

CR-10-00757-PHX-ROS, May 31, 2012

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

08:17:48

1					
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4					
5	United States of America,	)			
6		)			
7	Plaintiff,	)			
8	vs.	)			
9		)	CR-10-00757-PHX-ROS		
10	James R. Parker,	)			
11		)			
12	Defendant.	)			
13		)	May 31, 2012		
14		)	8:37 a.m.		
15		)			

08:17:48

08:17:48

**BEFORE: THE HONORABLE ROSLYN O. SILVER, CHIEF JUDGE**

**REPORTER'S TRANSCRIPT OF PROCEEDINGS**

JURY TRIAL - Day 3

(Pages 366 through 562)

08:17:48

Official Court Reporter:  
**Elaine Cropper, RDR, CRR, CCP**  
Sandra Day O'Connor U.S. Courthouse, Suite 312  
401 West Washington Street, Spc. 35  
Phoenix, Arizona 85003-2151  
(602) 322-7249

08:17:48

Proceedings Reported by Stenographic Court Reporter  
Transcript Prepared by Computer-Aided Transcription

08:17:48

United States District Court

CR-10-00757-PHX-ROS, May 31, 2012

08:17:48

I N D E X

TESTIMONY

WITNESS	Direct	Cross	Redirect	VD
KRISTY MORGAN	376	413	448	
PAUL GOGUEN	452	488		
PAUL WEDEPOHL	497			

08:17:48

E X H I B I T S

Number		Ident	Rec'd
24	Certified Copy of IRS Business Master File Entity Transcript for Sunlight Financial LLP	390	390
25	IRS Certification of Lack of Record for any tax form for any tax period for Sunlight Financial LLP	393	393
26	Certified Copy of IRS Business Master File Entity Transcript for Cimarron River Ranch LLC	399	399
27	IRS Certification of Lack of Record for any tax form for any tax period for Cimarron River Ranch LLC	401	401
28	Certified Copy of IRS Business Master File Entity Transcript for Resorts Consulting Quorum LLP	403	403
29	IRS Certification of Lack of Record for any tax form for any tax period for Resorts Consulting Quorum LLP	404	404
30	IRS Certification of Lack of Record for any tax form for any tax period for RSJ Investments LLC	406	406
31	Certified Copy of U.S. Income Tax Return for an S-Corporation (Form 1120-S) for the calendar year 2006 for Omega Construction Inc.	410	410

08:17:48

08:17:48

08:17:48

08:17:48

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1	36	Certified Copy of Notice of Federal Tax Lien for JAMES and JACQUELINE PARKER dated February 13, 2004	522	522	08:17:48
2					
3	40	Certified Copy of Articles of Organization for Cimarron River Ranch LLC dated April 21, 2004	396	396	
4					
5	41	Certified Copy of Articles of Organization for RSJ Investments LLC dated August 22, 2005	404	404	08:17:48
6					
7	42	Certified Copy of Certificate of Limited Partnership and Statement of Qualification to be a Limited Liability Partnership for Sunlight Financial LLP	386	386	
8					
9					
10	43	Certified Copy of Certificate of Limited Partnership and Statement of Qualification to be a Limited Liability Partnership for Resorts Consulting Quorum LLP	402	402	08:17:48
11					
12	44	Certified Copy of Articles of Incorporation of Omega Construction Inc. dated September 15, 1999	406	407	
13					
14	45	Certified Copy of Initial List of Officers of Omega Construction Inc. dated December 7, 1999	408	408	08:17:48
15					
16	122	Certified Copy of Certificate of Trust for Parker Children Irrevocable Trust notarized August 11, 2005	379	380	
17					
18	123	Memorandum of Sale (Mackinnon Belize Land and Development Limited, Vendor, and ioVest Development LLC, Purchaser) dated June 7, 2004 (sub-exhibit to Exhibit 203)	457	458	
19					
20					08:17:48
21	124	Mackinnon Belize Land and Development Ltd Wire Transfer Routing Instructions (sub-exhibit to Exhibit 203)	461	461	
22					
23	125	Letter to Paul Goguen, ioVest Development LLC, from JAMES PARKER dated February 19, 2008 (sub-exhibit to Exhibit 203)	486	487	
24					
25	162	Certified Copy of Arizona Department of Transportation, Motor Vehicle Division Certified Driver's License for Samuel	385	385	08:17:48

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1	Parker			08:17:48
2	163	Certified Copy of Arizona Department of Transportation, Motor Vehicle Division Certified Driver's License for Rachel Harris	381 382	
3				
4	167	Certified Copy of Arizona Department of Transportation, Motor Vehicle Division Certified Driver's License for JAMES PARKER	384 384	08:17:48
5				
6				
7	168	Certified Copy of Arizona Department of Transportation, Motor Vehicle Division Certified Driver's License for JACQUELINE PARKER	383 383	
8				
9				
10	207	IRS Certification of Lack of Record for any tax return for any period for Cornerstone Resource Trust	376 378	08:17:48
11				
12	208	IRS Certification of Lack of Record for any tax return for any period for Sunlight Partners	395 395	
13				
14	209	IRS Certification of Lack of Record for any tax return for any period for Sunlight Partners at 615 Zuni Drive, Prescott, AZ 86303	396	08:17:48
15				
16	210	IRS Certification of Lack of Record for any tax return for any period for Parker Children IRRV TR Harris Rachel T TTEE	385 385	
17				
18	446	IRS Certification of Lack of Record for any tax return for any period for Parker Children IRRV TR Harris Rachel T TTEE	509	
19				
20	450	IRS Final Notice dated February 12, 2004	519	08:17:48
21	451	IRS Letter dated February 17, 2004, concerning Notice of Federal Tax Lien	524 525	
22				
23	452	Form 12153 Request for Appeals, dated March 10, 2004	530 530	
24	453	Memorandum to Office of Professional Responsibility, dated March 11, 2004	535 537	
25	462	First Amendment to Real Estate Sale	462 462	08:17:48

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1	Contract between ioVest and MacKinnon Belize Land & Development, Ltd. (sub-exhibit to Exhibit 203)			08:17:48
2				
3	464 Receipt of Payment on Memorandum of Sale between MacKinnon and ioVest, dated November 3, 2005 (sub-exhibit to Exhibit 203)	469	469	
4				
5	467 Second Amendment to Real Estate Sale Contract between ioVest and MacKinnon Belize Land & Development, Ltd. (sub-exhibit to Exhibit 203)	463	463	08:17:48
6				
7				
8	468 Third Amendment to Real Estate Sale Contract between ioVest and MacKinnon Belize Land & Development, Ltd. (sub-exhibit to Exhibit 203)	464	464	
9				
10	469 Fourth Amendment to Real Estate Sale Contract between ioVest and MacKinnon Belize Land & Development, Ltd. (sub-exhibit to Exhibit 203)	466	466	08:17:48
11				
12				
13	470 Fifth Amendment to Real Estate Sale Contract between ioVest and MacKinnon Belize Land & Development, Ltd. (sub-exhibit to Exhibit 203)	468	468	
14				
15	471 Receipt of Payment on Memorandum of Sale between MacKinnon and ioVest, dated November 17, 2005 (sub-exhibit to Exhibit 203)	469	470	08:17:48
16				
17				
18	472 Receipt of Payment on Memorandum of Sale between MacKinnon and ioVest, dated November 26, 2005 (sub-exhibit to Exhibit 203)	470	471	
19				
20	473 Receipt of Payment on Memorandum of Sale between MacKinnon and ioVest, dated December 1, 2005 (sub-exhibit to Exhibit 203)	472	472	08:17:48
21				
22				
23	474 Receipt of Payment on Memorandum of Sale between MacKinnon and ioVest, dated January 18, 2006 (sub-exhibit to Exhibit 203)	472	472	
24				
25				08:17:48

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1	475	Receipt of Payment on Memorandum of Sale between MacKinnon and ioVest for Purchase Area 2-C, dated February 1, 2006 (sub-exhibit to Exhibit 203)	473	473	08:17:48
2					
3					
4	476	Receipt of Payment on Memorandum of Sale between MacKinnon and ioVest for Purchase Area 2-D, dated February 1, 2006 (sub-exhibit to Exhibit 203)	474	474	08:17:48
5					
6	477	Receipt of Payment on Memorandum of Sale between MacKinnon and ioVest, dated February 22, 2006 (sub-exhibit to Exhibit 203)	475	475	
7					
8					
9	478	Receipt of Payment on Memorandum of Sale between MacKinnon and ioVest, dated March 17, 2006 (sub-exhibit to Exhibit 203)	475	475	
10					08:17:48
11	479	Receipt of Payment on Memorandum of Sale between MacKinnon and ioVest, dated March 27, 2006 (sub-exhibit to Exhibit 203)	475	476	
12					
13	480	Receipt of Payment on Memorandum of Sale between MacKinnon and ioVest, dated April 17, 2006 (sub-exhibit to Exhibit 203)	476	476	
14					
15	481	Receipt of Payment on Memorandum of Sale between MacKinnon and ioVest, dated April 28, 2006 (sub-exhibit to Exhibit 203)	477	477	08:17:48
16					
17	482	Receipt of Payment on Memorandum of Sale between MacKinnon and ioVest for Purchase Area 3-A, dated May 10, 2006 (sub-exhibit to Exhibit 203)	478	477	
18					
19	483	Receipt of Payment on Memorandum of Sale between MacKinnon and ioVest for Purchase Area 2-D, dated May 10, 2006 (sub-exhibit to Exhibit 203)	477	477	08:17:48
20					
21					
22	484	Receipt of Payment on Memorandum of Sale between MacKinnon and ioVest, dated May 23, 2006 (sub-exhibit to Exhibit 203)	478	478	
23					
24	485	Receipt of Payment on Memorandum of Sale between MacKinnon and ioVest, dated May 31, 2006 (sub-exhibit to Exhibit 203)	479	479	
25					08:17:48

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1	486	Receipt of Payment on Memorandum of Sale between MacKinnon and ioVest, dated July 14, 2006 (sub-exhibit to Exhibit 203)	479	479	08:17:48
2					
3	487	Receipt of Payment on Memorandum of Sale between MacKinnon and ioVest, dated July 18, 2006 (sub-exhibit to Exhibit 203)	480	480	
4					
5	488	Receipt of Payment on Memorandum of Sale between MacKinnon and ioVest, dated July 27, 2006 (sub-exhibit to Exhibit 203)	480	480	08:17:48
6					
7	489	Receipt of Payment on Memorandum of Sale between MacKinnon and ioVest, dated July 31, 2006 (sub-exhibit to Exhibit 203)	481	481	
8					
9	490	Receipt of Payment on Memorandum of Sale between MacKinnon and ioVest, dated August 8, 2006 (sub-exhibit to Exhibit 203)	481	481	08:17:48
10					
11	491	Receipt of Payment on Memorandum of Sale between MacKinnon and ioVest, dated August 14, 2006 (sub-exhibit to Exhibit 203)	481	482	
12					
13	492	Receipt of Payment on Memorandum of Sale between MacKinnon and ioVest, dated August 25, 2006 (sub-exhibit to Exhibit 203)	482	482	
14					
15	493	Receipt of Payment on Memorandum of Sale between MacKinnon and ioVest, dated August 29, 2006 (sub-exhibit to Exhibit 203)	482	483	08:17:48
16					
17	494	Receipt of Payment on Memorandum of Sale between MacKinnon and ioVest, dated September 1, 2006 (sub-exhibit to Exhibit 203)	483	483	
18					
19	495	Receipt of Payment on Memorandum of Sale between MacKinnon and ioVest, dated September 18, 2006 (sub-exhibit to Exhibit 203)	483	483	08:17:48
20					
21					
22	496	Receipt of Payment on Memorandum of Sale between MacKinnon and ioVest, dated January 12, 2007 (sub-exhibit to Exhibit 203)	484	484	
23					
24					
25	497	Receipt of Payment on Memorandum of Sale between MacKinnon and ioVest, dated April 18, 2007 (sub-exhibit to Exhibit 203)	484	485	08:17:48

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1				08:17:48
2	498	Receipt of Payment on Memorandum of Sale between MacKinnon and ioVest, dated May 7, 2007 (sub-exhibit to Exhibit 203)	485 485	
3				
4	499	Receipt of Payment on Memorandum of Sale between MacKinnon and ioVest, dated July 10, 2007 (sub-exhibit to Exhibit 203)	485 485	
5				08:17:48
6	500	Receipt of Payment on Memorandum of Sale between MacKinnon and ioVest, dated August 6, 2007 (sub-exhibit to Exhibit 203)	485 485	
7				
8	501	Receipt of Payment on Memorandum of Sale between MacKinnon and ioVest, dated August 15, 2007 (sub-exhibit to Exhibit 203)	486 485	
9				
10	1010	Memorandum dated 3/11/2004 from Paul G. Wedepohl to Robert Kolbe, Office of Professional Responsibility re Referral of Gregory A. Robinson IRS Collection Files 013060-013090	536 536	08:17:48
11				
12				
13	1115	1/20/2000 letter from Rodwell R.A. Williams, S.C., Barrow & Williams to Gregory A. Robinson re Belize Land and Development, Ltd. IRS Audit Files; misc IRS Collection files 008823	489	
14				
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RECESSES

Page Line

(Recess at 9:42; resumed at 10:07.)	413	11
(Recess at 10:20; resumed at 10:39.)	420	19
(Recess at 11:54; resumed at 1:05.)	466	8
(Recess at 1:13; resumed at 1:18.)	471	18
(Recess at 2:27; resumed at 2:49.)	519	1

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A P P E A R A N C E S

08:17:48

1  
2 For the Government:

3 **PETER S. SEXTON, ESQ.**

4 **WALTER PERKEL, ESQ.**

5 U.S. Attorney's Office

40 North Central Avenue, Suite 1200

Phoenix, AZ 85004-4408

602.514.7500

08:17:48

6 For the Defendant:

7 **MICHAEL LOUIS MINNS, ESQ.**

8 **ASHLEY BLAIR ARNETT, ESQ.**

9 Minns Law Firm, P.L.C.

9119 S. Gessner, Suite 1

Houston, TX 77074

713.777.0772/(fax) 713.777.0453

08:17:48

KRISTY MORGAN - Direct

P R O C E E D I N G S

08:17:48

(Court was called to order by the courtroom deputy.)

(Jury enters.)

(Proceedings begin at 8:37.)

THE COURT: Please be seated.

08:37:48

Okay. Ladies and gentlemen. Good morning and counsel has given you -- right, Christine.

COURTROOM DEPUTY: They do, Your Honor.

THE COURT: You have a list, essentially, that counts and this will be -- perhaps it's already clear to you or it has been explained to you or will be explained to you during the trial.

08:38:01

Okay. Mr. Sexton?

KRISTY MORGAN,

called as a witness herein by the Government, having been previously duly sworn or affirmed to testify to the truth, was further examined and testified as follows:

08:38:17

**DIRECT EXAMINATION** (Continued)

BY MR. SEXTON:

Q. Good morning.

08:38:20

A. Good morning.

Q. You have Exhibit 207 in front of you.

A. Yes.

Q. Before we go into that exhibit, would you explain to the jury what the reporting requirements are for trusts with the

08:38:32

United States District Court

KRISTY MORGAN - Direct

1 Internal Revenue Service? 08:38:37

2 A. The trusts would file a Form 1041, which can be an

3 information document just about assets for the trust, or it can

4 actually be claiming income and assessing tax.

5 Q. Does it also report assets and liabilities that are 08:38:53

6 associated with the trust?

7 A. Yes, it does.

8 Q. And the form, you said it was not a 1040 but a --

9 A. It's a 1041.

10 Q. And how frequently is a 1041? Is it an annual thing or 08:39:05

11 something less frequently or more frequently than every year?

12 A. It would be annually depending on the assets or it could

13 be a one-time document based on when the trust was set up and

14 if the trust was dispensed to the beneficiaries.

15 Q. Now, in this case, were you asked to look into several 08:39:30

16 trusts, partnerships, incorporations to see whether they had

17 any records or tax returns that were filed during this period?

18 A. Yes, I was.

19 Q. Let's start with Exhibit 207. This is a certified record

20 of a particular search. 08:39:51

21 MR. SEXTON: We would offer it into evidence if it

22 isn't already in evidence.

23 THE COURT: Which number, please?

24 MR. SEXTON: 207.

25 THE COURT: And it is and the limiting instruction 08:39:59

United States District Court

KRISTY MORGAN - Direct

1 applies. 08:40:01

2 (Exhibit Number 207 was admitted into evidence.)

3 MR. SEXTON: If you could pull up page two and focus  
4 sort of in the top two-thirds if you would.

5 BY MR. SEXTON: 08:40:19

6 Q. What is the name of the trust that you searched the  
7 database for?

8 A. The name Cornerstone Resource Trust.

9 Q. And what was the address that was used for this?

10 A. 35802 North Meander Way, Carefree, Arizona. 08:40:33

11 Q. And did you have a taxpayer identification number or other  
12 identification number from which to try to find anything more  
13 about Cornerstone other than its name?

14 A. No. There was none provided to me.

15 Q. And then why don't you explain to the jury when you are 08:40:57

16 searching for records and that you don't necessarily find any,  
17 what kind of a certificate do you file on behalf of the  
18 Internal Revenue Service as to that search request?

19 A. The first thing that I would do is search the record for,  
20 for instance, Cornerstone Resource Trust, would try and find an 08:41:22

21 employer identification number. I can do that by using the  
22 name, the address, and the state and the ZIP code.

23 If the computer finds nothing, then I would broaden  
24 that search, remove the address, just look at the name and the  
25 state. And then again just the name if there was no 08:41:39

KRISTY MORGAN - Direct

1 information returned. 08:41:43

2 At that point, without an employer identification  
3 number, there's no record of that at the IRS, then we would do  
4 a certification of lack of record for that specific name  
5 business at that address. 08:41:57

6 Q. Isn't that what we're looking at in Exhibit 207 for  
7 Cornerstone Resource Trust?

8 A. That's correct.

9 Q. And then in the description of information sought down  
10 below, you were looking for any tax return? 08:42:13

11 A. Correct.

12 Q. And then down below for the periods you were searching  
13 for, did you have any limitation in the years that you were  
14 searching in any way?

15 A. No. We looked for possibly anything in any year. 08:42:28

16 Q. So for Cornerstone Resource Trust, did you find any tax  
17 return for any year being filed with the Internal Revenue  
18 Service?

19 A. I did not.

20 Q. You can put that one aside. 08:42:51

21 Would you look at Exhibit 122?

22 MR. SEXTON: We would move Exhibit 122 in as a  
23 certified public record for Maricopa County.

24 MS. ARNETT: No objection.

25 COURTROOM DEPUTY: Is that admitted, Your Honor? 08:43:25

KRISTY MORGAN - Direct

1 THE COURT: It's admitted. 08:43:26  
2 (Exhibit Number 122 was admitted into evidence.)  
3 MR. SEXTON: I'm sorry.  
4 BY MR. SEXTON:  
5 Q. Start with page -- 08:43:31  
6 First off, let's start with the last --  
7 second-to-the-last page. Let's start on page seven as to when  
8 this was signed. Up at the top do you see a signature for  
9 James Parker?  
10 A. Yes. 08:43:57  
11 Q. And underneath it is his name printed?  
12 A. Correct.  
13 Q. And what does it indicate he is in this document?  
14 A. This shows that he is a trustor.  
15 Q. Okay. And just below his signature, is his signature 08:44:06  
16 notarized?  
17 A. It is.  
18 Q. And then let's take where it says "subscribed." When was  
19 his signature notarized on this document? What's the date?  
20 A. August 11, 2005. 08:44:22  
21 Q. Now, let's go back to page two with it being executed in  
22 2005, starting up at the upper right-hand corner, what looked  
23 like a bar code there. Do you see that?  
24 A. Yes.  
25 Q. Okay. Let's magnify that. When was it actually a 08:44:52

KRISTY MORGAN - Direct

1 recorded document with the Maricopa County Recorder here? 08:44:55  
2 A. It shows September 15, '05.  
3 Q. And up above, do you see the fax header up above?  
4 A. Yes.  
5 Q. When did it indicate it was faxed in some fashion from 08:45:15  
6 Farley, Robinson, Larsen?  
7 A. The date is August 11, 2005.  
8 Q. And then when it's recorded, it's supposed to be returned  
9 to what in the upper left-hand corner?  
10 A. It states it's returned to Parker, P.O. Box, 5722, in 08:45:32  
11 Carefree, Arizona.  
12 Q. Is that the same P.O. Box we have been seeing on various  
13 documents yesterday?  
14 A. Yes, it is.  
15 Q. Now, let's look at the very first paragraph under the 08:45:51  
16 Certificate of Trust. When does it say the trust was started,  
17 even though it was signed in 2005?  
18 A. This states it was established April 16, 2002.  
19 Q. And who was it established by?  
20 A. James R. Parker and Jacqueline L. Parker as trustors. 08:46:15  
21 Q. And who is the trustee that is indicated?  
22 A. Rachel T. Harris.  
23 Q. For a moment, let's digress. Do you have Exhibit 163 in  
24 front of you? You probably don't. Let's do it this way.  
25 MR. SEXTON: This is a certified DMV record for 08:46:53

United States District Court



KRISTY MORGAN - Direct

1 Rachel Harris that we would offer in at this time. 08:46:56  
2 MR. MINNS: No objection.  
3 THE COURT: It's admitted.  
4 (Exhibit Number 163 was admitted into evidence.)  
5 BY MR. SEXTON: 08:47:02  
6 Q. It will come up on the screen. I don't think you  
7 necessarily need a hard copy in front of you. Can you read  
8 that well enough?  
9 A. Yes.  
10 Q. Okay. You probably need to pull the microphone closer to 08:47:11  
11 you as you're squinting to look at it. You'll probably have to  
12 move the microphone.  
13 Is this an MVD record for a Rachel Trina Harris?  
14 A. Correct.  
15 Q. And if you would, what does it say the date of birth is 08:47:23  
16 just below that?  
17 A. It shows September 14, 1977.  
18 Q. Now, back to that trust document, page two of 122. The  
19 Rachel Harris we were just looking at is designated as the  
20 trustee in the first paragraph? 08:48:00  
21 A. That's correct.  
22 Q. And then the next line after that is who the beneficiaries  
23 are to be.  
24 A. Correct.  
25 Q. Would could you read that? 08:48:15

United States District Court

KRISTY MORGAN - Direct

1 A. "The beneficiaries of the trust are James R. Parker, Jr., 08:48:17  
2 and Samuel J Parker."  
3 Q. Now, you'll notice that this trust, as we've already  
4 shown, was signed in 2005.  
5 A. Yes. 08:48:28  
6 Q. Can a trust be established in 2002 when the trustor  
7 doesn't sign the document until 2005?  
8 A. No.  
9 Q. Now, as far as --  
10 MR. SEXTON: At this time, Your Honor, we would move 08:49:18  
11 in certified DMV record of licensing for Jacqueline Parker as  
12 Exhibit 168, certified record.  
13 MR. MINNS: No objection.  
14 THE COURT: It's admitted.  
15 (Exhibit Number 168 was admitted into evidence.) 08:49:32  
16 MR. SEXTON: And also we would move in a certified  
17 record of the DMV license record for defendant James Parker,  
18 Exhibit 167. We would move that in at this time.  
19 MR. MINNS: I have no objection. I have just ask, is  
20 that James Parker, Sr., or James Parker, Jr.? 08:49:45  
21 MR. SEXTON: James R. Parker, Sr. There's no senior  
22 designated on it.  
23 MR. MINNS: Is that my client, Jim, or is that his  
24 son?  
25 MR. SEXTON: It's the defendant. 08:49:59

United States District Court

KRISTY MORGAN - Direct

1 MR. MINNS: Okay. Thank you. No objection. 08:50:00  
2 THE COURT: It's admitted.  
3 (Exhibit Number 167 was admitted into evidence.)  
4 BY MR. SEXTON:  
5 Q. Let's pull up James R. Parker, Exhibit 167. Page three, 08:50:13  
6 excuse me.  
7 Can you see that?  
8 A. Yes.  
9 Q. I'm just interested in what is the address that is listed  
10 on this MVD record as his home address? 08:50:29  
11 A. The address listed is 35802 North Meander Way, Carefree,  
12 Arizona.  
13 Q. Now if you would go to Exhibit 168, page three of that for  
14 Jacqueline Parker, and what is the -- up at the top, what is  
15 the address that she lists on her driver's license? 08:50:59  
16 A. The address listed is 35802 North Meander Way, Carefree,  
17 Arizona.  
18 MR. SEXTON: And then finally we would move into  
19 evidence as a certified public record from MVD the driver's  
20 license information for Samuel James Parker, Exhibit 162. 08:51:23  
21 MR. MINNS: Is that the junior, the son?  
22 MR. SEXTON: This is Samuel Parker.  
23 MR. MINNS: Okay. Oh. I apologize. There's no  
24 objection regardless.  
25 THE COURT: It's admitted. 08:51:38

United States District Court

KRISTY MORGAN - Direct

1 (Exhibit Number 162 was admitted into evidence.) 08:51:39

2 BY MR. SEXTON:

3 Q. Pull up page three of that one. Focus up at the top half.

4 What does Samuel James Parker list as his home address?

5 A. 35802 North Meander Way, Carefree, Arizona. 08:52:30

6 Q. And what is his date of birth?

7 A. December 24, 1982.

8 Q. Do you have Exhibit 210 in front of you?

9 A. Yes.

10 Q. Is this a certification of a lack of record for the Parker 08:53:21

11 Children Irrevocable Trust?

12 A. Yes, it is.

13 MR. SEXTON: I would move Exhibit 210 into evidence

14 as a certified public record, if it hasn't already been moved

15 in. 08:53:36

16 MR. MINNS: I believe it's already in evidence.

17 THE COURT: And the limiting instruction applies.

18 (Exhibit Number 210 was admitted into evidence.)

19 BY MR. SEXTON:

20 Q. Page two, the top two-thirds. Now, for the trust document 08:53:49

21 that we were just looking for, did I ask you to look and search

22 for records in the IRS associated with the Parker Children

23 Irreversible Trust?

24 A. Yes.

25 Q. Also with the further designation that the trustee was a 08:54:19

KRISTY MORGAN - Direct

1 Rachel Harris? 08:54:22  
2 A. Correct.  
3 Q. And in this particular case, did you also have a taxpayer  
4 identification number from which to work from?  
5 A. Yes. I used that in the search. 08:54:30  
6 Q. And what is the address shown for this trust?  
7 A. 615 Zuni Drive in Prescott, Arizona.  
8 Q. And did you search for any tax return for this trust or  
9 this taxpayer identification number?  
10 A. That's correct. 08:54:52  
11 Q. And were you able to find for any period in which this  
12 trust ever filed any tax return with the IRS?  
13 A. There's no record.  
14 Q. Do you have Exhibit 42 in front of you?  
15 A. Yes. 08:55:25  
16 MR. SEXTON: We would move Exhibit 42 into evidence.  
17 It's a self-authenticated public record from the Arizona  
18 Secretary of State for Sunlight Partners and Sunlight  
19 Financial, LLC.  
20 MR. MINNS: No objection, Your Honor. 08:55:46  
21 THE COURT: It's admitted.  
22 (Exhibit Number 42 was admitted into evidence.)  
23 BY MR. SEXTON:  
24 Q. Let's start on page two of this document. Let's start in  
25 the upper right-hand corner as to when this document was filed 08:56:08

United States District Court

KRISTY MORGAN - Direct

1 with the Arizona Secretary of State. What is the date in the 08:56:11  
2 upper right-hand corner?  
3 A. The date shows July 29, 2002.  
4 Q. And then moving down. Let's start for the heading for  
5 what the document is. What is this document heading there 08:56:26  
6 starting with the word "certificate"?  
7 A. Certificate of Limited Partnership and statement of  
8 qualification to be a Limited Liability Partnership.  
9 Q. And then the first line has -- asks for the name of the  
10 partnership. Do you see that? 08:56:47  
11 A. Yes.  
12 Q. Would you read that to the jury?  
13 A. Sunlight Partners, a general partnership.  
14 Q. And then the next line asks for the name of the limited  
15 liability partnership. 08:56:59  
16 A. Correct.  
17 Q. And does that say it was put in there?  
18 A. Sunlight Financial LLP.  
19 Q. And then what is the address that is used for this limited  
20 liability partnership? 08:57:10  
21 A. 615 Zuni Drive, Prescott, Arizona.  
22 Q. And then who is listed as the person for service of  
23 process in case there's any need to serve the partnership with  
24 a legal service of any sort?  
25 A. It shows a Gregory A. Robinson. 08:57:27

United States District Court

KRISTY MORGAN - Direct

1 Q. Now, going down to the bottom one-third of this page, it 08:57:33  
2 lists the general partners. So there are two general partners  
3 listed there. What's the first line there? Who is the first  
4 general partner?  
5 A. Rachel T. Harris. 08:57:55  
6 Q. And it lists that Prescott address that we have been  
7 looking at?  
8 A. Yes, it does.  
9 Q. And then who does it list as the second general partner?  
10 A. Named is Parker Children Irrevocable Trust. 08:58:11  
11 Q. Now, this document was filed in 2002, about?  
12 A. That's correct.  
13 Q. But the Parker Children Irrevocable Trust wasn't signed  
14 until 2005?  
15 A. Correct. 08:58:25  
16 Q. And, then, the Parker Children Irrevocable Trust has the  
17 same Prescott address?  
18 A. Yes, it does.  
19 Q. And the lists Rachel Harris as the trustee of the trust?  
20 A. Correct. 08:58:51  
21 Q. And she's the trustee and the general partner in her own  
22 name?  
23 A. Yes.  
24 Q. Page three, let's kind of pull up the heading there sort  
25 of in the middle for what it is there. 08:59:15

United States District Court

KRISTY MORGAN - Direct

1           What is this labeled with the Secretary of State? 08:59:21

2       A.    It shows annual report pursuant to A.R.S. 29-1103, limited

3       liability partnership or foreign limited liability partnership.

4       Q.    And then there's a handwriting underneath that.  What does

5       that read? 08:59:41

6       A.    It says, "For year ending December 31, 2002."

7       Q.    Now, in the upper right-hand corner, when was this

8       actually filed?

9       A.    April 4 of 2005.

10      Q.    And then going down to the body of it, this is an annual 08:59:55

11      report for -- can you read the first line up there at the top?

12      A.    It says Sunlight Financial.

13      Q.    And what's the next thing that is after that?

14      A.    It says just a P.

15      Q.    And then at the bottom of this page, it has some 09:00:20

16      signatures under penalty of perjury, penalty of law.  Is it

17      just two signatures with Rachel Harris?

18      A.    That's correct.

19      Q.    Both dated 3-28 of 2005?

20      A.    Yes. 09:00:37

21      Q.    The next page, page four, is it the same type of document

22      we just looked at except it has a different handwriting date

23      underneath the heading.  What does it say now?

24      A.    For year ending December 31, 2004.

25      Q.    And at the bottom, does it have a couple of signatures by 09:01:10

United States District Court



KRISTY MORGAN - Direct

1 Rachel Harris dated 4-4 of 2005? 09:01:13  
2 A. That's correct.  
3 Q. So approximately six days after the previous one for 2002?  
4 A. Yes.  
5 Q. And in the certified record, do you see anything for an 09:01:36  
6 annual report for 2003?  
7 A. No, I do not.  
8 Q. Now, if you would look at Exhibit 24, which is a certified  
9 record associated with Sunlight Financial.  
10 MR. SEXTON: We would move that into evidence at this 09:02:24  
11 time if it hadn't already been.  
12 THE COURT: It has been and a limiting instruction  
13 applies.  
14 (Exhibit Number 24 was admitted into evidence.)  
15 BY MR. SEXTON: 09:02:41  
16 Q. So to page three of Exhibit 24. Actually, go to page  
17 four. Is this from the place of business of the Internal  
18 Revenue Service?  
19 A. Yes, it is, internal information.  
20 Q. And the entity information that it deals with, is it -- 09:03:11  
21 where it says primary name line, is that it, Sunlight  
22 Financial, LLC?  
23 A. Yes, that's correct.  
24 Q. And what does it say is sort of another sort name below  
25 that? 09:03:25

United States District Court

KRISTY MORGAN - Direct

1 A. Harris, Rachel T, member. 09:03:26

2 Q. And then it has that Zuni address just below that?

3 A. Yes.

4 Q. Now, from the standpoint of what this document represents,  
5 on page three, going back, what is this document capturing from 09:03:42  
6 the IRS?

7 A. This is the information stored on the business master file  
8 online entity that shows the date that the trust was  
9 established. It shows the filing requirements, of course the  
10 name of the trust, and it shows the employer identification 09:04:05  
11 number.

12 Q. And again, the numbers are hard to understand but are  
13 there a series of numbers that start with 941, 1065 and 940, do  
14 you see those at the bottom?

15 A. Yes. 09:04:24

16 Q. Would you explain to the jury what those signify?

17 A. Those are the filing requirement codes that were sent to  
18 the IRS when this employer identification number was  
19 established. It states that there would be 941s filed, 1065s  
20 filed, and 940s filed. 09:04:47

21 Q. Now, let's break that down for the jury. When you say  
22 this was something that was sent to the IRS, what do you mean  
23 by "sent to the IRS"? Is it something the taxpayer would have  
24 sent to the IRS to alert them to something or something the IRS  
25 would send to the taxpayer? 09:05:03

United States District Court

KRISTY MORGAN - Direct

- 1 A. The taxpayer would send the IRS requesting an employer 09:05:05  
2 identification number. This would be information captured from  
3 the form the taxpayer sent to the IRS.
- 4 Q. And these forms at the bottom are those things they  
5 indicated on the form would be filed with the IRS? 09:05:18
- 6 A. Yes, that's correct.
- 7 Q. Let's break down each one of these. Are the 940 -- what  
8 is that, kind of a tax return that the IRS has filed?
- 9 A. That's a form that would be filed by the employer if they  
10 withhold unemployment, Social Security tax, from their 09:05:34  
11 employees. That would be reported at the end of the tax year.
- 12 Q. And then pulling back out, this 941, what's that form?
- 13 A. That is the form that is quarterly filed by an employer  
14 when they take withholding out of an employee's wage. That is  
15 where they mail the withholding to the IRS along with the form. 09:05:56
- 16 Q. And then, finally, the one in the middle, the 1065, what  
17 is that return?
- 18 A. That is a partnership return that is an information  
19 document that is sent in with the receipts and assets of the  
20 partnership. 09:06:13
- 21 Q. The entity Sunlight Financial, LLP. What's the LLP stand  
22 for?
- 23 A. Limited liability -- I don't know for sure what the  
24 partnership is.
- 25 Q. Partnership or not? 09:06:26

United States District Court

KRISTY MORGAN - Direct

1 A. Partnership, correct. 09:06:27

2 Q. Now, would you explain to the jury what the filing  
3 requirements are for partnerships?

4 A. For partnerships, they file an information return at the  
5 end of every filing season. The K-1s are attached to show the 09:06:35  
6 partners' share and the amount of income or loss that the  
7 partnership is claiming on their own personal income tax  
8 return.

9 Q. Is that an annual requirement?

10 A. It is. 09:06:51

11 Q. Would it also disclose assets and liabilities as well?

12 A. Yes, it would.

13 Q. Would you turn to Exhibit 25?

14 MR. SEXTON: I would offer Exhibit 25 as a certified  
15 record if it hasn't already been. 09:07:13

16 THE COURT: It's admitted already and the instruction  
17 applies.

18 (Exhibit Number 25 was admitted into evidence.)

19 BY MR. SEXTON:

20 Q. Page two. Did you search for Sunlight Financial with 09:07:26  
21 Rachel Harris as a member of Sunlight Financial?

22 A. Yes, I did.

23 Q. Now, I may be seeing a typographical error. It says LLC  
24 rather than LLP. Do you see that?

25 A. Yes. 09:07:55

United States District Court

KRISTY MORGAN - Direct

1 Q. And LLC is a limited liability corporation? 09:07:55  
2 A. That's correct.  
3 Q. Now, would the fact that you have a C there rather than a  
4 P affect the search for any tax records associated with this?  
5 A. No. The search was done with the employer identification 09:08:09  
6 number.  
7 Q. That is that number to the right?  
8 A. Yes.  
9 Q. And then the same address was used as far as the Prescott,  
10 Arizona? 09:08:20  
11 A. That's correct.  
12 Q. Now, this one describes that what you're looking for is  
13 you're looking for any tax form whatsoever, not even just tax  
14 returns, any tax form?  
15 A. Right. 09:08:29  
16 Q. And were you limited at all in the periods you searched  
17 for any records associated with the IRS as to Sunlight  
18 Financial?  
19 A. No.  
20 Q. And for Sunlight Financial, did you find any tax record 09:08:41  
21 whatsoever for any tax form -- I should say whatsoever for any  
22 period?  
23 A. The search resulted in no records at all.  
24 Q. And by tax form, that include tax returns?  
25 A. Yes. 09:09:04

United States District Court

KRISTY MORGAN - Direct

1 Q. Exhibit 208. 09:09:05

2 THE COURT: It has been admitted.

3 And, ladies and gentlemen, the instruction applies.

4 (Exhibit Number 208 was admitted into evidence.)

5 BY MR. SEXTON: 09:09:35

6 Q. Page two of this document. Did you also search for

7 something called Sunlight Partners as well?

8 A. Yes, I did.

9 Q. Now, using sort of an unknown taxpayer identification?

10 A. Right. I was not provided an employer identification 09:09:46

11 number.

12 Q. And did you search for any tax returns?

13 A. Yes.

14 Q. And for any period?

15 A. Yes. 09:09:56

16 Q. And did you find anything in regard to something called

17 Sunlight Partners having been filed as to tax returns?

18 A. There was no records for Sunlight Partners.

19 Q. Now, this one, the street address is unknown; correct?

20 A. Correct. 09:10:16

21 Q. And then in Exhibit 209, did you run it again using the

22 Zuni Drive?

23 MR. SEXTON: I offer Exhibit 209 if it's not in

24 evidence.

25 THE COURT: It's admitted and the instruction 09:10:27

KRISTY MORGAN - Direct

1 applies. 09:10:29

2 (Exhibit Number 209 was admitted into evidence.)

3 BY MR. SEXTON:

4 Q. Is Exhibit 209 just like Exhibit 208 except it has the

5 street address and the city and state location? 09:10:39

6 A. That's correct.

7 Q. For Sunlight Partners again?

8 A. Yes, it is.

9 Q. And again, would that additional information added, did

10 you find any tax returns for any tax period? 09:10:49

11 A. No. The search for the address also resulted in no

12 returns filed.

13 Q. I have Exhibit 40.

14 MR. SEXTON: I would offer Exhibit 40 as a

15 certified -- a record for the state of Oklahoma Secretary of 09:11:23

16 State for Cimarron River Ranch.

17 MR. MINNS: No objection.

18 THE COURT: It's admitted.

19 (Exhibit Number 40 was admitted into evidence.)

20 BY MR. SEXTON: 09:11:43

21 Q. Okay. Let's go to page two. At the top of this, it's a

22 certificate from the state of Oklahoma Office of the Secretary

23 of State?

24 A. Correct.

25 Q. And then down below about the second paragraph, let's wait 09:11:57

KRISTY MORGAN - Direct

1 until I can even pull the second paragraph up here. What is it 09:12:03  
2 pertaining to? What is the second paragraph saying?

3 A. It's pertaining to Cimarron River Ranch, LLC, a limited  
4 liability company, duly organized and existing under and by  
5 virtue of the laws of the state of Oklahoma, was granted a 09:12:21  
6 certificate on the 21st day of April, 2004.

7 Q. And then another couple of paragraphs down there's sort of  
8 a little recap of its history there on the first page. Do you  
9 see that? A little bit higher actually. Let's go to that  
10 midsection where it has the status and then the ending date. 09:12:44

11 And this gives a little history of annual reports,  
12 that there was a termination, there was a reinstatement. Do  
13 you see all of that?

14 A. Yes.

15 Q. And then the next paragraph that you can still see here, 09:13:01  
16 it indicates that the registered agent for service of process  
17 is Stanley Manske.

18 A. Yes.

19 Q. The second page -- or actually, the third page. Does  
20 that, in the middle there, sort of give a history of the 09:13:36  
21 Cimarron River Ranch as to its state filings?

22 A. Yes. It does. It shows the filings.

23 Q. Now, let's skip to page six. These are the articles of  
24 organization for Cimarron River Ranch?

25 A. I have that. 09:14:13

United States District Court



KRISTY MORGAN - Direct

1 Q. And then in the first box or the first thing, number one 09:14:18  
2 is what the entity will recall. What's it labeled there?  
3 A. The name of the company is Cimarron River Ranch, LLC.  
4 Q. And then it gives you an address in Kenton, Oklahoma?  
5 A. Yes, 106 East Main Street. 09:14:42  
6 Q. And then it has the same registered agent that we've  
7 talked about earlier?  
8 A. Correct.  
9 Q. And then down below, what's the date that's indicated?  
10 A. The signature date is April 15, 2004. 09:14:57  
11 Q. And it appears to be a signature by Samuel Parker?  
12 A. It does.  
13 Q. With the name printed underneath of Samuel Parker?  
14 A. Correct.  
15 Q. And then at the bottom you see there's a received stamp of 09:15:13  
16 April 21, 2004?  
17 A. That's correct.  
18 Q. And then skipping to page 12, what's the title of this  
19 document there at the top there?  
20 A. It's an Application for Reinstatement. 09:15:54  
21 Q. And then looking down toward sort of the middle of the  
22 document, this pertains to Cimarron River Ranch again?  
23 A. Cimarron River Ranch, LLC.  
24 Q. And then on number three there, it says, "The date the  
25 business entity ceased to be in good standing." Do you see 09:16:13

United States District Court

KRISTY MORGAN - Direct

1 that? 09:16:16

2 A. Yes.

3 Q. When was that?

4 A. August 1, 2009.

5 Q. And then it's reinstated just below that with a new date. 09:16:25

6 What does it say? Do you see the date?

7 A. The date is March 29, 2010.

8 Q. And it's signed by Samuel Parker again?

9 A. That's correct.

10 Q. And I don't know if you can make it out, do you see 09:16:53

11 there's a crossing out on the address down there?

12 A. Yes.

13 Q. Can you make out the word "Carefree" in the blackened

14 portion there as far as Arizona?

15 A. Yes. I also see a P.O. Box, 5722, Carefree, Arizona. 09:17:03

16 Q. Now, if you would go to Exhibit 26 --

17 MR. SEXTON: Which we move into evidence if it's not

18 already in.

19 THE COURT: It is. And a limiting instruction

20 applies. 09:17:32

21 (Exhibit Number 26 was admitted into evidence.)

22 BY MR. SEXTON:

23 Q. Page four of this document. Is this another one of these

24 sort of internal files for, in this case, Cimarron River Ranch?

25 A. That's correct. 09:17:52

United States District Court

KRISTY MORGAN - Direct

1 Q. Is that indicated right there in sort of the entity 09:17:53  
2 information section?  
3 A. Primary name line, Cimarron River Ranch, LLC.  
4 Q. And then it has a reference to a sort name. Who does it  
5 say? 09:18:05  
6 A. Parker, Samuel James, member.  
7 Q. And then it has a Kenton, Oklahoma, address after that?  
8 A. Yes.  
9 Q. Now, is this similar to the -- this document, it's similar  
10 in the sense of what it tells about what the taxpayer was going 09:18:18  
11 to file with the IRS for this limited liability corporation  
12 called Cimarron River Ranch?  
13 A. Yes, it does show filing requirements.  
14 Q. Go to page three, if you would. At the bottom there, it  
15 has that same 940 and 941 and 1065. Do you see that? 09:18:44  
16 A. Yes.  
17 Q. You have already explained what those are. But since this  
18 is a limited liability corporation, the 1065, is that a  
19 partnership return or a limited liability corporation that is  
20 included in that as well? 09:19:03  
21 A. That would be a partnership return.  
22 Q. Okay. So to the extent that we just looked at the  
23 incorporation documents for Cimarron River Ranch, that was as  
24 an LLC, a limited liability corporation, not an LLP, a limited  
25 liability partnership? 09:19:19

United States District Court

KRISTY MORGAN - Direct

1 A. Correct. 09:19:21

2 Q. So when it indicates on this record from what the taxpayer  
3 sent in, they really wouldn't be filing a 1065 partnership  
4 return; they would be filing some sort of a corporate return?

5 A. Yes. 1120 or 1120-S. 09:19:37

6 Q. Explain to the members of the jury when a limited  
7 liability corporation has an obligation to file a tax return  
8 annually with the IRS.

9 A. Yes. The limited liability corporation would file either  
10 an 1120, which is an actual return that tax is computed on, 09:19:56  
11 receipts and deductions are claimed on that. An 1120-S is an  
12 information return that the shareholders would be responsible  
13 to pay the tax on their personal income tax return. Still  
14 1120-S contains the gross income, any deductions, any assets  
15 would be reported on that document. 09:20:20

16 Q. Let me have you look at Exhibit 27. Did you run a search  
17 for any tax forms for Cimarron River Ranch, LLC?

18 THE COURT: And that's admitted and the limiting  
19 instruction applies.

20 MR. SEXTON: I'm sorry. Thank you. 09:20:41

21 (Exhibit Number 27 was admitted into evidence.)

22 THE WITNESS: Yes, I did perform that search.

23 BY MR. SEXTON:

24 Q. And that's in the -- oh, my co-counsel corrected me. It's  
25 not a limited liability corporation. It's a limited liability 09:20:50

KRISTY MORGAN - Direct

1 company. 09:20:53  
2 A. Yes.  
3 Q. My mistake. So as to Cimarron River Ranch, did you look  
4 for any tax form for any tax period?  
5 A. I did. 09:21:10  
6 Q. And was there any tax form for any tax period filed with  
7 the IRS for Cimarron River Ranch, LLC?  
8 A. The search result was "No records found."  
9 Q. Do you have Exhibit 43 in front of you?  
10 A. Yes. 09:21:50  
11 MR. SEXTON: I would move Exhibit 43 in as a  
12 certified record from the Secretary of State.  
13 MR. MINNS: I apologize. I didn't hear you.  
14 THE COURT: 43.  
15 MR. SEXTON: Exhibit 43 is a certified record for 09:22:03  
16 Resorts Consulting Quorum.  
17 MR. MINNS: I have no objection.  
18 THE COURT: It's admitted.  
19 (Exhibit Number 43 was admitted into evidence.)  
20 BY MR. SEXTON: 09:22:25  
21 Q. Up in the upper right-hand corner, when was this document  
22 filed with the Secretary of State?  
23 A. Filing date is January 26, 2005.  
24 Q. And let's go down to -- what is this document? Is this a  
25 certificate of limited partnership again? 09:22:39

United States District Court

KRISTY MORGAN - Direct

1 A. It is. 09:22:41

2 Q. And what is the name of the entity that considered the  
3 name of the partnership on that line?

4 A. Resort Consulting Group, a general partnership.

5 Q. And then in the name of the limited liability partnership, 09:22:53  
6 what does it say below that?

7 A. Resorts Consulting Quorum, LLP.

8 Q. And then it lists the name of an agent for service of  
9 process as David Robinson?

10 A. Yes. 09:23:10

11 Q. And then below that, as to the partners, there are two  
12 there listed. Do you see that?

13 A. Yes, I do.

14 Q. Is one an R.D. Robinson?

15 A. That's correct. 09:23:32

16 Q. And is the other one A Gila Shrimp, LLP?

17 A. Yes.

18 Q. Now, go to Exhibit 28, which I believe is in evidence.

19 THE COURT: Yes. And the instruction applies.

20 (Exhibit Number 28 was admitted into evidence.) 09:24:02

21 BY MR. SEXTON:

22 Q. On page three, is this another IRS database record for  
23 Results -- excuse me, Resorts Consulting Quorum?

24 A. That's correct.

25 Q. And does it indicate on the first page here that it is 09:24:18

KRISTY MORGAN - Direct

1 going to be responsible for filing a 1065 which is that 09:24:20  
2 partnership return you told the jury about a few minutes ago?  
3 A. That's the filing requirements, yes.  
4 Q. And Exhibit 29 which I believe is in evidence.  
5 THE COURT: It is, and the limiting instruction 09:24:37  
6 applies.  
7 (Exhibit Number 29 was admitted into evidence.)  
8 BY MR. SEXTON:  
9 Q. Page two. Did you run a database search for Resorts  
10 Consulting Quorum, LLP? 09:24:52  
11 A. Yes, I did.  
12 Q. Looking for any tax form for any tax period?  
13 A. Correct.  
14 Q. Did you find anything?  
15 A. No. The results of the search were "No records found." 09:25:01  
16 Q. Do you have Exhibit 41 there?  
17 A. Yes, I do.  
18 MR. SEXTON: I would offer Exhibit 41 as a certified  
19 record for the state of Oklahoma for RSJ Investments, LLC.  
20 MR. MINNS: No objection. 09:25:37  
21 THE COURT: It's admitted.  
22 (Exhibit Number 41 was admitted into evidence.)  
23 BY MR. SEXTON:  
24 Q. Let's go to the second paragraph. Would you read that  
25 second paragraph to the jury? 09:26:03

United States District Court

KRISTY MORGAN - Direct

1 A. "I further certify that RSJ Investments, LLC, a limited 09:26:09  
2 liability company duly organized and existing under and by  
3 virtue of the laws of the State of Oklahoma, was granted a  
4 certificate on the 22nd day of August, 2005."  
5 Q. And then just below that there's a little recap of the 09:26:28  
6 history of it. Do you see that?  
7 A. Yes.  
8 Q. It shows it was terminated on March 26, 2007?  
9 A. That's correct.  
10 Q. And that it showed a status as being canceled on July 1, 09:26:44  
11 2010?  
12 A. Yes.  
13 Q. And that it was reinstated on October 13, 2010?  
14 A. Correct.  
15 Q. And then page four. And then it talks about when the 09:27:08  
16 articles of organization were created?  
17 A. Yes.  
18 Q. August 22, 2005?  
19 A. That's correct.  
20 Q. And then it was eventually reinstated on October 13, 2010? 09:27:29  
21 A. Yes.  
22 Q. And then page six is the articles of organization?  
23 A. That's correct.  
24 Q. That's at the top there. And then in the first section it  
25 lists what the name of the entity is. What does it show there? 09:27:53

United States District Court



KRISTY MORGAN - Direct

1 A. It shows RSJ Investments, LLC. 09:27:56  
2 Q. And then let's go to the signature line at the bottom.  
3 Does it indicate a date of August 19 for a signature by Samuel  
4 Parker?  
5 A. Yes, it does. 09:28:14  
6 Q. With an address in Kenton, Oklahoma?  
7 A. Correct.  
8 Q. And was it received by the Secretary of State for Oklahoma  
9 on August 22, 2005, in the right-hand corner?  
10 A. That's correct. 09:28:27  
11 Q. If you go to Exhibit 30. I believe it is evidence.  
12 THE COURT: It is. And the instruction applies.  
13 (Exhibit Number 30 was admitted into evidence.)  
14 BY MR. SEXTON:  
15 Q. Can you go to page two? Were you asked to check for any 09:29:03  
16 tax returns or tax forms associated with RSJ Investments, Inc.?  
17 A. Yes, I was.  
18 Q. For any tax period?  
19 A. Yes.  
20 Q. Does this certificate of lack of record indicate that you 09:29:26  
21 were able to find anything for RSJ Investments, Inc.?  
22 A. The record did not return any tax returns filed for RSJ  
23 Investments, Incorporated.  
24 Q. If you look at Exhibit 44.  
25 MR. SEXTON: We offer Exhibit 44 as a certified 09:29:53

United States District Court

KRISTY MORGAN - Direct

1 public record from the state -- Secretary of State of Nevada 09:29:55  
2 for Omega Construction, Inc.  
3 MR. MINNS: No objection.  
4 THE COURT: It's admitted.  
5 (Exhibit Number 44 was admitted into evidence.) 09:30:06  
6 BY MR. SEXTON:  
7 Q. Will you go to page three, upper portion? This is for  
8 Omega Construction, Inc., articles of incorporation?  
9 A. That's correct.  
10 Q. And just to the left of that, what does it indicate is the 09:30:30  
11 date it was filed with the Secretary of State in Nevada?  
12 A. September 15, 1999.  
13 Q. Let's go to page four. Right in the middle there, it has  
14 a heading called Article V. If we could focus in on that  
15 portion there. What's the heading for Article V, right 09:31:03  
16 underneath it?  
17 A. Directors.  
18 Q. And then the section 5.02 says, "The initial board of  
19 directors." Does it give a name there?  
20 A. It shows Cort W. Christie. 09:31:20  
21 Q. And then in the Article VI -- and you can leave it right  
22 on the screen here the way it is -- where does it say the name  
23 and address of the incorporation is?  
24 A. It shows the corporate headquarters, P.O. Box 27740, Las  
25 Vegas, Nevada. 09:31:38

United States District Court

KRISTY MORGAN - Direct

1 Q. And then page seven. The signature line on the top one. 09:31:48  
2 A. Yes.  
3 Q. Is this that director Cort Kristy?  
4 A. Yes.  
5 Q. Signing it on roughly, it looks like, September 15 of 09:32:07  
6 1999?  
7 A. Correct.  
8 Q. And then would you turn to Exhibit 45?  
9 MR. SEXTON: I would offer Exhibit 45 as a certified  
10 Nevada Secretary of State record for Omega Construction. 09:32:29  
11 MR. MINNS: No objection.  
12 THE COURT: It's admitted.  
13 (Exhibit Number 45 was admitted into evidence.)  
14 BY MR. SEXTON:  
15 Q. Go to page three, if you would. At the top, is this for 09:32:45  
16 Omega Construction, a Nevada corporation? Is that what it says  
17 in the upper left-hand corner?  
18 A. Yes.  
19 Q. And it says its corporate headquarters are on West Sahara?  
20 MR. MINNS: Objection, leading. 09:33:14  
21 THE COURT: Sustained.  
22 BY MR. SEXTON:  
23 Q. What does it indicate is the address for the Nevada  
24 corporate headquarters?  
25 A. Nevada corporate headquarters, 5300 West Sahara, Suite 09:33:20

United States District Court

KRISTY MORGAN - Direct

1 101, Las Vegas, Nevada. 09:33:24

2 Q. And in the upper right corner, does it indicate the filing  
3 period?

4 A. It shows a period of September 1999 to September 2000.

5 Q. Now if we can go down to the bottom half of this document. 09:33:40  
6 Does the document indicate a person as president of the entity?

7 A. Yes, it does.

8 Q. Who does it indicate?

9 A. Jose R. Valero.

10 Q. And does it give an address for him? 09:33:58

11 A. It is 28805 North 51st Street, Cave Creek, Arizona.

12 Q. Is there an indication of a secretary for the entity?

13 A. Secretary is listed as James R. Parker, Post Office Box  
14 5722, Carefree, Arizona.

15 Q. What about as a treasurer? 09:34:19

16 A. Listed is James R. Parker, Post Office Box 5722, Carefree,  
17 Arizona.

18 Q. And as a director?

19 A. The director listed a James R. Parker, Post Office Box  
20 5722, Carefree, Arizona. 09:34:33

21 Q. And is it signed by James Parker at the bottom?

22 A. Yes, it is.

23 Q. And what is the title that that is to the right of his  
24 signature?

25 A. CEO and Secretary/Treasurer. 09:34:49

United States District Court

KRISTY MORGAN - Direct

1 Q. If you can go to Exhibit 31. 09:35:14

2 MR. SEXTON: I believe this is in evidence. If not,

3 I would move it in as a certified record for tax return for

4 Omega Construction.

5 MR. MINNS: I'm going to object as repetitive, 09:35:30

6 irrelevant and unduly burdensome.

7 THE COURT: And this is the tax return for Omega

8 Construction?

9 MR. SEXTON: For 2006.

10 THE COURT: Sustained -- I'm sorry. Overruled. 09:35:44

11 MR. MINNS: Then I would ask for limiting

12 instructions.

13 THE COURT: Ladies and gentlemen, this particular

14 document is not to be considered by you in determining or as a

15 separate claim against the defendant. It is to be considered 09:36:02

16 by you only if you decide to consider it for the purpose of

17 determining whether or not the defendant committed the charges.

18 BY MR. SEXTON:

19 Q. Would you look at page three of that document?

20 (Exhibit Number 31 was admitted into evidence.) 09:36:29

21 BY MR. SEXTON:

22 Q. Is this an 1120-S type of return you were talking about

23 earlier for corporations?

24 A. Yes, it is.

25 Q. And who is the corporation -- whose return is this for? 09:36:41

KRISTY MORGAN - Direct

- 1 A. Omega Construction, Incorporated. 09:36:46
- 2 Q. And what is the tax year that this is a filing for?
- 3 A. This is for the 2006 tax period.
- 4 Q. And in the middle of the -- is there a received stamp in
- 5 the middle of this one, middle of the tax return when the IRS 09:36:59
- 6 received it.
- 7 A. Yes. Received April 24, 2007 in Ogden, Utah.
- 8 Q. And is there a signature line of James Parker as president
- 9 on the bottom?
- 10 A. That's correct. 09:37:11
- 11 Q. And what is the date indicated?
- 12 A. The signature date is April 15, 2007.
- 13 Q. And is there a paid preparer indicated?
- 14 A. Yes. Timothy H. Liggett.
- 15 Q. Now, if you would go to page six, at the top it's a 09:37:38
- 16 balance sheet. Do you see that?
- 17 A. Yes.
- 18 Q. Is this a balance sheeted for Omega Construction?
- 19 A. That's correct.
- 20 Q. And would you -- does it show the beginning of the year as 09:38:06
- 21 being the first couple of columns?
- 22 A. Yes.
- 23 Q. And does it show the end of the year?
- 24 A. Yes. Column C and D is the end.
- 25 Q. Now, looking where it says "other current assets," line 09:38:22

United States District Court

KRISTY MORGAN - Direct

1 six, do you see that? 09:38:24

2 A. Yes.

3 Q. What is the amount that is indicated at the beginning and

4 at the end for this tax year?

5 A. \$296,000 at the beginning and \$296,000 at the end. 09:38:31

6 Q. Then looking down below, in line 21, is it showing another

7 liability by Omega?

8 A. It does.

9 Q. Is it the same \$296,000?

10 A. Yes, for the beginning and the end. 09:38:51

11 Q. Does it show an asset of \$296,000 and a liability of

12 \$296,000?

13 A. Correct.

14 Q. And then on page eight, let's focus on those last two

15 sections. In the heading called Other Current Assets here -- 09:39:23

16 A. Yes.

17 Q. -- what does it indicate in line one?

18 A. Line one says, "Note receivable, Sunlight, beginning,

19 \$296,000; and ending, \$296,000."

20 Q. And below that in the line 21, Other Liabilities, what 09:39:44

21 does it indicate on line one?

22 A. Other Liabilities, Sunlight, \$296,000, beginning; ending,

23 \$296,000.

24 Q. If you would go to Exhibit 104, page seven, at the bottom

25 there. What does that indicate for Omega Construction as an 09:40:54

United States District Court

KRISTY MORGAN - Cross

1 amount due from Sunlight? 09:41:04

2 A. \$296,000.

3 Q. Is there anything in Exhibit 104 that shows an offsetting

4 liability back to Sunlight Financial for \$296,000?

5 A. It does not. 09:41:21

6 MR. SEXTON: I have nothing further, Your Honor.

7 THE COURT: All right.

8 Ladies and gentlemen, we'll take our morning recess.

9 We'll see you back here at 10 o'clock.

10 (Jury departs.) 09:41:57

11 (Recess at 9:42; resumed at 10:07.)

12 (Jury enters.)

13 (Court was called to order by the courtroom deputy.)

14 THE COURT: Please be seated.

15 All right. Mr. Minns? 10:07:54

16 MR. MINNS: Thank you, Your Honor.

17 May it please the Court, may I begin cross?

18 THE COURT: You may.

19 **CROSS - EXAMINATION**

20 BY MR. MINNS: 10:08:25

21 Q. Good morning, Ms. Morgan.

22 A. Good morning.

23 Q. We've met before, have we not?

24 A. We have.

25 Q. And you know I'm here -- we have not met on this case, 10:08:42



KRISTY MORGAN - Cross

1     though; correct? 10:08:44

2     A.     That's correct.

3     Q.     We have not had any discussions about Jim Parker; correct?

4     A.     That's correct.

5     Q.     This is our first discussion on this case? 10:08:50

6     A.     Correct.

7     Q.     And you've never met Jim Parker, the man sitting at the

8     table there?

9     A.     No, I have not.

10    Q.     And, Ms. Morgan, you've testified about the function of 10:09:10

11    lot of complicated tax documents in the last day and part of

12    this morning and what they mean and you've testified from your

13    experience knowing what these instruments mean and how they act

14    and how they work; correct?

15    A.     By my background, yes. 10:09:30

16    Q.     You're not a CPA, though? You never sat for the CPA exam?

17    A.     No. No.

18    Q.     You've never taken the courses that CPAs take in order to

19    be qualified to sit for the exam?

20    A.     No. 10:09:47

21    Q.     So if at some point in time you wanted to, you would have

22    to go back to school to take those courses; correct?

23    A.     That's correct.

24    Q.     There's another licensed person that works for taxpayers

25    in front of the Internal Revenue Service. That would be the 10:10:01

KRISTY MORGAN - Cross

1 enrolled agent; correct? 10:10:08

2 A. An enrolled agent, yes.

3 Q. You're not an enrolled agent; correct?

4 A. No.

5 Q. You've never sat for the enrolled agent examination; 10:10:12

6 correct?

7 A. No, I have not.

8 Q. You've never taken the testing and the course study to

9 become an enrolled agent; correct?

10 A. No, I have not. 10:10:22

11 Q. There's a newly created by the Treasury position of an

12 accepted tax preparer which requires a certain amount of

13 classes. You haven't taken that either; correct?

14 A. No, I have not.

15 Q. If we drop down to, say, H&R Block to people that help on 10:10:48

16 simple tax returns and they teach a six-week course in order to

17 give -- prepare those returns, you haven't taken a course like

18 that before either; correct?

19 A. Not through H&R Block.

20 Q. You've taken one through a private institution or 10:11:07

21 university, not related to the Internal Revenue Service?

22 A. No. The course I took was through the IRS.

23 Q. That included the course in testifying; correct?

24 A. Yes.

25 Q. And you passed that with flying colors; correct? 10:11:21

KRISTY MORGAN - Cross

1 A. I have taken those training classes. 10:11:24

2 Q. Do you teach those classes, too?

3 A. Teach, which type of classes?

4 Q. How to testify in front of a jury?

5 A. No. 10:11:32

6 Q. But you know from your training that to become an enrolled

7 agent or CPA or a professional tax preparer or work for H&R

8 Block, it is not required to have a testifying class. You know

9 that?

10 A. I don't know what the requirements are, no. 10:11:51

11 Q. Okay. That's fair.

12 And you've testified over 60 times?

13 A. Correct.

14 Q. You have a degree. It's in medical assistant office

15 management; correct? 10:12:09

16 A. That's correct.

17 Q. You're on the government's payroll today and your job is

18 to help them win this case; correct?

19 A. My job is to explain the normal business practices of the

20 IRS and enter the documents. 10:12:28

21 Q. You're part of a government team trying to convict Jim

22 Parker; correct?

23 A. Again, I'm a fact witness for the -- as a custodian of

24 records.

25 Q. So you really don't care how the trial ends up? 10:12:41

KRISTY MORGAN - Cross

1 A. My responsibility is to enter the documents in and explain 10:12:43  
2 the normal business practices of the IRS.

3 Q. I apologize. I didn't ask the question clearly.

4 You don't have an interest in how the verdict comes  
5 out? You don't care. Is that what you're telling this jury? 10:12:57

6 A. I want the honest truth entered into the courts and the  
7 jury can deliberate that and come up with their decision.

8 Q. I am going to try to segregate my questions in groups to  
9 save some time. I may go back and forth a little bit but I'm  
10 going to try to go into the groups. I'm going to start with my 10:13:37  
11 chart.

12 Have you seen my chart?

13 A. I have not, no.

14 Q. Okay.

15 MR. MINNS: May I approach the witness, Your Honor? 10:13:49

16 THE COURT: Yes. Well, let's see. Isn't that the  
17 same --

18 MR. MINNS: Yes, it is.

19 THE COURT: Let's just give her one of the papers  
20 that the jury has. And this is the one we gave the jury? 10:13:58

21 COURTROOM DEPUTY: I have one, Your Honor.

22 MR. MINNS: May I put this back against the wall?

23 THE COURT: Yes.

24 MR. MINNS: That makes more sense, Your Honor.

25

KRISTY MORGAN - Cross

1 BY MR. MINNS: 10:14:48

2 Q. I may have the time on this wrong and I apologize if I'm  
3 wrong, but it appears that over half of the questions that you  
4 were asked had to do with Exhibits 13, 14, 17, 6, 18, 7, 19, 8,  
5 29, 21, 10, 22, 23, 207, 210, 24, 25, 208, 209, 26, 27, 29, and 10:15:05  
6 30 which where the Court gave some limiting instructions  
7 explaining that my client has not been charged with any  
8 wrongdoing in any of those cases. Would you agree with me on  
9 that?

10 A. There was limiting instructions on some of the exhibits. 10:15:31  
11 I don't know the numbers.

12 Q. Okay. Could this be possible for -- it couldn't be  
13 possible for you to memorize them all.

14 But, for example, if Rachel Harris is supposed to  
15 file a return on behalf of a trust and if that is one of those 10:15:47  
16 exhibits that -- and you decided to charge her or if Mr. Parker  
17 was supposed to do something that is not on what he's here for  
18 today and you decided to charge him, you can charge him for  
19 that as soon as this trial is over but he's not being charged  
20 for those things in this trial? 10:16:19

21 MR. SEXTON: Object to the form of the question.  
22 Very convoluted.

23 THE COURT: Sustained on the form. It is ambiguous.

24 BY MR. MINNS:

25 Q. The government is not restricted if they think he's broken 10:16:36

KRISTY MORGAN - Cross

1 other laws besides the eight that they are explaining in this  
2 courtroom that they are asking the jury to vote on. When this  
3 trial over, the government is not restrained. They can charge  
4 him with those other things as crimes tomorrow; correct?

10:16:39

5 MR. SEXTON: Objection. Calls for a legal  
6 conclusion.

10:16:53

7 THE COURT: Sustained on legal conclusion.

8 BY MR. MINNS:

9 Q. What I would like to do is talk about two of the counts  
10 that you testified about, Count 3 and Count 4, to start with  
11 and I would like to ask you if I understood your testimony  
12 correctly. Did you testify that the taxes on 2001 were paid  
13 but they were paid very, very, very late?

10:17:13

14 A. Yes. It was a payment received April 21.

15 Q. You testified again Mr. Parker's penalties and interest on  
16 those because if you pay, even a day late, you can owe interest  
17 and penalties; correct?

10:17:53

18 A. That's correct.

19 Q. When I put that on my chart, it just means that according  
20 to your testimony, the tax has been paid but he still owes  
21 penalties and interest.

10:18:14

22 A. Correct.

23 Q. And on 2002, Count 4, I believe you had similar testimony  
24 that the tax has been paid very, very, very late and there's a  
25 whole bunch of penalties and interest and you're not forgiving

10:18:35

United States District Court

KRISTY MORGAN - Cross

1 the penalties and interest; correct? 10:18:41

2 A. The penalties and interest are statutory. That's not my  
3 decision.

4 Q. Right. But the taxes are paid?

5 A. There was a payment received, yes. 10:18:54

6 Q. I may have misunderstood you. I thought you testified  
7 that all of the taxes reported on the form minus penalties and  
8 interest were paid.

9 A. That's correct.

10 MR. MINNS: I hope I didn't do that. I get near 10:19:28  
11 electronics on that --

12 COURTROOM DEPUTY: I'm going to have to get Brian  
13 Lalley in here.

14 THE COURT: Okay. Ladies and gentlemen, I don't  
15 think that's the kind of music we want to listen to so we're 10:19:52  
16 going to take another break and let's see if we can get our  
17 technical person in here. So Christine will let us know.

18 (Jury departs.)

19 (Recess at 10:20; resumed at 10:39.)

20 (Jury enters.) 10:34:39

21 (Court was called to order by the courtroom deputy.)

22 THE COURT: All right. We'll go ahead.

23 MR. MINNS: May I proceed, Your Honor?

24 THE COURT: You may.

25

KRISTY MORGAN - Cross

1 BY MR. MINNS: 10:39:16

2 Q. In your testimony yesterday, I don't believe you testified  
3 that any of these LLPs that you said have not filed tax returns  
4 owe any taxes.

5 A. There's no record of any of those companies with the IRS. 10:39:19

6 Q. And there's no substitute returns by the IRS?

7 A. There's no record. There's no substitute returns.

8 Q. Typically, when a trust exists and they get an  
9 identification number and the IRS writes the people in the  
10 address and asks for one, why didn't that happen in this case? 10:39:36

11 A. The information returns need to be filed to show assets  
12 and income for the IRS to know that.

13 Q. Okay. I apologize but I am going to disagree with you on  
14 that. You've testified under oath, correctly, that the form  
15 1120-S has an asset and balance sheet and I am putting on here 10:39:58  
16 Exhibit 31 which is already in evidence. And I've highlighted  
17 the words "balance sheet" and "assets and liabilities" for  
18 shareholders. It's one of my three objections in ten hours and  
19 it's in evidence now.

20 MR. SEXTON: Objection to the running narrative by 10:40:30  
21 counsel.

22 THE COURT: That is correct.

23 And, Mr. Minns, it is not relevant whether or not you  
24 personally disagree with this witness. It is only what's  
25 relevant are the facts as are generated by this witness and 10:40:43

United States District Court



KRISTY MORGAN - Cross

1 your statements that go beyond questions are not allowed. 10:40:47

2 MR. MINNS: Thank you, Your Honor.

3 BY MR. MINNS:

4 Q. You'll notice on the 1120-S there is a place for balance  
5 sheets and assets and liabilities. And you testified correctly 10:41:02  
6 that that is on the 1120-S?

7 A. That is the form, yes, attached to the return.

8 Q. But you also testified that there was assets and  
9 liabilities on the trust, the 1041 trust exhibit, and there  
10 isn't. Can you show the jury the 1041's assets and 10:41:26  
11 liabilities? There's no place on them for them unless I'm  
12 mistaken. Correct me now.

13 A. I would have to look at the 1041 form.

14 Q. Okay. We have several up there that were entered into  
15 evidence. Just pull out any one of them -- 10:41:41

16 THE COURT: You're going to have to tell her what  
17 exhibit numbers so she can pull them up.

18 MR. MINNS: Can I check for a 1041 exhibit number?

19 Ashley, a 1041 exhibit one. Do we have one? There's  
20 no 1041s in evidence? 10:42:01

21 There's no 1041s in evidence.

22 THE COURT: Well, a question.

23 MR. MINNS: Yes.

24 THE COURT: All right. You ask the witness a  
25 question. 10:42:11

KRISTY MORGAN - Cross

1 BY MR. MINNS: 10:42:12

2 Q. Are you saying to this jury under oath that there's assets  
3 and liabilities schedules on 1041 or do you wish to correct  
4 that?

5 A. I need to look at a 1041 to answer the question. 10:42:24

6 Q. Okay. When the government asked you the question, you did  
7 not need to look. You said there were, the 1041 trust returns  
8 show assets and liabilities on it.

9 A. There's income and deductions that are reported.

10 Q. Absolutely. It's not the same thing as assets and 10:42:41  
11 liabilities. That's a financial statement. That's on the  
12 1120-S.

13 THE COURT: Is that a question?

14 MR. MINNS: Yes.

15 BY MR. MINNS: 10:42:51

16 Q. You would agree with me it's on the 1120-S. But you don't  
17 know, then, if the 1041 has assets and liabilities on it. You  
18 don't know if your testimony running about 30 minutes ago was  
19 truthful?

20 MR. SEXTON: Objection to that characterization. 10:43:02

21 THE COURT: All right. I'm going to sustain the  
22 objection if that was intended to be impeachment, then the  
23 foundation has not been laid.

24 BY MR. MINNS:

25 Q. You have -- pardon me. 10:43:21

KRISTY MORGAN - Cross

1 MR. MINNS: I would like to show the witness what is 10:43:31  
2 in evidence, Exhibit 33.  
3 Q. Yesterday, Ms. Morgan, in relationship to Exhibit 33, the  
4 government asked you if this was an income tax examination  
5 change form and your answer was, "Yes." 10:44:04  
6 Was that a truthful answer?  
7 A. Yes. That is the name at the top of the form.  
8 Q. And the government asked you, "And it is for what period?"  
9 And your answer was, "1998." Was that a correct and  
10 truthful statement? 10:44:21  
11 A. That is on the form, yes.  
12 Q. And then the government asked you, "What does it indicate  
13 as the unreported income for the tax return?"  
14 And your answer was, "\$1,708,656." That was your  
15 truthful answer yesterday? 10:44:42  
16 A. That's correct. That is listed on the report.  
17 Q. And then the government said, "...starting with letter  
18 g down to k, does it indicate expenses that are being  
19 authorized for the Schedule C?"  
20 And your sworn answer was, "Yes, it does." Is that 10:44:58  
21 all correct?  
22 A. Yes, according to the report.  
23 Q. According to this report that is on the screen right now?  
24 A. Yes.  
25 Q. So I'm highlighting, f through k, these are expenses for 10:45:23

KRISTY MORGAN - Cross

1 James and Jacqueline Parker, the form 4549-A? 10:45:32

2 A. Yes.

3 Q. And then the government asked you, "And what does it  
4 indicate are being allowed expenses for the business?"

5 And your testimony was, "There's legal, professional 10:45:51  
6 expenses of \$2,850; vehicle expenses of \$6,828; utilities of  
7 \$10,600; equipment and furniture, \$2,045; and office in the  
8 home of \$1,840 as allowed expenses."

9 That was your sworn testimony yesterday?

10 A. Yes, that is what is on the report. 10:46:15

11 Q. You don't wish to change that testimony?

12 A. No.

13 Q. Well, ma'am, in your government work, did you not learn  
14 that the brackets on the income tax examination sheet are the  
15 allowed expenses and these are disallowed (indicating)? You 10:46:39  
16 were wrong.

17 THE COURT: Well, you asked her one question. She  
18 can answer the first question.

19 Do you understand the first question?

20 THE WITNESS: I would like it repeated, please. 10:46:52

21 BY MR. MINNS:

22 Q. It would be my pleasure.

23 First, the brackets on this sheets, they put brackets  
24 when they allow it and opposite to general accounting  
25 principles. On the income tax examination change, the brackets 10:47:05

KRISTY MORGAN - Cross

1 means it's allowed, not that they are giving the deduction. 10:47:10

2 A. That's a question?

3 Q. Yes, ma'am. Is what I just said true or false?

4 A. According to the report -- I would have to look at the

5 work papers to know exactly what their determination was. The 10:47:26

6 report just shows Schedule C legal and professional expenses

7 and it lists an amount.

8 Q. Well, assuming that you're knowledgeable in these forms,

9 I've highlighted the 56,318 and that's the self-employment tax.

10 Isn't it a fact that half of that, the allowable on all of 10:47:46

11 these forms, and that that \$24,388 is one-half that Mr. and

12 Mrs. Parker paid and that is why it is allowed on this form?

13 A. That's correct.

14 Q. And then the \$7,100 is the standard deduction. That is

15 why it's allowed on this form? 10:48:09

16 A. That's correct.

17 Q. But everything else isn't allowed, all of the expenses.

18 You testified under oath that all of the expenses were allowed.

19 And, in fact, it's exactly the opposite. Every one of these

20 expenses were disallowed. 10:48:22

21 A. I think I testified that they are adjustments on the tax

22 return. Whether they are allowed or not, I don't know. They

23 are adjustments to income.

24 MR. MINNS: May I approach the witness with her

25 testimony, Your Honor? 10:48:37

United States District Court

KRISTY MORGAN - Cross

1 THE COURT: No. You read the testimony. 10:48:39

2 MR. MINNS: I'm reading a transcript that was handed

3 out this morning.

4 BY MR. MINNS:

5 Q. Page four, line 10, "And what does it indicate are being 10:48:48

6 allowed expenses for the business?

7 "ANSWER: There's legal, professional expenses of

8 \$2,850; vehicle expenses of \$6,828; utilities of \$10,600;

9 equipment and furniture, \$2,05; and office in the home of

10 \$1,840." 10:49:11

11 Your sworn testimony yesterday was that they were

12 allowed. Do you change that testimony now?

13 A. According to what the report shows, I read it into the

14 record.

15 Q. Well, the truth is, they are not allowed on this form. 10:49:27

16 They are disallowed. He's not given one penny of actual

17 expenses on this report. 100 percent of these expenses are

18 disallowed. Yes or no, true or false?

19 A. If that is what comes into the computation, that's

20 correct. 10:49:44

21 Q. Well, this doesn't take accounting expertise or tax

22 expertise --

23 THE COURT: Mr. Minns?

24 MR. MINNS: Yes, Your Honor.

25 THE COURT: A question. 10:49:55

United States District Court

KRISTY MORGAN - Cross

1 BY MR. MINNS: 10:49:55

2 Q. If you can look at line two, total adjustments, rather

3 than allowing these expenses, if you add \$1,708,656 and you

4 force the taxpayer to lose all of his expenses, add them back

5 in, the exact figure is \$1,742,771. 10:50:14

6 A. Total adjustment, yes.

7 Q. So contrary to what you've sworn to yesterday, he wasn't

8 given one penny of credit for his expenses. They threw every

9 one of the expenses back onto the taxes due and owing.

10 A. It was a total adjustment of one million seven. 10:50:40

11 Q. So you were incorrect yesterday?

12 A. I would assume that what I was answering, I understood it

13 as what was total adjustments.

14 Q. Ma'am, you're not -- if you were to leave the IRS today,

15 you don't have the credentials or licensures to attend an 10:50:57

16 income tax examination change; correct?

17 A. I'm sorry. I don't understand the question.

18 Q. You are not qualified to interpret this form; correct?

19 A. I read into the record as a fact witness.

20 Q. So as a fact witness, and I may have misunderstood you 10:51:30

21 yesterday, I thought you were interpreting these documents,

22 telling the jurors what they meant.

23 A. What a Form 4549 is, what it's used for; what a 1040 is

24 used for, that kind of fact information.

25 Q. There is no evidence so far that Jim Parker has the 10:52:04

KRISTY MORGAN - Cross

1 authority to sign returns for the LLPs or the trust; correct? 10:52:07  
2 A. That I don't know.  
3 Q. Well, you know you didn't testify that there was a form  
4 that said he could sign; right?  
5 A. I don't know if there is or not. I wasn't asked to 10:52:21  
6 research that.  
7 Q. Well, the government has been investigating and auditing  
8 him for 13, 14 years. How long have you been on the team,  
9 prosecution team, helping with this case?  
10 MR. SEXTON: Objection to the form of the 10:52:41  
11 questioning.  
12 THE COURT: That assumes a fact that may not be in  
13 evidence because of your statement as to how long the United  
14 States government has been investigating this case, assuming  
15 that they have. 10:52:56  
16 So ask a question again that does not assume facts  
17 not in evidence.  
18 BY MR. MINNS:  
19 Q. You're aware that the original audit letter came out  
20 around 2000? 10:53:16  
21 A. The transcript documents when the audit began?  
22 Q. And you're aware that we are currently in the year 2012?  
23 A. Correct.  
24 Q. Have you seen any evidence or discussed any evidence with  
25 anybody at that table or anyone really in the country that you 10:53:40



KRISTY MORGAN - Cross

1 can provide that Jim Parker had the legal right to sign tax  
2 documents for the trust or the limited liability partnerships?

10:53:47

3 MR. SEXTON: Objection as to the foundation that this  
4 witness would have access to that information. It would be  
5 hearsay if she was to try to testify to any information she  
6 had.

10:54:06

7 THE COURT: Well, he asked her if she had access so  
8 I'm going to overrule that objection although you did ask her  
9 about whether or not there was a legal document. And in that  
10 respect, I would sustain the objection. I don't think this  
11 witness qualified to testify to what is legal.

10:54:23

12 You may proceed.

13 MR. MINNS: I agree, Your Honor. And I also think  
14 that the evidence -- I have a motion, Your Honor.

15 THE COURT: You can continued asking questions. I'll  
16 allow you to make a motion at a later time.

10:54:42

17 MR. MINNS: May I make a motion to strike?

18 THE COURT: No. To strike what? She didn't answer  
19 the question. I sustained the objection. So you can ask  
20 another question.

10:54:55

21 MR. MINNS: I may not make a motion to strike her --

22 THE COURT: No. You cannot move to strike because at  
23 this point, she has answered the question. I have sustained a  
24 portion of it -- or she didn't really answer it. I sustained a  
25 portion of your question and a portion I would allow.

10:55:17

United States District Court

KRISTY MORGAN - Cross

1           So there's no answer yet for you to strike. So you  
2 need to ask a question. Let's see if you can get an answer.  
3 And then the appropriate time is to move to strike.

10:55:21

4           MR. MINNS: Well, it was based on your prior ruling,  
5 Your Honor. That's why I was asking to strike. The Court  
6 ruled she was not qualified to give a legal opinion. I was  
7 going to ask if she could be stricken. Her accounting opinions  
8 are also not qualified. There's been no predicate so I would  
9 like to strike her accounting --

10:55:37

10           THE COURT: You would have to -- assuming that she  
11 has given expert testimony that constitutes accounting opinion,  
12 then at the time she gave the answer, then an objection should  
13 have been made by you.

10:55:54

14           And so your motion to strike is denied and that does  
15 not mean that I am finding that she gave any accounting  
16 opinions.

10:56:22

17           MR. MINNS: May I proceed, Your Honor?

18           THE COURT: You may.

19           MR. MINNS: Your Honor, what I would like to do is  
20 hold up my chart on lawyers and CPAs and ask the witness if  
21 she's testified now --

10:56:56

22           THE COURT: Well, you can -- are you familiar with  
23 this exhibit, Counsel?

24           MR. SEXTON: He used it in his opening statement,  
25 Your Honor.

10:57:09

United States District Court

KRISTY MORGAN - Cross

1 THE COURT: Okay. Then you may use that exhibit and 10:57:09  
2 ask her questions about it.

3 MR. MINNS: If I could approach, it might be easier.

4 THE COURT: Yes, you can. Just speak loud enough so  
5 that we can all hear you. 10:57:22

6 MR. MINNS: Can you see? I am going to turn it.

7 THE WITNESS: Sure. I can see down to the Henry Tom.

8 MR. MINNS: Okay. Thank you, Your Honor.

9 BY MR. MINNS:

10 Q. You testified that appearing on the power of attorney for 10:57:48  
11 the -- for Jim Parker, you testified that Timothy Liggett was  
12 on the power of attorney.

13 A. Yes. On the form that the taxpayer filed.

14 Q. You testified that Greg Robinson was on the power of  
15 attorney. 10:58:17

16 A. On the form, yes.

17 Q. Yes.

18 You testified that Gene Galant signed the two tax  
19 returns, Exhibit 1 and Exhibit 2, which were in record today;  
20 correct? 10:58:30

21 A. On the tax return, yes.

22 Q. Yes, ma'am. And you testified that Timothy Liggett is on  
23 the second two forms, the one before where you testified that  
24 taxes had been paid but the penalties and interest haven't?

25 A. On the tax form or the power of attorney? 10:58:47

KRISTY MORGAN - Cross

1 Q. The tax form itself and the power of attorney. 10:58:50  
2 A. Yes.  
3 Q. Now, that means, to your personal knowledge, these lawyers  
4 and CPAs represented and prepared tax returns or spoke before  
5 the Internal Revenue Service on behalf of Jim Parker. 10:59:10  
6 A. The power of attorney authorizes him to receive  
7 information regarding Mr. Parker's tax returns.  
8 Q. And as a matter of fact, the law limits who is allowed to  
9 make these powers of attorneys; correct?  
10 A. That I don't know. 10:59:30  
11 Q. Well, you know that the power of attorney form that you  
12 use all the time says they have to be an attorney or an  
13 enrolled agent or the person who prepared the form or an  
14 actuary. You know that; correct?  
15 A. There is boxes on there to check to identify yourself, 10:59:46  
16 yes.  
17 Q. And you know if you have no credentials of any kind and  
18 did not prepare the form and are not a trustee, you're not  
19 allowed to sign the power of attorney form?  
20 A. I don't know that. 11:00:01  
21 Q. Anybody in America can become a power of attorney in front  
22 of the Internal Revenue Service and negotiate with you?  
23 MR. SEXTON: Objection. Asked and answered as to  
24 what she knows.  
25 THE COURT: Sustained as to asked and answered. 11:00:12

KRISTY MORGAN - Cross

1 BY MR. MINNS: 11:00:14

2 Q. Well, I may have been mistaken but I thought on the first

3 day you testified that you had communications with taxpayers in

4 your earlier jobs, that you would send them out forms telling

5 them what they owed and things like that and take their 11:00:25

6 questions over the phone.

7 A. Yes. The individual themselves.

8 Q. You never talked with someone that was authorized to

9 represent the individual in your entire career?

10 A. If the records showed they had authorization, yes, I 11:00:37

11 talked to them.

12 Q. Correct. And in order to do that, in order to be

13 authorized, you have to be qualified to sign that form;

14 correct?

15 A. I never worked in power of attorney. I don't know the 11:00:51

16 qualifications for that job.

17 Q. You're not legally qualified to sign it, though? You do

18 know that.

19 A. The power of attorney form?

20 Q. Yes, ma'am. 11:01:02

21 A. I don't know that either.

22 MR. MINNS: I'm going to show the witness Government

23 Exhibit 5.

24 May I proceed, Your Honor?

25 THE COURT: Yes. 11:01:51

KRISTY MORGAN - Cross

1 BY MR. MINNS: 11:01:52

2 Q. The top of Government's Exhibit 5 shows that it was

3 received in 2004 and there's a stamp for it; right?

4 A. Yes.

5 Q. And you worked at the 914 desk; correct? 11:01:59

6 A. Yes. I worked in criminal investigations.

7 Q. And when a form came to your criminal investigation desk,

8 if it was suspicious, you would stamp on it that it was

9 suspicious or you would put a frivolous stamp if you found it

10 to be frivolous? 11:02:22

11 A. No.

12 Q. You don't have a frivolous stamp?

13 A. No.

14 Q. This is the amended U.S. Income Tax return that was filed

15 by the Parkers; correct? 11:02:33

16 A. Yes, it is an amended return.

17 Q. And they didn't prepare it. It shows on it that it was

18 prepared by a professional, Timothy Liggett, who you've already

19 identified; correct?

20 A. That's what the document shows, yes. 11:02:49

21 Q. Well, in your 28 years of experience in Internal Revenue

22 Service, you know that when a tax preparer prepares this and

23 puts his name on it, he's standing for the tax return?

24 A. No, I don't know that either, no.

25 Q. Okay. Well, you know that the professional, the expert 11:03:07

KRISTY MORGAN - Cross

1 who signs this, is the one that prepares it. The taxpayer 11:03:12  
2 doesn't prepare it.

3 A. Yes. The preparation is done by the professional. The  
4 document is signed under penalty of perjury by the taxpayer.

5 Q. But you know, after 28 years of doing this, that sometimes 11:03:24  
6 taxpayers don't understand every single line and dot on these  
7 things?

8 MR. SEXTON: Objection. It's foundation as to the  
9 vagueness.

10 THE COURT: Overruled. 11:03:36

11 THE WITNESS: According to the perjury statement, the  
12 taxpayer is signing under penalties of perjury that I have  
13 reviewed the tax return, reviewed what is attached and it's  
14 true and correct. That's what the perjury statement states,  
15 that the taxpayer is filing this document as a true and correct 11:03:53  
16 document.

17 BY MR. MINNS:

18 Q. You're not seriously telling this jury that in 28 years,  
19 100 percent of the taxpayers you've dealt with understood  
20 everything on the tax returns? 11:04:05

21 A. I don't know what the taxpayer understands. I know what  
22 the jurat means.

23 Q. You don't understand all of the things on the income tax  
24 examination 4549-A form truthfully; correct?

25 A. I didn't do the audit, no. So I would not know how the 11:04:29

KRISTY MORGAN - Cross

1 determinations are made. 11:04:33

2 Q. And the whole purpose of an amended return, which is a

3 federal form, the only purpose is to fix mistakes the taxpayers

4 and their tax preparers make; correct?

5 A. It's to amend the information previously filed. 11:04:48

6 Q. Is that different than what I said to fix mistakes?

7 A. It may be that they just forgot something. I guess that's

8 a mistake. But it's just to correct information.

9 Q. But the government understands that this is very, very

10 complicated and we are going to make mistakes and so they have 11:05:06

11 a form that is filled out every single day of the year by

12 hundreds of thousands of tax preparers telling the government,

13 "I made a mistake, here's the correct information"?

14 A. That's correct.

15 Q. And this particular mistake, the prior CPA, Mr. Galant, 11:05:30

16 never took home mortgage deduction interest for the Parkers?

17 It's not on the '97 to '98 returns.

18 A. I would have to look at returns to make sure.

19 Q. Well, you can see this one to make sure that Timothy

20 Liggett, the new one after Mr. Galant died, Timothy Liggett 11:05:54

21 took over. His name is on this one.

22 A. Yes, his name as the preparer, yes.

23 Q. And you testified under oath yesterday that there was home

24 interest deduction taken on the original one and then they

25 amended it to give up the home interest deduction? 11:06:09

United States District Court



KRISTY MORGAN - Cross

1 A. The attachments show that. 11:06:13

2 Q. Right. And you don't conclude that that's an honest  
3 mistake that they fixed and caught?

4 MR. SEXTON: Her conclusion about how it was done is  
5 not relevant and it's the improper opinion of this witness? 11:06:26

6 THE COURT: Sustained.

7 BY MR. MINNS:

8 Q. The 1040-X has been put upon evidence through you;  
9 correct?

10 A. Yes. 11:06:47

11 Q. And you know that there are many different types of  
12 trusts; correct?

13 A. I am not really familiar with the different types of  
14 trusts, no.

15 Q. Okay. But you do know that it's very common to make 11:07:03  
16 mistakes with trusts because if it is a grantor trust, you get  
17 to take the deduction. If an irrevocable trust, you do not get  
18 to take the deduction? You know that?

19 MR. SEXTON: Objection. Foundation hasn't been laid  
20 as to whether this -- 11:07:23

21 THE COURT: Well, I'm going to overrule the  
22 objection. She can answer that yes or no.

23 THE WITNESS: I don't know anything about the types  
24 of trusts and what's reportable or not. I know about the form  
25 filed with the IRS. 11:07:37

KRISTY MORGAN - Cross

1 BY MR. MINNS: 11:07:44

2 Q. Well, the trust that has come into evidence through your  
3 testimony today says that it is irrevocable; correct?

4 A. That's what the title says, yes.

5 Q. And that means that Mr. Parker can't deduct the home 11:07:53  
6 mortgage interest even if he pays it if it's in the trust, the  
7 irrevocable trust?

8 A. I don't know.

9 Q. If it was a grantor trust, which many of these estate  
10 trusts are, he would be allowed -- 11:08:12

11 THE COURT: Well, now, Mr. Minns, you're not to  
12 testify.

13 BY MR. MINNS:

14 Q. Do you know if he could deduct it if it were a grantor  
15 trust and if it were revocable? 11:08:28

16 A. I don't know.

17 Q. Do you know if that's a common mistake that people make?  
18 They put these on and if it's not the correct trust, then they  
19 have to amend the returns?

20 A. I don't know that, no. 11:08:42

21 Q. Is the government complaining that the return was  
22 corrected properly?

23 MR. SEXTON: Objection to the form of the question.

24 THE COURT: Sustained.

25

KRISTY MORGAN - Cross

1 BY MR. MINNS: 11:09:27

2 Q. I recall your testimony about the trust that their  
3 daughter Rachel is running. You testified that she was trustee  
4 and it was for the benefit of the two younger brothers?

5 A. She is the trustee on the forms, yes. 11:09:40

6 Q. Okay. You surely don't find that to be strange, that the  
7 Parkers let their oldest child in charge, do you?

8 A. I don't know. That something that I am not involved with.

9 Q. What was the point of that?

10 MR. SEXTON: Objection to the form of the question. 11:10:04

11 THE COURT: Sustained.

12 BY MR. MINNS:

13 Q. Well, you testified that a bunch of these tax forms have  
14 the younger boys, Sam and Jim, Jr., on the return, and then  
15 suddenly they are not on the return. There's no exemptions or 11:10:22  
16 deductions from them.

17 A. That's correct. They are sometimes claimed as deductions  
18 and then later years they were not.

19 Q. But isn't that very normal when the kids grow up, you  
20 can't take them on the form? Isn't that very normal? 11:10:38

21 A. If you provide support for that individual, it's required  
22 that you -- it is allowed that you can put that on the tax  
23 return.

24 Q. But why do you find it peculiar that they are no longer on  
25 the tax return after they have left home? 11:10:51

KRISTY MORGAN - Cross

1 MR. SEXTON: There's no testimony that she said it 11:10:54  
2 was a peculiar.

3 THE COURT: Sustained.

4 BY MR. MINNS:

5 Q. What was the purpose of telling the jury that they are no 11:10:58  
6 longer on the tax returns?

7 MR. SEXTON: Objection to the form of the question.

8 THE COURT: Sustained.

9 MR. MINNS: I'm trying to organize and speed this up  
10 a little, Your Honor. 11:11:44

11 BY MR. MINNS:

12 Q. You described addition errors in one of the returns. Do  
13 you remembering doing that yesterday?

14 A. Yes.

15 Q. And your testimony was that Jim Parker had added it up 11:12:18  
16 wrong.

17 A. There was some error on the tax return. I didn't identify  
18 what error it was.

19 Q. Okay. But why attribute it to Jim Parker? It just as  
20 likely could have been the tax preparer that prepared the 11:12:40  
21 return, couldn't it?

22 A. It was identified on the account that a math error was  
23 made and corrected.

24 Q. Under oath, were you asked, "Are you allowed to deduct  
25 mortgage interest on a property you do not own?" 11:13:16

KRISTY MORGAN - Cross

1 And your sworn answer was, "No, you're not." 11:13:21

2 Do you remember that?

3 A. Yes.

4 Q. But if you don't own it, because you've put it in a  
5 grantor trust, are you allowed to deduct it? Correct or not? 11:13:38

6 A. I don't know.

7 Q. But you swore under oath to that involving this particular  
8 trust yesterday without knowing --

9 MR. SEXTON: Objection. It misstates the evidence.

10 THE COURT: Well, he hasn't finished asking the 11:13:57  
11 question.

12 BY MR. MINNS:

13 Q. Is that true?

14 THE COURT: Well, I'm not sure what the question is.  
15 Would you repeat the question, please? 11:14:05

16 MR. MINNS: Yes, Your Honor.

17 BY MR. MINNS:

18 Q. Yesterday you swore under oath that there are no  
19 circumstances under which you can deduct interest and I am  
20 asking you now, you said you don't know if you can deduct 11:14:16  
21 grantor trust. A grantor trust is when you --

22 THE COURT: You are not to testify.

23 BY MR. MINNS:

24 Q. Do you know what a grantor trust is?

25 MR. SEXTON: Objection. Asked and answered. 11:14:32

United States District Court

KRISTY MORGAN - Cross

1 THE COURT: Sustained. 11:14:34

2 BY MR. MINNS:

3 Q. Yesterday when the government asked you if the return  
4 filed on August 19, 2003, was four days later, your first  
5 answer was yes. Then the government said, wait, you can get an 11:15:01  
6 extension to October 15 so the correct answer is, no, it wasn't  
7 late. It could have been as filed as late as October 15. Do  
8 you remember that?

9 A. The transcript reflected the actual extension that was  
10 approved. It was just farther down on the transcript. I 11:15:28  
11 missed that.

12 Q. So your first under oath was wrong and then you figured  
13 out that it was wrong and you corrected yourself?

14 A. Yes. I corrected the fact to what was on the transcript.

15 Q. So the implication seems to be that if the government 11:15:48  
16 wants you to say yes to something, you say yes to it regardless  
17 of whether you have knowledge of it or not?

18 MR. SEXTON: Objection to the form of the question.

19 THE COURT: And the objection is sustained. It's  
20 argumentative. 11:16:04

21 BY MR. MINNS:

22 Q. There's been testimony about what's on the offers in  
23 compromise and what is -- I'm not going to ask that right now.

24 MR. MINNS: Thank you, Your Honor.

25

KRISTY MORGAN - Cross

1 BY MR. MINNS: 11:17:21

2 Q. You testified yesterday that you put your business

3 expenses on your Schedule C; correct?

4 A. For that business, yes.

5 Q. Well, if it was a corporation, it would not appear on 11:17:31

6 Schedule C; correct?

7 A. I don't know for sure what you're talking about as far

8 as --

9 Q. What form does the corporate income pass through and an

10 1120-S go on? 11:17:48

11 A. The 1120-S?

12 Q. Yes.

13 A. That is the form that you use.

14 Q. Yes, ma'am. Where does it appear on the 1040? It's not

15 on Schedule C. Do you agree with me or disagree that it is on 11:17:59

16 Schedule C?

17 A. It's not on Schedule C. That's not where it's reported.

18 I don't know that it was reported on Schedule C or not.

19 Q. Where is it supposed to be reported on the 1040?

20 A. The 1120 information? 11:18:11

21 Q. Yes, ma'am.

22 A. Goes in the partnership area of the tax return.

23 MR. MINNS: I'm nearly done, Your Honor, and jurors.

24 Let me just make sure.

25

KRISTY MORGAN - Cross

1 MR. MINNS: I'm showing the witness Exhibit 6, the 11:19:28  
2 2003 return, asking the witness to look on lines 6 and 10.  
3 Q. I have a couple of questions. Correct me if I'm wrong.  
4 This is a return also prepared by Mr. Liggett. It appears that  
5 Mr. Liggett, in 2003, having caught his error, was no longer 11:20:02  
6 taking real estate taxes or home mortgage interest off. Am I  
7 correct or incorrect?  
8 A. The Schedule A shows that there was no real estate taxes  
9 or home mortgage on that schedule.  
10 MR. MINNS: This is Plaintiff's Exhibit 13 which 11:20:49  
11 you've testified to.  
12 BY MR. MINNS:  
13 Q. There are penalties if you file anything late with the  
14 IRS; correct?  
15 A. Yes. 11:21:03  
16 Q. And on top of the penalties for late filing, there are  
17 other penalties; correct?  
18 A. Yes.  
19 Q. And, in fact, for the late filing on the 2009 tax returns,  
20 the Parkers were assessed about a quarter of a million dollars 11:21:18  
21 for late filing penalty and \$176,000 plus for miscellaneous  
22 penalty; correct?  
23 A. Yes.  
24 Q. And is this as much or more of the original contested tax  
25 for that year, for 2009? 11:21:40

United States District Court



KRISTY MORGAN - Cross

1 A. I don't understand your question, what the contested tax 11:21:44  
2 is.  
3 Q. Let me rephrase. You've testified about the civil side,  
4 which is money. And you've also testified about your criminal  
5 experience which is much more dear, much more frightening. 11:22:05  
6 Now, on -- I apologize.  
7 MR. SEXTON: Can we start this question over again?  
8 I mean --  
9 THE COURT: Yes. I'm not sure it was a question.  
10 MR. MINNS: I was going into -- the witness was 11:22:23  
11 amused so I stopped.  
12 THE COURT: Okay. So you may ask a question and the  
13 last statement by counsel is stricken.  
14 And, ladies and gentlemen, you are to ignore it.  
15 BY MR. MINNS: 11:22:39  
16 Q. So on the civil side, money side, the taxpayer, if they  
17 make a mistake, has to pay the penalties and has to pay  
18 interest; correct?  
19 A. Yes.  
20 Q. On this side, mistakes are not punished; correct? 11:22:59  
21 A. On this side, I don't understand --  
22 Q. In the criminal court, jail, prison, it's not punished --  
23 if -- let me rephrase. Withdrawn.  
24 If --  
25 THE COURT: Ladies and gentlemen, because the 11:23:23

KRISTY MORGAN - Cross

1 statement has been withdrawn, you are to ignore the last 11:23:27  
2 statement by counsel.

3 And please ask a question.

4 MR. MINNS: Yes. Thank you, Your Honor.

5 BY MR. MINNS: 11:23:34

6 Q. If Jim Parker relied on his lawyers and his CPAs and tried  
7 to follow the law, he still has to pay all of the penalties and  
8 interest anyway; correct?

9 A. Yes. The taxpayer --

10 MR. SEXTON: Stop, please. 11:23:51

11 Objection to the form of the question. He's  
12 asking -- he's making an argument.

13 THE COURT: Overruled. She can answer that.

14 Assuming that you can answer it.

15 THE WITNESS: Okay. You're asking about penalties 11:24:03  
16 and interest on the tax owed?

17 BY MR. MINNS:

18 Q. I am asking if he relied on his lawyers and his CPAs and  
19 tried to follow the law but he didn't follow the law, he made  
20 mistakes, he still has to pay all of the taxes and interest and 11:24:18  
21 penalties; correct?

22 A. The tax that is owed by the taxpayer?

23 Q. Yes, ma'am.

24 A. There's penalties applicable and interest?

25 Q. Yes, ma'am. 11:24:30

KRISTY MORGAN - Redirect

1 A. To any taxpayer, if they are late filed, if they do not 11:24:31  
2 pay in full.

3 Q. And a mistake doesn't change that?

4 A. When you are saying a mistake, I guess I don't  
5 understanding. 11:24:44

6 Q. Well, if he files late, even if it's an accident, even if  
7 it's on advice of counsel, he still has to pay the penalty.

8 A. The penalties are applicable based on the law, the tax  
9 law.

10 MR. MINNS: May I approach counsel table and see if 11:25:02  
11 anybody has -- I'm nearly finished.

12 THE COURT: Yes. Go ahead.

13 MR. MINNS: Your Honor, with the Court's permission,  
14 I pass the witness.

15 THE COURT: All right. 11:25:55  
16 Redirect?

17 MR. SEXTON: Yes, I have some brief redirect.

18 **REDIRECT EXAMINATION**

19 BY MR. SEXTON:

20 Q. Mr. Minns justs asked you whether you were qualified 11:26:33  
21 either as a CPA, enrolled or a somehow tax preparer that has  
22 been trained by H&R Block. Do you remember your testimony on  
23 that?

24 A. Yes, I do.

25 Q. Would you summarize -- although you haven't been trained 11:26:46

KRISTY MORGAN - Redirect

1 in any of those, would you summarize for the grand jury the 11:26:48  
2 types --

3 THE COURT: Grand jury?

4 MR. SEXTON: Did I say grand jury?

5 BY MR. SEXTON: 11:26:57

6 Q. I apologize, for this jury, what your training has been  
7 over the last 28 years with the Internal Revenue Service as it  
8 pertains to your job?

9 MR. MINNS: Pardon me. Excuse me, Your Honor. That  
10 was gone into for 45 minutes on day one, her past experience. 11:27:07  
11 I object --

12 THE COURT: And I'm going to sustain the objection.

13 BY MR. SEXTON:

14 Q. Do you remember when Mr. Minns was holding this up  
15 (indicating) and writing the word "paid" across? 11:27:34

16 A. Yes.

17 Q. The 2001 tax return was due when?

18 A. 2001 is due April 15, 2002. There was extensions on the  
19 account. I don't remember exactly but yes.

20 Q. And when was it finally paid? 11:27:53

21 MR. MINNS: Pardon me. Excuse me, again, Your Honor.  
22 That was asked and answered several times on opening and she  
23 said it was very, very late. This is redundant.

24 THE COURT: I am going to allow it. Overruled.

25 THE WITNESS: April 21, 2012. 11:28:09

KRISTY MORGAN - Redirect

1 BY MR. SEXTON: 11:28:13

2 Q. And the same is true of the 2002 tax return?

3 A. Correct.

4 Q. Just last month?

5 A. Just last month. 11:28:20

6 MR. MINNS: Leading.

7 THE COURT: Sustained.

8 MR. MINNS: Instructions to disregard the question,

9 please, Your Honor.

10 THE COURT: Ladies and gentlemen, you are to 11:28:28

11 disregard the question and the answer.

12 And you may proceed.

13 MR. SEXTON: One second, Judge. We're booting it up

14 here.

15 BY MR. SEXTON: 11:28:55

16 Q. Do you have Exhibit 32 in front of you?

17 A. I do.

18 Q. This was the exhibit that had the tax examination changes

19 that you went into regarding all of those business expenses?

20 A. Yes. 11:29:27

21 MR. MINNS: Pardon me, Your Honor. The questions

22 that I asked were on 33, not 32.

23 THE COURT: Overruled.

24 BY MR. SEXTON:

25 Q. What is the unreported income adjustment that was made in 11:29:38

KRISTY MORGAN - Redirect

1 Section E? 11:29:42

2 A. I think I have the wrong exhibit. I have the wrong

3 exhibit.

4 Q. It is 33. Do you have 33 in front of you? My apologies.

5 Okay. Exhibit 33 is on the screen now. You went 11:30:06

6 through the items in g through k. What was the unreported

7 income on line e?

8 A. The unreported income shows, \$1,708,656.

9 Q. And then finally, go to Exhibit 13. He's asking you about

10 the late penalty and miscellaneous penalty in the middle of the 11:30:50

11 page there. Do you see that?

12 A. Yes.

13 Q. What was the amount of additional tax that was also

14 assessed at this time?

15 A. The tax was \$881,227. 11:31:00

16 Q. 227 or 277?

17 A. 277, excuse me.

18 MR. SEXTON: I have nothing further, Judge.

19 THE COURT: All right. You may step down.

20 (Witness excused.) 11:31:16

21 THE COURT: And are you prepared to call your next

22 witness?

23 MR. SEXTON: We are, Judge. It's Paul Goguen.

24 PAUL GOGUEN,

25 called as a witness herein by the Government, having been first 11:31:49

PAUL GOGUEN - Direct

1 duly sworn or affirmed to testify to the truth, was examined 11:31:49  
2 and testified as follows:

3 COURTROOM DEPUTY: State your name for the record,  
4 spell your last name, please.

5 THE WITNESS: Paul Goguen. G-O-G-U-E-N. 11:31:59

6 COURTROOM DEPUTY: Okay. Have a seat right up here,  
7 please, sir.

8 **DIRECT EXAMINATION**

9 BY MR. SEXTON:

10 Q. Good morning, Mr. Goguen. 11:32:29

11 A. Good morning.

12 Q. Would you introduce yourself to the jury, please, sir?

13 A. I'm Paul Goguen.

14 Q. And where do you live?

15 A. Sedona. 11:32:38

16 Q. How long have you lived there?

17 A. Six years.

18 Q. Would you give the jury an overview of your work  
19 experience?

20 A. Yeah. I have been a developer of real estate for about 11:32:48  
21 30-something years and primarily in the Chicago area and back  
22 in 2004 made a decision to develop down in the country of  
23 Belize.

24 Q. Before we get to that, your work in Chicago, what kind of  
25 work did you do in development and real estate there? 11:33:14

PAUL GOGUEN - Direct

1 A. I would acquire older apartment buildings along the 11:33:17  
2 lakefront of lake Michigan and rehab them, re-tenant them, and,  
3 in some cases, convert them to condominiums.

4 Q. And are you a shareholder or member in a company called  
5 ioVest? 11:33:36

6 A. Yes, I am.

7 Q. How is that spelled?

8 A. I-O-V, as, in Victor, E-S-T.

9 Q. And when was that formed, sir?

10 A. About 2004. 11:33:49

11 Q. And are you a shareholder, partner shareholder?

12 A. I am a -- I'm actually not a member of ioVest Development.  
13 I have a corporation that is the member of ioVest Development,  
14 not that I'm the sole shareholder of that corporation.

15 Q. And do you have a title associated with ioVest? 11:34:13

16 A. Well, through that corporation, I would be the president.

17 Q. A moment ago you said you started getting an interest in  
18 developing a property down in the Belize area. When did you  
19 first begin to show an interest in the Caribbean area?

20 A. In about the middle of 2003. 11:34:38

21 Q. And for the benefit of the jury, from a geography  
22 standpoint, roughly how would you describe geographically where  
23 Belize is in this area?

24 A. It's located directly south of Mexico, north of Honduras  
25 and east of Guatemala. 11:34:57



PAUL GOGUEN - Direct

1 Q. And where did you begin your search? 11:35:00  
2 A. Mexico, Turks and Caicos, Virgin Islands, different places  
3 like that.  
4 Q. And what were you searching for?  
5 A. I was looking for a piece of land to develop into a resort 11:35:12  
6 community.  
7 Q. And did there come a time where you focused on Belize as  
8 the best prospect for your venture?  
9 A. Yes.  
10 Q. And what was it about Belize that brought you there? 11:35:31  
11 A. It seemed to have a good value for the dollar.  
12 Q. And what kind of property were you looking for? More  
13 inland or more along the coast?  
14 A. Beachfront, beachfront property.  
15 Q. And in this process, did you become acquainted with 11:35:54  
16 Mr. James Parker?  
17 A. Yes.  
18 Q. Was that something that you initiated the contacted or did  
19 you have any kind of a broker in the process.  
20 A. There was a broker in the process? 11:36:11  
21 Q. Approximately what year was it that you first met  
22 Mr. Parker?  
23 A. '04.  
24 Q. Do you see Mr. Parker in the courtroom today, sir?  
25 A. Yes. 11:36:24

United States District Court

PAUL GOGUEN - Direct

1 Q. Would you identify him by pointing to him? Is he the one 11:36:25  
2 standing up now to my right?  
3 A. Yes.  
4 Q. Let the record reflect his identification.  
5 When you met him, what company was he associated 11:36:38  
6 with?  
7 A. I believe the company was called MacKinnon Belize Land  
8 Development or something like that.  
9 Q. Did he have some land that you were interested in?  
10 A. Yes. 11:36:56  
11 Q. Where?  
12 A. It was in Placencia peninsula in the southern part of the  
13 country.  
14 Q. Why don't you describe the Peninsula aspect, give them a  
15 sense of sort of where the bodies of water are in relation to 11:37:09  
16 the land that you were looking at.  
17 A. The peninsula is a 14-mile strip of beach, Caribbean beach  
18 on the eastern side and freshwater lagoon on the western side,  
19 and Mr. Parker's land laid to the north of the peninsula.  
20 Q. The first time you viewed that the land that was 11:37:41  
21 available, was that with or without Mr. Parker?  
22 A. Without.  
23 Q. And after viewing the land, did you have an interest in  
24 purchasing the land after looking at it?  
25 A. Yes. 11:37:52

United States District Court

PAUL GOGUEN - Direct

1 Q. Who contacted you in regard to your interest in purchasing 11:38:02  
2 that land? In the sense that you were interested now and  
3 exploring the purchase of land, who did you deal with?  
4 A. I dealt with -- we hooked up with a broker from Belize  
5 City. 11:38:19  
6 Q. And did you eventually have face-to-face dealings with  
7 Mr. Parker?  
8 A. Over time, yes.  
9 Q. How long did it take for you to negotiate a land purchase  
10 down in Belize with Mr. Parker? 11:38:45  
11 A. Two, three months.  
12 Q. Did you deal exclusively with him as far as the MacKinnon  
13 Belize Land & Development Company?  
14 A. With respect to the contract, yes.  
15 Q. Did you ever meet anyone who represented himself to be one 11:39:05  
16 of his partners down there?  
17 A. No.  
18 Q. When you were looking at this land that he had available  
19 for sale, how much land was available for you to possibly buy?  
20 A. You know, somewhere in the neighborhood of, I'm going to 11:39:30  
21 say, a couple thousand acres, more or less.  
22 Q. How much land did you ultimately decide to buy?  
23 A. 600 acres.  
24 Q. When you were negotiating with Mr. Parker, in that  
25 process, did you ever learn of any prior sales of land that had 11:40:01

United States District Court

PAUL GOGUEN - Direct

1 occurred before you expressed an interest in that land? 11:40:06  
2 A. Yes.  
3 Q. Who told you that?  
4 A. Mr. Parker.  
5 Q. What did he tell you had been sold in Belize in his 11:40:15  
6 property before your interest in the 600 acres?  
7 A. A number of single family lots that lie to the south of  
8 us, of our property.  
9 Q. Approximately how many acres did he tell you was  
10 previously sold? 11:40:35  
11 A. You know, I don't remember.  
12 Q. Is it adjacent to the property that you were looking at  
13 for 600 acres? Was it contiguous in any way?  
14 A. It was contiguous, yes.  
15 Q. Did he indicate in any way how long before you were 11:40:53  
16 meeting with him in 2004 that he had sold that land to the  
17 south of what you were interested in? How long did he say?  
18 A. I would say over a three- to five-year period, something  
19 like that.  
20 Q. Did you and he ultimately come to an understanding on the 11:41:18  
21 sale of the 600 acres of land in this Placencia peninsula?  
22 A. Yes.  
23 Q. Would you take a look at Exhibit 123, sir?  
24 Is that the memorandum of sale that was executed  
25 between you and Mr. Parker as to the sale of this land? 11:41:50

United States District Court

PAUL GOGUEN - Direct

1 A. Yes. 11:41:52

2 MR. SEXTON: I would offer Exhibit 123 into evidence.

3 MR. MINNS: No objection.

4 THE COURT: It's admitted.

5 (Exhibit Number 123 was admitted into evidence.) 11:41:58

6 BY MR. SEXTON:

7 Q. Let's start on page one, sir. At the very top -- do you

8 see there at the very top there under the words Memorandum of

9 Sale, what did it say the date of this agreement?

10 A. Seventh of June of 2004. 11:42:23

11 Q. Would you mind using the microphone a little bit? You are

12 sort of not coming in. Would you repeat that date?

13 A. June 7, 2004.

14 Q. Thank you. And then the vendor listed there, number one,

15 what is that date on the first line? 11:42:35

16 A. MacKinnon Belize Land & Development, Limited.

17 Q. And then line two there is the purchaser, who does that

18 indicate it is?

19 A. IoVest Development, LLC.

20 Q. And that is your entity? 11:42:47

21 A. Yes.

22 Q. And then the property sold in line four -- or section four

23 indicates how many acres were you interested in buying in this

24 agreement?

25 A. 597. 11:43:02

PAUL GOGUEN - Direct

1 Q. And then, finally, at the bottom of the first page, what 11:43:02  
2 was the purchase price for those 597 acres?  
3 A. \$6 million, U.S.  
4 Q. And then going on to the next page or page three of the  
5 exhibit, in that section seven at the top, it kind of gives 11:43:23  
6 sort of the initial way this is to be paid. Do you see that?  
7 A. Yes.  
8 Q. And then subsection A, there, it began with a \$50,000  
9 earnest payment.  
10 A. Yes. 11:43:45  
11 Q. And then Section B is a much larger payment of \$1,950,000  
12 on or before July 31, 2004?  
13 A. Yes.  
14 Q. And then C has a series of payments adding up to \$4  
15 million that are spread out over the next period, through 11:44:07  
16 roughly November 2006?  
17 A. Yes.  
18 Q. And then on page five, and when I'm saying page five, sir,  
19 I'm looking at the bottom of the document, there's a little  
20 Bates stamp number, it's four on the exhibit but five on the 11:44:33  
21 Bating stamping. So it's the subsection 14 where it says  
22 Survey and Subdivision. Do you see that?  
23 A. Yes.  
24 Q. Would you explain to the jury how you devised having  
25 acreage freed up as payments came in? In other words, how you 11:44:53

PAUL GOGUEN - Direct

1 were able to become title to the property in stages? Would you 11:45:01  
2 explain that to the jury and to the Court?  
3 A. Yes. We divided the property into three purchase areas.  
4 The first purchase area was paid for in that initial two  
5 payments that you discussed earlier. And then the remaining 11:45:16  
6 two purchase areas were divided into four segments each with  
7 approximately 2 -- 124 acres at \$500,000 for each segment; and  
8 as we paid the \$500,000 for each segment, documents would be  
9 drawn up to transfer title.  
10 Q. So as payments became in, you would become an owner of 11:45:45  
11 certain parts of it on a graduated basis?  
12 A. That's correct.  
13 Q. And then going to page 11, the page before the  
14 signatures -- by the way, just so you understand, it's on the  
15 screen with you as well, sir, to your right. 11:46:11  
16 A. Okay.  
17 Q. It indicates that from a contact standpoint as to the  
18 vendor, it's to going to whom?  
19 A. James Parker.  
20 Q. Okay. And does it give an address there? 11:46:28  
21 A. Yes.  
22 Q. What is the address?  
23 A. 35802 North Meander Way in Carefree, Arizona.  
24 Q. And then to the extent things have to be sent to the  
25 buyer, is that to you with your Chicago address? 11:46:41

United States District Court

PAUL GOGUEN - Direct

1 A. That's correct. 11:46:46

2 Q. And then the next page, is that the signature line?

3 A. Yes.

4 Q. Did you and Mr. Parker sign this on June 7 of 2004?

5 A. Yes. 11:46:59

6 Q. And if you would look at Exhibit 124, sir.

7 MR. SEXTON: I would offer this into evidence as a

8 subset of the 902(11) cert for this record.

9 MR. MINNS: No objection.

10 THE COURT: It's admitted. 11:47:30

11 (Exhibit Number 124 was admitted into evidence.)

12 MR. SEXTON: Can we put page two on the screen?

13 Q. What was this for, sir?

14 A. This was wiring instructions for making payments.

15 Q. Would these be your payments to MacKinnon Belize for your 11:47:48

16 purchase?

17 A. Yes.

18 Q. And is the writing on here your writing?

19 A. Yes.

20 Q. And so explain sort of where the money would be coming 11:47:56

21 from, what bank, and where it would be going to in Belize?

22 A. Well, at the time we had an account with Chase; and so

23 when payments were ready to be made, we would wire the funds to

24 the Belize Bank Limited from our bank at Chase.

25 Q. And does it have an account number there? 11:48:24

United States District Court



PAUL GOGUEN - Direct

1 A. Yes, there is. 11:48:25

2 Q. Now, this memorandum of sale that we've already gone  
3 through, did there come a time where the two of you negotiated  
4 amendments to the terms and executed new documents associated  
5 with those amendments? 11:48:54

6 A. Yes.

7 Q. Let's start with Exhibit 462 which we would offer as an  
8 exhibit as a subpart of the 902(11) search.

9 MR. MINNS: No objection.

10 THE COURT: It's admitted. 11:49:14

11 (Exhibit Number 462 was admitted into evidence.)

12 BY MR. SEXTON:

13 Q. The second page. Let's go to the top. Is this the first  
14 amendment to your real estate contract that we just saw?

15 A. Yes. 11:49:24

16 Q. And in the document, it actually sort of the references in  
17 the first line, the original memorandum of sale on June 7 of  
18 2004.

19 A. Yes.

20 Q. And what is the date of this amendment to the agreement? 11:49:41

21 Do you see that at the bottom left?

22 A. Yes. July 3, 2004.

23 Q. You said July 3 or 30?

24 A. 3-0.

25 Q. Okay. And is it signed by you, the president of ioVest? 11:49:58

United States District Court

PAUL GOGUEN - Direct

1 A. Yes. 11:50:02

2 Q. And James Parker as president/director of MacKinnon  
3 Belize?

4 A. Yes.

5 Q. Go to 467. 11:50:25

6 MR. SEXTON: We offer this into evidence as the  
7 second amendment under the 902(11) cert.

8 MR. MINNS: No objection.

9 THE COURT: It's admitted.

10 (Exhibit Number 467 was admitted into evidence.) 11:50:36

11 BY MR. SEXTON:

12 Q. Would you explain to the jury why you were going through  
13 this amendment process? What was it that was causing terms to  
14 be revisited between you and Mr. Parker on the sale of this  
15 land? 11:50:54

16 A. Well, it was -- these payments weren't dependent on our  
17 ability to raise capital through an investment offering that we  
18 had. So there would be times when the capital wasn't ready to  
19 make a scheduled payment. So I would ask Mr. Parker for an  
20 extension, which he typically would granted. 11:51:16

21 Q. And when those extensions were granted, would it sort of  
22 reconfigure the timetable for payments and perhaps even  
23 reconfigure the release of land to be titled accordingly?

24 A. Yes. Yes.

25 Q. So we have a second amendment here in Exhibit 467. What's 11:51:32

PAUL GOGUEN - Direct

1 the date of this amendment? 11:51:40

2 A. August 31, 2004.

3 Q. And did you sign as president for your company?

4 A. Yep.

5 Q. I notice it's ioVest and then there's by CD Partners, 11:51:50

6 Inc., is that the member entity that you were talking about?

7 A. Yes.

8 Q. And that James Parker signed as president on August 31?

9 A. Yes.

10 MR. SEXTON: The third amendment, Exhibit 468 we 11:52:11

11 offer into evidence under the 902(11) cert.

12 MR. MINNS: No objection.

13 THE COURT: It's admitted.

14 (Exhibit Number 468 was admitted into evidence.)

15 BY MR. SEXTON: 11:52:29

16 Q. Is this the third amendment to your original contract?

17 A. Yes.

18 Q. And so in this particular amendment, if you would look at

19 the second paragraph, do you see where it says, "Whereas in

20 consideration of \$350,000." Do you see that little line there? 11:52:57

21 A. Yes.

22 Q. Is that additional moneys that you need to pay above the

23 \$6 million? Is that additional consideration that you are

24 having to pay in order to work out this amendment in any way or

25 is that consistent with the original terms? 11:53:15

United States District Court

PAUL GOGUEN - Direct

- 1 A. I believe it's consistent with the original terms. 11:53:18
- 2 Q. So ultimately, for this project, did you pay more than \$6  
3 million?
- 4 A. We did pay more. There were some extension fees.
- 5 Q. Approximately how much in extension fees did you pay? Do 11:53:32  
6 you have any approximation?
- 7 A. I can't remember.
- 8 Q. Was it less than a million dollars in extension fees?
- 9 A. Yes.
- 10 Q. More than \$500,000? 11:53:43
- 11 A. I don't think so, no. I think it was less than that.
- 12 Q. And looking at this subsection B that is on the screen  
13 here, you're agreeing to pay, at the bottom of that, \$1,315,000  
14 on or before January 15, 2005?
- 15 A. Yes. 11:54:11
- 16 Q. And to your knowledge, did you make that payment?
- 17 A. Yes. If I didn't, it was made at a subsequent time.
- 18 Q. Okay. Well, we'll see whether --
- 19 A. Okay.
- 20 Q. And then at the bottom, is this signed by James Parker as 11:54:27  
21 president?
- 22 A. Yes.
- 23 Q. And what is it dated?
- 24 A. December 22, 2004.
- 25 Q. And did you sign it as well at the bottom? 11:54:39

United States District Court

PAUL GOGUEN - Direct

1 A. Yes. 11:54:41

2 THE COURT: We're going to break for lunch.

3 Ladies and gentlemen, we'll see you back here at 1

4 o'clock.

5 We are in recess. 11:54:54

6 COURTROOM DEPUTY: All rise.

7 (Jury departs.)

8 (Recess at 11:54; resumed at 1:05.)

9 (Jury enters.)

10 (Court was called to order by the courtroom deputy.) 01:05:38

11 THE COURT: All right. Please be seated.

12 And, Mr. Sexton?

13 BY MR. SEXTON:

14 Q. Mr. Goguen, I think we just finished up with Exhibit 468.

15 So let's turn to 469. 01:06:00

16 MR. SEXTON: I would move that in under the 902(11)

17 certification.

18 THE COURT: Objection or none?

19 MR. MINNS: None.

20 THE COURT: It's admitted. 01:06:12

21 (Exhibit Number 469 was admitted into evidence.)

22 BY MR. SEXTON:

23 Q. Do you have that exhibit in front of you, sir?

24 A. Yes.

25 Q. Before I get to that, when you are negotiating for the 01:06:22

PAUL GOGUEN - Direct

1 purchase of the 600 acres approximately that you ultimately 01:06:28  
2 agreed on buying, did Mr. Parker in any way indicate to you  
3 that he was at least some form of an owner of the land that he  
4 was selling to you?  
5 A. Yes. 01:06:39  
6 Q. Okay. Did he give you any sort of sense of percentage or  
7 just that he was an owner of the land?  
8 A. An owner of several.  
9 Q. An owner of what? I didn't hear you.  
10 A. An owner among others. 01:06:52  
11 Q. Okay. Now, looking at this is Exhibit 469, is this the  
12 Fourth Amendment to your sale memorandum?  
13 A. Yes.  
14 Q. If you look at the second whereas, is that additional  
15 consideration or is that part of the original amounts paid on 01:07:18  
16 this, the \$800,000?  
17 A. Part of the original.  
18 Q. And then this is signed by Mr. Parker on January 16 of  
19 '05?  
20 A. Yes. 01:07:33  
21 Q. And by you a day later?  
22 A. Yes.  
23 Q. And then Exhibit 470.  
24 MR. SEXTON: Which we offer into evidence under the  
25 same certification. 01:07:47

United States District Court

PAUL GOGUEN - Direct

1	MR. MINNS: No objection.	01:07:48
2	THE COURT: It's admitted.	
3	(Exhibit Number 470 was admitted into evidence.)	
4	BY MR. SEXTON:	
5	Q. Is this the fifth and final sale to your land sale	01:08:05
6	agreement?	
7	A. It's the fifth. I'm not sure if it's the final or not.	
8	Q. And then in the third recital down below, the whereas,	
9	would you read that one to the jury, "Whereas, as of January	
10	31, 2005," do you see the third one down?	01:08:23
11	A. "Whereas, as of January 31, 2005, purchaser has deposited	
12	a total of \$1,650,000 which was credited toward the deposits	
13	required under paragraph 7(b) of the agreement."	
14	Q. So at this point, does this say how much you've actually	
15	put into the property at this point?	01:08:45
16	A. I think that's what it's saying, yes.	
17	Q. And then down below in what's referred to as paragraph B.	
18	It's in the second half of this document. Hold on a second.	
19	There's some additional dates and such to be modified from the	
20	existing agreement?	01:09:11
21	A. Yes.	
22	Q. And the second page, did you sign this for your entity?	
23	A. Yes.	
24	Q. On February 5 of 2005?	
25	A. February 3.	01:09:32

PAUL GOGUEN - Direct

1	Q. February 3, thank you. And did Mr. Parker sign it on	01:09:33
2	February 4 of 2005?	
3	A. Correct.	
4	Q. Let's go to 464.	
5	MR. SEXTON: And we would offer that under the	01:10:04
6	902(11) cert.	
7	MR. MINNS: No objection.	
8	THE COURT: It's admitted.	
9	(Exhibit Number 464 was admitted into evidence.)	
10	BY MR. SEXTON:	01:10:14
11	Q. What's the date of this letter, sir?	
12	A. November 3, 2005.	
13	Q. And is it sent to you?	
14	A. Yes.	
15	Q. From Mr. Parker?	01:10:27
16	A. Yes.	
17	Q. And what's it indicate Mr. Parker's title is under his	
18	printed signature at the bottom?	
19	A. Chairman of MacKinnon Belize Land & Development.	
20	Q. And was this a payment confirmation letter for a	01:10:41
21	particular payment?	
22	A. Yes.	
23	Q. For how much?	
24	A. \$100,000 U.S.	
25	Q. Would you go to 471?	01:10:53

United States District Court



PAUL GOGUEN - Direct

1 MR. SEXTON: I would offer that into evidence under 01:11:00  
2 the same certification.  
3 THE COURT: Any objection?  
4 MR. MINNS: No, Your Honor.  
5 THE COURT: It's admitted. 01:11:13  
6 (Exhibit Number 471 was admitted into evidence.)  
7 BY MR. SEXTON:  
8 Q. Is this letter dated November 17, 2005?  
9 A. Yes.  
10 Q. So roughly 14 days after the previous one we just looked 01:11:20  
11 at?  
12 A. M'hum.  
13 Q. You have to answer yes or no.  
14 A. I'm sorry. Yes.  
15 Q. And is it signed by Mr. Parker? 01:11:32  
16 A. Yes.  
17 Q. As the chairman again?  
18 A. Yes.  
19 Q. And is this another \$100,000 confirmation of the payment  
20 by your company to MacKinnon Belize Land Development? 01:11:43  
21 A. Yes, it is.  
22 Q. 472.  
23 MR. SEXTON: We would offer into evidence at this  
24 time under the same certification.  
25 MR. MINNS: No objection, Your Honor. 01:11:56

United States District Court

PAUL GOGUEN - Direct

1 THE COURT: It's admitted. 01:11:59

2 (Exhibit Number 472 was admitted into evidence.)

3 BY MR. SEXTON:

4 Q. Is this a confirmation letter nine days after the letter  
5 that we just looked at? 01:12:06

6 MR. MINNS: Excuse me, Your Honor. I am going to  
7 object at this time. First of all, the document speaks for  
8 itself. He is asking the witness to identify the dates that  
9 are easily on there. It's repetitive. The point is made. I'm  
10 objecting because it's repetitive, burdensome. The documents 01:12:22  
11 speak for themselves.

12 THE COURT: Overruled.

13 And we're going to take just a break. I'm going to  
14 talk to my court reporter.

15 We'll take a break and my able court reporter will 01:13:18  
16 try to fix the equipment.

17 (Jury departs.)

18 (Recess at 1:13; resumed at 1:18.)

19 THE COURT: So we got that fixed.

20 THE REPORTER: Sorry about that. Yes. 01:18:39

21 (Jury enters.)

22 THE COURT: All right. We're ready to go?

23 BY MR. SEXTON:

24 Q. We're on Exhibit 472, Mr. Goguen. What's the date of this  
25 letter? 01:19:38

PAUL GOGUEN - Direct

1 A. November 26, 2005. 01:19:39

2 Q. And what's the amount that is paid with this letter or  
3 acknowledged by this letter?

4 A. \$100,000 U.S.

5 Q. And who signs the letter at the bottom? 01:19:49

6 A. James Parker.

7 Q. If you go to Exhibit 473, please.

8 MR. SEXTON: I would offer 473 in under the same  
9 certification.

10 MR. MINNS: No objection. 01:20:05

11 THE COURT: It's admitted.

12 (Exhibit Number 473 was admitted into evidence.)

13 BY MR. SEXTON:

14 Q. What's the date of this letter?

15 A. December 1, 2005. 01:20:14

16 Q. What's the amount that is acknowledged paid with this  
17 letter?

18 A. \$100,000 U.S.

19 Q. And who signs the letter on behalf of MacKinnon Belize?

20 A. James Parker. 01:20:25

21 MR. SEXTON: 474.

22 MR. MINNS: No objection.

23 THE COURT: Okay.

24 (Exhibit Number 474 was admitted into evidence.)

25 MR. SEXTON: I didn't hear you, Judge. Did you admit 01:20:45

United States District Court

PAUL GOGUEN - Direct

1	that?	01:20:47
2	THE COURT: Oh. It's admitted.	
3	MR. SEXTON: Thank you.	
4	BY MR. SEXTON:	
5	Q. What's the date of this letter?	01:20:50
6	A. January 18, 2006.	
7	Q. And what's the amount indicated?	
8	A. 100,000, U.S.	
9	Q. Is there also a late fee indicated as well?	
10	A. It indicates that it includes the late fee, yeah, yes.	01:21:03
11	Q. So the \$100,000 has within it a \$50,000 late fee?	
12	A. No. I think what it's saying is the balance owing,	
13	including late fee, is \$50,000.	
14	Q. Okay. And then who signed this letter on behalf of	
15	MacKinnon?	01:21:20
16	A. James Parker.	
17	MR. SEXTON: 475 we would offer in.	
18	MR. MINNS: No objection.	
19	THE COURT: It's admitted.	
20	(Exhibit Number 475 was admitted into evidence.)	01:21:30
21	BY MR. SEXTON:	
22	Q. What's the date on this letter, sir?	
23	A. February 1, 2006.	
24	Q. And what's the amount that is acknowledged paid?	
25	A. \$50,000 U.S.	01:21:45

PAUL GOGUEN - Direct

1 Q. And who signed it? 01:21:46  
2 A. James Parker.  
3 Q. And then it says in the one sentence in the paragraph, it  
4 says for payment in full of purchase area 2-C. Do you see  
5 that? 01:21:57  
6 A. Yes.  
7 Q. Did that, then, free up purchase area 2-C for you to have  
8 it deeded to you and titled to you?  
9 A. That is correct.  
10 MR. SEXTON: Exhibit 476 we would offer into 01:22:10  
11 evidence.  
12 MR. MINNS: No objection.  
13 THE COURT: It's admitted.  
14 (Exhibit Number 476 was admitted into evidence.)  
15 BY MR. SEXTON: 01:22:17  
16 Q. And let's hold on here. What is the date of this letter?  
17 A. February 1, 2006.  
18 Q. And how much is paid and acknowledged in this letter?  
19 A. It's indicating 50,000 is paid and 500,000 is owing.  
20 Q. So now you're moving on to sort of the next purchase area 01:22:37  
21 grid named 2-D?  
22 A. That is correct.  
23 Q. And who signed this letter on behalf of MacKinnon?  
24 A. James Parker.  
25

PAUL GOGUEN - Direct

1	MR. SEXTON: Exhibit 477, please.	01:22:53
2	MR. MINNS: No objection.	
3	THE COURT: It's admitted.	
4	(Exhibit Number 477 was admitted into evidence.)	
5	BY MR. SEXTON:	01:23:01
6	Q. The date of this letter, sir?	
7	A. February 22, 2006.	
8	Q. And how much was paid and acknowledged in this letter?	
9	A. 40,000 U.S.	
10	Q. And who signed it on behalf of MacKinnon?	01:23:12
11	A. James Parker.	
12	Q. Exhibit 478.	
13	MR. MINNS: No objection.	
14	THE COURT: It's admitted.	
15	(Exhibit Number 478 was admitted into evidence.)	01:23:22
16	BY MR. SEXTON:	
17	Q. Mr. Goguen, what's the date of this letter?	
18	A. March 17, 2006.	
19	Q. How much was paid and acknowledged in this letter?	
20	A. \$100,000 U.S.	01:23:40
21	Q. And who signed on behalf of MacKinnon?	
22	A. James Parker.	
23	MR. SEXTON: Exhibit 479.	
24	MR. MINNS: No objection.	
25	THE COURT: It's admitted.	01:23:55

PAUL GOGUEN - Direct

1 (Exhibit Number 479 was admitted into evidence.) 01:23:56  
2 BY MR. SEXTON:  
3 Q. And what's the date of this letter, sir?  
4 A. March 27, 2006.  
5 Q. And how much was paid and acknowledged through this 01:24:08  
6 letter?  
7 A. \$50,000 U.S.  
8 Q. And who signed on behalf of MacKinnon?  
9 A. James Parker.  
10 MR. SEXTON: 480. 01:24:21  
11 MR. MINNS: No objection, Your Honor.  
12 THE COURT: It's admitted.  
13 (Exhibit Number 480 was admitted into evidence.)  
14 BY MR. SEXTON:  
15 Q. I'm sorry, sir. What is the date of this letter? 01:24:38  
16 A. April 17, 2006.  
17 Q. And how much was paid and acknowledged through this  
18 letter?  
19 A. \$150,000 U.S.  
20 Q. And who signed on behalf of MacKinnon? 01:24:47  
21 A. James Parker.  
22 MR. SEXTON: Exhibit 481.  
23 MR. MINNS: No objection.  
24 THE COURT: It's admitted.  
25 (Exhibit Number 481 was admitted into evidence.) 01:24:59

United States District Court

PAUL GOGUEN - Direct

1	BY MR. SEXTON:	01:25:02
2	Q. And the date of this letter, sir, is?	
3	A. April 28, 2006.	
4	Q. And how much was paid and acknowledged through this	
5	letter?	01:25:12
6	A. \$150,000 U.S.	
7	Q. And who signed this letter on behalf of MacKinnon?	
8	A. James Parker.	
9	MR. SEXTON: 483.	
10	MR. MINNS: No objection.	01:25:25
11	MR. SEXTON: 482. Let's do 483 first.	
12	MR. MINNS: No objection to either of them.	
13	THE COURT: They are both admitted.	
14	(Exhibit Number 482 was admitted into evidence.)	
15	(Exhibit Number 483 was admitted into evidence.)	01:25:32
16	MR. SEXTON: 483 first.	
17	BY MR. SEXTON:	
18	Q. What's the date of this letter, sir?	
19	A. May 10, 2006.	
20	Q. And how much was paid and acknowledged?	01:25:41
21	A. \$10,000 U.S.	
22	Q. And who signed -- what does it indicate as a signature	
23	space without signing?	
24	A. James Parker.	
25	Q. And then did this, then, release -- was that the final	01:25:55



PAUL GOGUEN - Direct

1 payment for the purchase area that is referred to as 2-D? 01:25:57  
2 A. That's correct.  
3 Q. And then thereafter you were -- your company had that  
4 property titled to you pursuant to the agreement?  
5 A. Effectively, yes. 01:26:09  
6 BY MR. SEXTON:  
7 Q. Now, 482.  
8 MR. SEXTON: And I think you already admitted it,  
9 Judge.  
10 Q. What's the date of this letter? 01:26:24  
11 A. May 10, 2006.  
12 Q. And how much is paid and acknowledged?  
13 A. \$90,000 U.S.  
14 Q. And who signed on behalf of MacKinnon?  
15 A. James Parker. 01:26:36  
16 Q. 484.  
17 MR. MINNS: No objection.  
18 THE COURT: Admitted.  
19 (Exhibit Number 484 was admitted into evidence.)  
20 BY MR. SEXTON: 01:26:46  
21 Q. What's the date of this letter?  
22 A. May 23, 2006.  
23 Q. How much was paid and acknowledged?  
24 A. \$50,000 U.S.  
25 Q. And who signed on behalf of MacKinnon? 01:27:02

United States District Court

PAUL GOGUEN - Direct

1	A.	James Parker.	01:27:06
2	Q.	485.	
3		MR. MINNS: No objection.	
4		THE COURT: It's admitted.	
5		(Exhibit Number 485 was admitted into evidence.)	01:27:10
6		BY MR. SEXTON:	
7	Q.	What's the date of this letter, sir?	
8	A.	May 31, 2006.	
9	Q.	And how much was acknowledged and paid?	
10	A.	\$25,000 U.S.	01:27:34
11	Q.	And who signed on behalf of MacKinnon Belize Land &	
12		Development?	
13	A.	James Parker.	
14		MR. SEXTON: 486.	
15		MR. MINNS: No objection.	01:27:45
16		THE COURT: It's admitted.	
17		(Exhibit Number 486 was admitted into evidence.)	
18		BY MR. SEXTON:	
19	Q.	What's the date of this letter, sir?	
20	A.	July 14, 2006.	01:28:04
21	Q.	How much was acknowledged and paid in this letter?	
22	A.	\$100,000.	
23	Q.	And who signed on behalf of MacKinnon?	
24	A.	James Parker.	
25	Q.	487.	01:28:11

United States District Court

PAUL GOGUEN - Direct

1 MR. MINNS: No objection. 01:28:13  
2 THE COURT: It's admitted.  
3 (Exhibit Number 487 was admitted into evidence.)  
4 BY MR. SEXTON:  
5 Q. What is there date of this letter, sir? 01:28:27  
6 A. July 18, 2006.  
7 Q. And what was acknowledged?  
8 A. \$50,000 U.S.  
9 Q. And who signed on behalf of MacKinnon?  
10 A. James Parker. 01:28:36  
11 Q. 488.  
12 MR. MINNS: If the government is offering it, I am  
13 not objecting.  
14 MR. SEXTON: I thought we were in a little rhythm  
15 there. 01:28:47  
16 MR. MINNS: I'll help you there.  
17 MR. SEXTON: I was offering 488.  
18 THE COURT: Okay. It's admitted.  
19 (Exhibit Number 488 was admitted into evidence.)  
20 BY MR. SEXTON: 01:29:03  
21 Q. And what's the date of this letter, sir?  
22 A. July 27, 2006.  
23 Q. And what amount was paid and acknowledged?  
24 A. \$85,000.  
25 Q. And who signed on behalf of MacKinnon Belize? 01:29:09

United States District Court

PAUL GOGUEN - Direct

1	A.	James Parker.	01:29:12
2		MR. SEXTON: 489, sir, I would offer into evidence.	
3		MR. MINNS: No objection.	
4		THE COURT: It's admitted.	
5		(Exhibit Number 489 was admitted into evidence.)	01:29:21
6	BY MR. SEXTON:		
7	Q.	Sir, what's the date of this letter?	
8	A.	July 31, 2006.	
9	Q.	How much is paid and acknowledged to you?	
10	A.	\$150,000.	01:29:35
11	Q.	And who signed as the chairman of MacKinnon Belize?	
12	A.	James Parker.	
13		MR. SEXTON: 490 we would offer.	
14		MR. MINNS: No objection.	
15		THE COURT: It's admitted.	01:29:50
16		(Exhibit Number 490 was admitted into evidence.)	
17	BY MR. SEXTON:		
18	Q.	What's the date of this letter, sir?	
19	A.	August 8, 2006.	
20	Q.	How much is paid and acknowledged?	01:30:04
21	A.	\$100,000.	
22	Q.	And who signs on behalf of MacKinnon?	
23	A.	James Parker.	
24		MR. SEXTON: 491.	
25		MR. MINNS: No objection.	01:30:20

United States District Court

PAUL GOGUEN - Direct

1	THE COURT: It's admitted.	01:30:21
2	(Exhibit Number 491 was admitted into evidence.)	
3	BY MR. SEXTON:	
4	Q. Sir, what is the date of this letter?	
5	A. August 14, 2006.	01:30:32
6	Q. And how much is paid and acknowledged through this letter?	
7	A. \$100,000.	
8	Q. And who signed on behalf and as chairman of MacKinnon	
9	Belize?	
10	A. James Parker.	01:30:43
11	Q. 492.	
12	MR. MINNS: No objection.	
13	THE COURT: It's admitted.	
14	(Exhibit Number 492 was admitted into evidence.)	
15	BY MR. SEXTON:	01:30:53
16	Q. What's the date of this letter, sir?	
17	A. August 25, 2006.	
18	Q. And how much was paid and being acknowledge?	
19	A. \$100,000.	
20	Q. And who signed on behalf of MacKinnon?	01:31:07
21	A. James Parker.	
22	Q. 493.	
23	MR. MINNS: No objection.	
24	THE COURT: It's admitted.	
25	(Exhibit Number 493 was admitted into evidence.)	01:31:18

PAUL GOGUEN - Direct

1 BY MR. SEXTON: 01:31:20  
2 Q. What's the date of this letter, sir?  
3 A. August 29, 2006.  
4 Q. And how much was paid and acknowledged in the body of this  
5 letter? 01:31:33  
6 A. \$100,000.  
7 Q. And who signed as chairman for MacKinnon Belize?  
8 A. James Parker.  
9 MR. SEXTON: 494.  
10 MR. MINNS: No objection. Pardon, I didn't use the 01:31:40  
11 microphone. No objection.  
12 THE COURT: It's admitted.  
13 (Exhibit Number 494 was admitted into evidence.)  
14 BY MR. SEXTON:  
15 Q. What's the date of this letter, sir? 01:31:59  
16 A. September 1, 2006.  
17 Q. And how much was paid and acknowledged?  
18 A. \$150,000.  
19 Q. And who signed on behalf of MacKinnon Belize?  
20 A. James Parker. 01:32:06  
21 MR. SEXTON: 495.  
22 MR. MINNS: No objection.  
23 THE COURT: It's admitted.  
24 (Exhibit Number 495 was admitted into evidence.)  
25

PAUL GOGUEN - Direct

1	BY MR. SEXTON:	01:32:22
2	Q. What's the date of this letter, sir?	
3	A. September 18, 2006.	
4	Q. What's the amount paid and acknowledged?	
5	A. \$100,000.	01:32:28
6	Q. And who signed on behalf of MacKinnon Belize?	
7	A. James Parker.	
8	MR. SEXTON: 496.	
9	MR. MINNS: No objection.	
10	THE COURT: It's admitted.	01:32:40
11	(Exhibit Number 496 was admitted into evidence.)	
12	BY MR. SEXTON:	
13	Q. What's the date of this letter, sir?	
14	A. January 12, 2007.	
15	Q. And what's the amount of money paid and acknowledged?	01:32:55
16	A. \$50,000.	
17	Q. And who signed on behalf of MacKinnon Belize?	
18	A. James Parker.	
19	MR. SEXTON: 497.	
20	MR. MINNS: Your Honor, we have no objection to 497,	01:33:05
21	499, 498, 500 and 501.	
22	THE COURT: Thank you.	
23	MR. MINNS: If that would speed things up.	
24	THE COURT: Thank you. They are all admitted.	
25	(Exhibit Numbers 497 through 501 were admitted into	01:33:16

PAUL GOGUEN - Direct

1	evidence.)	01:33:16
2	BY MR. SEXTON:	
3	Q. Turning to 497 if you would, sir.	
4	A. Yes.	
5	Q. What's the date of this letter?	01:33:23
6	A. April 18, 2007?	
7	Q. What's the amount that is confirmed as received?	
8	A. \$450,000.	
9	Q. And who signed on behalf of MacKinnon Belize?	
10	A. James Parker.	01:33:40
11	Q. And did this satisfy on what is called purchase area 3-C?	
12	A. Yes.	
13	Q. 498. What's the date of this letter?	
14	A. May 7, 2007.	
15	Q. And what's the amount paid and acknowledged?	01:34:08
16	A. \$200,000.	
17	Q. And who signed on behalf of MacKinnon Belize?	
18	A. James Parker.	
19	Q. 499. Sir, what's the date of this letter?	
20	A. July 10, 2007.	01:34:33
21	Q. How much was paid and acknowledged?	
22	A. \$50,000.	
23	Q. And who signed on behalf of MacKinnon Belize?	
24	A. James Parker.	
25	Q. 500. What's the date of this letter?	01:34:43

United States District Court



PAUL GOGUEN - Direct

1	A.	August 6, 2007.	01:34:59
2	Q.	How much is paid and acknowledged?	
3	A.	\$150,000.	
4	Q.	And who signed on behalf of MacKinnon Belize Land &	
5		Development?	01:35:05
6	A.	James Parker.	
7	Q.	501. What's the date of this letter, sir?	
8	A.	August 15, 2007.	
9	Q.	And the amount paid and acknowledged?	
10	A.	\$150,000.	01:35:34
11	Q.	And did this satisfy the purchase area 3-D?	
12	A.	Yes.	
13	Q.	And who signed on behalf of MacKinnon Belize?	
14	A.	James Parker.	
15	Q.	Is Exhibit 125 the next one in front of you, sir?	01:35:55
16	A.	Yes.	
17		MR. SEXTON: I would offer that into evidence.	
18		THE COURT: 125, any objection?	
19		MR. MINNS: I apologize, Your Honor. What was the	
20		exhibit number?	01:36:10
21		MR. SEXTON: Exhibit 125.	
22		MR. MINNS: No, Your Honor. There's no objection to	
23		Exhibit 125.	
24		THE COURT: It's admitted.	
25		(Exhibit Number 125 was admitted into evidence.)	01:36:19

United States District Court

PAUL GOGUEN - Direct

1	BY MR. SEXTON:	01:36:33
2	Q. Mr. Goguen, what's the date of this letter?	
3	A. February 19, 2008.	
4	Q. And would you read the first line of the letter to you?	
5	A. "This is to confirm that on August 15, 2007, we received	01:36:43
6	final payment to complete your purchase in full for the 582	
7	acre estate associated with the above referenced agreement and	
8	that Ara Macao Holdings, L.P., is now the sole effective	
9	owner."	
10	Q. And who signed on behalf of MacKinnon Belize?	01:37:01
11	A. James Parker.	
12	Q. And after it was all said and done with all of the	
13	amendments, did you buy 582 acres?	
14	A. When the land was surveyed or resurveyed, it was	
15	approximately 600.	01:37:23
16	Q. And have you developed that land at this point?	
17	A. Not completely, no. We just -- we're in a predevelopment	
18	stage.	
19	MR. SEXTON: One moment.	
20	That's it for me.	01:37:50
21	THE COURT: All right.	
22	Cross?	
23	MR. MINNS: Yes. Thank you, Your Honor.	
24	MR. SEXTON: Thank you, sir.	
25	THE WITNESS: You're welcome.	01:37:58

United States District Court

PAUL GOGUEN - Cross

**CROSS - EXAMINATION**

1		01:37:58
2	BY MR. MINNS:	
3	Q. Good afternoon, Mr. Goguen. Am I pronouncing that right?	
4	A. That is right, yes.	
5	Q. And we met for about seven or eight seconds during the	01:38:22
6	break. I came up. I shook hands with you. You shook hands	
7	with me.	
8	A. Yes, sir.	
9	Q. But other than that, we haven't had an opportunity to talk	
10	or -- about any of this?	01:38:32
11	A. Yes. That is correct.	
12	Q. Have you had an opportunity to talk with any of the	
13	government people before today?	
14	A. Yes.	
15	Q. Did you enjoy that opportunity?	01:38:41
16	A. Ha, ha. I would rather say I was neutral to the	
17	opportunity.	
18	MR. MINNS: Your Honor, may I approach the witness	
19	with a memorandum of interview from the government?	
20	THE COURT: Is it an exhibit or would you like to	01:39:05
21	make it an exhibit? Is that what you want to do?	
22	MR. MINNS: I wanted to ask him a question about it.	
23	THE COURT: Let me just ask again. Is it already an	
24	exhibit?	
25	MR. MINNS: No.	01:39:16

PAUL GOGUEN - Cross

1 THE COURT: You are using it for just your exhibits? 01:39:17  
2 MR. MINNS: I am not using it for any purpose.  
3 THE COURT: Well, let me stop you.  
4 MR. MINNS: Well, that's not -- that's silly. Yes, I  
5 have a purpose. I apologize to the Court. 01:39:30  
6 THE COURT: You, generally, have a purpose. We need  
7 to have it marked. And then Christine will show it to the  
8 witness.  
9 MR. MINNS: May I approach the --  
10 THE COURT: Yes. Please do. 01:39:47  
11 MR. MINNS: I have handwritten marks on it, Your  
12 Honor.  
13 THE COURT: Okay. Is that okay? He can see those.  
14 MR. MINNS: Yes, ma'am. I have no objection to that.  
15 THE COURT: And then is it going to be -- Christine, 01:39:54  
16 what exhibit?  
17 COURTROOM DEPUTY: 1115.  
18 THE COURT: 1115.  
19 (Exhibit Number 1115 was marked for identification.)  
20 COURTROOM DEPUTY: Can the witness have it? 01:40:09  
21 MR. MINNS: I believe I am required -- because I had  
22 handwritten notes, I believe I would be required -- I'm not  
23 offering it into evidence, but I believe I'm required to show  
24 it to the government.  
25 THE COURT: Haven't you? 01:40:19

United States District Court

PAUL GOGUEN - Cross

1 MR. MINNS: No, Your Honor, not with my highlights on 01:40:20  
2 it.  
3 THE COURT: Okay. Go ahead.  
4 MR. SEXTON: One moment, Judge.  
5 Let me show you something here. 01:41:02  
6 All right. Thank you, Judge, for letting me look at  
7 it.  
8 THE COURT: All right. Then just bring it forward  
9 and Christine will help us out.  
10 MR. MINNS: May I? 01:41:59  
11 THE COURT: Yes.  
12 MR. MINNS: Thank you, Your Honor.  
13 The witness is reading it. With the Court's  
14 permission, it's very short. If I could just wait until he  
15 finishes? 01:42:08  
16 THE COURT: Oh. Sure.  
17 MR. MINNS: Could I retrieve it to ask my questions  
18 now, Your Honor?  
19 THE COURT: Yes. As long as he's not going to have  
20 to reread it. 01:43:02  
21 MR. MINNS: No, ma'am. I'm not going to ask him to  
22 reread it.  
23 THE COURT: All right.  
24 BY MR. MINNS:  
25 Q. When the government conducts an interview, they are 01:43:19

United States District Court

PAUL GOGUEN - Cross

1 supposed to reduce that to writing and submit it. So I wanted  
2 you to have the advantage of their version. Now I have a  
3 couple of questions that come to mind.

01:43:21

4 Today I'm asking about ownership of the property in  
5 Belize. You truthfully testified that Mr. Parker signed on  
6 behalf of the owner MacKinnon corporation.

01:43:43

7 The government suggests in that memorandum --

8 MR. SEXTON: Judge, he is testifying again.

9 THE COURT: Well, this is by way of introduction to a  
10 question, so I'm going to wait until we hear the question.

01:44:06

11 Again, though, Mr. Minns, you're going to have to be  
12 careful about giving an introductory statement to a question.

13 Let's hear a question.

14 MR. MINNS: Thank you, Your Honor.

15 BY MR. MINNS:

01:44:31

16 Q. The government's suggestion, I'm asking if this was true.  
17 I'm assuming you told the truth today under oath. You didn't  
18 sign this. You didn't sign this document that I just showed  
19 you; correct?

20 MR. SEXTON: Objection. He is expressing his own  
21 opinions in his own question.

01:44:42

22 THE COURT: He's asking -- he's assuming, and I'm  
23 going to allow it, go ahead.

24 MR. MINNS: Thank you, Your Honor.

25

PAUL GOGUEN - Cross

1 BY MR. MINNS: 01:44:58

2 Q. Did the government, when they were interviewing you, ask

3 you to say that Mr. Parker was the owner?

4 A. I don't recall that.

5 Q. The suggestion in this piece of paper that Mr. Parker was 01:45:13

6 the owner, they didn't get it from you, did they?

7 A. They did not.

8 Q. So they wrote that on this paper, they just made it up.

9 It didn't come out of the interview?

10 A. I don't believe -- I think I stated that he represented to 01:45:27

11 me that he was representing a group of owners.

12 Q. And he also told you -- you and he -- neither one of you

13 could close the deal. I mean, he had to go back to his

14 investors and owners and you had to go back to your investors

15 and owners before you could close the deal; correct? 01:45:47

16 A. That's correct, yes.

17 Q. And you told that to the government when they interviewed

18 you or talked to you?

19 A. It was a long time ago. I believe I did. I certainly

20 have recently. That letter was from a few years ago; right? I 01:46:03

21 forgot the date there.

22 MR. MINNS: May I hand this back up to him?

23 THE COURT: You can refresh his recollection of what

24 the date is and ask him if that does refresh his recollection.

25 MR. MINNS: The date typed on here is July 29, 2008. 01:46:21

United States District Court

PAUL GOGUEN - Cross

1 THE WITNESS: Yes. So that was a phone interview, 01:46:26  
2 yes.  
3 BY MR. MINNS:  
4 Q. And it was a woman that was on the telephone at this time?  
5 A. Yes. 01:46:36  
6 Q. And you also met with them today?  
7 A. Yes.  
8 Q. And they asked you questions and things before you came on  
9 here?  
10 A. Well, they met with me a couple of weeks ago. 01:46:48  
11 Q. A couple of weeks ago?  
12 A. Yes.  
13 Q. And they also -- was that a voluntary meeting? Did you  
14 feel like you had to meet with them?  
15 A. I felt pressed to, you know, to be there, to have that 01:47:08  
16 meeting.  
17 Q. And when your company -- you've testified that your  
18 company, the corporation that you own, owns a piece of ioVest;  
19 correct?  
20 A. That's right. 01:47:27  
21 Q. So you don't own all of ioVest?  
22 A. Correct.  
23 Q. You're hoping that ioVest will make a huge profit;  
24 correct?  
25 A. That is correct. 01:47:42

United States District Court



PAUL GOGUEN - Cross

1 Q. But you're not going to get to keep that huge profit. It 01:47:42  
2 won't belong to you?  
3 A. No.  
4 Q. It won't belong to your corporation?  
5 A. No. I'm sorry, whatever ioVest makes, it will belong to 01:47:49  
6 the corporation and then it passes through to the principal  
7 owners of ioVest.  
8 Q. And lawyers set up these corporations for you?  
9 A. Yes.  
10 Q. CPAs set up these corporations for you? 01:48:04  
11 A. Yes.  
12 Q. Do you prepare your own tax returns and records for that?  
13 A. No.  
14 Q. If the government were to say to you that you have to  
15 report all of the profit that is made on this on your personal 01:48:14  
16 return, would you be able to survive that?  
17 A. No.  
18 MR. SEXTON: Objection to the form of the question.  
19 Relevance as to this witness as to what the question was  
20 asking. 01:48:26  
21 THE COURT: Overruled.  
22 BY MR. MINNS:  
23 Q. And I believe your answer to that was, "No"?  
24 A. No.  
25 Q. Thank you. 01:48:37

United States District Court

PAUL GOGUEN - Cross

1           And you met in Mr. Barrow's office to sign all of           01:48:38  
2 these deals to purchase the property from the corporation that  
3 Mr. Parker worked for?  
4       A.     Yes.  
5       Q.     Has he been able to meet any of the investors -- he hasn't   01:48:51  
6 met anybody in your corporation except you.  
7       A.     That's correct.  
8       Q.     And you haven't met the people behind his corporation  
9 except him?  
10      A.     Correct.   01:49:02  
11      Q.     And as businessmen, all you're interested in is getting  
12 good, clean, honest title, working with an honest businessman  
13 and making the transaction go through so that you can make an  
14 honest profit?  
15      A.     Correct.   01:49:14  
16      Q.     You are really not interested in socializing or the other  
17 stuff. This is a business transaction?  
18      A.     That's right, sir.  
19      Q.     You understand the difference in revenue, money that you  
20 take in, and profit, income, after you've paid your expenses?       01:49:33  
21      A.     Correct.  
22      Q.     From your substantial business experience, your  
23 substantial property management, do you have a professional  
24 opinion as to whether Mr. Barrow -- the lawyer's services were  
25 free.   01:49:55

United States District Court

PAUL GOGUEN - Cross

1 A. Not a chance. 01:49:57

2 MR. SEXTON: Objection. Foundation.

3 THE COURT: Hold on. Sustained.

4 BY MR. MINNS:

5 Q. Generally -- 01:50:05

6 THE COURT: Ladies and gentlemen, you are to ignore

7 the last answer to the last question.

8 MR. MINNS: May I proceed, Your Honor.

9 THE COURT: You may.

10 BY MR. MINNS: 01:50:15

11 Q. Generally, part of the cost of doing business in offshore

12 and even in the United States on major properties is the

13 expense of building them up, the expense of construction,

14 advertisement, legal fees, CPA fees, accounting fees,

15 bookkeeping fees and management fees and things like that; 01:50:32

16 correct?

17 A. Correct.

18 Q. And as a businessman, you expect to write these off;

19 correct?

20 A. Correct. 01:50:46

21 Q. But you don't know how to do it. You just hand it over to

22 your CPAs and tax attorneys and they figure out how it's

23 supposed to legally be done?

24 A. Correct.

25 Q. It was a pleasure meeting you, Mr. Goguen. 01:50:57

United States District Court

PAUL WEDEPOHL - Direct

1 MR. MINNS: I pass the witness. 01:51:00

2 THE COURT: All right.

3 Any redirect?

4 MR. SEXTON: No, Your Honor.

5 THE COURT: You may step down. 01:51:03

6 (Witness excused.)

7 THE COURT: Your next witness?

8 (The following portion was previously separately  
9 transcribed and is incorporated herein.)

10 PAUL WEDEPOHL, 01:51:21

11 called as a witness herein by the Government, having been first  
12 duly sworn or affirmed to testify to the truth, was examined  
13 and testified as follows:

14 COURTROOM DEPUTY: State your name for the record;  
15 spell your last name, please. 01:51:43

16 THE WITNESS: My name is Paul Wedepohl.  
17 W-E-D-E-P-O-H-L.

18 COURTROOM DEPUTY: Have a seat right up here, sir.

19 **DIRECT EXAMINATION**

20 BY MR. SEXTON: 01:52:18

21 Q. Would you introduce yourself to the Court and to the jury?

22 A. Certainly. My name is Paul Wedepohl. I used to be -- I'm  
23 a retired revenue officer with the Internal Revenue Service.

24 Q. When did you retire?

25 A. I retired in September of 2009. 01:52:32

PAUL WEDEPOHL - Direct

1 Q. And retired, are you retired-retired, or are you retired 01:52:37  
2 to a new job?

3 A. My new job is living life. I'm retired-retired.

4 Q. And when were you a revenue officer for the Internal  
5 Revenue Service? 01:52:51

6 A. I was a revenue officer from July of 1982 until I retired  
7 in September of 2009.

8 Q. Did you work in a particular office?

9 A. I worked in several offices around the Valley here,  
10 Phoenix offices, Mesa office, Tempe office. 01:53:08

11 Q. Is all of your experience in sort of the greater Phoenix  
12 metropolitan area?

13 A. That's correct. Now and then I would travel out of state,  
14 but that was the exception rather than the rule. Mostly, I  
15 worked around town here. 01:53:22

16 Q. So, overall, you had 27 years of experience with the  
17 Internal Revenue Service?

18 A. Yes, sir.

19 Q. Always as a revenue officer?

20 A. Yes, sir. 01:53:34

21 Q. As a revenue officer, would you give the jury sort of the  
22 highlights of your training and experience as a revenue  
23 officer?

24 A. Absolutely. As I said, I started with the Service in July  
25 of 1982 and at that point, I was in a one-year training 01:53:56

United States District Court

PAUL WEDEPOHL - Direct

1 program. It involved classroom training for a month or two,  
2 then on-the-job training and then back to classroom training  
3 and so forth. That period lasted for a year.

01:53:58

4 And at that time, I went out and started working  
5 collection cases for the Internal Revenue Service.

01:54:15

6 Since then I've had -- it would take me a while to  
7 list all of the training that I've had through the years  
8 including many training classes that I was an instructor for  
9 classes. Most recent classes I instructed on before I retired  
10 involved cases of more technical nature and the higher complex  
11 cases and so forth.

01:54:39

12 Q. Now, sometimes in the records, do you use an alias name?

13 A. Yes. My true name, as I indicated, is Paul Wedepohl.

14 However, the Internal Revenue Service at one time -- I don't  
15 know if they do now but at one time assigned us what is called  
16 pseudonyms, or a name other than our true name, that we would  
17 use in the course of our official duties. And so my name that  
18 was assigned to me was Paul Chase.

01:55:08

19 Q. And why were you using an alias name in your dealings?

20 A. Sure. The main reason was for safety and security. A  
21 great many taxpayers and individuals that we come across in our  
22 duty are completely cooperative and willing to, you know,  
23 resolve their issues and work with you. However, you do have a  
24 few that aren't so willing and cooperative and don't really  
25 like you or like the Internal Revenue Service. There was a

01:55:34

01:56:02

United States District Court

PAUL WEDEPOHL - Direct

1 tendency periodically for some individuals to file personal  
2 liens against me or against other revenue officers.

01:56:05

3 For example, in an effort to ruin our personal  
4 credit, stop us from maybe obtaining a mortgage for our own  
5 personal needs. If you can imagine somebody messing up your  
6 credit report with bogus liens and false documents, can create  
7 a problem for you personally.

01:56:22

8 So in an effort to kind of stay away from that, we  
9 worked with pseudonyms that were sanctioned by the Internal  
10 Revenue Service.

01:56:42

11 Q. While you were a revenue officer, on average, about how  
12 many collection files were you working on at any given time?

13 A. Towards the last, I would say, 10 years of my career my  
14 maximum inventory could be -- well, my inventory numbers, which  
15 are individual cases or entities, ran in the area of 35,  
16 between 33, 36 entities at any one time that we worked on. We  
17 called that our inventory.

01:57:04

18 Q. Now, your title is a revenue officer. That's distinct  
19 from a revenue agent?

20 A. Yes. There's a great distinction between the two.

01:57:29

21 Q. Okay. Would you explain what a revenue agent does and  
22 what you, as a revenue officer, are responsible for?

23 A. Sure. A revenue agent is an individual with the Service  
24 who does examinations or audits on income tax returns of  
25 various types. So a revenue agent will examine, say, for

01:57:47

United States District Court

PAUL WEDEPOHL - Direct

1 example, a 1040 income tax return that you may file. There may  
2 be a need to -- for the service to look at that return. A  
3 revenue agent would examine it or audit that return to verify  
4 what's on the return is valid. That's what a revenue agent  
5 basically did for individuals and businesses.

6 Q. Now, you, as a revenue officer during your career, what  
7 was your responsibility within the IRS as a revenue Officer?

8 A. Sure. My responsibility involved the collection actions  
9 on a case, whether it be a case that a revenue agent audited  
10 and established that there was a liability owing or whether it  
11 was an instance where an individual or business filed a tax  
12 return showing a balance owing where no one's paying that  
13 balance or for whatever reason didn't pay the balance.

14 That case would come to myself to make contact with  
15 the individual or the business to determine, you know, what's  
16 going on, what can we do together to work out the problem? And  
17 so I worked collection. I would collect money that was due the  
18 government and I would collect returns or tax returns that were  
19 due to the government but that weren't filed timely.

20 Q. Now, in the process of being a revenue officer, when is it  
21 that, in essence, a file is begun and assigned to someone like  
22 you in the IRS? When is it that somebody says, "It's time to  
23 send this to collections"?

24 A. Well, management would assign us inventory or our case  
25 files based on our work load. For example, management always

United States District Court



PAUL WEDEPOHL - Direct

1 liked revenue officers to have plenty of work to do. They 01:59:44  
2 didn't want us sitting around. They wanted us working so they  
3 would make sure that we had plenty of work, plenty of cases.  
4 When we would close a case, most of the time we would get  
5 another one right behind it assigned to us on the computer 01:59:57  
6 system.

7 So they always kept us at a higher end of inventory.  
8 We didn't control the work that came to us. It was assigned to  
9 us and we would take what was given to us and go from there.

10 Q. Now, in the beginning of the process of an assigned case, 02:00:15  
11 when it's given to you, there has been some determination that  
12 a tax is due and owing that needs to be collected?

13 A. If it's a case for collection. When I say "collection," I  
14 mean to collect money.

15 Q. Right. 02:00:34

16 A. Then, yes, the liability has already been established nine  
17 times out of ten. Whether it's a voluntarily filed return by  
18 the individual or a return that was set up by the Internal  
19 Revenue Service, and maybe even taken to a tax court, for  
20 determination. Once the liability was determined, then that 02:00:52  
21 case would come to us to collect.

22 Q. So the liability could have been determined by the  
23 taxpayer to justify the tax return itself that they filed?

24 A. Correct.

25 Q. By an audit process that there was a determination that 02:01:04

PAUL WEDEPOHL - Direct

1 wasn't disputed at the end? 02:01:07

2 A. Correct.

3 Q. Or even by some sort of a tax court judgment that

4 finalized that due and owing for a particular tax year?

5 A. Correct. 02:01:15

6 Q. Now, when you begin the collection process, how is it that

7 you reach out to the person who owes the money, the taxpayer,

8 how do you reach out to them to begin the process of trying to

9 collect it?

10 A. Sure. Well, when we first receive a case, we establish a 02:01:33

11 date to analyze what information we can analyze that we have

12 available to us internally. More importantly, when we receive

13 a case, we set up a date to go out and make contact with the

14 individual taxpayer, whether it be a business or whatever.

15 Since I'm a field revenue officer, my job is to be in 02:01:58

16 the field, is to go out and knock on doors and do my job. We

17 don't operate on the phone necessarily but it's a face-to-face

18 meeting with the tax-paying individual, whether it be that

19 person or a representative they may have retained or whoever we

20 need to contact. We go out and knock on the door and meet with 02:02:22

21 them in person, or we attempt to do that I should say.

22 Q. And in this process, is it generally cooperative or

23 uncooperative?

24 A. Again, I believe in my experience, over 90 percent of the

25 cases I've worked in 27 years have been with cooperative 02:02:42

United States District Court

PAUL WEDEPOHL - Direct

1 individuals. Actually, believe it or not, some people have  
2 said to me, "I am glad to finally see you." They have been  
3 dealing with the Ogden Service Center through letters and phone  
4 calls and they get a different person on the phone or whatever  
5 every time and they become frustrated so, they are happy to see  
6 us sometimes. Those individuals are great to work with. They  
7 are cooperative. We have a good flow of information and  
8 communication. And, you know, my job, as a revenue officer for  
9 the IRS, is to protect the interest of the individual taxpayer  
10 as well as the interest of the service.

02:02:45

02:03:00

02:03:18

11 So I go out there to try to help fix this problem but  
12 I do it on a face-to-face, in-person basis.

13 Q. Now, you said the flow of information. Do you ask the  
14 taxpayer for various pieces of financial information to get a  
15 measure of their financial picture?

02:03:39

16 A. Why, sure we do. However, before we even start talking  
17 about what records we might need or documents or discussion  
18 points, I always ask for the money. "Can you pay the tax that  
19 you owe today? Can you pay part of the tax that you owe  
20 today?"

02:03:59

21 So, you know, although I am probably going to end up  
22 securing information in many cases, I always try -- we always  
23 try to get the money or get a partial payment or secure returns  
24 that haven't been filed when we make our initial contact.

25 If the individual and business is unable to pay, then

02:04:14

United States District Court

PAUL WEDEPOHL - Direct

1 we get into a discussion about coming up with the resolution to  
2 get it paid based on their financial situation and then enters  
3 the issue of needing documents and records and so forth to  
4 establish the best resolution of that case.

02:04:19

5 Q. What procedures do you employ if you have an uncooperative  
6 taxpayer?

02:04:41

7 A. Well, the revenue officers have made tools, if I can use  
8 that word, available to us to try to promote compliance.

9 That's what we are trying to do is get somebody back into the  
10 system, back into the paying, filing routine so that they are  
11 productive in that regard and we move on out of their life. So  
12 we do have a lot of different things that we can do.

02:05:01

13 Q. Let me ask it a little bit more specifically. If they are  
14 not willing to give you information, what do you do, as a  
15 revenue officer, to try to learn about what their assets and  
16 liabilities and income are if they are not going to give it to  
17 you? How do you go about trying to figure that out ourself?

02:05:25

18 A. Sure. Well, I ask them first if they say they can't pay,  
19 then I start asking, you know, "Well, what kind of income do  
20 you have? What kind of assets do you have? What are your  
21 liabilities? What are your expenses?" And we try to kind of  
22 formulate a financial statement to see -- get a picture, a  
23 snapshot, of where that individual is in terms of their ability  
24 to pay.

02:05:44

25 If they don't willingly provide that information,

02:06:00

United States District Court

PAUL WEDEPOHL - Direct

1 then we have ways that we can find information through the 02:06:05  
2 issuance of a summons where it's a document that we might serve  
3 on a bank account to ask for bank records. We always ask the  
4 individual to provide us with that information first because  
5 it's just easier. But if we need to, we can summons bank 02:06:19  
6 accounts. We can summons individuals for testimony.

7 If somebody is not willing to cooperate and maybe we  
8 know about a bank account somewhere after they have had their  
9 due process notices and so forth, we may send what's called a  
10 notice of levy, which is a document that basically attaches or 02:06:38  
11 garnishes the funds in that account. We could do the same  
12 thing with wages. We can even seize assets if we have to, if  
13 an individual or business refuses to comply and won't work with  
14 us. And we take even further collection action that could  
15 include showing up one day with a tow truck and seizing the car 02:07:02  
16 or seizing their personal residence or seizing their wages.  
17 But of course they have warnings and notice and opportunity  
18 through due process procedures to rectify that event from  
19 happening by just sitting down and talking to us. That is the  
20 name of the game. 02:07:22

21 Q. Besides a summons, are you able to do searches for title  
22 records with various recorders' offices within the State of  
23 Arizona?

24 A. Yes. We can serve a summons on pretty much any entity  
25 that we believe may have some relevant records to our case. 02:07:39

United States District Court

PAUL WEDEPOHL - Direct

1 For example, the title company. If it looks like somebody's -- 02:07:43  
2 somebody owns a house or if they are living in a house and  
3 we're not sure who owns the house, who bought the house, things  
4 like that, then we can serve summonses and secure records from  
5 title companies to see the escrow file to see when the house 02:07:58  
6 was originally purchased and to try to determine who was  
7 involved, where the income came from to buy the house and  
8 things like that.

9 Q. Do you search other public databases like Department of  
10 Motor Vehicles, Recorder's Office, the Department of Economic 02:08:13  
11 Security to try to get those pieces of information?

12 A. All of those. All of those sources and as many more as  
13 you can think of. We have no perimeters or boundaries by which  
14 we can reach out and try to secure information.

15 If there's a nexus to our case or a connection to our 02:08:34  
16 case that that third party, we believe, has, then one summons  
17 that third party for the information.

18 Q. Let's talk about the nexus there. Do you -- obviously  
19 there are 50 states in the United States. Do you search the  
20 public records in each state when you are looking at an 02:08:48  
21 uncooperative taxpayer's information or do you start with the  
22 state that they seem to be living in and search that thoroughly  
23 and it's hit and miss otherwise?

24 A. Sure. Typically, we search the database in the area or  
25 state where the residence is located, where the taxpayer 02:09:10

United States District Court

PAUL WEDEPOHL - Direct

1 resides I should say, where the individual resides. 02:09:14

2 We can search outside of the State of Arizona.

3 Remember, we're federal. So we can search in Maine or

4 Washington state. But I wish our databases were that

5 accessible to us but, typically, we search the State of 02:09:28

6 Arizona, for example. Unless we have a reason to look in

7 another state, whether it's DMV or their Department of Economic

8 Security or a bank or someplace else in another state, we don't

9 just search the whole country. It's just prohibitive to do

10 that. We have to have some nexus or reason to go out. 02:09:48

11 Q. And what about into foreign lands outside the United

12 States, do you have any mechanisms or powers to get records out

13 of the country?

14 A. We have -- we, I say the federal government has a

15 collection treaty with six countries in the whole world, but 02:10:07

16 generally, the answer to that is no. We can't reach out to

17 other countries. And many times, even if we have a collection

18 treaty with the other countries, we still have lots of hurdles

19 and road blocks.

20 It's very difficult to get another country to want to 02:10:25

21 cooperate with Internal Revenue Service.

22 Q. To your knowledge, was there a collection treaty with the

23 country of Belize?

24 A. No, there isn't.

25 Q. Were you assigned the collection matter for James and 02:10:50

United States District Court

PAUL WEDEPOHL - Direct

1	Jacqueline Parker?	02:10:53
2	A. Yes, I was.	
3	Q. Now, do you have in front of you Exhibit 446?	
4	A. Yes, I do.	
5	Q. Is that an archive history that includes the sort of the	02:11:08
6	collection history associated with the James and Jacqueline	
7	Parker taxpayer?	
8	A. Yes.	
9	Q. And are many of the inputs in this document inputs that	
10	you inputted into the system during your time as a collection	02:11:32
11	officer for this particular file?	
12	A. Yes.	
13	Q. Would this document help you in recalling the specific	
14	things that you did in regards to this collection file?	
15	A. I'm sure it would.	02:11:53
16	Q. As needed, you can refresh your recollection to see if it	
17	refreshes your recollection as to the next thing you did in	
18	that or it refreshes your recollection as to a conversation.	
19	But when you need to do that, would you let us know so then you	
20	can look at it and then we want you to testify from your	02:12:11
21	recollection. Do you understand that?	
22	A. Sure.	
23	Q. When were you assigned the collection file for James and	
24	Jacqueline Parker? When was that?	
25	A. I was assigned that file in January of 2004.	02:12:34

United States District Court



PAUL WEDEPOHL - Direct

1 Q. And what tax years were you assigned to collect? 02:12:46  
2 A. If I could refer to this briefly, please?  
3 Q. Yes.  
4 A. I was assigned the tax years of -- for 1040 income tax  
5 returns for 1997, 1998, 2000, and 2002 -- I'm sorry, and 1999 02:13:01  
6 as well.  
7 Q. And did you have a particular amount of unpaid balance  
8 that you were pursuing?  
9 A. Yes. The unpaid amount was 1,700,000 and some extra  
10 dollar and change. A million seven. 02:13:38  
11 Q. Approximately?  
12 A. Yes, approximately.  
13 Q. And when you began to work on this file, did Mr. and  
14 Mrs. Parker have someone working for them at that time under a  
15 power of attorney? 02:13:56  
16 A. Yes. At the time I received the case, there was a power  
17 of attorney representative working on behalf of Mr. and  
18 Mrs. Parker.  
19 Q. And who was that?  
20 A. That was a CPA. His last name was Liggett. I don't 02:14:08  
21 recall his first name.  
22 Q. Does the name Timothy Liggett --  
23 A. Timothy Liggett, thank you, yes.  
24 Q. When a taxpayer like Mr. and Mrs. Parker have put a power  
25 of attorney on record with the Internal Revenue Service that 02:14:27

United States District Court

PAUL WEDEPOHL - Direct

1 they have a representative who can speak on their behalf, are 02:14:32  
2 you allowed, as a revenue officer, to bypass that power of  
3 attorney and go directly to the taxpayer?

4 A. No.

5 Q. So once a power of attorney is put into a file that is 02:14:49  
6 associated with the tax years to which you are seeking  
7 collection, you have to work with that power of attorney at  
8 that point?

9 A. That's correct.

10 Q. Prior to meeting with Mr. Liggett when the file was 02:15:06  
11 assigned to you, did you do some investigation before ever  
12 meeting with Mr. Liggett?

13 A. Yes, I did.

14 Q. In that investigation, did you focus on any particular 02:15:22  
15 assets that were of interest to you?

16 A. I did some research on a residence in Carefree, Arizona,  
17 where -- which was the address for Mr. and Mrs. Parker.

18 Q. Anything else that sort of stuck out in your preliminary  
19 research that you wanted to look more closely at?

20 A. Well, yes. I found that the residence in Carefree was not 02:15:52  
21 actually titled to Mr. or Mrs. Parker. It was titled to  
22 another entity and it always makes me ask why. So that looked  
23 odd to some extent.

24 Q. Other than that asset, the Carefree residence, were you  
25 aware of any other significant assets from which you thought 02:16:19

PAUL WEDEPOHL - Direct

1 collection could be possible? 02:16:22

2 A. No.

3 Q. When did you first meet with Mr. Liggett?

4 A. If I could look here real quick, I believe I met with

5 Mr. Liggett on February 3 of 2004. 02:16:35

6 Q. Where did you meet?

7 A. I met Mr. Liggett in his office in Mesa -- no, I'm sorry,

8 Gilbert.

9 Q. Was it just you and Mr. Liggett or was anybody else with

10 you? 02:16:54

11 A. No. There were others there. Actually, I met Revenue

12 Agent Dave Hunt at Mr. Liggett's office and his group manager,

13 Ollie Johnson, attended also.

14 Q. So there were three representatives from the Internal

15 Revenue Service and then Mr. Liggett? 02:17:08

16 A. Correct.

17 Q. And why were you meeting with Mr. Liggett on this day?

18 A. Because he was the authorized representative for Mr. and

19 Mrs. Parker.

20 Q. Now, sir, I don't want you to speak about what Mr. Hunt or 02:17:25

21 Mr. Johnson may have said in this meeting, but would you please

22 tell the jury what you and Mr. Liggett talked about in this

23 meeting on February 3?

24 A. I sure will. Just as I start out every contact I have

25 with an individual, if it's the first contact I have with them, 02:17:50

United States District Court

PAUL WEDEPOHL - Direct

1 whether it's the taxpayer individual or the representative, I 02:17:55  
2 explain what the collection process is all about. I let them  
3 know what type of rights they have to appeal decisions and  
4 actions that are maybe taken along the way so that they know  
5 who to contact if they think I make a bad decision or won't do 02:18:11  
6 something they wanted. So I explain everything along those  
7 lines to him. But, then, like I indicated a couple of minutes  
8 ago, I asked for the money. My next question is, okay.  
9 There's 1.7 million owed here. Can you pay it? Can you pay  
10 part of it and so forth. So that is the direction I took with 02:18:31  
11 that interview with Mr. Liggett.  
12 Q. When you brought up either full payment or partial  
13 payment, did Mr. Liggett respond to your efforts in that  
14 regard?  
15 A. Yes. 02:18:47  
16 Q. What did he say?  
17 A. He said that he couldn't pay anything. In fact, I think I  
18 remember him saying that ever since 9-11, business for  
19 Mr. Parker had dropped off. And he was in a situation where he  
20 was not able to pay. 02:19:09  
21 There was some discussion brought up about an offer  
22 in compromise. I could talk about that if you wish.  
23 Q. Before we get to that, did you ask him at all about where  
24 Mr. and Mrs. Parker did their banking?  
25 A. Yes, I did. 02:19:27

United States District Court

PAUL WEDEPOHL - Direct

1 Q. And did he respond to you? 02:19:28

2 A. Yes, he did.

3 Q. What did he say to you about Mr. and Mrs. Parker's

4 banking?

5 A. He said didn't know. 02:19:34

6 Q. Did you ask Mr. Liggett at all how he was being paid for

7 his services?

8 A. Yes, I did.

9 Q. Did he respond to you?

10 A. Yes. 02:19:43

11 Q. What did he tell you?

12 A. He said that he received payment for his billing from a

13 bank account held by some entity called Sunlight.

14 Q. Did you inquire about why Sunlight would have a bank

15 account? 02:20:02

16 A. I did inquire about that because previously he -- we had

17 discussed the fact that Sunlight held title to the residence.

18 But Mr. Liggett indicated to me that Sunlight was there for no

19 other reason than to hold title to the house, that it didn't

20 operate as an entity, a going concern, and that it didn't have 02:20:24

21 a checking account.

22 Q. So when you asked him about the bank account for Sunlight,

23 what was his answer?

24 A. Then he indicated to me that maybe it wasn't Sunlight but

25 that he would have to find out. He would need to check with 02:20:36

United States District Court

PAUL WEDEPOHL - Direct

1 Mr. Parker or look back because then he wasn't sure. 02:20:40

2 Q. In this conversation, did you broach with Mr. Liggett  
3 whether or not the home could be borrowed against to satisfy  
4 all or part of the tax debt?

5 A. Yes, I did. 02:20:57

6 Q. And what was discussed between you and Mr. Liggett in that  
7 regard?

8 A. Well, it was -- that discussion was wrapped around a  
9 larger discussion where I indicated what information I would  
10 need to make a collection determination for Mr. Liggett such as 02:21:15  
11 financial records and so forth. In that same discussion, I  
12 asked Mr. Liggett to ask Mr. Parker to initiate a loan against  
13 the house to borrow the money to pay the taxes.

14 Doing my research earlier, I realized that this is a  
15 \$2 million house probably and that it appeared there were very 02:21:40  
16 little liabilities owed on it. So I asked that they initiate a  
17 loan to borrow against the residence, among other things.

18 Q. Did Mr. Liggett commit anything to you at that point one  
19 way or the other?

20 A. He agreed to everything I asked for him to do by -- I 02:21:57  
21 think I gave him 10 days to get the ball rolling on these items  
22 and he agreed to do that.

23 Q. And when you say "the ball rolling," what kind of records  
24 did you want him to get to you?

25 A. I needed financial statements. We call them collection 02:22:15

United States District Court

PAUL WEDEPOHL - Direct

1 information statements whereby somebody will indicate their 02:22:19  
2 assets and income, liabilities, and expenses so we can get a  
3 picture, a snapshot, of what their financial ability to pay is  
4 or is not.

5 Q. Let me stop you. I think this jury is pretty familiar 02:22:31  
6 with those documents. Are these the 433-A and 433-B financial  
7 statements?

8 A. Yes.

9 Q. Sometimes called offers in compromise?

10 A. Yes. 02:22:47

11 Q. You're asking for those records to be completed?

12 A. I'm asking for those records to be completed.

13 Q. Besides having him complete those forms and asking for  
14 information, were you asking for any specific records from  
15 third parties that would corroborate the information that would 02:22:57  
16 be put on those forms?

17 A. I believe I asked him for -- if I could look here again  
18 real quick, I think I asked him for some bank statements.

19 I asked him for some sort of possible payment to be  
20 remitted along with proof that estimated tax payments were made 02:23:24  
21 for the current year because I wanted him to be in compliance  
22 so the liability wasn't getting any bigger while we were  
23 working together. Those were the main things that I asked him  
24 for.

25 Q. And did it indicate in your memory, or in your note there 02:23:43

PAUL WEDEPOHL - Direct

1 to jog your memory, what date you gave him by which to get back 02:23:47  
2 to you with those records?

3 A. Yes. I believe -- if I could look here. It was February  
4 11 -- I'm sorry, February 13 or sooner was the deadline for  
5 those records and information. 02:24:03

6 Q. Now, in this conversation, what, if anything, was said by  
7 you regard to without having a sufficient payment, I will have  
8 to begin the process of trying to levy against the Carefree  
9 home or other assets?

10 A. Well, right. Whenever we ask for information and a 02:24:25  
11 deadline is set, we always indicate to the person, taxpayer or  
12 representative, what the consequences will be if the  
13 information is not submitted by that date so there's no  
14 surprises or mystery in what could happen next. Remember,  
15 after all, we're asking for cooperation and compliance to do 02:24:47  
16 this amenably and amicably.

17 I did indicate that if I did not receive the  
18 information by February 13 that I would file a notice of  
19 federal tax lien, which is a document, it's a public record  
20 filed at the County Recorder's Office in this case, because 02:25:05  
21 this is where Mr. Parker and Mrs. Parker reside. We file it in  
22 Maricopa County. Then I would pursue other collection avenues  
23 as necessary if I didn't receive my information.

24 Q. And did Mr. Liggett in any way respond to you about what  
25 he would like you to do in that regard? 02:25:28



PAUL WEDEPOHL - Direct

1 A. He asked that we hold off on filing the federal tax lien 02:25:31  
2 because if Mr. Parker was going to attempt to get a loan on the  
3 property, then a federal tax lien may hamper that ability to  
4 get a loan. So he asked that we withhold filing the tax lien  
5 and I agreed to do that to give him sufficient time to get that 02:25:50  
6 loan in the process.

7 Q. And in this conversation, did he indicate at all that  
8 perhaps one or more others might be assisting him in dealing  
9 with these issues?

10 A. Mr. Liggett? 02:26:07

11 Q. Yes.

12 A. Yes. He indicated to me that there -- I don't remember if  
13 he said there was going to be or will be another representative  
14 involved on behalf of Mr. and Mrs. Parker by the name of Greg  
15 Robinson who will handle, I guess, the collection side of this, 02:26:20  
16 which is what I do.

17 Q. Do you remember anything else about this conversation?

18 A. If I could look again real quick?

19 Q. Sure.

20 A. That pretty much covers it I think, sir. 02:26:55

21 THE COURT: All right. We're going to take a break.  
22 Ladies and gentlemen, we'll see you back here about  
23 ten minutes of three. We're in recess.

24 COURTROOM DEPUTY: All rise.  
25 (Jury departs.) 02:27:11

United States District Court

PAUL WEDEPOHL - Direct

1 (Recess at 2:27; resumed at 2:49.) 02:27:11  
2 (Jury enters.)  
3 (Court was called to order by the courtroom deputy.)  
4 THE COURT: Please be seated.  
5 This is a reminder, ladies and gentlemen, we are 02:50:08  
6 concluding today at 3:30.  
7 MR. SEXTON: Ready, Judge?  
8 THE COURT: Yes.  
9 BY MR. SEXTON:  
10 Q. Sir, after that meeting with Mr. Liggett, was the February 02:50:22  
11 13, 2004, deadline complied with for the information you  
12 sought?  
13 A. No.  
14 Q. As a result of that, did you go ahead with your filing a  
15 notice and beginning the process? 02:50:43  
16 A. Yes, I did. I requested the filing of the notice of  
17 federal tax lien and I also sent out final demand and notice  
18 letters via certified mail to both Mr. Parker, Mrs. Parker,  
19 with a copy to their representative, Mr. Liggett.  
20 Q. Do you have Exhibit 450 in front of you? 02:51:07  
21 A. Yes.  
22 MR. SEXTON: That's in evidence, I believe, Your  
23 Honor.  
24 THE COURT: Okay.  
25

PAUL WEDEPOHL - Direct

1 BY MR. SEXTON: 02:51:23

2 Q. Hold on one second. This is in evidence, sir. Is this

3 something that you generated to be sent and filed?

4 A. Yes.

5 Q. And what was the date you did this? 02:51:53

6 A. The date was February 12, 2004.

7 Q. And explain to the jury what this was for.

8 A. This is a notice that is sent to the individual or

9 business called the final notice, notice of intent to levy and

10 notice of your right to hearing. This is the Internal Revenue 02:52:12

11 Service's last and final notice that is sent out after all

12 efforts have failed to notify the individual that the liability

13 is still due and owing and, basically, because it's not been

14 resolved, that the next actions will be -- may be enforcement

15 action, which when I say enforcement action, that means 02:52:38

16 attachment of bank accounts, seizure of vehicles, seizure of

17 property, that sort of thing. It also, lastly, explains to the

18 individual that the letter is addressed to that if they don't

19 agree with this being the next action or don't agree that they

20 should pay or whatever they don't agree with, that they have an 02:52:58

21 opportunity to request an appeal through another office to

22 determine whether this action would be appropriate or whether I

23 should rescind this notice and give the individual more

24 opportunity to do whatever they need to do.

25 Q. And this is, on the next page, page four, is this from you 02:53:19

United States District Court

PAUL WEDEPOHL - Direct

1 specifically? 02:53:25

2 A. Yes, it is.

3 Q. And is it directed to Mr. and Mrs. Parker specifically?

4 A. Yes, it is.

5 Q. And when you say certified mail, is it certified mail to 02:53:35

6 them collectively or individually?

7 A. No. We send a separate envelope with this letter and the

8 publications that it indicates which basically involve their

9 rights to respond.

10 We send a separate letter, package, to the 02:53:57

11 individual, in this case, Mr. Parker, and I sent a separate one

12 to Mrs. Parker, both at their home address.

13 Q. And are those separately attached beyond your letter as

14 far as the certified receipts?

15 A. Yes. 02:54:14

16 Q. And then on page four, do you see just below your name, is

17 this the period -- periods that you were basically given a file

18 for purposes of collection?

19 A. You kind of lost me. Page four?

20 Q. It's actually the lowest number at the bottom. If you 02:54:43

21 look at the screen, it's right there on the screen for you,

22 sir.

23 A. I'm sorry.

24 Q. Maybe that's easier. It's from the same document.

25 A. Yes, right. 02:54:53

United States District Court

PAUL WEDEPOHL - Direct

1 Q. Are those the four tax years that were basically given to 02:54:53  
2 you for collection purposes?  
3 A. Correct.  
4 Q. And now the amount -- I thought you said originally 1.7.  
5 Now it's closer to 1.9. 02:55:03  
6 A. Correct.  
7 Q. And those are the amounts you are seeking to collect  
8 around the time that this letter is going out?  
9 A. Yes.  
10 Q. And at this time farther back in the exhibit on page 02:55:16  
11 seven, because there's a power of attorney with Mr. Liggett, is  
12 this something that you also sent to him as well to alert him  
13 to your actions?  
14 A. That's correct.  
15 Q. And this is on February 12 of 2004? 02:55:37  
16 A. Yes, sir.  
17 Q. And then on February 13 of 2004, did you go ahead and  
18 record a tax lien in Exhibit 36?  
19 A. Yes, I did.  
20 Q. Okay. Take a look at that. 02:55:55  
21 MR. SEXTON: That is in evidence as well. That's in  
22 evidence, Your Honor.  
23 THE COURT: Okay.  
24 BY MR. SEXTON:  
25 Q. Is that the tax lien that you -- you will come up on page 02:56:12

United States District Court

PAUL WEDEPOHL - Direct

1 three in a second. You'll see it's the next page. 02:56:16

2 A. Yes, it is.

3 Q. Okay. And this is something that you generated?

4 A. Yes, I did.

5 Q. What is your goal in having this notice of federal tax 02:56:28  
6 lien filed?

7 A. Well, the objective of the notice of federal tax lien is  
8 to -- again, it's a public recorded document to put the public  
9 on notice, anybody that cares to look to see if there's any  
10 recordings, that the Parkers owe income taxes for the years 02:56:46  
11 listed and the amount indicated.

12 And the reason -- did you want me to say why we file  
13 it?

14 Q. Yes.

15 A. All right. The reason that is filed, not only to put the 02:57:00  
16 public on notice, but it's to let possibly creditors that may  
17 be down the road or contacted in the future perhaps for a loan  
18 or something like that, that there's an outstanding tax  
19 liability against these individuals that has been recorded.

20 And that usually will prevent other loans from 02:57:24  
21 occurring because if a loan made in the face of this tax lien  
22 by another creditor, then they become junior in priority as far  
23 as the claim to the assets this lien attaches. So they may not  
24 want to make that loan. But this is simply a public record to  
25 let the world know that we've got this issue here to deal with. 02:57:46

United States District Court

PAUL WEDEPOHL - Direct

1 Q. And you're directing this tax lien as it applies to James 02:57:53  
2 R. and Jacqueline Parker?

3 A. That's correct.

4 Q. You're not -- well, this is a straight lien in that sense.  
5 Would you explain to them what a nominee lien is and how and 02:58:10  
6 when that is filed?

7 A. Sure. Well, let me start with what is a nominee, if I  
8 could, and I'll be real quick. A nominee simply, for example,  
9 if I have a vehicle and I titled it to my neighbor for whatever  
10 reason but I still owned the vehicle, drove it and everything 02:58:36  
11 else, then that neighbor is my nominee in terms of holding  
12 title to the vehicle. It's still my vehicle. I take care of  
13 it. I maintain it, I gas it up, I drive it, I wash it, but the  
14 name is in his name and he's then my nominee in name only. But  
15 the asset is still my asset. 02:58:57

16 So this lien here is simply a notice of lien that  
17 attaches to the Parkers' assets or any assets in the name of  
18 the Parkers.

19 Q. And then look at Exhibit 451.

20 MR. SEXTON: Is that in evidence? 02:59:28

21 COURTROOM DEPUTY: It is not, Counsel.

22 BY MR. PERKEL:

23 Q. And is this another notice that you had generated a few  
24 days after that that was sent to Mr. Liggett?

25 A. Yes, it is. 02:59:58

United States District Court

PAUL WEDEPOHL - Direct

1 Q. Is this a true and accurate copy? I don't know if it's 02:59:59  
2 certified. I can't tell from my record here but we would offer  
3 it into evidence.

4 MS. ARNETT: No objection.

5 THE COURT: It's admitted. 03:00:06

6 (Exhibit Number 451 was admitted into evidence.)

7 BY MR. SEXTON:

8 Q. Let's put up page two.

9 So on the 12th you filed the final notice and the  
10 notice of intent to levy. On the 13th of February you filed a 03:00:23  
11 notice of federal tax lien with the Recorder's Office. Now,  
12 what is this one that you are doing on February 17, just a few  
13 days later?

14 A. On February 15, I mailed this letter to Mr. Liggett as  
15 representative for the Parkers to indicate to him that, 03:00:39  
16 basically, the same information we relayed to the Parkers in  
17 those letters was that we had filed a federal tax lien and this  
18 is a notification of their rights to appeal that filing.

19 Q. And then on the second page or page three, in that second  
20 paragraph at the top there -- 03:01:16

21 A. Yes.

22 Q. -- do you have authority, if payment is made, to make a  
23 release of the federal tax lien?

24 A. Yes.

25 Q. And is that something that you are indicating on that 03:01:28



PAUL WEDEPOHL - Direct

1	line?	03:01:30
2	A. Yes.	
3	Q. After you made these various filings or notices, what's	
4	the next substantive conversation you had with the power of	
5	attorney representative for Mr. and Mrs. Parker?	03:01:54
6	A. After these letters were sent?	
7	Q. Yes.	
8	A. If I could look to my -- to the history notes here.	
9	Q. If it helps you, perhaps look at pages 18 and 19 of your	
10	collection history.	03:02:12
11	A. So your question is, what is the next action that I took?	
12	Q. More is what was the next conversation that you had with	
13	somebody that was associated with representing the Parkers?	
14	A. Well, my next conversation was a call from Mr. Liggett.	
15	He had indicated to me that Greg Robinson was going to be the	03:02:42
16	primary person to represent the Parkers in terms of the	
17	collection issues.	
18	Q. And did you subsequently have a conversation with	
19	Mr. Robinson?	
20	A. I did.	03:02:56
21	Q. What day are we talking about?	
22	A. On February 23, I talked to Mr. Robinson.	
23	Q. Was it a face-to-face or a telephone conversation?	
24	A. It was a telephone conversation.	
25	Q. Was it just the two of you on the telephone?	03:03:08

United States District Court

PAUL WEDEPOHL - Direct

1 A. Yes. 03:03:11

2 Q. What did you and he talk about in that regard?

3 A. Well, aside from my initial explanation of rights and the  
4 collection process and so forth, which I'm required to explain  
5 in each first contact with a person or representative, I talked 03:03:27  
6 to him about securing the funds to pay the taxes. Mr. Robinson  
7 wanted to talk about an installment agreement.

8 Q. Did he indicate the amount of the installment?

9 A. Yes, he did.

10 Q. What was the amount that he was indicating to you at this 03:03:52  
11 time?

12 A. Mr. Robinson offered for the Parkers to pay \$1500 a month.

13 Q. How did you respond, if at all, to that?

14 A. Well, what I told him was, basically, I didn't know  
15 whether 1500 was an appropriate amount or \$15,000 a month or 03:04:12  
16 maybe to pay anything. But without financial statements,  
17 collection information statements to assist in that analysis  
18 and determination, I couldn't grant an installment agreement of  
19 1500.

20 Additionally, there were still some unfiled tax 03:04:31  
21 returns and without those returns being filed, we cannot enter  
22 into an agreement.

23 Q. When you say financial information, again, are we  
24 referring to the 433-A and 433-B that the jury has been looking  
25 at? 03:04:51

PAUL WEDEPOHL - Direct

1 A. Yes. 03:04:52

2 Q. And was there any discussion at this time, besides an  
3 installment agreement, about any possible offers in compromise  
4 being forthcoming?

5 A. Yes. Mr. Robinson indicated that the Parkers were going 03:05:06  
6 to file an offer in compromise once all of the -- well, he  
7 indicated that they were going to file ultimately an offer in  
8 compromise.

9 Q. Did Mr. Robinson in any way convey to you the financial  
10 situation of the Parkers at this time during this telephone 03:05:29  
11 call?

12 A. Mr. Robinson indicated to me that -- in so many words, the  
13 taxpayers were unable to pay anything, that there was a  
14 business in Belize, and he indicated that it was virtually  
15 nonexistent at that time and that he would have -- and 03:05:48  
16 Mr. Parker had a construction company here in the area and the  
17 business for that was slow and gave me the impression that  
18 there was no income from any source.

19 Q. As to the business in Belize, was there any indication by  
20 Mr. Robinson as to the cause of why the business wasn't 03:06:10  
21 functioning very well in Belize.

22 A. Yes. He indicated to me that because of September 11, I  
23 presume September 11 attacks on this country, were still  
24 impacting business in Belize?

25 Q. And as to the 433-A and 433-B information that you are 03:06:33

PAUL WEDEPOHL - Direct

1 requesting, did Mr. Robinson indicate to you at all any trouble 03:06:36  
2 that he thought he might have in getting that information?  
3 A. He indicated that he had difficulty getting the  
4 information from -- indicated he had difficulty getting good  
5 financial information. 03:06:58  
6 Q. And from the standpoint of the discussions about an  
7 installment agreement or subsequent offers in compromise, how  
8 did you leave it with him? How did you give him the impression  
9 that you would consider it or did you reject it at that time?  
10 A. Well, I indicated to him that, you know -- I always tell 03:07:15  
11 people -- I told Mr. Robinson, "I will take anything you will  
12 give me at any point." We mutually set a deadline for  
13 Mr. Robinson to provide me with financial statements, of the  
14 Forms 433-A and 433-B as well as some bank statements to help  
15 me substantiate no income I guess, which is what they were 03:07:35  
16 indicating that he had. And that I asked him to bring his  
17 current year taxes current and I warned him if he didn't do  
18 those things that, again, I may take seizure, enforcement  
19 collection action, levy assets, that kind of thing.  
20 Q. After this telephone conversation, what was the next 03:08:04  
21 communication that arose in your collection process?  
22 A. With Mr. Robinson or with anybody?  
23 Q. Let's try with Mr. Robinson.  
24 A. Okay. I received another call from Mr. Robinson the next  
25 day, on February 24. 03:08:27

United States District Court

PAUL WEDEPOHL - Direct

1 Q. And what was that about? 03:08:29

2 A. Mr. Robinson just called to let me know that he'd, quote,  
3 lit a fire under the Parkers to get the financial information  
4 and that he's also lit a fire under Mr. Liggett to help get  
5 those audits wrapped up that were still in process. 03:08:46

6 Q. And then on roughly March 10 did you receive a letter from  
7 Mr. Robinson regarding a collection due process hearing?

8 A. I did. I received a fax from Mr. Robinson on March 10  
9 that had a letter dated that same day from Mr. Robinson  
10 indicating that he was submitting a collection due process 03:09:14  
11 request. And that was in response to my letter. I sent the  
12 final demand letter that I sent certified earlier to him.

13 Q. And look at Exhibit 452. Is that the letter and  
14 attachments that you received?

15 A. Yes, it is. 03:09:39

16 MR. SEXTON: I would offer Exhibit 452 into evidence.  
17 MS. ARNETT: No objection, Your Honor.  
18 THE COURT: It's admitted.  
19 (Exhibit Number 452 was admitted into evidence.)

20 BY MR. SEXTON: 03:09:55

21 Q. You received this around March 10 of 2004?

22 A. Yes.

23 Q. And it's from Mr. Robinson?

24 A. Correct.

25 Q. And copied on the letter is who? 03:10:04

United States District Court

PAUL WEDEPOHL - Direct

1 A. It looks like copies were sent to James and Jacqueline 03:10:07  
2 Parker and Timothy Liggett, CPA.

3 Q. And if you would, would you read the first full paragraph  
4 that is in the letter?

5 A. Certainly. "Please find enclosed Form 12153 requesting 03:10:20  
6 appeals consideration of the pending enforced collection  
7 regarding James and Jacqueline Parker. Any enforced collection  
8 should be withheld as an installment agreement has been  
9 requested."

10 Q. And is the next page sort of the official request for a 03:10:50  
11 collection due process hearing?

12 A. Yes, it is.

13 Q. Explain to the jury what a collection due process hearing  
14 is.

15 A. Okay. A collection due process hearing is an 03:10:58  
16 administrative procedure that the Internal Revenue Service put  
17 into place to give the individual who has the liability that  
18 we're dealing with one last opportunity should they decide to  
19 take advantage of it to appeal their position or their side of  
20 the case to an independent party within the Internal Revenue 03:11:20  
21 Service.

22 In other words, this is in response to my final  
23 demand indicating that I was going to start taking action to  
24 collect, seizing, levying, that kind of thing. This is to ask,  
25 "Wait a minute, Mr. Wedepohl, we don't want you to do that. We 03:11:34

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PAUL WEDEPOHL - Direct

1 want to go to appeals and talk to somebody else about it 03:11:38  
2 because we don't agree with you doing this." And they have a  
3 right to do that and that's fine.  
4 Q. And looking at the first line under the heading of the  
5 Request for Collection Due Process, in essence, your actions in 03:11:49  
6 mid-February triggered their right to request this hearing?  
7 A. Yes.  
8 Q. And then the next page is an attachment to that request.  
9 Do you see that?  
10 A. Yes. 03:12:16  
11 Q. Would you read that full paragraph, after it's enlarged  
12 here, for the jury?  
13 A. Certainly. "We respectfully request the withholding of  
14 any enforce the collection. An installment agreement of \$1500  
15 per month has been requested. This amount is in relation to 03:12:36  
16 the income of the taxpayers for the past two years. The tax  
17 assessment amounts are large and the taxpayers have no ability  
18 to pay. Once the additional years audit is completed, we will  
19 file an offer in compromise. This offer will be filed as a  
20 'doubt to collectability' even though we could file as 'doubt 03:12:56  
21 as to liability' as the audits are not correct. However, the  
22 taxpayers have found it too expensive to continue fighting the  
23 audit through Court."  
24 Q. And then just below that is a received stamp of March 11,  
25 2004, from the IRS? 03:13:16

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1 A. Correct. 03:13:17

2 Q. And then the next page is the power of attorney  
3 designation that now expands to include two representatives on  
4 behalf of the taxpayers, Mr. Robinson and Mr. Liggett?

5 A. That's correct. 03:13:38

6 Q. Now, when a collection due process hearing is requested,  
7 does that require you to stand down as a collection officer  
8 until somebody else makes some kind of decision about this?

9 A. Absolutely. We are precluded from taking any collection  
10 action while this appeal is pending. 03:14:11

11 Q. Are you precluded from working the file from an  
12 investigative standpoint as opposed to doing some affirmative  
13 collection efforts?

14 A. No, we are not.

15 Q. So are you allowed to continued to investigate for assets 03:14:24  
16 and income? You are just simply not allowed to perhaps act on  
17 anything you might find?

18 A. That's correct, yes.

19 Q. And what was done here, them asking for that, is perfectly  
20 legal? 03:14:46

21 A. Asking for an appeal?

22 Q. Yes.

23 A. Oh, absolutely.

24 Q. Though even though it's legal, you didn't like it? Is  
25 that fair enough? 03:15:01

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1 A. Well, I don't know that I would say I didn't like it. It 03:15:03  
2 slows me down. It stops me from resolving the case or taking  
3 meaningful actions to collect the tax.

4 Q. You didn't like it, did you?

5 A. It didn't make my day. 03:15:21

6 Q. Well, as a result of that, you actually thought it was an  
7 improper delaying action and you filed something with the  
8 Office of Professional Responsibility to bring this to the  
9 attention of them as to what Greg Robinson filed?

10 A. Yes, I did. 03:15:39

11 Q. Why did you do that?

12 A. Well, as a revenue officer, my job isn't only to collect  
13 tax or collect returns. It's kind of a wide encompassing  
14 position inasmuch as if we, revenue officers, during the course  
15 of working on cases, come across a situation where there may be 03:16:05  
16 some -- in our opinion or in our view, some unnecessary delays  
17 or some unreasonable delays in terms of resolving the case or  
18 things being done, albeit they are legal to do, to stop the  
19 Service and slow the Service down, I felt that these, some of  
20 these delays may be frivolous and just for the point of staving 03:16:33  
21 collection while something else happened. I don't know.

22 But in this instance, because I felt that maybe these  
23 were frivolous or inappropriate, I made a referral to the  
24 Office of Professional Responsibility Office in Washington,  
25 D.C., letting them know, basically, my circumstances in this 03:16:52

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1 case in the event they may have something else going on back 03:16:57  
2 there with Mr. Robinson or whatever that I don't know about and  
3 wouldn't need to know about. I was just doing my job to  
4 provide them with input, as I was trained to do, when we come  
5 across a situation that looks possibly inappropriate. 03:17:14

6 They then determine where to go from there in terms  
7 of that issue. I'm out. I'm done.

8 Q. Bottom line is, you wanted him investigated?

9 A. Yes.

10 Q. But as far as what happens with that investigation, that 03:17:30  
11 is beyond your power?

12 A. Beyond my power. In fact, I never know.

13 Q. In addition, it does not change in any fashion his right  
14 to remain as the power of attorney representing Mr. and  
15 Mrs. Parker in their dealings with you and others with the IRS? 03:17:48

16 A. You are correct. He's still the authorized  
17 representative.

18 Q. Would you look at Exhibit 453, sir?

19 A. Yes, sir.

20 Q. Is that the memorandum referral by you to the office of 03:18:13  
21 professional responsibility referring Greg Robinson for review  
22 by that office?

23 A. Yes, it is.

24 MR. SEXTON: I would offer Exhibit 453 into evidence.

25 MS. ARNETT: I have no objection to the memo coming 03:18:38

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1 in but it's not complete. There are letters referenced in the 03:18:42  
2 memo that aren't attached, so I would like the whole thing to  
3 come in.  
4 MR. SEXTON: What number is yours?  
5 MS. ARNETT: 453. It only goes to page four. 03:18:51  
6 MR. SEXTON: Don't you have a full copy marked?  
7 MS. ARNETT: Of 453?  
8 MR. SEXTON: The one you were showing me this  
9 morning.  
10 MS. ARNETT: Oh. 1010. That's our exhibit, yes. 03:19:01  
11 MR. SEXTON: Do you mind if I move that one in?  
12 MS. ARNETT: Okay.  
13 MR. SEXTON: I don't need it. I'll refer to it.  
14 Can the witness be brought Defense Exhibit 1010?  
15 I don't think the parties have any disagreement, 03:19:36  
16 Judge. We would offer 1010.  
17 MS. ARNETT: No objection.  
18 THE COURT: It's admitted.  
19 (Exhibit Number 1010 was admitted into evidence.)  
20 MR. SEXTON: But I would also offer, as a subpart of 03:19:44  
21 it, Exhibit 453.  
22 THE COURT: They are identical, I take it?  
23 MS. ARNETT: Yes, Your Honor. 453 is the first three  
24 pages of 1010.  
25 (Exhibit Number 453 was admitted into evidence.) 03:19:53

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1 THE COURT: Okay. It's admitted. 03:19:54

2 MR. SEXTON: I do that, Judge, simply because I've

3 got it tooled up for my Sanctions here.

4 BY MR. SEXTON:

5 Q. Is 1010 sort of the complete package that you sent over to 03:20:07

6 OPR with the attachment with your referral?

7 A. Yes.

8 Q. Since I don't have that on the computer system, let's go

9 back to 453, if you would, the three-page memorandum that sort

10 of sets the page for the attachments; okay? 03:20:22

11 A. Yes.

12 Q. All right. Let's put that on the screen, page two for the

13 jury.

14 Let's focus on the first three paragraphs. First

15 off, the subject matter of it up there is? 03:20:45

16 PANEL MEMBER: We don't have it here.

17 COURTROOM DEPUTY: I'm sorry?

18 BY MR. SEXTON:

19 Q. It's you referring this to the Office of Professional

20 Responsibility regarding who? What is the subject matter? 03:20:59

21 A. Referral of Gregory A. Robinson.

22 Q. Okay. Why don't you read for the jury the first three

23 paragraphs of your memorandum to shorthand OPR?

24 A. "This memorandum is submitted to provide you with

25 additional information pertaining to the OPR referral dated 03:21:19

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1 December 5, 2003, on Gregory A. Robinson. 03:21:22

2 "The information communicated to you in this  
3 memorandum relates to taxpayers James and Jacqueline Parker,"  
4 and then their social security numbers are indicated. "The  
5 taxpayers have outstanding Form 1040 income tax liabilities 03:21:37  
6 exceeding \$1.7 million. Additionally, they have not filed  
7 their 1040 returns for 1999 and 2000. These years are  
8 presently assigned to the Examination function, where  
9 substitute returns are being prepared/audited. Mr. Parker has  
10 been identified by the Examination function as being involved 03:21:56  
11 in Abusive Tax Avoidance Transactions schemes. He evidently  
12 sells or develops land in the country of Belize.

13 "The basis of this memorandum is to advise you that  
14 on March 10, 2004, Mr. Robinson submitted a Form 12153, Request  
15 for a Collection Due Process (CDP) hearing. A copy of 03:22:17  
16 Mr. Robinson's request is attached to this memorandum. The  
17 following information reflects that Mr. Robinson has submitted  
18 yet another frivolous CDP, which coupled with other actions  
19 intended to cloud the title of the taxpayer's residence,  
20 reflect his intent to delay and hinder collection of the 03:22:37  
21 taxpayer's liabilities."

22 "On February 9, 2004, I received a letter from Greg  
23 Robinson" --

24 Q. You can stop there.

25 A. Okay. 03:22:49

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1 Q. And go to page three at the bottom three paragraphs. That 03:23:02  
2 first paragraph indicates -- the phrase is "yet another  
3 instance that demonstrates his intent to circumvent the  
4 system."

5 Do you have some bad history with Mr. Robinson at 03:23:26  
6 this point that goes well beyond Mr. and Mrs. Parker's file?

7 A. I don't know what you mean by "bad history," but I have  
8 historical experience with Mr. Robinson involving possibly  
9 other cases -- well, involving other cases where there have  
10 been similar problems. 03:23:51

11 Q. If I may, the way this is written is that this particular  
12 request for a collection due process hearing appears to be the  
13 straw that finally broke the camel's back. Is that what it was  
14 with you?

15 A. Yes. You could say that, yes. 03:24:07

16 Q. And to this day, do you have any personal knowledge of  
17 what became of this OPR investigation?

18 A. I have no idea, no idea.

19 Q. After you -- first off, does he know you made this  
20 referral in any fashion? 03:24:39

21 A. I didn't tell him.

22 Q. I mean -- I guess, to your knowledge --

23 A. I don't know.

24 Q. -- was this communicated to him?

25 A. Not to my knowledge. 03:24:49

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1 Q. So after you made this referral to the Office of 03:24:56  
2 Professional Responsibility, what's the next time that you and  
3 he talked? And I would refer you to your archive history on  
4 page 21 and see if that helps you locate it faster.  
5 A. Yes. I spoke to Mr. Robinson on March 12 of 2004. 03:25:22  
6 Q. Just the two of you?  
7 A. Yes, just he and I.  
8 Q. Telephone conversation, face-to-face?  
9 A. He called me on the telephone.  
10 Q. Okay. Now if you would, sir, would you tell the jury what 03:25:38  
11 you and he talked about -- did you say March 12?  
12 A. March 12.  
13 Q. What did you and he talk about?  
14 A. We talked about the collection due process request that he  
15 had submitted and I indicated to him that I would like to 03:25:51  
16 resolve it, resolve this whole issue without having to have  
17 appeals get involved, maybe save everybody some time and  
18 everything else.  
19 Q. What else?  
20 A. So we talked about working with that. He advised me again 03:26:15  
21 that he wanted an installment agreement until the audits were  
22 completed and I indicated that that may be feasible. I may be  
23 able to do just that; but, again, I needed financial  
24 statements, 433-A and B, to substantiate what, if any, amount  
25 could be worked out. 03:26:38

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1 Q. So at this point you still hadn't received either of those 03:26:39  
2 two filled out for your use?

3 A. Correct.

4 Q. And did Mr. Robinson tell you what delays or any reason  
5 why he hasn't gotten that information to you at this point? 03:26:51

6 A. If I could look here. I don't remember him telling me  
7 anything other than he was going to try to get the financial  
8 information within 30 days and that's where we left it.

9 Q. Was there any discussion about the Parkers' lack of a bank  
10 account? 03:27:29

11 A. Yes, there was.

12 Q. And what was discussed in that regard?

13 A. The discussion about that involved when we were talking  
14 about the financial statements, again, and Mr. Robinson  
15 indicated that Mr. Parker did not have a personal bank account. 03:27:40  
16 He said that they operated with -- paid their expenses through  
17 a bank account held by Omega Construction and that all of  
18 Mr. Parker's personal expenses were paid through Omega  
19 Construction.

20 Q. Do you encounter -- 03:28:06

21 THE COURT: Let me stop you here. We're at 3:30.

22 Ladies and gentlemen, we'll see you next week. We're  
23 in June now, June 5, at 8:30.

24 Have a nice weekend.

25 We're in recess. 03:28:17

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PAUL WEDEPOHL - Direct

1 (Jury departs.) 03:28:20  
2 (End of excerpted portion.)  
3 MR. SEXTON: May the witness step down and be  
4 excused?  
5 THE COURT: Yes, you may. 03:28:46  
6 (Witness excused.)  
7 THE WITNESS: Thank you.  
8 MR. SEXTON: One thing real quickly.  
9 THE WITNESS: Judge --  
10 MR. MINNS: We're not in recess? I thought the court 03:29:14  
11 said we're in recess and it seems like we're still --  
12 THE COURT: Well, we're -- I used that, recess,  
13 adjourned, whatever. We're adjourned except for us.  
14 MR. MINNS: Oh, okay. Recess, adjourned.  
15 Well, I don't know what you've got but -- so that we 03:29:40  
16 can all go living our lives for a few days.  
17 MR. SEXTON: We'll be brief.  
18 THE COURT: Which we would all enjoy doing.  
19 MR. SEXTON: Mr. Perkel has one thing and I have one  
20 thing. 03:29:57  
21 I just want to let you know I've talked with defense  
22 counsel. We have a lot of out-of-state witnesses coming in  
23 from Oklahoma next week and perhaps even other places. And so  
24 if the Court doesn't mind, some of these people are very old  
25 and if they are coming all the way over here, we would like to 03:30:10

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1 make sure they get on -- 03:30:13

2 THE COURT: Get on and off, sure.

3 MR. SEXTON: We would ask permission to sort of

4 interrupt this witness and make sure that we get through that

5 crop and then resume with this witness at another time. 03:30:26

6 THE COURT: Any objection?

7 MR. MINNS: No, Your Honor. I had another issue that

8 I would like to bring up.

9 THE COURT: With that, though?

10 MR. MINNS: No. No. 03:30:35

11 THE COURT: Mr. Perkel, do you have something?

12 MR. PERKEL: I do, Your Honor. May I approach?

13 THE COURT: Yes.

14 MR. PERKEL: One quick thing, Your Honor, and then

15 something a little more substantive. 03:30:44

16 The first has to do with witnesses as well. Ralph

17 Compton is under subpoena. He is an agent for State Farm

18 Insurance. I received a letter from his physician yesterday

19 that says told me that he has had open heart surgery on March

20 15, just a few months ago, and has been advised not to travel 03:31:04

21 to Phoenix to testify.

22 I am inclined to release him from the subpoena

23 pursuant to the letter, but I wanted to give -- at least put on

24 the record and give the defense attorneys an opportunity to

25 object to that if they wanted to and then, sort of coupling 03:31:24

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1 with that, to let the Court know that we were originally going 03:31:25  
2 to bring in a custodian of records from State Farm to explain  
3 some of the documents as well as a supplement to his testimony.

4 But I think now we're just going to bring in two custodians  
5 from State Farm, same company, explain the records in lieu of 03:31:38  
6 his testimony.

7 THE COURT: Have you talked to Mr. Minns about it?

8 MR. PERKEL: We mentioned it to him briefly yesterday  
9 and I didn't think there was a problem, but I just wanted to --

10 THE COURT: Is open heart surgery an excuse? 03:31:53

11 MR. MINNS: It's an excuse for an unnecessary witness  
12 to be excused, yes, Your Honor. We don't see the use for him  
13 anyway.

14 THE COURT: All right. What about the records? He  
15 wants to use two custodians. 03:32:06

16 MR. MINNS: We have no custodial objection. The only  
17 objection that we had -- we had a motion in limine and I don't  
18 know how the Court will feel when it's finally raised. They  
19 put "pleasure" on the -- it's a hearsay statement on there. It  
20 gives a lower insurance rate and I have no idea why that was 03:32:22  
21 put on there but we object to that word. If that word is taken  
22 off, we don't care.

23 THE COURT: Is that word a word that was generated by  
24 Mr. Compton or is that a word that was uttered by the  
25 defendants? Is it hearsay, in other words? 03:32:42

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1 MR. PERKEL: It's a statement that was made by the 03:32:45  
2 defendant to Mr. Compton as to the purchase of the vehicle, so  
3 it's a computer-generated record and one of the options is to  
4 put for pleasure versus for business.

5 MR. MINNS: My client never made that statement. He 03:32:59  
6 never --

7 THE COURT: Well, then, obviously it's hearsay  
8 because it's a statement made not by the party opponent but a  
9 statement by the party opponent to someone else who would have  
10 to testify to it. He's not here., unless you can establish an 03:33:15  
11 exception to the hearsay rule, which I don't know that you can,  
12 and there are exceptions that may apply and may not.

13 Okay.

14 So at this point, it's sustained based upon lack of  
15 foundation to establish that it is admissible for the truth of 03:33:35  
16 what is asserted. It doesn't sound -- he's offered a  
17 compromise, business -- the word "business" instead of  
18 "pleasure." Is that acceptable?

19 MR. MINNS: The word "business" is acceptable.

20 THE COURT: There we go. Then that takes care of it. 03:33:51

21 MR. PERKEL: I don't know if I would insert the word  
22 "business." If the Court doesn't mind, I understand the  
23 Court's ruling right now, I'll go back and look and see if I  
24 can find another exception. If I can't, then, obviously, I'll  
25 abide by the Court's ruling. If we have to redact, we'll 03:34:05

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1 redact that small section.

03:34:07

2 THE COURT: Okay. Work with Mr. Minns about it.

3 MR. PERKEL: And there doesn't seem to be a problem  
4 with the custodians?

5 MR. MINNS: No. We haven't made a custodial  
6 objection yet. I rarely do and I have -- I extend, again, an  
7 offer to the government that this weekend we could get the  
8 document -- my last three trials there were almost no documents  
9 put in during the trial. They preapproved them all and  
10 admitted them before the trial started and it will go much  
11 faster. I extend that offer, too. I know they don't have to  
12 accept it but I extend that offer again.

03:34:15

03:34:50

13 I doubt I'm going to make any objection to custodial  
14 except to something that brings into hearsay and I had one  
15 other issue. But if the government is not finished, I'll  
16 stand --

03:35:05

17 THE COURT: Well, we could start with that and that  
18 is just -- that is something that I'm going to have to leave up  
19 to counsel.

20 Counsel does not have to stipulate to whether or not  
21 the documents are what they purport to be. But as I take it  
22 from at least the first witness, sometimes the documents are  
23 what they purport to be, but no one understands what they  
24 purport to be. So that's why I understand Ms. Morgan was  
25 called.

03:35:15

03:35:37

United States District Court

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1           So I'll leave it up to the government as to whether  
2 or not any other exhibits are ones that will not require a  
3 witness to testify.

03:35:39

4           We have a number of custodians and I'm sure the jury  
5 is going to need gallons of energy drinks for them to see all  
6 of those custodians, so I'm going to leave it up to you as to  
7 whether or not you can reach an agreement on that or whether or  
8 not you want an expansion of the hearsay or -- excuse me, of  
9 the foundation of whether it is what it purports to be or  
10 explanation. So that's for you. Okay.

03:35:52

03:36:20

11           Anything else?

12           MR. PERKEL: Thank you, Your Honor.

13           Yes. This is slightly more substantive and this  
14 deals with the issue of the suspicious activity reports and I  
15 know last week the Court denied my motion to seal and then also  
16 seemed to indicate that it -- it sort of indicated that it  
17 would allow cross-examination on the suspicious activity  
18 reports but didn't give me an option to refile under the same  
19 motion to seal, which I did last Friday as well with the same  
20 substantive motion.

03:36:31

03:36:51

21           So I guess there's sort of three things. I don't  
22 know if the Court is willing to consider revisiting the  
23 substantive motion that I filed; two, if --

24           THE COURT: The answer to that no. I have trouble  
25 seeing how I can seal something that is relevant and

03:37:17

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1 potentially *Brady* material. How do I tell the jury, tell them 03:37:20  
2 not to disclose this to anyone? That is the problem.

3 And at this point, the cat's out of the bag. You  
4 know, as I read the statute, it's to protect those individuals  
5 and to protect the bank at the time. Now we're in litigation, 03:37:36  
6 litigation brought by the United States government using these  
7 exhibits. And if you are going to use them, then, you know,  
8 you have to take the thorns with the roses.

9 MR. PERKEL: Let me explain kind of where we're at.  
10 The problem is, is that -- the problem is that the Bank Secrecy 03:37:59  
11 Act prohibits a bank employee or former bank employee from  
12 orally or disclosing in writing that the bank that he works for  
13 or worked for filed a Suspicious Activity Report, the actual  
14 formal report. It doesn't prevent a bank employee from saying,  
15 "I was suspicious," or, "I noted suspicious behavior." So all 03:38:22  
16 my motion was trying to address was really that issue. And I  
17 apologize if it was confusing. I wasn't trying to seal the  
18 hearing from the jury. I may have made it more confusing than  
19 it should have been.

20 So what the government was originally trying to do, 03:38:38  
21 and still trying to do, is that we're not trying to limit  
22 Mr. Minns' cross-examination about suspicious behavior or  
23 whether they felt suspicious. But if they testify on the  
24 stand, my understanding of the Bank Secrecy Act is that they  
25 would then -- if he asks, "Did your bank file a Suspicious 03:38:52

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1 Activity Report," or, "Did you file a SAR using the Suspicious 03:38:56  
2 Activity Report in the formal sense," if that witness said yes,  
3 they would technically be violating the Bank Secrecy Act.

4 THE COURT: Unless of course I tell them and I tell  
5 you that they have to. 03:39:13

6 MR. PERKEL: Correct. And that was part of my  
7 request today. If you disagree with the government, if there  
8 was an order that you could give me that says the Court deny  
9 denies the government's motion in limine and is ordering the  
10 witnesses to disclose the Bank Secrecy Act, I could then pass 03:39:29  
11 that along to the bank's attorneys and I think they would feel  
12 more comfortable with the oral testimony.

13 THE COURT: I'm sure they would and I'm going to ask  
14 you to prepare that. Before I do that, how is it that that is  
15 relevant to your defense? I am not going to speculate and 03:39:44  
16 conjure up in my mind how it would be relevant to a defense or  
17 how it is even if there is no defense, how it is *Brady* material  
18 on behalf of your client.

19 MR. MINNS: And I have never seen or heard of a  
20 motion like this. The Suspicious Activity Reports are entered 03:40:05  
21 into evidence every day all over the United States when they  
22 become relevant.

23 In this particular case, the government has made them  
24 relevant over my objection and motion in limine. They have  
25 entered the Suspicious Activity Report in one of their written 03:40:18

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PAUL WEDEPOHL - Direct

1 documents and I said -- it just seems like good for the -- 03:40:22  
2 THE COURT: Which report are you talking about?  
3 MR. PERKEL: I don't know actually, because we are  
4 planning on introducing a memorandum from the bank documenting  
5 a conversation between the bank president and the defendant and 03:40:36  
6 it documents the bank president writing a letter to Cimarron  
7 River Ranch saying, "We've seen a number of wires from Belize.  
8 Belize is a country that is on the Department of State's  
9 website as having a problem with money laundering."  
10 THE COURT: Let me stop you there. What exhibit are 03:40:54  
11 you talking about?  
12 MS. ARNETT: Their Bates number 8341, 8342. I would  
13 have to look at the report.  
14 MR. PERKEL: They are not the actual Suspicious  
15 Activity Report. We don't plan on introducing the actual 03:41:06  
16 Suspicious Activity Reports.  
17 THE COURT: It's the content or the conversation they  
18 had. Is that it?  
19 MR. PERKEL: It's really two -- I'm not sure what  
20 Bates number she's referring to, Ms. Arnett is referring to. 03:41:16  
21 We're planning on introducing two documents. One is a letter  
22 to Cimarron River Ranch in which Timothy Barnes, who is the --  
23 at the time he was the president -- he's now a former president  
24 of that bank -- writes to Cimarron River Ranch and says,  
25 "You've received a number of wires from Belize. Belize is a 03:41:31

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1 country that is on the Department of State's watch list for 03:41:35  
2 money laundering. Can you please explain the transactions?"

3 I am giving an abbreviated summary for Your Honor.  
4 There's a few more details in there. And he gets a call from  
5 the defendant. The defendant says to Mr. Barnes, "This is 03:41:48  
6 money that comes from real estate development in Belize."  
7 Mr. Barnes then types up a memorandum documenting that  
8 conversation and decides not to close the account.

9 Those are the two pieces of evidence that are coming  
10 in as business records from First State Bank. We don't plan on 03:42:03  
11 introducing the actual Suspicious Activity Report in the formal  
12 sense.

13 THE COURT: So was that the content of the Suspicious  
14 Activity Report?

15 MR. PERKEL: Reviewing the Suspicious Activity 03:42:18  
16 Reports, I think some of those reports were filed because of  
17 the wires. I think that's true. And I think there were some  
18 that were filed because of nonwires but because of other  
19 suspicious behavior.

20 THE COURT: When you say some of those reports, you 03:42:31  
21 mean some of the information you've disclosed to me here today?

22 MR. PERKEL: Correct.

23 THE COURT: Was contained in the reports?

24 MR. PERKEL: Correct.

25 THE COURT: And if that's the case, then what you're 03:42:39

PAUL WEDEPOHL - Direct

1 saying is but the document you wanted to offer is -- only as a 03:42:44  
2 matter of course duplicates what was in the Suspicious Activity  
3 Report. Am I right?

4 MR. PERKEL: I don't think it duplicates it. I think  
5 it summarizes the bank president's maybe questions or 03:42:58  
6 suspicions.

7 THE COURT: Okay. But these suspicions were not  
8 quotes from the Suspicious Activity Report. They were his own  
9 suspicions that came about as things were happening?

10 MR. PERKEL: That is my understanding, Your Honor. 03:43:16

11 THE COURT: So we don't have the Suspicious Activity  
12 Report.

13 MR. MINNS: I want to make sure that I am in  
14 obedience not to only what the Court orders but the spirit of  
15 the order. So I want to make it very clear what I want to do 03:43:29  
16 and what has been done by both the government and defense in  
17 cases all over the United States.

18 The first principal is this: We have huge  
19 confidentiality and the majority of the government's exhibits  
20 so far are prohibited from being made public but they happen 03:43:44  
21 every day. Every tax case they are done. Every securities  
22 case.

23 THE COURT: Let me stop you, though. Before I issue  
24 an order that requires that individuals testify that they filed  
25 Suspicious Activity Reports, I have to make sure it's relevant. 03:44:05

United States District Court

PAUL WEDEPOHL - Direct

1           So even though it has been accomplished or done in 03:44:08  
2 previous cases, what I need to know is what the exhibits are.  
3 And if the exhibit isn't a Suspicious Activity Report, then  
4 independent of that, why is it necessary for you to ask the  
5 particular witnesses, "Did you file a Suspicious Activity 03:44:32  
6 Report?" And why did you do so?

7           And if that somehow is relevant to a defense and I  
8 find that there's sufficient evidence to get close to --  
9 certainly under Rule 104 that there is enough evidence to go  
10 forward to allow you to ask that question, because it could be 03:44:54  
11 *Brady* material, then I will allow it and I will issue the  
12 order.

13           Now, I don't know what it is. You're going to have  
14 to work with counsel. So the broad breadth response that this  
15 has been done before is not enough. 03:45:13

16           I don't have a problem issuing the order as long as I  
17 find that this report constitutes *Brady* material or the  
18 reference to the report which is -- that would be I need to ask  
19 this person, "Did you file the report?" And if you did, for  
20 example, is this report inconsistent with what you've said? In 03:45:43  
21 other words, does it say -- I'm just hypothesizing here -- to  
22 offer what I would think would be an example of *Brady* material.  
23 Let's say someone says, "I was really suspicious but the report  
24 understates it is," then of course the report would be  
25 potential impeachment material. 03:46:04

United States District Court

PAUL WEDEPOHL - Direct

1 At this point, I can't make that decision. So I'm 03:46:06  
2 going to leave it to counsel. You can point out what records  
3 that you think, number one, indicate that the government has  
4 already placed into evidence the Suspicious Activity Reports  
5 or, number two, why you want to offer them. And if you do want 03:46:22  
6 to offer them, why it constitutes *Brady* material, impeachment  
7 *Brady* material or general *Brady* material.

8 Okay.

9 MR. MINNS: Thank you, Your Honor. First of all, we  
10 didn't bring it to the table. The government -- and there's 03:46:42  
11 another issue after this that the government has brought to the  
12 table. But the government feels it's relevant. The government  
13 has put it into evidence --

14 THE COURT: Well, the government is perplexed  
15 about -- 03:47:03

16 You don't intend to ask your witnesses or offer  
17 evidence of the Suspicious Activity Report. Am I correct?

18 MR. PERKEL: That's correct, Your Honor.

19 THE COURT: Okay. So with respect to that statement,  
20 the government has not offered this as a Suspicious Activity 03:47:18  
21 Report. Apparently, as what I understand the government to say  
22 is they are going to offer evidence that these individuals were  
23 suspicious. The fact that they filed a report is irrelevant.  
24 I can't say, "You've got to admit that you filed this report,"  
25 unless it's relevant to a defense. 03:47:42

United States District Court

PAUL WEDEPOHL - Direct

1 MR. MINNS: And I -- and the first thing, what is the 03:47:44  
2 offered exhibit that talks about it?

3 MS. ARNETT: It's government 76 and within 76 is that  
4 8341 and 8342, the memo from the bank president referencing the  
5 Suspicious Activity Reports that he filed. 03:47:58

6 THE COURT: Well, if that's the case, counsel, you're  
7 stuck with it.

8 MR. PERKEL: Okay. I'll take a look again.

9 The only other compromise I was thinking of was I --  
10 let me take a look. I'll take a look -- 03:48:09

11 THE COURT: Well, let's make sure. Don't be making  
12 arguments to me when you haven't read your own records that  
13 you're offering. If you are referring to a Suspicious Activity  
14 Report and someone has referred to it, that comes in evidence.

15 MR. PERKEL: Fair enough. I understand. 03:48:29

16 THE COURT: I mean, if this was in a writing, it  
17 definitely comes in, that you intend to offer.

18 Now if it's a statement someone made at some time to  
19 a revenue agent, "I filed a Suspicious Activity Report," I'm  
20 not quite sure how that's relevant to a defense. 03:48:51

21 And I'm sorry, your last name?

22 MS. ARNETT: Arnett.

23 THE COURT: I'm sorry I didn't remember. She's  
24 shaking her head no. You guys work that out. Is it clear?  
25 If, in fact, it's in what somebody testified to or if it's in 03:49:04

United States District Court

PAUL WEDEPOHL - Direct

1 an exhibit, it comes in. You're not going to delete it. 03:49:09

2 You're not going to redact it.

3 MR. PERKEL: Fair enough. I understand, Your Honor.

4 I appreciate your time. I just -- the only other thing is the

5 other compromise that I was thinking of -- and it may be moot 03:49:22

6 at this point because we still have to take a look at the

7 exhibits again, if it's not in any of your exhibits. We are

8 not precluded from entering into a stipulation with the

9 defendant that the reports were filed. It's just the witnesses

10 orally testifying in front of the defendant that the reports 03:49:38

11 were filed is the violation of the Bank Secrecy Act.

12 THE COURT: Didn't they already violate it?

13 MS. ARNETT: Yes.

14 MR. PERKEL: The Bank Secrecy Act.

15 THE COURT: If it's already in a report or if it's in 03:49:49

16 a document.

17 MR. PERKEL: No. The bank employees.

18 THE COURT: Ms. Arnett says it's in a document that

19 is going to be offered or that is in evidence.

20 MR. PERKEL: I don't remember seeing it in the 03:49:59

21 documents, so I'm going to go back and take a look.

22 THE COURT: Okay. So we don't even need to get to

23 number two because if they have already -- if they have already

24 disclosed it, then I suppose you could say, "Well, we want you

25 to order them to disclose it again and issue an order." We're 03:50:16

United States District Court

PAUL WEDEPOHL - Direct

1 beyond that. Let's get to the reports. 03:50:21

2 MR. PERKEL: If the Court wishes, I can pull up the  
3 record right now.

4 MR. MINNS: They disclosed it to me personally and to  
5 Ms. Arnett personally and Mr. Parker personally. I went and 03:50:30  
6 interviewed them both and they told me about it. If the Court  
7 wants, I could share the reasons --

8 THE COURT: Well, you have to work that out. No use  
9 hypothesizing, Mr. Perkel, until everybody knows what we're  
10 talking about. 03:50:45

11 MR. PERKEL: Okay.

12 THE COURT: And I appreciate the fact that you are  
13 trying to save the witnesses from having somebody come in here  
14 and arrest them or getting themselves in trouble, which I would  
15 be very happy to assist you with, as long as it is not a moot 03:50:59  
16 issue. Okay.

17 MR. PERKEL: Thank you.

18 THE COURT: Anything else from the government?

19 MR. SEXTON: No.

20 MR. PERKEL: No, Your Honor. Thank you. 03:51:09

21 MR. MINNS: I had this one simpler similar type  
22 situation now.

23 There's been the argument over the ethics. I was  
24 kind of thrown for a loop today. The argument over whether or  
25 not there could be discussion of Mr. Robinson's ethics and 03:51:24

United States District Court



PAUL WEDEPOHL - Direct

1 whether or not there would be instructions on it. And whether 03:51:30  
2 or not there would be cross-examination on it and the  
3 government doesn't want it and then the government sent the  
4 letter to Mr. Robinson implying truthfully, but I don't think  
5 appropriately, that I had challenged his ethics that day in the 03:51:41  
6 courtroom.

7 And now I'm sitting there watching them trash his  
8 ethics and I'm just wondering, are we still --

9 THE COURT: Well, I'm not sure what this  
10 Mr. Wedepohl's letter challenges his professional 03:51:59  
11 responsibility is. I don't know if that has to do with his  
12 legal responsibilities. I don't know what the criteria are for  
13 someone sending that. But if, in fact, it is legal,  
14 professional responsibility, well, that at least opened up the  
15 door for you to ask this witness, and perhaps even others, 03:52:26  
16 about what this means. Is he challenging him on his legal  
17 obligations or is this something that is filed by Mr. Wedepohl  
18 and doesn't make any difference if he's a lawyer or he's -- you  
19 know, he's a plumber or he's an accountant?

20 I took note of that characterization, but I'm not 03:52:55  
21 sure what it is. And counsel are going to talk about it. And  
22 my response, then, is as clear as it is ambiguous which is that  
23 if it's legal professional responsibility, then we'll have to  
24 talk about it. You can certainly talk to this witness about  
25 it. He's not a lawyer. It was out of his hands apparently. 03:53:18

United States District Court

PAUL WEDEPOHL - Direct

1 I just don't know what the criteria are for somebody 03:53:22  
2 filing one of those. So that's what we come down to.

3 MR. MINNS: I can share that. The Ninth Circuit  
4 ordered me to file similar type things against lawyers in the  
5 past and I have and they were reprimanded by the same group. 03:53:36

6 It's under --

7 THE COURT: When you say -- that you were ordered to  
8 file them with the IRS? That's where he filed this.

9 MR. MINNS: Well, there was a chamber, the three  
10 judges. We won a judgment against -- 03:53:50

11 THE COURT: But let me stop you. Let's see. The  
12 question is, he filed this with the IRS.

13 MR. MINNS: Yes, ma'am. Yes, Your Honor.

14 THE COURT: So that can be different than the Ninth  
15 Circuit or me telling you you have to file the complaint of 03:54:03  
16 arguing the professional responsibility with the State Bar.  
17 That is what I do not know.

18 MR. MINNS: And each group -- if you do what  
19 Mr. Robinson, Mr. Liggett, and these gentlemen do, negotiate  
20 internally before -- 03:54:27

21 THE COURT: Let me stop. Do you know what this  
22 professional responsibility group is designed for?

23 MR. MINNS: It's under Circular 230 of the Internal  
24 Revenue Service. It's for ethics. It includes the ethical  
25 responsibilities and it mirrors, in many respects, the Bar 03:54:47

United States District Court

PAUL WEDEPOHL - Direct

1 responsibilities --

03:54:53

2 THE COURT: Well, those ethical responsibilities may  
3 well be relevant but legal ethical responsibilities may not, so  
4 I'll leave that to you. It's potentially a door-opener, but I  
5 don't know what the answer will be with respect to what you've  
6 asked for, which are instructions concerning legal professional  
7 responsibility.

03:55:04

8 This, Mr. Liggett, I think is a CPA, isn't he?

9 MR. MINNS: Yes.

10 THE COURT: So that's different than a lawyer.

03:55:20

11 MR. MINNS: Well, what happens is this: There's  
12 overlaps. And what happened in this case in the Ninth Circuit  
13 is they were disciplined in their State Bar. They were  
14 disciplined in the Tax Court Bar and they were disciplined in  
15 the Treasury. This is the Treasury.

03:55:33

16 But they overlap and there's a great deal of  
17 similarities in overlap. So if they discipline Mr. Robinson in  
18 front of the Treasury, then he ethically has to tell the  
19 Arizona Bar and he ethically has to tell the Federal Bar.  
20 Sometimes lawyers don't do that. And, frequently, those bars  
21 will overlap the ethics.

03:55:49

22 I am certainly not an expert on Arizona ethics law  
23 but I have significant experience on this because of the case  
24 with the Ninth Circuit where I pretty much was pro bono  
25 handling the case against these two lawyers in two different

03:56:15

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1 states and before the Tax Court and before the treasury.

03:56:19

2 So your law license and your tax court law license  
3 allows you to practice in the federal -- there's the federal  
4 license. We are here pro hac vice, and then there's the Ninth  
5 Circuit and then there's simultaneous ethical jurisdiction with  
6 the Treasury Department. And both CPAs and enrolled agents and  
7 lawyers are obligated under the same ethical considerations  
8 when they work before the Treasury.

03:56:39

9 THE COURT: Well, it seems what, on the face of it,  
10 is relevant is what the ethical or professional, to use  
11 Mr. Wedepohl's terms, responsibilities are with the IRS and why  
12 he may not -- not necessarily why he had violated it. That, I  
13 suppose, is a question on direct or cross-examination but why  
14 Mr. Wedepohl thought he had to file it.

03:57:03

15 So in terms of the scope so far, the only thing that  
16 is relevant so far is what the criteria are for professional  
17 responsibility that would have alerted Mr. Wedepohl and also  
18 triggered his filing of that report. That's what's relevant.

03:57:30

19 Okay. Now we are adjourned.

20 COURTROOM DEPUTY: All rise.

03:58:02

21 (Whereupon, these proceedings recessed at 3:58 p.m.)

22 \* \* \* \* \*

PAUL WEDEPOHL - Direct

C E R T I F I C A T E

03:58:03

I, ELAINE M. CROPPER, do hereby certify that I am  
duly appointed and qualified to act as Official Court Reporter  
for the United States District Court for the District of  
Arizona.

03:58:03

I FURTHER CERTIFY that the foregoing pages constitute  
a full, true, and accurate transcript of all of that portion of  
the proceedings contained herein, had in the above-entitled  
cause on the date specified therein, and that said transcript  
was prepared under my direction and control, and to the best of  
my ability.

03:58:03

DATED at Phoenix, Arizona, this 8th day of August,  
2012.

03:58:03

s/Elaine M. Cropper

03:58:03

Elaine M. Cropper, RDR, CRR, CCP

United States District Court