  So he eventually spent more than $200 million renovating the property; is that right?
6 A  That's correct.
7 Q  But it's your position that at the time they're initiating this loan, with all that renovation still to come, it was appropriate to price it as a Class A property?
8 A  Absolutely.  It was a first-class facility, and just because it needs renovation does not mean that it is not a Class A facility.
9 THE COURT REPORTER: There are multiple examples and items or projects that I've worked on throughout my career that are renovation projects that are treated as Class A.
10 MR. WALLACE: Exactly.  It was a full-service lodging facility.  It's not certain if it was a Class B, but it would have been factored into Class A based off the renovations that were going to be undertaken by the defendants.
11 Q  I guess that's my question.  Is the plan at the time of

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NYS Attorney General v. 

December 1, 2023

<table>
<thead>
<tr>
<th>R. Unell - by Defendant - Cross (Mr. Wallace)</th>
<th>Page 5789</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Mr. Trump paid $150 million to purchase the resort out of bankruptcy; correct?</td>
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<tr>
<td>2. Q And he was then going to invest more than $200 million of his own funds in the property?</td>
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<tr>
<td>3. A Correct.</td>
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<td>4. Q So the fact that the property was going to need $200 million of renovation over several years, to your professional view, did not add any risk to the loan for the Doral property?</td>
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<tr>
<td>5. A Additional risk over what?</td>
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<td>6. Q That the project would be successful; that the project would be repaid?</td>
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<td>8. Q And --</td>
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<td>9. A So it's no more risky than any other, you know, repositioning loan that's out there.</td>
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<tr>
<td>10. Q My question is, these are for operating properties.</td>
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<td>11. Was the fact that Doral was going to require extensive renovations, $200 million, did that add any risk that should be considered in pricing the loan for that property?</td>
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<tr>
<td>12. A Add any risk to what? I'm trying to figure out what we are adding risk to.</td>
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<tr>
<th>R. Unell - by Defendant - Cross (Mr. Wallace)</th>
<th>Page 5790</th>
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<tr>
<td>1. Q You said that banks set interest rates based on their assessment of the risk in the loan.</td>
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<tr>
<td>2. A Okay. And that was factored in to their analysis of the project in the plan.</td>
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<td>3. Q I'm asking -- the &quot;they&quot; you are referring to is Deutsche Bank?</td>
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<td>4. A Deutsche Bank, yes, sir.</td>
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<td>5. Q I'm not asking about Deutsche Bank at this point. My question is whether the Doral loan is more risky because the property needed to be renovated, over an operating property that is not planning on extensive renovations?</td>
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<td>6. A If you are trying to compare it between a property that needs renovation and doesn't need renovation, it could.</td>
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<td>7. However, there are many examples of luxury properties that go through a renovation that are accretive and do not create additional risk. So to measure that risk, you would have to dive into the actual details of what the plan was, the timing of it, the impact on ADR, how would it affect occupancy, how it affects cash flow, the timing of it. So in order for seasonality, there are multiple factors that go into that that I did not evaluate that were evaluated by Deutsche Bank in that analysis of the project.</td>
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<td>8. Q Let's go back to the sort of market rate information you were talking about. If we look at golf, Doral also had a golf element; correct?</td>
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<tr>
<th>R. Unell - by Defendant - Cross (Mr. Wallace)</th>
<th>Page 5791</th>
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<td>1. A Correct.</td>
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<td>2. Q That's why you included the golf courses and country club number in your chart? correct?</td>
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<td>3. A Yes, sir.</td>
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<tr>
<td>4. Q If we look at the spread for golf, the minimum is 1.2, the maximum is 11.5, and the average is 5.84. Actually, why don't we look at the interest rate instead, because I believe the two percent number that -- the two point -- the two plus number that you were using was the actual interest rate, so that included the spread plus whatever the base rate would have been; correct?</td>
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<td>5. A Um, we looked at it from multiple different angles, so happy to look at it however you like.</td>
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<td>6. Q So since Mr. McCarty, in his chart, and you, in your chart, include natural interest rate, let's look at the interest rate column. For golf, the minimum is 3.5; correct?</td>
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<td>8. Q And so that's higher than the two plus rate that Mr. Trump actually obtained; correct?</td>
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<td>9. A It is.</td>
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<td>10. Q And the maximum is 13.8; is that correct?</td>
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<td>12. Q And the average is 8.14; correct?</td>
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<td>14. Q So the eight percent -- so the ten percent used by Mr. Trump actually obtained; correct?</td>
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<th>R. Unell - by Defendant - Cross (Mr. Wallace)</th>
<th>Page 5792</th>
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<tr>
<td>1. Mr. McCarty is between the maximum and the average; is that correct?</td>
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<tr>
<td>2. A Yeah.</td>
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<td>3. Q Okay.</td>
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<td>4. Why don't we take a look at another document. Let me ask, Mr. Unell, did you consider any contemporaneous documents about the potential commercial real estate loans, without a personal guaranty, that were being offered on Doral?</td>
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<td>5. A I reviewed nonbinding term sheets.</td>
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<td>6. Q And you decided not to use those documents; correct?</td>
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<td>7. A They were nonbinding.</td>
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<td>8. Q So you didn't rely on them.</td>
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<td>9. A They were not binding and not relied in my opinion.</td>
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<tr>
<td>10. Q They were not to be relied on.</td>
<td></td>
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<tr>
<td>11. A In my expert opinion, in my experience, a nonbinding term sheet is not an indication of terms, so therefore, I did not include it.</td>
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<tr>
<td>12. Q And so you, in fact, did not rely on them; correct?</td>
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<tr>
<td>13. A In my expert opinion, in my experience, a nonbinding term sheet is not an indication of terms, so therefore, I did not include it.</td>
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<td>14. Q As long as I have -- I just wanted to follow up on the last topic. I think what Mr. Wallace was asking -- maybe I'm wrong -- all other things being equal, because</td>
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Mr. Unell, you like to bring in all these various factors, which often are very important about the pricing of a loan, but if all other things are equal, is there more risk to a lender in lending to a fully built Class A property worth approximately $350 million opposed to a potential Class A property that's being purchased for $150 million and there's an estimate of $200 million to bring it up to Class A? Wouldn't there be more risk? I could ask leading questions I hope.

THE WITNESS: There is, but there is also more reward there. And the upside is more. So you're initial investment of $150 million for the lender is less than the $350 million loan that they would make. So with the equity infusion of the $200 million, the guarantor and borrower had more money invested into this asset than the lender did. And so I would have to say with -- it's not all things equal. You would have to look at everything there. So you are trying to say a $350 million stabilized loan or $150 million stabilized loan with $200 million of equity in it, that's not an apples to apples comparison. And there is no way to compare that without doing extreme analysis that was conducted by Deutsche Bank to determine where the risk profile is.

Those are two completely different animals that -- you are talking about different amounts of leverage; you are talking about a different amount of equity contribution; you are talking about a different future value. And more importantly, you are talking about a different principal amount of 150 versus 350 million.

THE COURT: What if the principal amount of the loans was equal?

THE WITNESS: Well, if it was 150 million and 150 million, you wouldn't be able to -- how would you come up with the $200 million of equity to purchase a $350 million loan. Nobody is going to go out and buy a $350 million operating stabilized hotel and only take out $150 million of debt. They would leverage it up to 65 to 75 percent, as is done and shown in the investor survey, that the average LTV was 70 percent. So you can't compare $150 million loan to a $150 million loan that is at a completely different loan-to-value with a different profile in equity contribution. It's not -- it's not fair to for anybody to do.

It would be impossible to do, as I sit here today, without having all of those factors in front of me, and to underwrite them side by side and tell you what that would be. It's not an equal comparison. They are two different loan products.

THE COURT: All right. Next question.

MR. WALLACE: We are going to hand the witness a document that's been marked as Plaintiff's Exhibit 369.

(Whereupon, the exhibit was displayed on the screen.)

(The witness was handed the exhibit.)

THE WITNESS: Thank you, sir.

Q Mr. Unell, you reviewed this document preparing your report; is that correct?

A Let me make sure this is it. Yes, sir.

Q And this is a transaction overview of a proposed loan by Doral for the CRE Group in Deutsche Bank, dated November 21, 2011; correct?

A Yes, sir.

Q This proposal does not include a personal guaranty, does it?

A No, it doesn't.

MR. WALLACE: Turn to page five of the document.

(Whereupon, the exhibit was displayed on the screen.)

Q Under the bar marked "Facility", it states the amount of the loan would be 130 million dollars, and the transaction would be LIBOR 800 -- LIBOR plus 800, with a LIBOR floor of 200 BPS, or two percent; is that correct?

A Yes, sir.

Q And so this rate matches the ten percent rate that Mr. McCarty used; is that correct?
<table>
<thead>
<tr>
<th>Page 5797</th>
<th>Page 5798</th>
<th>Page 5800</th>
</tr>
</thead>
<tbody>
<tr>
<td>R. Unell - by Defendant - Cross (Mr. Wallace)</td>
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<tr>
<td>1</td>
<td>I wanted to ask you if the last page of documents,</td>
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<td>easiest way to see it, there is a summary of terms in the</td>
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<td>line that say the facility.&quot;</td>
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<td>4</td>
<td>Yeah.&quot;</td>
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<td>5</td>
<td>It says the amount is 130 million. The spread is</td>
<td>5</td>
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<td>6</td>
<td>L plus 800 BPS, which I'm interpreting to mean LIBOR plus</td>
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<td>7</td>
<td>800?&quot;</td>
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<td>8</td>
<td>ANSWER: Yes.</td>
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<td>9</td>
<td>QUESTION: The LIBOR floor is two percent OID is</td>
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<td>10</td>
<td>97, and the maturity is six years. I just wanted to see if</td>
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<td>11</td>
<td>this refreshes your recollection that Deutsche Bank, the</td>
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<td>12</td>
<td>Commercial Real Estate Group, was offering you a rate of</td>
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<td>13</td>
<td>LIBOR plus 800?</td>
<td>13</td>
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<td>14</td>
<td>ANSWER: Well, it's LIBOR, a floor of two, which</td>
<td>14</td>
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<td>15</td>
<td>it was going lower than that at the time. So I was actually</td>
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<td>16</td>
<td>-- so I had a floor of two, which was sort of standard, and</td>
<td>16</td>
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<tr>
<td>17</td>
<td>then 800 over that.&quot;</td>
<td>17</td>
</tr>
<tr>
<td>18</td>
<td>&quot;So that would be ten percent at the lowest of the</td>
<td>18</td>
</tr>
<tr>
<td>19</td>
<td>lowest?&quot;</td>
<td>19</td>
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<tr>
<td>20</td>
<td>ANSWER: So it would be -- no. It would mean two</td>
<td>20</td>
</tr>
<tr>
<td>21</td>
<td>plus 800 BPS.&quot;</td>
<td>21</td>
</tr>
<tr>
<td>22</td>
<td>&quot;Okay.&quot;</td>
<td>22</td>
</tr>
<tr>
<td>23</td>
<td>ANSWER: I think that was an I think it was pretty</td>
<td>23</td>
</tr>
<tr>
<td>24</td>
<td>standard.&quot;</td>
<td>24</td>
</tr>
<tr>
<td>25</td>
<td>&quot;Okay but you didn't choose to go with the</td>
<td>25</td>
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<td>R. Unell - by Defendant - Cross (Mr. Wallace)</td>
<td>R. Unell - by Defendant - Cross (Mr. Wallace)</td>
<td>R. Unell - by Defendant - Cross (Mr. Wallace)</td>
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<tr>
<td>1</td>
<td>Commercial Real Estate Group at Deutsche Bank; is that</td>
<td>1</td>
</tr>
<tr>
<td>2</td>
<td>correct?&quot;</td>
<td>2</td>
</tr>
<tr>
<td>3</td>
<td>&quot;No, I didn't.&quot;</td>
<td>3</td>
</tr>
<tr>
<td>4</td>
<td>So Mr. Trump is stating that two plus 800 BPS is</td>
<td>4</td>
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<tr>
<td>5</td>
<td>pretty standard; correct?</td>
<td>5</td>
</tr>
<tr>
<td>6</td>
<td>A</td>
<td>I mean, he says it was sort of standard. He doesn't</td>
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<tr>
<td>7</td>
<td>say that. He said it was sort of standard. If you would</td>
<td>7</td>
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<tr>
<td>8</td>
<td>scroll back up, he is actually talking about the floor is sort of</td>
<td>8</td>
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<tr>
<td>9</td>
<td>standard, not the 800 over that.</td>
<td>9</td>
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<tr>
<td>10</td>
<td>Q</td>
<td>Well, we could each interpret --</td>
</tr>
<tr>
<td>11</td>
<td>A</td>
<td>Could you please scroll up so that I could read into</td>
</tr>
<tr>
<td>12</td>
<td>the whole thing so that I can have my answer correct, please.</td>
<td>12</td>
</tr>
<tr>
<td>13</td>
<td>My reading of this in the opinion is that the floor was</td>
<td>13</td>
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<tr>
<td>14</td>
<td>standard, not the 800 BPS was standard.</td>
<td>14</td>
</tr>
<tr>
<td>15</td>
<td>Q</td>
<td>Well, he then says:</td>
</tr>
<tr>
<td>16</td>
<td>&quot;So it would be -- no it would mean the two plus</td>
<td>16</td>
</tr>
<tr>
<td>17</td>
<td>800 BPS, okay. And I think this was pretty standard.&quot;</td>
<td>17</td>
</tr>
<tr>
<td>18</td>
<td>That was after the discussion of ten percent. Your</td>
<td>18</td>
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<tr>
<td>19</td>
<td>interpretation of this is it's only the two -- LIBOR floor of</td>
<td>19</td>
</tr>
<tr>
<td>20</td>
<td>two?</td>
<td>20</td>
</tr>
<tr>
<td>21</td>
<td>A</td>
<td>That's correct.</td>
</tr>
<tr>
<td>22</td>
<td>Q</td>
<td>If Mr. Trump was, in fact, saying that LIBOR floor of</td>
</tr>
<tr>
<td>23</td>
<td>two plus 800, or 10 percent was standard, you would disagree</td>
<td>23</td>
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<tr>
<td>24</td>
<td>with that?</td>
<td>24</td>
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<tr>
<td>25</td>
<td>A</td>
<td>Yes, based off of my experience.</td>
</tr>
</tbody>
</table>
1. above and placed the 250 above --
2. THE COURT REPORTER: I'm sorry, to be determined,
3. because they already had gone above --
4. A They already gone above 250 million, and the plans
5. could've changed based off of the financing.
6. Q But to use a turn of phrase, all other things being
7. equal, this loan, as opposed to the Deutsche Bank loan, they
8. would have had to have $30 million of their own equity added?
9. A If the development plan would have stayed the same,
10. yes, sir.

11. MR. WALLACE: If we could do another document,
12. Plaintiff's Exhibit 3243.
13. (Whereupon, the exhibit was displayed on the
14. screen.)
15. MR. WALLACE: It's in evidence.
16. THE WITNESS: Thank you.
17. Q So this is an e-mail between Ivanka Trump, Ronnie
18. Levine, Ralph Herzka, and Dave Orowitz, dated November 1, 2011.
19. Mr. Unell, did you review this document in the course
20. of preparing your report?
21. A I don't believe so.
22. (Continued on the next page.)

Unell - by Defendant - Cross (Wallace) Page 5802

1. Q Do you know who Ronny Levine at Meridian Capital is?
2. A No, sir.
3. Q If you look at the e-mail from Mr. Levine to Ivanka
4. Trump he writes: Heard back from Blackstone a little while ago
5. and they are a pass on the deal. Didn't get a definitive
6. answer as to why. But Peter mentioned to me this morning they
7. over weighted on hotels in the debt fund.
8. Do you know if the Trump Organization approached
9. Blackstone about financing for the Doral resort?
10. A I am not aware if they did or not.
11. Q A little further down he writes about following up
12. with Jeff Weissman from Macquaire.
13. Do you know if the Trump Organization approached
14. Macquaire for the loan?
15. A Macquaire is an investment bank. I am not certain
16. what their ability to finance that is or not.
17. Q The next paragraph he mentions a reach-out to Chuck
18. Rosenzweig at Criterion Partners. Do you know if Trump
19. Organization approached Criterion Partners about financing for
20. the Doral project?
22. Q If you look down he writes: He has been trying to
23. reach out to Todd Sammann at Colony.
24. Do you know if the Trump Organization approached
25. Colony about financing for the Doral transaction?

Unell - by Defendant - Cross (Wallace) Page 5803

1. A I am not aware of that.
2. Q At the end he says: We have lunch with HSBC tomorrow
3. and will be discussing the deal with them.
4. Do you know if the Trump Organization approached HSBC
5. about financing for the Doral transaction?
6. A I am not aware.
7. Q If we go to the top e-mail from Ms. Trump she writes:
8. I actually spoke to Tom Harrison at Colony today. I know Todd
9. through Jared as well, as we are partners on another deal
10. together. He said that we wouldn't want to do a deal with them
11. on the debt side, as they are too expensive for what we would
12. be looking for (low teens).
13. Do you have a view as to whether or not a rate in the
14. low teens would have been a market rate for debt on the Doral
15. project?
16. A Perhaps from a non-bank lender such as Colony or
17. these other firms that are out there from a debt fund.
18. Q I think we have heard Mr. Suarez say the Trump
19. Organization could have approached thousands of banks about
20. these loans. First of all, do you know how many banks the
21. Trump Organization approached to finance these transactions?
22. A I do not.
23. Q Do you know how many non-banks they approached to
24. finance these transactions?
25. A I do not.

Unell - by Defendant - Cross (Wallace) Page 5804

1. MR. WALLACE: I think we can put that document
2. aside.
3. To further continue a theme, Your Honor, if we
4. want to take a slightly early break I may be able to
5. condense.
6. THE WITNESS: You would be one for one overall.
7. MR. ROBERT: As long as he has the same batting
8. average, we have no objection.
9. MR. WALLACE: I think we can shorten things.
10. THE COURT: You are taking a page from
11. Mr. Kise's playbook.
12. MR. WALLACE: As often as I can, Your Honor.
13. THE COURT: All right, so 20 after we will see
14. you then.
15. (Pause in the proceedings.)
16. COURT OFFICER: All rise.
17. Part 37 is back in session.
18. Please be seated and come to order.
19. (Whereupon the witness resumed the stand.)
20. THE COURT: Mr. Wallace, are you ready to
21. continue?
22. MR. WALLACE: I am, Your Honor.
23. Q Mr. Unell, just a couple of quick questions to close
24. out the Doral loan. I believe you said that the offers from
25. the Deutsche Bank CRE group had not been fully negotiated, they
1. Did you have as detailed an understanding of the property, and
2. that's some of the reasons you didn't consider those to be
3. market estimates of value; is that fair?
4. A Yes, sir.
5. MR. WALLACE: If we could pull up Plaintiff's
6. Exhibit 3111. This is already in evidence.
7. Q I apologize, I don't have a hard copy. But this is
8. an e-mail chain from November 2011 between Dave Orowitz and
9. Allen Weisselberg and others at Deutsche Bank. The top e-mail
10. Mr. Orowitz writes: Mark, it was good speaking with you
11. earlier today.
12. Please find a link to a folder containing the due
13. diligence materials that you requested.
14. I'll just note that the cc also includes David
15. Goodman. Do you know if the people on this e-mail chain were
16. in the CRE group of Deutsche Bank or the Private Wealth
17. Management group of Deutsche Bank?
18. A I do not, no.
19. Q I'll represent to you that Dave Goodman is in the CRE
20. group at Deutsche Bank.
21. MR. WALLACE: If we could go down to, I believe,
22. page two of this document?
23. Q This is after Ivanka Trump has written an
24. introductory e-mail and she writes: Thank you for providing us
25. with the investment memo and projections for the Doral Golf

1. Resort and Spa in Miami, Florida. We at Deutsche Bank are very
2. familiar with the asset, as we have financed this loan several
3. times over the years for previous ownership.
4. Then it states: The Commercial Real Estate group in
5. conjunction with the Leverage Finance group are giving
6. immediate attention to your request.
7. Do you know what the Leverage Finance group at
8. Deutsche Bank is?
9. A No, sir.
10. Q You will see that there is an attachment of a due
11. diligence file. Do you know how far the due diligence went
12. between the Commercial Real Estate group and the Trump
13. Organization on the financing of the Doral transaction?
14. A I have seen no evidence to indicate one way or the
15. other.
16. MR. WALLACE: We can put Doral to the side.
17. Q I just want to clarify one point, actually, in the
18. affidavit that you submitted two nights ago.
19. MR. WALLACE: So if we could put up on the
20. screen Defendant's Exhibit 1061.
21. Q This is the affidavit you prepared that, among other
22. things, updated your opinion. And I believe was the basis for
23. the table we looked at calculating a potential interest
24. differential. Is this correct?
25. A Yes. This was a portion of that basis, yes.

1. Q And I just wanted to check on one thing on page 11,
2. on the last page. I am sorry, paragraph 11.
3. A I was going to say, I am missing part of it.
4. It is Friday.
5. Q Paragraph 11, page four. You write that given the
6. testimony and documents presented at trial that show 1)
7. Deutsche Bank relied on adjusted financial numbers for
8. approving loan origination and reviews. 2) Step-downs on Doral
9. and OPO were in place that decreased or eliminated Trump's
10. financial covenants.
11. I just want to make sure that the reference to OPO
12. was an error and it should be Doral and Chicago. Is that
13. correct?
15. MR. SUAREZ: It also says President Trump and
16. not Trump's financial covenants?
17. MR. WALLACE: I thought I said President, I
18. apologize.
19. Q I want to talk briefly about 40 Wall Street.
20. MR. WALLACE: If we could put up DD-5 and PDX-4,
21. again?
22. Q Again, it is all very difficult to see.
23. A It is easier on this little monitor up here.
24. Q So, Mr. McCarty estimates a market rate for 40 Wall
25. Street of 5.71 percent, correct?
**December 1, 2023**

**Unell - by Defendant - Cross (Wallace)**

<table>
<thead>
<tr>
<th>Page 5810</th>
<th>Page 5811</th>
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</thead>
<tbody>
<tr>
<td>1 interest rates, are both outside the existing loan with Capital One, correct?</td>
<td>1 A Yes, sir.</td>
</tr>
<tr>
<td>2 Q Well, my point is just that for either the 3.6650 rate or the 3.9150 rate to come into effect, the Trump Organization would have had to pay the swap breakage fee, correct?</td>
<td>2 Q And I think your testimony was today, I assume that you mean that at the time of the swap of the breakage or the change in the loan in 2015; is that fair?</td>
</tr>
<tr>
<td>3 A I am not following that.</td>
<td>3 A Yes, in 2015. Yes, sir.</td>
</tr>
<tr>
<td>4 Q Well, your point, I believe, was that to get to this rate there was a cost to the Trump Organization of $6 million.</td>
<td>4 Q Now, that 5.71 percent interest rate was from a loan that was in existence in 2015 and continued into the future; is that correct?</td>
</tr>
<tr>
<td>5 So if they wanted to get this 3.6650 fee -- rate, they had to pay a swap breakage fee. Right?</td>
<td>5 A Yes.</td>
</tr>
<tr>
<td>6 A It was factored in. I am still not following how the 6 million -- how you are trying to or what you are trying to ask as related to the $6 million and where it went.</td>
<td>6 Q So in fact, just staying in place with the 5.71 percent interest rate going into the future, if the Trump Organization had maintained that loan they would not have had to pay the swap breakage fee; is that fair?</td>
</tr>
<tr>
<td>7 Q Any transaction where they were no longer in the Capital One loan as of 2015, there would have had to have been a swap breakage fee, correct?</td>
<td>7 A It would have been a business decision. The swap breakage fee, depending on what market rates do, they may have decided if it was in the money or out of the money to have broken it or not. It could have gone one way or the other.</td>
</tr>
<tr>
<td>8 A Not necessarily. It depends on the loan documents in the ISDA agreement. So without knowing that, the agreements, the swap agreement and the loan agreement could have not been tied together. There could be an opportunity for the borrower to keep the swap in place if it wasn't directly tied and secured by that, without having the underlying documents to review that. But it was a cost of doing business, so it would be.</td>
<td>8 They are not directly tied to each other.</td>
</tr>
<tr>
<td>9 Q It wouldn't have been necessitated by refinancing the loan?</td>
<td>9 Q I have seen nothing to indicate that it is.</td>
</tr>
<tr>
<td>10 A Correct.</td>
<td>10 Q and I take it you have an independent view that a 5.71 percent interest rate was not market in July of 2015; is that correct?</td>
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<td>11 Q And what is this document?</td>
<td>11 A I believe so, yes.</td>
</tr>
<tr>
<td>12 A That's correct, yes.</td>
<td>12 Q Did you review any contemporaneous documents from other market participants concerning the market rate for a loan on 40 Wall Street?</td>
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<tr>
<td>13 Q I thought you -- well, I believe that you -- when you testified about the Ladder Capital loan, your testimony was that much of that was driven by the underlying collateral and the LTV on the transaction; is that fair?</td>
<td>13 A No, sir.</td>
</tr>
<tr>
<td>14 A Yes, sir.</td>
<td>14 Q Okay. And that was based on a loan of $160 million and an appraised value of $540 million; is that correct?</td>
</tr>
<tr>
<td>15 Q Okay. And that was based on a loan of $160 million and an appraised value of $540 million; is that correct?</td>
<td>15 A I believe so, yes.</td>
</tr>
<tr>
<td>16 Q Did you review any contemporaneous documents from other market participants concerning the market rate for a loan on 40 Wall Street?</td>
<td>16 Q Mr. Unell, did you review this document in the course of preparing your expert report?</td>
</tr>
<tr>
<td>17 A No, sir.</td>
<td>17 A Yes, sir.</td>
</tr>
<tr>
<td>18 Q Mr. Unell, did you review this document in the course of preparing your expert report?</td>
<td>18 Q And what is this document?</td>
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<tr>
<td>19 MR. WALLACE: If we could take a look at Plaintiff's Exhibit 268.</td>
<td>19 A This is the annual review from Capital One of the 40 Wall Street loan. And the date is September 9, 2005 is the origination date and the --</td>
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<td>20 (Handing)</td>
<td>20 A Yes, sir.</td>
</tr>
<tr>
<td>21 THE WITNESS: Thank you, sir. I got two. It is Friday.</td>
<td>21 Q And what is this document?</td>
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<tr>
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<td>22 A This is the annual review from Capital One of the 40 Wall Street loan. And the date is September 9, 2005 is the origination date and the --</td>
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<td>23 THE WITNESS: Thank you, sir. I got two. It is Friday.</td>
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</tr>
<tr>
<td>24 THE WITNESS: Thank you, sir. I got two. It is Friday.</td>
<td>24 A Yes, sir.</td>
</tr>
<tr>
<td>25 A I see nothing to indicate that it is.</td>
<td>25 Q I'll direct your attention to the current review date</td>
</tr>
</tbody>
</table>
MR. WALLACE: We can put that document down.

Q The Ladder loan on 40 Wall Street was securitized; is that correct?

A I believe so.

Q And can you just explain to the Court, what does it mean to securitize a loan?

A A securitized loan is a loan that is the cash flow streams are essentially sold to investors in the market.

Q And in the course of preparing your reports, did you review any analysts reports concerning the securities that included the 40 Wall Street loan?

A I did not.

Q I am going to hand you a document that has been marked as Plaintiff's Exhibit 3186. It is 135 pages. So I think we can just go through it on the screen.

A Absolutely.

Q I think it is a little easier.

I'll state that this is a Morningstar report with preliminary ratings on a Wells Fargo commercial mortgage trust as of September 9, 2015. Are you familiar with Morningstar?

MR. SUAREZ: Objection, Your Honor.

MR. SUAREZ: Outside of the scope of my direct and outside of the scope of the witness's testimony to talk about the securitization of the loans and the ratings.

MR. WALLACE: Outside of the scope of my direct and outside of the scope of the witness's testimony.

THE COURT: All right. Let's see where we are going with this.

Q I believe the question pending that was objected to was, are you familiar with Morningstar?

A I am aware of Morningstar, yes.

Q And I will represent to you that the securities covered in this report include the 40 Wall Street loan?

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

Q Again, it is probably easiest to do it up on the screen here. You will see this is the section of the report that addresses the 40 Wall Street loan by Ladder Capital. And I want to walk through the metrics very quickly.

MR. WALLACE: Since we are not looking at the full thing, if we can go down one more page.

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

If you look at the top under the Morningstar screen here. You will see this is the section of the report that addresses the 40 Wall Street loan by Ladder Capital. And I want to walk through the metrics very quickly.

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MR. WALLACE: Since we are not looking at the full thing, if we can go down one more page.

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

If you look at the top under the Morningstar perspective, it says that Morningstar has a favorable opinion.
of the loan to 40 Wall Street, primarily due to the positive
loan metrics, the granular rent-roll and amortization through
the loan term.
4 So, I will let you know, they have a positive view of
the loan.
A Yes.
MR. WALLACE: If we can go back to the summary
page. If you zoom in on the Morningstar analytics.
Q You can see that Morningstar states that the value of
the building is $262,270,494. And that Morningstar calculates
an LTV of 61 percent. Beginning LTV.
A This was an amortizing loan correct?
Q So the beginning LTV would be higher than the ending
LTV?
A That's correct.
Q Okay. So Morningstar calculates a higher LTV than
Ladder Capital did in their analysis, correct?
A Yes.
Q And these amounts of the value of the building and
the LTV might affect how a banker would underwrite the loan if
they came to a different conclusion?
A It is difficult to tell, because without the backup
to know where this valuation came from, I don't know what it is
based off of. So I couldn't tell you because rating agencies
in my experience do different ways that they look at it. They
also look at it from a loss perspective versus whether or not
they are a independent agency. It is outside of my scope to be
able to speculate on the value and compare it to anything and
how Morningstar calculated value.
Q I'll say that it mentions that they had a site visit.
As you can see it says: Morningstar site visit, yes.
But my question -- let's step back from what
Morningstar did. If a banker came to a different conclusion
about the LTV of the property and the value of the property
that would affect how the banker would underwrite the loan. Is
that fair?
A A banker would rely on an appraisal report
commissioned by them, not a Morningstar number without any
backup behind it.
Q I am asking about using this. I am saying if a
banker -- if someone comes to a different analysis of the asset
value and the LTV, that's going to affect the pricing per loan?
A It could.
MR. WALLACE: We can put that down.
THE COURT: Objection overruled.
MR. WALLACE: Oh. Thank you.
THE WITNESS: I was following you.
MR. WALLACE: To borrow a phrase from Mr. Unell,
it is Friday.
defendants overvalued the assets reported in the SFCs between 17.27 and 38.51 percent. This amounts to a discrepancy of between $812 million and $2.2 billion.

Did you review that section of the summary judgment decision?

A    Yes, sir.

Q    And in your professional opinion, is it acceptable for a guarantor, like Mr. Trump, to intentionally inflate his assets as reported to a bank by $2.2 billion?

A    If it was intentional, then it would not be acceptable.

Q    You testified yesterday that the net worth covenants on the Deutsche Bank loans are solely determined by the guarantor's stated assets. In your professional view, is it acceptable for a guarantor to fraudulently inflate their assets to meet a net worth covenant?

A    It is not acceptable to fraudulently inflate assets.  

MR. WALLACE:  If we could pull up DD-4, page: seven.

Q    This is your chart showing the number of billionaires in the United States and the world between 2010 and 2020. Mr. Unell, would it have been acceptable under the bank regulations, as you understand them, for the 492 billionaires in the United States as of 2015 to lie about their asset values in seeking lending from a bank?

A    Yes, sir.

Q    Almost.

MR. WALLACE:  We've already been over this.

Q    Is there anything special about the 492 billionaires that United States had in 2015 that would make it acceptable for them to lie about their asset values when seeking financing from a bank?

A    No, as I just testified, it would not be acceptable for anybody.

MR. WALLACE:  Nothing further, Your Honor.

THE COURT:  Okay.  Any redirect?

MR. SUAREZ:  Briefly, Your Honor.

THE COURT:  Okay.

REDIRECT EXAMINATION

BY MR. SUAREZ:

Q    Mr. Unell, good morning.

A    Good morning.  We are almost at the afternoon.

Q    Almost.

MR. SUAREZ:  If we could please pull up what has previously been admitted as Defendant's Exhibit 62, and turn to page five.

First let's put up page one.

Q    Are you familiar with this document, Mr. Unell?

A    Yes, sir.

Q    What is this document?

A    This is the new Private Wealth Management U.S. Lending Product Commercial Real Estate Finance Guidelines.

Q    Did President Trump meet this criteria to qualify for a commercial real estate loan in the private bank?

THE COURT:  Objection sustained for the three or four reasons given. We've already been over this.

MR. SUAREZ:  Your Honor if I may ask yes or no questions, I could cut 30 questions into three.  They are not leading questions.  They are simply yes or no questions. I'll try it that way.

THE COURT:  I don't think the objection was leading.

MR. SUAREZ:  No, I know, but I was doing it that way in order to avoid the inevitable leading question when I ask a yes or no question.  But if I could just cut to the chase, I'll cut to the chase.

THE COURT:  You can't ask a question that goes beyond the scope of cross examination, especially since you discussed this ad nauseam yesterday.

MR. SUAREZ:  I'll try it this way.

Q    Did President Trump meet this criteria to qualify for a commercial real estate loan in the private bank?

THE COURT:  Objection sustained.  I got the gist, but read back of the question, please.

(Whereupon, the record was read back by the court reporter.)

(The following proceedings were stenographically recorded by Senior Court Reporter Michael Ranita.)
walk.
2 Q What, if anything, did President Trump have to do to qualify for this pricing grid?
3 MR. WALLACE: Same objection.
4 THE COURT: What did he have to do -- let's take a simple ground. Is this -- are you claiming, Mr. Wallace, it's outside the scope of the cross?
5 MR. WALLACE: Outside of cross, was covered yesterday extensively.
6 THE COURT: That's enough. Sustained.
7 MR. KISE: Your Honor, I don't see how it's outside the scope of cross, because what Mr. Wallace was talking about was the whole differential in interest rates. It was a whole colloquy with the witness about the differential in interest rates, and what Mr. McCarty did, and the CRE rates versus these rates.
8 And what Mr. Suarez is doing is simply going back and pointing out why this witness believes that the range, his range is the appropriate range.
9 Well, I mean, you challenged this witness -- the government challenged this witness's opinion that the range that point -- the two 25-basis points was incorrect. And the presumption behind that was that Mr. McCarty was more correct because his CRE rates, his ten percent rates, were the better way to go; that was the more acceptable method.
10 Q And do you see the spread of 2.0 to 2.5 percent?
11 A Yes.
12 Q And would he have had to negotiate between that spread, what interest rate he and the bank ultimately settled on?
13 A Yes, sir.
14 Q Would he have had to negotiate between that spread, what interest rate he and the bank ultimately settled on?
15 A Yes.
16 Q And do you see the spread of 2.0 to 2.5 percent?
17 A Yes.
18 Q And do you see the spread of 2.0 to 2.5 percent?
19 A Yes.
20 Q And do you see the spread of 2.0 to 2.5 percent?
21 A Yes.
22 Q And do you see the spread of 2.0 to 2.5 percent?
23 A Yes.
24 Q And do you see the spread of 2.0 to 2.5 percent?
25 A Yes.

So what Mr. Suarez is doing is simply going on redirect, over those same -- over those issues, and it's certainly within scope. And we are certainly entitled, even if we covered it some yesterday, we are certainly entitled to focus, now, on exactly what the Government brought out this morning, and demonstrate, or at least attempt to demonstrate for the Court why this witness has the right view.

So I think it's fully within the scope of the cross examination, because they've spent a good deal of time on that very issue, and that's all we are doing. We are not going to go through back through the entire litany of it. It's just focusing on the precise pieces that were covered this morning.

MR. WALLACE: Your Honor, I will just say Mr. Kise is, again, telling the witness what he would like him to present through this redirect.

I believe what Mr. Kise is, at base, saying is that they are going to go back through certain portions of yesterday's testimony to reiterate things that have been established; that is cumulative, that is repetitive, it is not appropriate. And I will also say that the focus of my examination was that Mr. McCarty and Mr. Unell were doing completely different things.

So I retain my objection to this as cumulative.
MR. SUAREZ: Thank you.

Can we please pull up the Court's summary judgment order, and go to the section that Mr. Wallace just reviewed with the witness.

THE COURT: Look at all those documents I had to review to write that decision.

THE WITNESS: It's page 19.

(Whereupon, the exhibit was displayed on the screen.)

Q  Do you see where it says, "OAG has submitted conclusive evidence that between 2014 and 2021, defendants overvalued the assets reported in the SFCs between 17.27 to 38.51 percent; this amounts to a discrepancy of between $812,000,000 and $2.2 billion"?

A  Yes, sir.

Q  Does the word "intentional" appear anywhere there?

A  No, sir.

Q  Can we pull up Defendant's Exhibit 312 and put it side by side to the summary judgment order?

(Whereupon, the exhibit was displayed on the screen.)

Q  Have you reviewed this e-mail prior to today?

A  Yes, sir.

MR. SUAREZ: If we could turn to page three of this e-mail.

Q  Do you see where it says --

MR. SUAREZ: Actually, let's start at page two.

(Whereupon, the exhibit was displayed on the screen.)

Q  Do you see where it says "DJT financial profile"?

A  Yes, sir.

Q  And here where it says "net worth" at the bottom of page two.

A  Yes, sir.

MR. SUAREZ: And then if we could scroll to the next paragraph.

(Whereupon, the exhibit was displayed on the screen.)

THE COURT: It's leading, and I could do the math, too.

MR. SUAREZ: Okay.

Q  Having concluded, according to DB due diligence that the President had a net worth of 2.4 billion, is that adjustment within the range that the Court determined the OAG had submitted evidence to adjust the value of assets in the Statement of Financial Condition?

THE COURT: I'll say again, I could do the math.

MR. WALLACE: It's a math question. That mischaracterizes the evidence that has gone on since summary judgment, that there was, like, an adjustment.

THE COURT: I'll say again, I could do the math. I

THE COURT: Mr. Suarez, your choice.

MR. WALLACE - by Defendant - Redirect (Mr. Suarez)
1 discrepancy of the magnitude demonstrated here could be considered immaterial”?
2 A Yes, sir.
3 Q Do you agree with that?
4 A No, sir.
5 Q Why?
6 A Based on the evidence that I've received, the reports that I've reviewed, the testimony I've heard, that it would be immaterial, in my opinion, as evidenced by the adjustments done by Deutsche Bank in and my own analysis and experience.
7 THE COURT: I will just point out that I'm -- he is certainly entitled to that opinion.
8 This opinion is law of the case, and I believe it's under appeal. So it is what it is, to repeat what I said yesterday.
9 MR. SUAREZ: And if we could turn to the first page of Defendant's Exhibit 312.
10 (Whereupon, the exhibit was displayed on the screen.)
11 Q I would like to draw your attention to the sentence that says, in the e-mail from Thomas Bowers to Marcus Mitchell, "Mentioned that it is among the strongest personal balance sheets we have seen, and totally unlike any of our major real estate developer clients in that we observe an absence of personal debt, with huge asset base and diversified CF." Do you see that?
12 A Yes, sir.
13 Q Based upon your experience in the real world, is that a statement that you agree with?
14 A Absolutely, that the analysis that they were looking at is an analysis that I would look at in my experience. Personal debt, liabilities are something that is of most importance because of the ability for -- to carry that debt. And also, a diversified cash flow allows for a changes in market to perhaps be offset by different asset classes.
15 And it is different than most other real estate developers because most real estate developers stay in one lane, whether they are industrial developer, multifamily developer, hotel developer. Very few successfully have a diversified cash flow stream such as President Trump and The Trump Organization.
16 THE COURT: Hold on.
17 Mr. Wallace, is that question and answer beyond the scope of your cross examination?
18 MR. WALLACE: I think all of this is beyond the cross examination, with the possible exception of asking him about the same passages that I asked him about in the summary judgment decision.
19 But I understood we were sort of letting them continue with these lines of questions. It is beyond the scope of my --
20 A That's my understanding, yes, sir.
21 Q In your professional experience, have you seen any individuals with $50 million of net worth obtain $378 million of credit from a lending institution?
22 A Yes, sir.
23 Q And in what instances have you seen that?
24 A When I was at Bank of America and there were multiple instances of individuals with guarantees in the 10 to $15 million range that had facilities that were guaranteed upwards of 500 plus million dollars. And they were syndicated facilities run across multiple banks with similar collateral.
25 Q And did the individuals guarantee the entirety of the debt, or was the guarantee limited to the full amount of their net worth?
26 A It varied based off of the different deals.
27 MR. WALLACE: Okay.
28 Q Please let me know if you have any other questions from this witness stand.
29 (Whereupon, the witness stepped down from the witness stand.)
30 MR. KISE: Could we just have five minutes to make sure the witness's transportation --
31 THE COURT: Sure. And then I'll address motions.
Mr. Kise: Yes, your Honor. (Whereupon, there is a brief pause in the proceedings.) The Court: Did Mr. Unell have a successful departure? Mr. Kise: He did. The Court: Okay. We are up to housekeeping, motions, and anything else that we can accomplish in the next 35, 40 minutes. Mr. Wallace: So, your Honor, I guess we are the movant, so I will start with our motion to strike the testimony of Mr. Shubin. I’ll state this very basically. He is offering illegal opinions. He is offering illegal conclusions about the interpretation of the various easement donations and restrictions on the Doral -- or, I’m sorry, Mar-a-Lago property. And that is improper expert testimony. You’ve already found this twice in this case when the defendants have submitted judicial opinions as expert’s affidavits for various legal issues. It's the same principle. Mr. Shubin’s testimony is not helpful to the Court because the Court is the one who finds the law. Mr. Kise: I didn’t know he was done. Sorry, your Honor. So, briefly, your Honor, you have our submissions.

Mr. Shubin’s testimony is both material and necessary for the defendants case. He will provide critical evidence as to the scope of and application of the documents, not legal conclusions. And I will get to that. It’s uncontested, still, that Mr. Shubin possesses the requisite experience, training and knowledge. I mean, there’s no challenge there. So Mr. Shubin does two things. First he identifies the relevant universe of documents, of governing documents that apply to the situation. That exercise alone requires expertise. That’s not something that the average person, the average fact finder could do, and, in fact, the average lawyer couldn’t do. Land use and zoning is very insular, unique, specialized, I’m sorry, area of the law. And so it requires expertise to go look at the public record, and of the 500 documents in the public record, pick out which ones, actually, are important to look at for purposes of whatever analysis you are doing. So that’s the first thing that he does.

And then he explains which provisions of those documents are pertinent to the Court’s ultimate determination, focusing the Court on the specific provisions of those documents. So it’s not a legal conclusion. A bare legal conclusion is demeaning of a determine in a statute. So if a witness comes in, a lawyer witness, or any expert comes in and says that, you know, best efforts means X, well, that’s a legal conclusion. But here, Mr. Shubin’s testimony addresses facts. They are complex facts. He identifies the relevant documents, and then the application of those facts to the subject property. That subject matter is unquestionably beyond the knowledge or understanding, or will dispel misconceptions of a typical finder of fact. And that’s cited in the Guide to New York Evidence rule. I’m still getting used to the fact that you all don’t have an evidence code here. It’s all done by case law.

But importantly as well, Mr. Shubin doesn’t opine on the seminal legal issue to be decided in the case. His testimony would be admissible, even if it did embrace an ultimate issue, but I would say, your Honor, it does not. To the extent it would, or could, then that should be decided when Mr. Shubin is here. And if there is a particular question asked, or series of questions asked that your Honor finds that invade that province, then that can be addressed then, but to wholesale discard his testimony isn’t supported.

We’ve cited the Court to case where expert witnesses may offer opinions as to the applicability of documents and regulatory schemes. The Zohar case, Z-O-H-A-R, the Lurie case, L-U-R-I-E, the Loscalzo, L-O-S-C-A-L-Z-O -- I won’t cite them. They are in our papers.

And the Attorney General’s cases that preclude experts based on offering legal opinions all involve situations where the contract term or the seminal legal issue that’s to be decided by the Court is that forms the foundation of the opinion; the Goodhill case, precluding testimony related to interpretation of a contract provision, the same example I gave before. The Measom, M-E-A-S-O-M, case, where the legality, the question of legality of an apartment was central to the issues in the case.

The Colon, C-O-L-O-N case, again, precluding expert testimony as to the interpretation of a particular contract provision, or particular statutory provision. But Mr. Shubin is not being called to opine on the seminal issues in the case.

The seminal legal issues in the case are the matters set forth requisite elements of counts two through seven. He is not opining at all on any of those.

Now, his testimony relates to the question of intent, ultimately, and, and it assists the finder of fact in determining, understanding the relevant complex documents, the universe of documents and the application of the particular terms to the subject property. And that...
MR. WALLACE: Any reply?

THE COURT: Any reply?

MR. WALLACE: Yes. What Mr. Kise is eloquently and...
the limitations I've just indicated.
(Continued on the next page.)

THE COURT: Okay. So, motion granted only to
the extent --

MR. WALLACE: Motion is denied I thought? Our
motion was to preclude Mr. Shubin, I believe. It has been
denied.

THE COURT: I am precluding him from testifying
as to certain areas.

MR. WALLACE: I'll move on to Mr. Moens,
although it seems like anything an expert wants to say is
going to at least be heard.

Mr. Moens, in particular, provides no formal
basis. He is an ipse dixit expert. He has said his
calculations cannot be recreated. He says that he used
his gut feeling; that he didn't verify information; that
it would not be possible for another person to reproduce
his analysis. His testimony stated that he did not, his
testimony did not depend on whether the property could be
used as a private residence, only a social a club. A fact
which this Court has already found.

He has stated that he has not reviewed any of
the data showing how Mr. Trump actually prepared his
valuation of the Statements of Financial Condition, so he
is offering nothing that is relevant to the Court's
analysis of whether what the Trump Organization did
contemporaneously throughout the Statements of Financial

THE COURT: Mr. Kise?

MR. KISE: So, I don't know where to begin.
I think the government raises two separate
questions.
And so there is no basis to exclude his testimony simply because he doesn't meet the Frye standard. He is certainly qualified.

Mr. Robert may have more CPLR based analysis than me. But, issues relevant to his qualifications and competency aren't -- I just don't think that there is a plausible basis to argue that he isn't, given his vast experience.

We have a right to present a complete defense and the denial of critical expert testimony is, as Your Honor I think has recognized when you have said it over and over again, a fundamental basis for reversal.

You can accord whatever weight that you deem appropriate to the testimony. And any purported lack of experience or any purported lack of merit of his opinions can be well brought out on cross examination. But none of that rises to the level of excluding Mr. Moens testimony.

He is an expert in this industry. And I think Your Honor will be very satisfied that he has the requisite qualifications.

MR. ROBERT: If I may briefly, Your Honor? And I think Mr. Kise is learning the CPLR just great. So that's actually not what I am going to talk about for the moment.

Mr. Moens qualifications are world renowned, and you will see. I just want to talk about a factual issue.

In the government’s own case when they called Mr. McArdle to the stand from Cushman & Wakefield, one of the things they asked him about is to how he valued certain property. And he talked about bringing in a local expert to help him value property. And it is on page 1986 of the trial transcript, line nine to line 16:

"QUESTION: Who was that expert?

"ANSWER: The local expert was, I selected, was a gentleman named David Turner from a highly regarded large residential brokerage firm in the Westchester area called Houlihan Lawrence. So David was one of the top producers in the luxury marketplace that would include home sales and land. I approached him and asked him if he would be interested in helping me with my understanding of land values in Bedford, and he quickly agreed.

So, their own witness affirms the fact that local real estate brokers who are highly qualified and top producers, and it is beyond any dispute that Mr. Moens is a top producer and he works in the luxury marketplace, and Palm Beach is his specialized area, that he could certainly provide information that would be relevant and information that would be necessary for this Court to hear.

Thank you, sir.
1. THE COURT: Thanks.
2. Mr. Kise, when this trial is over, not until then, but when it is over, I will accept an offer to condense everything you ever write or say.
3. MR. KISE: Most people that know me would.
4. THE COURT: You should follow your buddy there on your left, Mr. Robert. He is very succinct and to the point.
5. MR. WALLACE: Can I be heard on one point?
6. THE COURT: Of course, in a second.
7. Let me try to condense things right now. Okay?
8. So, am I correct, and there are a lot of witnesses here, this potential expert witness is going to basically come in and say, I am an expert, and I can, based on my experience, and I'll tell you what the property is worth, I'll opine what the property is worth.
10. THE COURT: Mr. Wallace, any quick response?
11. MR. WALLACE: I would direct Your Honor to page 26 of your summary judgment opinion where Mr. Moens' opinion is discussed at length.
12. You write that: It is well settled that where an expert's ultimate assertions are speculative or unsupported by any evidentiary foundation, however, the opinion should be given no probative force and is insufficient to withstand summary judgment.
13. You have already decided the issue of whether the easement donations and the easement deeds restrict the use of the Mar-a-Lago property. The defendants are now proposing to spend a full trial day valuing, establishing that, in fact, you are wrong, and the easement does not restrict the use of the Mar-a-Lago property.
14. And that in turn, it should be valued at $1 billion because Elon Musk might want to move to Palm Beach. That will be a full day of this trial.
15. THE COURT: And that's what we are going to do.
16. Motion to preclude denied.
17. And if I am being inconsistent -- what is it? A foolish consistency is the hobgoblin of little minds.
18. Let him testify. It seems sort of straightforward.
19. Any other housekeeping or motions?
20. MR. KISE: We wanted to address briefly the Judge Jones testimony you asked us -- I don't think you asked us, you allowed us.
21. THE COURT: That's a more accurate word.
22. MR. KISE: That's a better statement.
23. THE COURT: I read some or all of your submissions on this issue; and the others to a certain extent.
24. MR. AMER: If I may be heard on this?
25. THE COURT: Time goes fast when you are having a good time.
26. MR. AMER: If I may be heard on this?
27. THE COURT: Sure, Mr. Amer.
28. MR. AMER: So the challenge that the Court laid down was to have defendants find a case that said that the court-appointed monitor can be compelled to testify. I don't believe they found such a case in their letter.
And certainly this Court has broad discretion when looking at relevance and prejudice. And of course Your Honor already identified one point of prejudice, which is a potential conflict that could arise.

But we actually have found cases that go the opposite way of your request to defendants that demonstrate that a court-appointed monitor cannot be compelled to testify. And there is really two bases in these cases, and it all comes down to immunity.

New York State recognizes the Doctrine of Judicial Immunity extends to non-Judges in the cloak of quasi judicial immunity where they perform discretionary acts of a judicial nature. And in the Clapper v Guria case 153 Misc2d 726. That's a 1992 New York County Supreme Court decision. The State defendants on behalf of the disciplinary committee performed a judicial function in their investigation of plaintiff's alleged misconduct and commencement of the petition. And in this case the Court recognized that the defendants there were cloaked with quasi judicial immunity.

It has also been recognized in the decision Pertilla v Genetic Design Inc., that's 166 Misc2d 843. Generally the doctrine of judicial immunity extends to those parties acting in a quasi judicial capacity in the course of their performance of court-appointed duties.

The Court itself, this Court itself drew a distinction between a monitor, which is undefined, and a receiver, which is defined as an arm of the court, specifically in its order. And we cite that in the November 3, 2022 decision, where you state that they, in fact, perform two different functions. And that a limited function of a monitor is entirely different from the functions of a receiver. So the receiver case law and the case law that applies to immunity is inapposite here.

Even if a receiver were an arm of the court, we cited the Court the cases, the Continental case, the Urinski case, and other cases where receivers have been called to testify. As I mentioned to the Court last week, in the bankruptcy and other context, SEC context, they are called frequently to testify. As I mentioned to the Court last week, in the bankruptcy and other context, SEC context, they are called frequently to testify. And the notion that a monitor in this context enjoys some broad sovereign immunity, I don't think that enjoys any support in the case law.

For those reasons and the reasons in our papers, we think she is a qualified witness that should be called.

THE COURT: But wait a minute. Immunity from what? Is this --

MR. AMER: My next case.

THE COURT: Okay.

MR. AMER: Just to finish quoting from Pertilla:

This privilege is based upon the public policy that expert witnesses must be encouraged to perform public services without fear of harassment or threat of litigation.

And then finally the First Department, to address Your Honor's point in Alvarez v Schneider that's 264 AD2d 27 at page 34, noted that: As with other forms of immunity, judicial immunity is an immunity from suit, not just from ultimate assessment of damages. And suit is recognized as a judicial proceeding that compels someone to act or refrain from acting. So the act of compelling Judge Jones to come to this court and testify would be a suit within the meaning of these immunity doctrines.

Then there is a second separate immunity that applies here, Your Honor. And that's sovereign immunity. Judge Jones, because she is an arm of this Court, is a state actor who is entitled to broad state sovereign immunity. State immunity applies to both states and their agents. And she would be an agent of the state. Recently in an Eastern District decision by Magistrate Judge Lock.

THE COURT: Just putting my thoughts together here quickly. (Pause in the proceeding)

THE COURT: The request to subpoena Judge Jones is denied.
First of all, as has already come up, there is no authority for subpoenaing a monitor to testify. And I'll just use the word "monitor" as opposed to "independent monitor." I don't think there is a difference in this case.

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

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

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

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

And that's the ruling.

Any other business we can finish today?

Have a great weekend everybody.

MR. ROBERT: Thank you, Your Honor.

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

MR. KISE: Yes, Your Honor.

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

(whereupon, the trial stood adjourned to Monday December 4, 2023 at 10:00 a.m.)
$1 (1) 5854:9
$100 (1) 5849:23
$125 (3) 5767:14,15,22
$15 (1) 5836:9
$150 (6) 5793:6,12,19; 5794:11,14,15
$160 (1) 5812:6
$17 (2) 5760:3,10
$2.2 (3) 5821:3,9;5829:25
$200 (14) 5788:8;5789:5,9,22; 5793:7,14,19;5794:9; 5819:7,15,17,22; 5820:2,11
$250 (1) 5767:10
$257,729,000 (1) 5813:11
$262,270,494 (1) 5817:10
$283 (2) 5813:16,20
$30 (2) 5800:23;5801:8
$350 (5) 5793:5,13,18; 5794:9,10
$378 (1) 5836:3
$5 (1) 5808:18
$50 (2) 5835:20;5836:3
$500 (1) 5849:23
$540 (1) 5812:7
$6 (3) 5808:8;5809:10,15
$812 (1) 5821:3
$812,000,000 (1) 5829:25
$900 (1) 5755:23
$950 (1) 5755:23

A

abbreviated (1) 5844:6

action (1) 5796:10
actively (1) 5823:8
actor (1) 5858:21
acts (1) 5857:13
actual (8) 5758:23;5759:3; 5764:15;5768:15; 5783:12;5788:21; 5790:17;5791:9
actuality (1) 5768:4
actually (23) 5756:22;5758:20; 5763:5;5765:15; 5767:18;5768:4; 5769:15;5784:5; 5785:11;5791:6,19; 5797:15;5798:8; 5803:8;5806:17; 5814:9;5830:14; 5838:17;5843:6; 5846:21;5851:23; 5857:5
ad (1) 5824:15
AD2d (1) 5858:11
AD3d (1) 5847:13
add (4) 5789:10,22,24; 5800:22
added (3) 5759:13;5765:19; 5801:8
adding (1) 5789:25
additional (5) 5759:9,13;5762:18; 5789:12;5790:16
address (3) 5836:23;5854:19; 5858:10
directed (2) 5847:1;5854:22
accused (1) 5816:23
achieved (1) 5814:4
acknowledged (2) 5819:25;5844:9
acquisition (1) 5771:15
across (3) 5770:14,23;5836:11
act (2) 5858:15,15
acting (2) 5857:24;5858:15
admissible (1) 5839:15
admit (1) 5799:2
admitted (6) 5799:6;5822:18; 5827:5;5841:1,23
admonish (2) 5862:7,8
ADR (1) 5790:18
adults (1) 5855:12
aid (1) 5847:11
advise (1) 5842:6
advisor (1) 5799:25
affected (4) 5790:18;5817:21; 5818:11,18
affects (1) 5790:19
affidavit (2) 5806:18,21
affidavits (3) 5837:20;5841:9,10
affirms (1) 5852:17
afraid (1) 5861:17
afternoon (1) 5822:15
AG (2) 5844:19,22
again (16) 5762:11;5770:15; 5773:8,11;5781:19; 5807:21,22;5816:17; 5826:16;5829:3; 5831:25;5840:13; 5841:15,15;5850:1; 5851:12
agencies (2) 5816:1;5817:25
agency (1) 5818:3
agent (1) 5858:23
agents (2) 5850:12;5858:23
aggregate (1) 5814:5
amount (4) 5756:11;5770:18; 5802:4;5806:18
agree (5) 5766:12;5773:15; 5833:4;5834:4;5841:6
agreed (2) 5773:16;5852:16
agreement (5) 5763:8;5808:16; 5809:20,21,21
agreements (2) 5768:15;5809:20
ahead (1) 5855:2
air (1) 5779:2
alleged (1) 5857:17
ALLEN (3) 5753:7;5771:7; 5805:9
allow (10) 5764:25;5829:10; 5835:3;5843:23; 5844:10,16,21,24,25; 5855:3
allowed (5) 5755:6;5780:25; 5844:8;5854:21;
5859:11
allows (1) 5834:9
almost (2) 5822:15,16
alone (1) 5838:10
along (1) 5829:1
alongside (1) 5861:21
Although (3) 5844:7,15;5846:9
Alvarez (1) 5858:10
ambiguities (1) 5856:13
ambiguous (1) 5820:8
AMER (6) 5856:20,21,22;
5858:3,5;5861:6
America (1) 5836:7
amicus (1) 5843:20
among (2) 5806:21;5833:22
amortization (2) 5814:16;5817:2
amortizing (1) 5817:12
amount (14) 5766:16;5794:1,4,5;
5795:19;5797:5; 5800:11;5814:6,6;
5819:8,11;5827:24;
5828:1;5836:13
amounts (7) 5766:9,12,22;
5793:25;5817:20;
5821:2;5829:25

Ny Supreme Court- Civil

December 1, 2023

(1) $1 - amounts
Donald J. Trump et al

NYS Attorney General v.

December 1, 2023

INDEX NO. 452564/2022

RECEIVED NYSCEF: 01/04/2024

Min-U-Script®
evaluate (1)
   5790:21
evaluated (1)
   5790:21
even (12)
   5765:18;5766:1; 5768:6;5800:18; 5808:22,5826:3;
   5828:25;5829:1; 5839:15;5842:23; 5859:22;5860:10
eventually (1)
   5788:8
everybody (4)
   5760:16;5761:3,4; 5862:3
everyman's (2)
   5855:6;5859:18
everyone (2)
   5771:3;5847:4
evidence (30)
   5770:14;5771:3; 5774:7;5776:19; 5778:4;5780:17;
   5784:8;5789:3,6; 5801:15;5805:6; 5806:14;5813:4,7;
   5820:25;5828:10,24; 5829:23;5831:7,20,23;
   5833:7;5838:2; 5839:10,11;5848:11; 5855:6,10,13;5859:19
evidenced (1)
   5833:9
evidentiary (3)
   5779:10,11;5853:25
exact (5)
   5756:14;5764:11,12; 5775:14;5819:8
exactly (4)
   5762:6;5778:22; 5820:10,5826:5
exam (1)
   5781:21
examination (19)
   5755:9,11;5780:22, 24;5781:3;5822:12;
   5824:14;5826:10,23; 5828:24;5834:18,20;
   5835:6,16;5841:20; 5844:5,5849:4,16; 5851:16
example (2)
   5808:6;5840:10
examples (3)
   5763:24;5788:17; 5790:14
exceed (1)
   5814:8
exception (1)
   5834:20
excerpt (1)
   5796:13

evaluate (1)
   5790:21
excess (1)
   5814:7
exchange (2)
   5768:17;5769:16
excludable (1)
   5849:8
exclude (3)
   5841:21;5851:11
excuse (1)
   5764:13;5777:11
executed (1)
   5759:4
exercise (1)
   5838:10
Exhibit (37)
   5771:4;5782:11;
   5784:15;5785:3;
   5786:2,12,23;5795:1,2, 4,17;5796:15,20;
   5799:3,5,8,9,11;
   5801:12,13,16;5805:6;
   5806:20;5812:14; 5813:4,7;5815:14;
   5822:18;5824:22,23;
   5829:20;5830:5,7,15; 24;5833:17,18
exigent (1)
   5755:13
exist (1)
   5856:13
existing (1)
   5759:3
existence (1)
   5811:7
existing (4)
   5808:13,15;5809:1;
   5814:21
expected (1)
   5777:14
expecting (1)
   5828:17
expenses (1)
   5772:7
expensive (1)
   5803:11
experience (25)
   5760:9,22;5761:19,
   25;5763:18,5766:23;
   24;5774:10;5792:16;
   5798:23;5818:1;
   5828:13;5832:4;
   5833:10;5834:3,6;
   5836:2;5838:6;
   5844:17;5847:9;
   5848:16,19;5851:8,15;
   5853:15
experiences (1)
   5848:18

F

facilities (3)
   5785:13;5836:9,11
facility (5)
   5787:21;5788:14,16;
   5795:19;5797:3
fact (26)
   5760:7,9;5761:16;
facel (1)
   5755:13
feeling (1)
   5846:14
fees (2)
   5762:25;5763:1
Felix (1)
   5858:25
felt (2)
   5770:6;5772:10
few (1)
   5834:14
figure (4)
   5775:6;5784:11;
   5789:24;5842:13
figures (2)
   5847:15,17
file (2)
   5806:11;5843:20
finally (1)
   5858:9
finance (7)
   5802:16;5803:21,24;
   5806:5,7;5822:25;
   5832:22
financed (1)
   5806:2
financial (9)
   5775:25;5807:7,10;
   16;5819:12;5831:17;
   5831:21;5846:22,25
financing (7)
   5801:5;5802:9,19;
   25;5803:5;5806:13; 5822:4
find (2)
   5805:12;5856:23
finder (5)
   5838:12;5839:9;
   5840:22;5841:12;
   5842:20
finds (3)
   5837:22;5839:20;
   5842:14
fine (5)
   5773:12;5777:12;
   5785:2;5786:8;5850:6
finish (4)
   5778:1;5781:20;
   5838:5;5862:2
firm (1)
   5852:11
firmly (1)
   5765:10
firms (1)
   5803:17
first (18)
   5755:20;5768:25;
   5777:4;5786:14;
   5803:20;5808:9;
   5814:17;5822:20;
   5823:7;5833:16;

Min-U-Script®
Min-U-Script®

Ny Supreme Court- Civil

December 1, 2023

FORMED: NEW YORK COUNTY CLERK 01/04/2024
RECEIVED NYSCEF: 01/04/2024

INDEX NO. 452564/2022

Ny Attorney General v.

force (1)

5840:8

Goodman (2)

5805:15,19

governing (2)

5839:8;5844:15

government (5)

5825:21;5826:5;

5841:6;5847:24;

5848:4

government's (1)

5852:2

Granted (3)

5799:4;5813:5;

5846:1

granular (1)

5817:2

great (6)

5766:14;5772:16,25;

5843:1;5851:23;

5862:3
greater (1)

5774:22

Greenblatt (8)

5771:7;17,24,25;

5772:10,13;5773:5,16

grid (3)

5825:3;5828:3,4

ground (4)

5789:1,1;5815:22;

5825:6

Group (29)

5759:4;5763:5;

5765:16;5766:11;

5775:24;5776:7;

5779:17;5781:13,15;

5788:5;5795:10;

5797:12;5798:1;

5804:23;5805:16,17;

5806:19,5,7,12;

5827:6,19;5828:2,5,9,

12,14;5835:19

guarantee (6)

5760:10;5772:17;

5773:11;5836:12,13

guaranteed (3)

5767:22;5775:12;

5836:9

guaranteeing (1)

5773:2

guarantes (1)

5836:8

guaranties (3)

5766:25;5767:6;

5773:13

guarantor (8)

5773:19;5774:16,19;

5793:14;5819:16,21;

5821:8,15

guarantor's (1)

5821:14

guaranty (78)

5757:22;5758:2,2,4,

21,24;5759:6,7,10,

14,15,19,21,22;5760:1,

1,2,7,11,21,23;

5761:10,11,12,13,14,

15,16,17,18,21;

5762:5,11,12,14,16,18,

21;5763:12;5764:16,

17,18,20,22;5765:16;

5766:6,13;5767:3,6,11,

12,13,14,24;5768:5,8,

9,12,17,19;5769:5,16;

5772:7;5774:4,4,25;

5775:1,2,19;5776:4;

5778:19,20;5779:1;

5792:8;5795:13

guess (3)

5762:1;5787:25;

5837:10

guesstimate (1)

5764:10

guidance (1)

5827:17

Guide (2)

5839:10;5848:11

guideline (6)

5774:3,8,9;5814:14,

18,18

guidelines (2)

5774:2;5822:25

Guria (1)

5857:13

gut (1)

5846:14

half (2)

5844:1,3

hand (4)

5771:2;5784:14;

5794:25;5813:13

handed (5)

5795:4;5796:19,20;

5799:11;5801:16

Handing (2)

5771:5;5812:15

happened (5)

5768:6,16;5769:15;

5770:23;5820:23

happening (5)

5770:19,20,21;

5775:6

happens (1)

5842:23

happy (3)

5766:14;5791:13;

5816:5

harassment (1)
Ny Supreme Court- Civil

December 1, 2023

Min-U-Script®

Ny Supreme Court- Civil

(10) interested - literally

305 of 316
litigation (1) 5858:8
little (7) 5768:23;5769:1; 5802:4,11;5807:23; 5815:17;5815:4
LLC (4) 5753:9,10,10;5800:8
loan (110) 5757:25;5758:25; 5759:6,7,10,11,12,12; 5760:24;5761:15,23; 5762:3,21;5763:8,11, 15;5764:15,15,16,18; 5765:12,16;5766:2,6, 10,24;5767:12,22; 5768:15,16;5769:4,5,6, 9,10,14;5770:7,15; 5773:14;5775:4,12,12, 18;5783:5;5787:13; 5788:11,12;5789:10,16, 19,23;5790:6,8,9,29;5793:2, 13,18,19;5794:10,14, 15,23;5795:19,20; 5800:11,22;5801:7,7; 5802:14;5804:24; 5806:2;5807:8;5808:4, 5,13,16,19,22;5809:1, 17,19,21;5811:1,6,12, 20,5812:2,6,10,23; 5813:22;5814:14,21; 5815:2;6,7,7,11; 5816:14,19;5817:1,2,3, 5,12,21;5818:11,18; 5824:18,5827:18; 5835:20
loans (24) 5757:21;5758:4,20; 5759:3,5,7,9,5763:1, 2;5765:6,18;5767:2,3; 5773:17,21;5775:19, 5778:16;5781:13; 5782:21;5783:6,11; 5784:2;5794:6; 5803:20;5815:25; 5821:13
loan-to-value (4) 5760:4,5768:6,17,20; 5794:16
local (4) 5844:14,5852:5,9,18
located (1) 5859:22
location (1) 5788:21
locations (1) 5850:14
Lock (1) 5858:24
lodging (2) 5785:13;5787:21
long (6) 5767:1;5792:23;

luxury (3) 5790:14;5852:13,20

Macquire (3) 5802:12,14,15
Magistrate (1) 5858:24
magnitudes (2) 5773:8;5833:1 maintaine(2) 5808:22,5811:12
maintaining (1) 5759:15
major (1) 5833:8
maker (1) 5773:18
makes (3) 5766:20;5767:3; 5848:21
making (3) 5819:22;5849:2; 5861:10
Management (12) 5774:1;5775:24; 5776:7;5805:17; 5827:24;5823:10; 5827:19,23;5828:5,9, 12;5835:19
many (6) 5758:17;5774:25; 5790:14;5803:20,23; 5861:24
Mar-a-Lago (6) 5837:16;5844:15; 5847:2;5849:2,5854:5, 8
Marcus (1) 5833:21
Mark (1) 5805:10
marked (7) 5784:15;5795:1,19; 5796:20;5799:5; 5817:3;5815:14
market (21) 5762:20,5763:11; 5766:5,5772:18; 5773:18;5790:23; 5796:3,15;5800:19; 5803:14,5805:3; 5807:24;5811:15,23; 5812:10,10;5815:8; 5834:9,5850:23,24
marketplace (2) 5852:13,20
markets (1) 5770:21
Marriott (1) 5788:5
matches (1) 5840:1
M-E-A-S-O-M (1) 5840:10
measure (7) 5776:12;5781:16,17, 18;5790:16;5828:8,15
measuring (4) 5776:11,15,16; 5787:9
meet (4) 5821:16;5824:17; 5849:8,5851:2
MEMBER (1) 5753:9
members (1) 5554:4
memo (1) 5805:25
memos (1) 5768:15
mentioned (4) 5770:17;5802:6; 5833:22;5860:13
mentions (2) 5802:17;5818:6
Meridian (1) 5802:1
merit (1) 5851:15
mess (1) 5773:10
met (1) 5814:10
method (1) 5825:25
methodologies (1) 5848:14
metrics (4) 5760:24;5770:17; 5816:20;5817:2
Miami (2) 5796:21;5806:1
Michael (2) 5777:16,5823:21
MICHELE (1) 5574:24
microphone (1) 5848:1
middle (1) 5813:1
might (5) 5756:15;5758:20; 5817:21;5854:10; 5856:13
million (70) 5760:3,10;5767:9, 10,14,15,22;5773:14; 5777:6,6,7,5778:5,6; 5788:8,5789:2,5,9,22; 5793:5,6,7,12,13,14,18, 19,19,5794:4,8,9,9, 10,11,14,15;5795:20; 5797:5,5800:12,12,23; 5801:4,8;5808:8,18;
NYS Attorney General v.
Donald J. Trump et al

INDEX NO. 452564/2022
FILED: NEW YORK COUNTY CLERK 01/04/2024 11:10 PM

P

Page 38

Participating

P

Participants

perform

P

Performing

P

Permitted

P

Personnel

P

Perspective

P

Photography

P

Phrase

P

Pick

P

Piece

P

Pieces

P

Place

P

Part (6)

PANTELOUKAS

PAPEIZ

P

Payment

P

Outside

P

Overruling

P

Overruled

P

Ownership

P

Ongoing

P

Open

P

Opinion

P

Organization

P

Objections

P

Order

P

Option

P

Parties

P

Part (6)

P

Partners

P

Part (6)

P

Outside

P

Ownership

P

Page

P

Participating

P

Parties

P

Penalties

P

Pending

P

People

P

Payment

P

Performing

P

Perform

P

Partners

P

Part (6)

P

Paying

P

Perez

P

P Pace

P

perform (4)

P

5843:5;5857:12;

P

5848:7;5860:6;

P

5857:25

P

5855:25;5756:3;

P

5843:4;5857:16

P

Permitted (2)

P

5755:4;5841:4

P

Person (6)

P

5762:3;5764:6;

P

5768:25;5810:11;

P

5838:11;5846:15

P

Personal (16)

P

5759:6;5757:12;

P

5766:6;5770:19;

P

5772:7;5775:19;

P

5778:19;20;5792:8;

P

5795:13;5833:22:25;

P

5834:6;5848:15;18

P

Personally (1)

P

5767:23

P

Personnel (1)

P

5758:11

P

Perspective (2)

P

5816:25;5818:2

P

Pertilla (2)

P

5857:22;5858:5

P

Permit (1)

P

5838:21

P

Peter (1)

P

5802:6

P

Petition (1)

P

5857:18

P

Philosophy (1)

P

5828:22

P

Phones (2)

P

5755:3:4

P

Photography (1)

P

5755:5

P

Phrase (2)

P

5801:6;5818:24

P

Pick (1)

P

5838:16

P

Piece (5)

P

5758:17;17;5766:5;

P

5843:8;11

P

Pieces (2)

P

5758:16;5826:13

P

Place (13)

P

5760:13;5761:16;

P

5762:12,14;5766:16;

P

21,22;5768:5;5776:4;

P

5807:9;5809:23;

P

5810:2;5811:10

308 of 316