

CR-10-00757-PHX-ROS, June 6, 2012

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

08:28:17

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)	June 6, 2012		
14)	8:36 a.m.		
15)			
16)			
17)			
18)			
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BEFORE: THE HONORABLE ROSLYN O. SILVER, CHIEF JUDGE

REPORTER'S TRANSCRIPT OF PROCEEDINGS

JURY TRIAL - Day 5

(Pages 767 through 972)

08:28:17

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

08:28:17

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

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I N D E X

TESTIMONY

WITNESS	Direct	Cross	Redirect	VD
KEITH KUHLMAN	774	781	793	
TIMOTHY BARNES	794	805		
BILL MULLINIKS	813	848		
MARISOL CAVAZOS	860	880		
ED MCLENNA	885			
PAUL WEDEPOHL	905	932		

E X H I B I T S

Number		Ident	Rec'd
77	Signature card for Cimarron River Ranch LLC account #231142 (sub-exhibit to Exhibit 76)	803	
78	Certified Copy of Affidavit of Stanley Ed Manske dated April 12, 2010 and Attachments including three Promissory Notes held by JAMES R. PARKER and JACQUELINE L. PARKER	774	775
104	Certified Copy of specific pages from the Collections File, Offer in Compromise (Form 656) signed June 18, 2004, for JAMES R. and JACQUELINE R. PARKER including IRS Form 433-B Collection Information Statement for Businesses (OMEGA CONSTRUCTION INC) dated June 18, 2004, and IRS Form 433-A Collection Information Statement for Wage Earners and Self-Employed Individuals dated June 18, 2004	913	
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)	915	

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1	130	First State Bank Letter of Due Diligence to Cimarron River Ranch LLC dated August 9, 2007	797		08:28:17
2					
3	131	First State Bank Memorandum of Contact dated August 16, 2007	799		
4					
5	135	State Farm Insurance Automobile Policy #058933136, Auto Application and Premium Payments (2004 Rolls Royce Phantom) (sub-exhibit to Exhibit 519)	864	864	08:28:17
6					
7	136	State Farm Insurance Automobile Policy #060682136, Auto Application (2005 Ford F350) (sub-exhibit to Exhibit 519)	868	864	
8					
9	367	State Farm Mutual Automobile Insurance Company Records concerning Cimarron River Ranch	875	864	
10					08:28:17
11	422	Photo 3 of property located at 35802 N. Meander Way, Carefree, Arizona (sub-exhibit to Exhibit 360)	845	845	
12					
13	424	Photo 5 of property located at 35802 N. Meander Way, Carefree, Arizona (sub-exhibit to Exhibit 360)	846	846	
14					
15	425	Photo 6 of property located at 35802 N. Meander Way, Carefree, Arizona (sub-exhibit to Exhibit 360)	846	846	08:28:17
16					
17	426	Photo 7 of property located at 35802 N. Meander Way, Carefree, Arizona (sub-exhibit to Exhibit 360)	846	846	
18					
19	429	Photo 10 of property located at 35802 N. Meander Way, Carefree, Arizona (sub-exhibit to Exhibit 360)	926	926	
20					08:28:17
21	430	Photo 11 of property located at 35802 N. Meander Way, Carefree, Arizona (sub-exhibit to Exhibit 360)	926	926	
22					
23	432	Photo 13 of property located at 35802 N. Meander Way, Carefree, Arizona (sub-exhibit to Exhibit 360)	926	926	
24					
25	519	Certified Copy of State Farm Records		864	08:28:17

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1	520	State Farm Records - Auto Claim Service Record - Full, Claim #36-A463-996, 2005 Ford F250, Date of Loss June 25, 2006 (sub-exhibit to Exhibit 519)	893	864	08:28:17
2					
3					
4	521	State Farm Records - Letter From Fenton Ford of Dumas, Texas, dated December 1, 2004 Regarding Purchase of 2005 Ford F250, VIN #1FTSW21Y953A54415 by James Parker (sub-exhibit to Exhibit 519)		864	08:28:17
5					
6					
7	522	State Farm Records - Affidavit of Vehicle Theft, Claim #36-A463-996 Regarding 2005 Ford F250	898	864	
8					
9	523	State Farm Records - Priority Drop File, Claim #36-A463-996, Title and Power of Attorney for 2005 Ford F250 (sub-exhibit to Exhibit 519)	902	864	08:28:17
10					
11	524	State Farm Records - Claim #36-A463-996 Payments (sub-exhibit to Exhibit 519)	903	864	
12					
13	525	State Farm Records - Auto Policy #068-5305, Auto Application and Premium Payments (sub-exhibit to Exhibit 519)	870	864	
14					
15	526	State Farm Records - Fire Homeowners Policy and Application, Policy #36-C8-6617-5 (sub-exhibit to Exhibit 519)	871	864	08:28:17
16					
17	527	State Farm Records - Fire Homeowners Policy #36-C8-6617-5, Premium Payments (sub-exhibit to Exhibit 519)	874	864	
18					
19	528	State Farm Records - Claim #36-A382-485 Payments (sub-exhibit to Exhibit 519)	893	864	
20					
21	529	State Farm Records - Claim #36-A32-485, Letter Regarding Settlement of Total Loss of 2005 Ford F350, VIN #1FTWF31Y45EA51851 (sub-exhibit to Exhibit 519)	892	864	08:28:17
22					
23	530	State Farm Records - Auto Claim Service Record - Full, Claim #36-A382-485, 2005 Ford F350, Date of Loss November 10, 2004 (sub-exhibit to Exhibit 519)	887	864	
24					
25					08:28:17

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1	531	State Farm Records - Screen Print of Policy Master Record, Policy #058-9331, dated June 9, 2011 (sub-exhibit to Exhibit 367)	864	08:28:17
2				
3	532	State Farm Records - Screen Print of Policy Master Record, Policy #144-8810, dated June 13, 2011 (sub-exhibit to Exhibit 367)	875 864	08:28:17
4				
5				
6	533	State Farm Records - Screen Print of Premium History, Policy #144-8810, dated June 13, 2011 (sub-exhibit to Exhibit 367)	864	
7				
8	534	State Farm Records - Screen Print of Auto Application, Policy #144-8810, dated June 13, 2011 (sub-exhibit to Exhibit 367)	864	
9				
10	535	State Farm Records - Letter dated July 30, 2009 to James Parker Regarding 2004 Rolls Royce (sub-exhibit to Exhibit 367)	875 864	08:28:17
11				
12	536	State Farm Records - Letter dated August 3, 2009 to James Parker Regarding 2004 Rolls Royce (sub-exhibit to Exhibit 367)	876 864	
13				
14	537	State Farm Records - Screen Print of Echo Policy Transactions, Policy #144-8810, dated June 13, 2011 (sub-exhibit to Exhibit 367)	878 864	08:28:17
15				
16				
17	538	State Farm Records - Screen Print of Policy Master Record, Policy #173-7013, dated June 13, 2011 (sub-exhibit to Exhibit 367)	878 864	
18				
19	539	State Farm Records - Screen Print of Premium History, Policy #173-7013, dated June 13, 2011 (sub-exhibit to Exhibit 367)	864	08:28:17
20				
21	540	State Farm Records - Screen Print of Auto Application, Policy #173-7013, dated June 13, 2011 (sub-exhibit to Exhibit 367)	864	
22				
23	541	State Farm Records - Screen Print of Household Clients and Claims, dated June 13, 2011 (sub-exhibit to Exhibit 367)	879 864	
24				
25	542	State Farm Records - Premium Payments Received by Remittance Processing Center (sub-exhibit to Exhibit 367)	864	08:28:17

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1	543	State Farm Records - Letter dated December 28, 2010 Regarding Driver Exclusion of Samuel Parker on 2004 Hummer (sub-exhibit to Exhibit 367)	879	864	08:28:17
2					
3	590	Criminal History for Roy Young		829	
4					
5	598	State Farm Mutual Automobile Insurance documents for 2004 Rolls Royce Phantom	818	830	08:28:17
6	599	State Farm Mutual Automobile Insurance documents for 2004 Hummer (H2)	836	830	
7					
8	600	State Farm Fire and Casualty Company rental dwelling policy Declarations and Premium Notice for 35802 N. Meander Way, Carefree, AZ 85377 (09/10/2009 to 09/10/2010)	839	840	
9					
10	601	State Farm Fire and Casualty Company rental dwelling policy Premium Notice, Application, and Declarations for 35802 N. Meander Way, Carefree, AZ 85377 (09/10/2009 to 09/10/2010)	841	842	08:28:17
11					
12					
13					
14	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	941		08:28:17
15					
16	1020	2-4-2005 letter from IRS to James Parker with Parker Handwritten notes to Greg Robinson dated 2-22-2005, Parker_0229	946		
17					
18	1027	Belize Land and Development Limited v. Cimarron Judgment for \$3,192,375.00, Parker_0006	788		
19					
20	1076	American Sterling Bank 007983 CK No. 6464	950	950	08:28:17
21					
22		<u>RECESSES</u>			
23			Page	Line	
24		(Recess at 9:59; resumed at 10:23.)	830	8	
		(Recess at 11:55; resumed at 1:44.)	892	1	
25		(Recess at 2:51; resumed at 3:27.)	931	14	08:28:17

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A P P E A R A N C E S

08:28:17

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

08:28:17

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

08:28:17

KEITH KUHLMAN - Direct

P R O C E E D I N G S

08:28:17

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

(Jury enters.)

(Proceedings begin at 8:36.)

THE COURT: Please be seated.

08:36:30

Good morning.

Mr. Sexton?

MR. PERKEL: Thank you, Judge.

KEITH KUHLMAN,

called as a witness herein by the Government, having been first

08:36:48

duly sworn or affirmed to testify to the truth, was examined

and testified as follows:

DIRECT EXAMINATION

BY MR. PERKEL:

Q. Good morning, Mr. Kuhlman.

08:36:50

A. Good morning.

Q. We left off that on the eve of a sheriff's sale in April of 2010 associated with some of the leaseholds and the deeded property associated with the Cimarron River Ranch.

A. That's correct.

08:37:19

Q. Now, around that same time --

A. Would you look at Exhibit 78? Is that in front of you, sir?

MR. SEXTON: We would offer Exhibit 78 into evidence as a certified record from Oklahoma.

08:37:31

KEITH KUHLMAN - Direct

1 MR. MINNS: We object to it. It has nothing to do 08:37:41
2 with this witness, Your Honor. This witness can't lay any
3 predicates on it.

4 THE COURT: Well, let's see if he can lay some
5 foundation. 08:37:49

6 BY MR. SEXTON:

7 Q. Do you recognize this document?

8 MR. MINNS: Has this already been admitted. It's on
9 the screen.

10 COURTROOM DEPUTY: It's not being published to the 08:37:59
11 jury.

12 MR. MINNS: Oh. Just asking. Thank you.

13 BY MR. SEXTON:

14 Q. Do you recognize this document?

15 A. Yes, I do. 08:38:04

16 Q. Was this a document that you received around the time it
17 was actually at the sheriff's sale?

18 A. Yes, sir. It was received by our attorneys at that time.

19 MR. PERKEL: Again, it's a certified public record
20 from Oklahoma and we would offer it at this time. 08:38:21

21 THE COURT: It's admitted.

22 MR. MINNS: Thank you, Your Honor.

23 (Exhibit Number 78 was admitted into evidence.)

24 BY MR. SEXTON:

25 Q. Let's start with page two. Do you have that affidavit in 08:38:43

KEITH KUHLMAN - Direct

1 front of you, sir? 08:38:50

2 A. Yes, sir.

3 Q. Let's focus, if we could, on sort of the top portion. Who
4 is this an affidavit from?

5 A. This is an affidavit of Stanley Manske who is with Manske 08:39:08
6 Law Office in Boise City.

7 Q. And looking at the first full paragraph there, would you
8 read the first line of that paragraph?

9 A. "Stanley Ed Manske, being first duly sworn, deposes and
10 states as follows: 08:39:37

11 "The Manske Law Office, P.C., and the undersigned
12 counsel have performed legal services for James R. Parker and
13 Jacqueline L. Parker, and in that capacity, have maintained for
14 them, in the firm's fire proof storage, three original
15 promissory notes from Cimarron River Ranch, L.L.C., in favor of 08:39:54
16 James R. Parker and Jacqueline L. Parker, husband and wife as
17 joint tenants."

18 Q. And then the next paragraph. The next three paragraphs,
19 would you read each one of those?

20 A. "Note dated April 13, 2005 in the original sum of 08:40:14
21 \$450,000, due within thirty days after demand and containing a
22 covenant against encumbrances concerning real properties of
23 Cimarron River Ranch, L.L.C.

24 "Note dated June 16, 2005 in the original sum of
25 \$450,000, due within thirty days after demand and containing a 08:40:35

KEITH KUHLMAN - Direct

1 covenant against encumbrances concerning the livestock of 08:40:40
2 Cimarron River Ranch, L.L.C.
3 "Note dated August 31, 2005 in the original sum of
4 \$239,903.48 due September 1, 2010 and providing for the note to
5 be secured by a mortgage lien on the real properties of 08:40:58
6 Cimarron River Ranch, L.L.C."
7 Q. Now, below that, in the signature area -- let's go to the
8 second half of the document now.
9 And is there a signature line for Stanley Manske?
10 A. Yes, sir there, is. 08:41:40
11 Q. And what is the date that he is signing this document
12 above it?
13 A. April 12, 2010.
14 Q. Was this affidavit produced before or after the sale was
15 to be done on the property? 08:42:02
16 A. Before.
17 Q. Now, let's go to page three. Actually, let's go to page
18 five, sir. Actually, focus on the first -- the upper half of
19 the document. That's good.
20 What's the amount in this promissory note? 08:42:31
21 A. \$450,000.
22 Q. And what is the date in the right-hand corner?
23 A. April 13, 2005.
24 Q. And who is to be paid this according to the first line?
25 A. It states, "Without grace, the undersigned promises to pay 08:42:52

KEITH KUHLMAN - Direct

1 to James R. Parker and Jacqueline L. Parker, husband and wife, 08:42:56
2 as joint tenants with full rights of survivorship, the sum of
3 \$450,000 . . ."

4 Q. And then skipping down to the third paragraph that has an
5 underlined Covenant Against Encumbrances, could you read what 08:43:12
6 is being encumbered by this promissory note?

7 A. It states, "Covenants Against Encumbrances: Maker
8 covenants and agrees to allow no voluntary or involuntary
9 mortgages, liens, or encumbrances to be placed of record
10 against the following described property, to-wit . . ." 08:43:29

11 Q. Actually, don't read that. Is it just a legal description
12 of some property?

13 A. That's correct.

14 Q. And then at the bottom in the signature area, does it
15 indicate a signature for Samuel Parker as the manager of 08:43:48
16 Cimarron River Ranch?

17 A. Yes. It's signed Cimarron River Ranch, LLC, with Samuel
18 James Parker, manager.

19 Q. And just to the left of that signature, when was that
20 document recorded in the state of Oklahoma? 08:44:03

21 A. This is from the Cimarron County courthouse, this
22 instrument was filed and recorded April 12, 2010.

23 Q. Page four, again, if you could focus on the top half, what
24 is the amount of this promissory note?

25 A. The amount is \$450,000. 08:44:33

United States District Court

KEITH KUHLMAN - Direct

- 1 Q. And what's the date of this promissory note? 08:44:36
- 2 A. June 16, 2005.
- 3 Q. And who is to be paid this \$450,000?
- 4 A. It states, "Without grace, the undersigned promises to pay
- 5 James R. Parker and Jacqueline L. Parker, husband and wife, as 08:44:48
- 6 joint tenants with full rights of survivorship . . ."
- 7 Q. And what is encumbered by this promissory note? When I
- 8 use the word "encumbrance," what does that mean?
- 9 A. It means that it has a lien against that particular
- 10 property, whatever it may be, whether it be personal or real 08:45:09
- 11 property.
- 12 Q. And then what is being encumbered by this promissory note?
- 13 A. It states, "Covenants Against Encumbrances: Maker
- 14 covenants and agrees to allow no voluntary or involuntary
- 15 mortgages, liens or encumbrances to be placed of record against 08:45:25
- 16 the following described property, to wit:"
- 17 And then it states, "All livestock and the issue and
- 18 proceeds of all livestock, now owned or hereafter acquired by
- 19 Cimarron River Ranch, L.L.C."
- 20 Q. And is this signed at the bottom of this document by 08:45:41
- 21 Samuel Parker?
- 22 A. Yes, sir, it is.
- 23 Q. And this is a promissory note evidencing a debt from
- 24 Cimarron River Ranch to Mr. and Mrs. Parker for \$450,000?
- 25 A. That's correct. 08:45:59

United States District Court

KEITH KUHLMAN - Direct

1 Q. And we say a promissory note. What's a promissory note? 08:46:05
2 A. Again, it's just a document that if I sign something and I
3 promise to pay somebody \$450,000, I have stated that that's
4 what I am going to do.
5 Q. Is it a form of IOU? 08:46:22
6 A. Yes.
7 Q. And then the last promissory note, page three, what's the
8 amount of this promissory note?
9 A. \$239,903.48.
10 Q. And what's the date of it? 08:46:49
11 A. This is dated August 31, 2005.
12 Q. And who is this IOU to be paid to?
13 A. It states, "Without grace, I, or we, or either of us
14 promise to pay to the order of James R. Parker and Jacqueline
15 L. Parker, husband and wife, as joint tenants with the rights 08:47:06
16 of survivorship . . ."
17 Q. And then looking at the second-to-the-last paragraph, does
18 it indicate an encumbrance in that second-to-the-last
19 paragraph?
20 A. The second-to-the-last paragraph states, "And, provided 08:47:25
21 further, that as of the date hereof the makers hereof have
22 executed a real estate mortgage in favor of payee herein, and
23 all of the terms, agreements and conditions set forth in said
24 mortgage of real estate are hereby made a part of this
25 obligation." 08:47:45

United States District Court

KEITH KUHLMAN - Cross

1 Q. And then at the bottom, is it signed by Samuel Parker as 08:47:52
2 manager of Cimarron River Ranch?

3 A. That's correct.

4 MR. SEXTON: I have no further questions, Your Honor.

5 THE COURT: All right. 08:48:03

6 Cross?

7 MR. MINNS: Yes, please, Your Honor.

8 **CROSS - EXAMINATION**

9 BY MR. MINNS:

10 Q. Good morning, Mr. Kuhlman. 08:48:29

11 A. Good morning.

12 Q. You and I shook hands for the first time about 15 minutes
13 ago; correct?

14 A. Correct.

15 Q. I had never met you before and you had never met me? 08:48:34

16 A. That's correct.

17 Q. Pleasure to have met you. I introduced myself to you as
18 Jim Parker's attorney.

19 A. That's correct.

20 Q. And you smiled and weren't mean to me. 08:48:44

21 In these auctions where the state of Oklahoma
22 conducts them, during that brief moment you and I talked, I
23 asked you if the state of Oklahoma had the legal right to
24 refuse to give the property to the high bidder.

25 A. That's correct. 08:49:09

KEITH KUHLMAN - Cross

- 1 Q. And I haven't seen one of those before so it's interesting 08:49:12
2 to me. And your answer was the state of Oklahoma can refuse to
3 give to it the high bidder.
- 4 A. My answer was yes.
- 5 Q. And so if the state of Oklahoma thinks there's something 08:49:23
6 wrong with the high bidder, they reject the bid?
- 7 A. Yes, sir. We -- in our notice of invitation to bid, we
8 have the right to reject any and all bids placed at the time of
9 auction.
- 10 Q. But the state of Oklahoma accepted the bids of Cimarron 08:49:42
11 River Ranch?
- 12 A. Yes, sir.
- 13 Q. Did Jim Parker or Sam Parker or Stan Manske on their own,
14 had any of them gotten permission to bid on their own
15 individual behalves at that auction or was Cimarron River Ranch 08:50:03
16 the only one that had permission to bid at that auction?
- 17 A. Cimarron River Ranch was the registered bidder at the
18 lease auction.
- 19 Q. Okay. And you only allow registered bidders to bid?
- 20 A. That's correct. 08:50:21
- 21 Q. But a limited liability partnership or corporation or any
22 other kind of partnership, basically, those are pieces of paper
23 and they have to have a human being actually show up at the
24 auction to bid for those pieces of paper; correct?
- 25 A. Yes. 08:50:42

KEITH KUHLMAN - Cross

- 1 Q. And was the property Cimarron River Ranch was bidding on 08:50:47
2 certain specific large blocks of land, the right to lease them
3 for five years; correct?
- 4 A. Correct.
- 5 Q. And an argument came about. After a while, the state of 08:50:59
6 Oklahoma said, "We don't want you to have the specific pieces
7 you bid on. We want you to have different pieces that are just
8 as good or better for you"; correct?
- 9 A. No.
- 10 Q. The state of Oklahoma didn't switch the property on them 08:51:16
11 later and tell them, "You had to lease this different
12 property"?
- 13 A. The way are you forming your question, I can't answer
14 that.
- 15 Q. Okay. I'll do my best. There's a lawsuit going on 08:51:28
16 because Cimarron River Ranch says, "You tried to change the
17 property on us and we don't agree that that isn't right." Is
18 that pretty much what they are saying? "We don't think we have
19 to pay leases on a different piece of property than we bid on."
20 Is that what they are saying in their lawsuit? 08:51:49
- 21 A. It's a lot more technical than that.
- 22 Q. I'm no expert on it and probably the jurors aren't either.
23 But is that the crux of it? Is that basically what they are
24 complaining about?
- 25 A. I would say it this way, is that a land exchange was 08:52:10

KEITH KUHLMAN - Cross

1 conducted and with the land exchange -- 08:52:13

2 Q. If I could interrupt for a second. The land exchange --

3 MR. SEXTON: Hold on a second.

4 May the witness be allowed to answer the question

5 that was put to him? 08:52:27

6 THE COURT: Yes.

7 You may finish the answer.

8 THE WITNESS: Thank you.

9 The land exchange was completed within the ranch
10 boundaries as they existed. The parcels that were exchanged, I 08:52:37

11 had conversations with Mr. Parker concerning those, land

12 exchanges as we were in the process of doing those and

13 Mr. Parker did not have any objections at that time.

14 In October of 2007 Mr. Parker, after we informed him
15 of the -- in writing that these exchanges were completed, wrote 08:53:06

16 and stated that based on a provision within the lease contract,

17 he had the right to terminate the lease contract because he

18 considered the exchange a sale of land, not a swapping of

19 property. Then Cimarron River Ranch refused to pay the rental

20 on the property and that's when the litigation started. 08:53:38

21 MR. MINNS: May I continue my questioning, Your
22 Honor?

23 THE COURT: Well, you can ask him a question.

24 MR. MINNS: Thank you.

25

KEITH KUHLMAN - Cross

1 BY MR. MINNS: 08:53:50

2 Q. So the bottom line is, you all exchanged the piece that he
3 bid on. When you put it in writing, he said, "No, I don't
4 agree to this exchange and Cimarron River Ranch doesn't want to
5 pay the lease on the exchanged property, the substituted 08:54:04
6 property"?

7 A. They refused to pay the contract rental.

8 Q. But -- and you all said, "You have to pay it even
9 though -- because we have the right to change the land," to
10 exchange it to use your word? 08:54:21

11 A. Yes.

12 Q. And the trial court agreed with you but the Supreme Court
13 disagreed with you; correct?

14 A. We received a summary judgment in district court and then
15 it was appealed and the appeal court remanded it back to 08:54:37
16 district court for further consideration.

17 Q. They threw the judgment out. They disagreed with you;
18 correct?

19 A. Yes.

20 Q. Okay. And you're one of the people that's been sued in 08:54:50
21 the suit; is that correct or not?

22 A. No, not that I'm aware of.

23 Q. Well, I apologize. Probably wrong.

24 This is a suit between the state of Oklahoma based on
25 the exchange and Cimarron River Ranch. 08:55:14

KEITH KUHLMAN - Cross

- 1 A. Actually, I believe the case is styled with Commissioners 08:55:18
2 of the Land Officer, Tecelote, and it's a ranching partnership,
3 George Wilson, I think those are the parties involved that are
4 being sued by Cimarron River Ranch.
- 5 Q. Okay. I apologize for my error. 08:55:33
- 6 But bottom line, there's a disagreement right now
7 whether or not you all can just exchange the property and force
8 Cimarron River Ranch to pay lease payments on a property they
9 did not bid on?
- 10 A. Again, sir, it's more complicated than that because, 08:56:05
11 actually, their attorneys have raised the question on whether
12 or not an exchange is a sale which would, in essence, trigger
13 paragraph 2.4 of the lease contract which would allow the
14 lessee to get out of the lease at that point in time at his
15 option. 08:56:28
- 16 Q. Are you an elected official?
- 17 A. No, sir.
- 18 Q. Now, at this meeting, I believe you said the meeting that
19 you had with Roy Young with the lawyer, Stan Manske, with Jim
20 Parker was on the deck of the house of the property, the first 08:56:46
21 meeting, and I believe you said you called the meeting and it
22 was very cordial.
- 23 A. Yes.
- 24 Q. And I suppose that if they refused to meet with you, you
25 could say, "I will not let you bid on property." 08:57:02

KEITH KUHLMAN - Cross

1 A. No. 08:57:08

2 Q. So at that meeting, you were representing the state of
3 Oklahoma?

4 A. That's correct, the Commissioners of the Land Office.

5 Q. But you're not one of the commissioners that was sued, 08:57:26
6 that filed the suit against Cimarron River Ranch. You're not
7 one of the commissioners?

8 A. No, sir, I am not.

9 Q. Okay. You don't own any of the land; you just represent
10 the state of Oklahoma to protect the land for the school 08:57:41
11 district?

12 A. That's correct. It's a trust and we are trustees, in
13 essence.

14 Q. Now, the government has put on an exhibit recent a few
15 minutes ago, 78. And with the Court's permission, I'm going to 08:58:11
16 publish the affidavit page here.

17 A. Yes.

18 Q. And on that exhibit, Mr. Kuhlman, it says that it has been
19 maintained for James and Jacqueline Parker in the law firm's
20 fireproof storage. You have no reason to disagree with the 08:58:46
21 sworn statement of Stan Manske; correct?

22 A. Correct.

23 Q. And so it appears that it had been sitting in his safety
24 deposit box, fireproof safety deposit box, since on or about
25 June 15, 2005, about five years? 08:59:18

KEITH KUHLMAN - Cross

1 A. Are we talking about the one that you have posted? 08:59:26
2 Q. Yes, sir.
3 A. Yes, sir. It's June 16, 2005.
4 Q. There's another one and it has a different date. But if
5 that is useful, tell the jury. If that useful to talk about 08:59:35
6 that date, go ahead and do so.
7 A. The one that you have displayed at this point in time
8 states "note" and the date on that is August 31, 2005.
9 Q. So they both seem to be the same year?
10 A. Yes. June 16, 2005, and August 31, 2005. 09:00:06
11 Q. And in your investigation, did you learn that this money
12 was borrowed from Belize Land & Development Limited for the
13 purposes of financing Cimarron River Ranch?
14 MR. SEXTON: Objection. Foundation as to --
15 THE COURT: Sustained. 09:00:30
16 MR. MINNS: May I approach the witness, Your Honor,
17 with Parker Exhibit 1027?
18 THE COURT: Do we have a copy of it or an original?
19 MR. MINNS: Where is the original?
20 COURTROOM DEPUTY: Is that the one I handed you, sir? 09:00:51
21 THE COURT: Okay. Thank you, Christine. He has it.
22 So what Exhibit Number is it?
23 MR. MINNS: Defendant's Exhibit 1027.
24 BY MR. MINNS:
25 Q. You're holding the judgment by Belize Land & Development 09:01:09

KEITH KUHLMAN - Cross

1 Limited against Cimarron River Ranch, LLC, for \$3,192,375; is 09:01:11
2 that correct?

3 A. I am just looking at the document for the first time.

4 It states, "The above named defendant" --

5 MR. SEXTON: Hold on. He's reading from the 09:01:35
6 document. We object as to foundation, hearsay and
7 authentication.

8 THE COURT: Sustained.

9 MR. MINNS: This is authenticated, Your Honor, from
10 the Supreme Court of Belize. We offer it into evidence. 09:01:48

11 THE COURT: Well, unless there has been a stipulation
12 to the foundation for the admission of the document, it's not
13 admitted; and unless this witness has personal knowledge and
14 can identify the document so that it shows that it is what it
15 purports to be and is not hearsay, then the objection will 09:02:07
16 continue to be sustained.

17 So you are not, Mr. Kuhlman, to read the document.

18 THE WITNESS: Yes, ma'am.

19 BY MR. MINNS:

20 Q. Do you know where the money that was originally loaned for 09:02:22
21 the notes that you've already testified to came from?

22 MR. SEXTON: Objection. Foundation. And it would
23 lead to a hearsay response.

24 THE COURT: Well, I'm going to ask him if he knows.
25 You can answer that yes or no. Do you know? 09:02:38

KEITH KUHLMAN - Cross

1 THE WITNESS: No, ma'am. 09:02:49

2 THE COURT: All right.

3 BY MR. MINNS:

4 Q. Yesterday you used the term -- in describing this piece of

5 property, you used the term "dude ranch" and you also used the 09:03:01

6 word "wild west." Do you recall that?

7 A. Yes.

8 Q. Now, you can, as a public official, and you've been

9 instructed not to talk to the other witnesses about what they

10 testify in during this trial; correct? 09:03:12

11 A. Correct.

12 Q. Have you discussed this case with Cerita Walker?

13 A. No, I have not.

14 Q. Did you discuss the term "wild west" with Cerita Walker?

15 A. I did not. 09:03:27

16 Q. Are you friends with Cerita Walker?

17 A. I met her for the first time yesterday.

18 Q. So if she used that exact same term describing the

19 property, that's just a coincidence?

20 A. I would assume that it would be. 09:03:42

21 Q. As custodian of the property in Oklahoma that's trying to

22 get a judgment from Cimarron River Ranch for the -- what was

23 the word -- traded. I apologize. What was the word that you

24 used? Traded, extended property? What was the word you used?

25 A. Exchanged. 09:04:16

KEITH KUHLMAN - Cross

1 Q. Exchanged. For the exchanged property, you're hoping that 09:04:16
2 Oklahoma gets a judgment for that exchanged property and that
3 Cimarron River Ranch is forced to make rental payments on the
4 exchanged property; correct?

5 A. We have a judgment for nonpayment of rent and that is what 09:04:36
6 we're hoping to collect.

7 Q. Well, you don't have any more. The Supreme Court of
8 Oklahoma threw it out, did they not?

9 A. You are correct. It's not the Supreme Court. It's the
10 Appeals Court. 09:04:52

11 Q. You still want -- you still are pursuing it, though. You
12 would like to get it back. You would like to get that judgment
13 back even though it's been thrown out?

14 A. Yes, sir.

15 Q. And as far as ownership of Cimarron River Ranch, who owns 09:05:08
16 the individual shares of Cimarron River Ranch?

17 A. I do not know.

18 Q. You don't know if Jim Parker owns a single share; correct?

19 MR. SEXTON: Objection. He just answered the
20 question he doesn't know. 09:05:25

21 THE COURT: Sustained. Asked and answered.

22 MR. MINNS: Your Honor, the government has been
23 allowed to ask many questions about the same issue and I had
24 four about this same issue.

25 THE COURT: Well, if you ask the same question, 09:05:34

KEITH KUHLMAN - Cross

1 though, Mr. Minns, and he has already answered that question, 09:05:36
2 then I'm going to sustain the objection.

3 MR. MINNS: Thank you, Your Honor.

4 BY MR. MINNS:

5 Q. Nobody has made any secret about this, that Jim Parker is 09:05:52
6 actively involved in helping Cimarron River Ranch; correct?

7 A. Helping?

8 Q. Working for them?

9 A. Every time I've had to do anything with Cimarron River
10 Ranch, I've either dealt with Stan Manske, Jim Parker, or Roy 09:06:10
11 Young.

12 Q. And I'll repeat my question again. I apologize that it
13 wasn't clear. My question is, nobody has ever tried to make a
14 secret of the fact that Jim Parker was doing work for Cimarron
15 River Ranch, yes or no? 09:06:27

16 A. Yes.

17 Q. The owner of Cimarron River Ranch today you know is Belize
18 Land & Development Limited?

19 A. I do not know that.

20 Q. You haven't checked to see who owns it currently? 09:07:02

21 A. No, sir.

22 Q. You do not know that because of the judgment, they have
23 taken it over?

24 MR. SEXTON: Objection. He's answered the question.

25 THE COURT: It's a different question. 09:07:14

KEITH KUHLMAN - Redirect

1 All right. Can you answer that yes or no? 09:07:16

2 THE WITNESS: No, ma'am. I do not know who.

3 THE COURT: Okay. He answered it.

4 MR. MINNS: Mr. Kuhlman, thank you for coming to

5 Arizona. 09:07:25

6 I pass the witness.

7 THE COURT: Any redirect?

8 MR. SEXTON: Question, judge.

9 **REDIRECT EXAMINATION**

10 BY MR. SEXTON: 09:07:32

11 Q. Is this litigation still ongoing?

12 A. Yes, sir.

13 Q. Is it something that the state of Oklahoma is still
14 pursuing?

15 A. Yes, sir. 09:07:41

16 MR. SEXTON: No further questions.

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

18 (Witness excused.)

19 THE COURT: And call your next witness.

20 MR. SEXTON: Thank you, Your Honor. The government 09:07:47

21 calls Timothy Barnes.

22 **TIMOTHY BARNES,**

23 called as a witness herein by the Government, having been first

24 duly sworn or affirmed to testify to the truth, was examined

25 and testified as follows: 09:08:25

United States District Court

TIMOTHY BARNES - Direct

1 COURTROOM DEPUTY: Please state your name for the 09:08:33
2 record and spell your last name, please.

3 THE WITNESS: B-A-R-N-E-S.

4 COURTROOM DEPUTY: Thank you. Have a seat right up
5 there. 09:08:44

6 **DIRECT EXAMINATION**

7 BY MR. PERKEL:

8 Q. Good morning, Mr. Barnes.

9 A. Good morning.

10 Q. Could you please introduce yourself to the Court and to 09:09:06
11 the jury?

12 A. Okay. My name is Tim W. Barnes. I was president of the
13 First State Bank at Boise City.

14 Q. Okay. And, sir, if you could just maybe scoot your chair
15 up or pull the microphone in just a little bit closer. 09:09:19

16 A. Okay.

17 Q. Thank you very much.

18 Mr. Barnes, you said you were the former president of
19 which bank?

20 A. The First State Bank being of Boise City, Oklahoma. 09:09:31

21 Q. Okay. And where do you currently live? Where do you
22 currently reside?

23 A. In Boise City, Oklahoma.

24 Q. And is Boise City in the sort of western part of Oklahoma?

25 A. Yeah. It's in the extreme western part, in the panhandle. 09:09:47

TIMOTHY BARNES - Direct

1 Q. And how long have you lived in Boise City? 09:09:51
2 A. About 40 years.
3 Q. Where are you originally from?
4 A. I grew up in a little town called Keys, Oklahoma, which is
5 15 miles east of Boise City. 09:10:02
6 Q. How did you end up in Boise City?
7 A. After I got out of the army, I got a job offer from a bank
8 in Boise City.
9 Q. And is that the same bank that you worked at for most of
10 your career? 09:10:20
11 A. Right, yeah.
12 Q. Same First State Bank?
13 A. Right, yeah.
14 Q. Okay. Can you tell us what's your educational background?
15 A. I have a bachelor's degree in economics from Oklahoma City 09:10:32
16 University.
17 Q. And how long did you work for the First State Bank?
18 A. Almost 40 years.
19 Q. And you're currently not working for First State Bank?
20 A. No. I retired at the end of December. 09:10:47
21 Q. December of just this past year?
22 A. Yes, yeah.
23 Q. December 2011?
24 A. Right.
25 Q. How come you retired? 09:10:57

United States District Court

TIMOTHY BARNES - Direct

1 A. Well, I turned 65. 09:10:58
2 Q. And do you -- the City of Boise City, is that near Kenton,
3 Oklahoma?
4 A. Yeah. It's probably about 30 miles.
5 Q. And do you know how many people live in Boise City? 09:11:16
6 What's the approximate population?
7 A. Oh, probably around 12 or 1300 people. It's a pretty
8 small town.
9 Q. I would like to ask you some questions about First State
10 Bank. 09:11:29
11 A. Okay.
12 Q. How many branches or buildings does First State Bank have?
13 A. Just one.
14 Q. And where is that?
15 A. It's on the town square in there. 09:11:35
16 Q. Is that in Boise City?
17 A. Right, yeah.
18 Q. And when you were working there, approximately how many
19 employees were at First State Bank?
20 A. Oh, there was probably 12 to 14, something like that. 09:11:46
21 Q. And how long did you serve as the bank's president?
22 A. Let's see. I took over in 2002 I believe.
23 Q. And prior to becoming the president of the bank, can you
24 give the jury just a very brief description of some of the jobs
25 that you did when you first started working there after the 09:12:14

United States District Court

TIMOTHY BARNES - Direct

1 army? 09:12:17

2 A. I went through a training program under the GI bill and
3 just worked my pay up.

4 Q. Okay. And the bank itself, what type of business does the
5 bank support with regards to loans and things of that nature? 09:12:31

6 A. We do a lot of agricultural loans and we do some business
7 loans and consumer loans.

8 Q. I would like to show you, in front of you are two folders.

9 A. Each folder has a number on it.

10 Q. Let's just start with the folder that has the number 130. 09:13:00
11 Can you see the number on that yellow piece of paper?

12 A. Right. Yeah.

13 Q. Now, that exhibit is already in evidence. I would like to
14 publish it for the jury. I would like to turn to page two of
15 the exhibit. 09:13:13

16 If we could just kind of highlight the -- that's
17 great. The first half. Let me ask you a question, sir. Do
18 you recognize this letter even before we get to the specifics?

19 A. Yes, I do. That's my signature at the bottom.

20 Q. And did you draft this letter? 09:13:27

21 A. Yes, I did.

22 Q. Okay. Why don't we go ahead and just read -- what's the
23 date of the letter?

24 A. August 9, 2007.

25 Q. And can you tell us who it's addressed to? 09:13:38

United States District Court

TIMOTHY BARNES - Direct

- 1 A. Cimarron River Ranch, LLC, 3420 West Steinbeck Drive, 09:13:41
2 Anthem, Arizona.
- 3 Q. What is the account number contained in the letter?
- 4 A. 231142.
- 5 Q. Can you read the first paragraph to us, please? 09:14:01
- 6 A. It says, "A review of your checking account shows that you
7 have received thirty-six money wires totaling \$1,277,000.00
8 from June 28, 2004 through the date of this letter. All of the
9 money wires were originated by the Belize Bank International
10 Limited, 60 Market Square, Belize City, Belize." 09:14:22
- 11 Q. Can you go on to the second paragraph, sir?
- 12 A. It says, "Since Belize is listed as a country of primary
13 concern on the U.S. State Department's list of major money
14 laundering countries, the number of money wires and the total
15 of those wires are of concern to us." 09:14:43
- 16 Q. Okay. Thank you. And if we could go to now the second
17 portion of the letter. If you could read the remaining
18 portions of the letter.
- 19 A. Okay. "According to our Customer Due Diligence policy,
20 which we are required to have, we must inquire about the source 09:15:02
21 or sources of those funds and the use of those funds because of
22 the country of origin. Please furnish us with information that
23 describes the source or sources and the intended use of the
24 wired funds."
- 25 Q. Okay. And just finally, the last paragraph, sir? 09:15:24

United States District Court

TIMOTHY BARNES - Direct

- 1 A. "If you are unable to furnish the requested information, 09:15:28
2 we will be unable to receive money wires from Belize for credit
3 to your account."
- 4 Q. And that's your signature at the bottom?
- 5 A. Yes, it is. 09:15:41
- 6 Q. Can you tell the jury -- I know you just read the details.
7 Can you tell the jury why you sent this letter out?
- 8 A. Well, the volume of money wires that we were getting and
9 the fact that they were coming from Belize.
- 10 Q. And after sending this letter to that address in Arizona, 09:16:01
11 did, at some point shortly thereafter, you receive a phone
12 call?
- 13 A. Yes.
- 14 Q. And who called you?
- 15 A. James Parker called me. 09:16:11
- 16 Q. And did he introduce himself as James Parker? How did you
17 know it was James Parker?
- 18 A. He told me that, he identified himself as James Parker.
- 19 Q. And just to make sure it's clear for the jury, was this
20 conversation over the phone or did he come into your office? 09:16:29
- 21 A. No. It was over the phone.
- 22 Q. Okay. He called you?
- 23 A. He called me, yes.
- 24 Q. I would like to show you now -- and it should be in front
25 of you -- is a folder that has the number 131 on it. It's 09:16:40

United States District Court

TIMOTHY BARNES - Direct

1 Exhibit 131 and it's also in evidence. 09:16:43
2 Do you recognize this exhibit?
3 A. Yes, I do.
4 Q. What is this?
5 A. It is a summary of the phone call I had with Mr. Parker. 09:16:59
6 Q. And did you type up this summary?
7 A. Yes, I did.
8 Q. And you did that after or before the phone call?
9 A. After.
10 Q. Right. And essentially you summarized the contents or the 09:17:12
11 substance of that conversation?
12 A. Yes.
13 Q. What's the date on the top of this memorandum?
14 A. August 16, 2007.
15 Q. Can you read the first line? 09:17:24
16 A. It says, "I received a phone call about 11 a.m. from James
17 Parker, who is the source of funds that have been wired to
18 Cimarron River Ranch, LLC."
19 Q. And if you could just go ahead and read the other portion.
20 A. Okay. "The content of our conversation is as follows, to 09:17:40
21 wit:
22 "He stated that the sources of funds wired to
23 Cimarron River Ranch LLC are from real estate development.
24 "He has been in the real estate development business
25 in Belize for a long period of time with a group of investors 09:17:56

TIMOTHY BARNES - Direct

1 and had previously lived in Belize for about 20 years. 09:17:59

2 "He was surprised to receive our letter of due
3 diligence and wondered by Cimarron River Ranch had received
4 such a letter. I explained that we were required to inquire
5 into the source and uses of the funds since the wires 09:18:16
6 originated in Belize which is listed on the U.S. State
7 Department's list of countries of primary concern for money
8 laundering. He was told that he could find the list on the
9 state department's website.

10 "He stated that the use of the funds were to build a 09:18:31
11 lodge and to operate a cattle ranch. A review of Cimarron
12 River Ranch LLC's account substantiates this statement.

13 "I requested that he write a letter to us confirming
14 what he had stated in our conversation."

15 Q. Let me ask you a couple of quick follow-up questions. If 09:18:54
16 we could still keep that section highlighted.

17 A. Okay.

18 Q. Aside from the statement that he was involved in real
19 estate development or real estate development in Belize with
20 investors, do you remember anything else he said about the type 09:19:07
21 of work he did?

22 A. No, not really.

23 Q. So the first two sections of this statement, paragraphs
24 one and two, which deal with the fact that he stated that the
25 source of funds come from real estate and he had been in the 09:19:24

United States District Court

TIMOTHY BARNES - Direct

1 real estate business in Belize, that captures essentially the 09:19:26
2 substance of the conversation?

3 A. Yes, it does, yes.

4 Q. And you asked him to follow up with a letter in writing.
5 Did you ever receive a letter in writing to the best of your 09:19:35
6 memory?

7 A. No, I didn't.

8 Q. And in addition to the statement about using the funds to
9 build a lodge or cattle ranch, do you remember if he said
10 anything else about what he wanted to use the money for? 09:19:49

11 A. I don't recall. I think he mostly talked about his land
12 development in Belize.

13 Q. Okay. Let's now go to the bottom portion of this page.

14 A. Okay.

15 Q. So this is just the bottom portion of the same exhibit. 09:20:13
16 If you could read it. If it makes it easier, it is on the
17 screen in front of you to your right. It's blown up so if that
18 helps you, you can read from either the screen or from the
19 exhibit.

20 A. Okay. The rest of it says, "The decision not to close 09:20:24
21 Cimarron River Ranch, LLC's, account is based on:

22 "The fact that Cimarron River Ranch LLC has
23 constructed a lodge type building and a residential structure
24 near Kenton, OK is common knowledge.

25 "The fact that Cimarron River Ranch LLC has leased 09:20:43

TIMOTHY BARNES - Direct

1 several hundreds acres of pasture land from the Oklahoma 09:20:47
2 Commissioners of the Land Office is common knowledge.

3 "Funds wired from Belize appear to have been used for
4 the above two items as well as general operating and other
5 expenses." 09:21:06

6 The last sentence says, "Parker stated that money
7 wires from Belize would probably decline in frequency." And
8 then my signature is at the bottom there.

9 Q. Okay. And so First State Bank did not close the Cimarron
10 River Ranch account? 09:21:27

11 A. Not at that time, no.

12 Q. And at some later point, the bank itself -- let me
13 withdraw the question.

14 Do you know whether or not the account was eventually
15 shut down? 09:21:40

16 A. Yes, I think it was. It's -- I think it's noted on the
17 signature card when the account was closed.

18 MR. PERKEL: And if we could show the witness
19 Government Exhibit 77, page two.

20 Q. Now, it's not in front of you but it has already been 09:21:57
21 introduced and it's going to pop up on the screen.

22 A. Yeah, that's it.

23 COURTROOM DEPUTY: Is this admitted, Counsel?

24 Okay. Thank you.

25 THE WITNESS: Yeah. There's a notice on there that 09:22:10

TIMOTHY BARNES - Direct

1 says it was closed on 11-16-07. 09:22:12

2 BY MR. PERKEL:

3 Q. Okay. Aside from this phone conversation that you had

4 with Mr. Parker on or about August 16, 2007, did you have any

5 other phone conversations with him after this conversation? 09:22:28

6 A. No. I don't recall any.

7 Q. Okay. And did you ever meet Mr. Parker in person?

8 A. No.

9 Q. Did you ever see him in town or around town?

10 A. Oh, yeah, I saw him around town a few times. 09:22:44

11 Q. I know it's been a long time but considering how long it's

12 been, would you be able to recognize him in the courtroom

13 today?

14 A. Yeah. I think so.

15 Q. Could you look around and point to him, please, if you see 09:22:53

16 him.

17 A. Yeah. That's him right there (indicating).

18 Q. The gentleman that is standing up?

19 A. Right. Yeah.

20 Q. Okay. 09:23:00

21 MR. PERKEL: Thank you.

22 BY MR. PERKEL:

23 Q. Did there come a point in time that you saw him operate a

24 car or a motor vehicle?

25 A. Yes. 09:23:17

United States District Court

TIMOTHY BARNES - Cross

1 Q. Can you tell us about that time? 09:23:19

2 A. I was upstairs in the bank and I saw a large black car go
3 around the square and I thought that's rather unusual. So I
4 went downstairs and there was a Rolls Royce, a black Rolls
5 Royce there parked on the square, and I thought that's rather 09:23:36
6 unusual.

7 Q. And any other times that you saw the defendant or
8 Mr. Parker?

9 A. I've seen him on the square a few times, yeah.

10 MR. PERKEL: Your Honor, if I could have one moment, 09:23:57
11 please?

12 THE COURT: Yes.

13 MR. PERKEL: I have nothing further. Thank you, Your
14 Honor.

15 THE COURT: All right. 09:24:02
16 Cross?

17 MR. MINNS: Yes, please, Your Honor.

18 May I proceed, Your Honor?

19 THE COURT: Yes, you may.

20 **CROSS - EXAMINATION** 09:24:27

21 BY MR. MINNS:

22 Q. Mr. Barnes, do you remember that you and I met briefly?

23 A. Yes. You came down to my house, ha, ha, ha.

24 Q. I knocked on your door; correct?

25 A. Right. 09:24:39

TIMOTHY BARNES - Cross

1 Q. And you were kind enough to open the door? 09:24:40
2 A. Yeah.
3 Q. And then you and I visited for a little while?
4 A. Right, yeah.
5 Q. That was in Boise City, Oklahoma? 09:24:53
6 A. Right, yeah.
7 Q. What kind of car was I driving?
8 A. Oh, I don't remember. It was a small gray car. I don't
9 remember the brand.
10 Q. After we talked, did you have an opportunity to discuss 09:25:12
11 our conversation with anybody from the government?
12 A. Yeah. Walter asked me if you had come by my house and I
13 said yeah, you did.
14 Q. "Walter" meaning that gentleman, Walter Perkel?
15 A. Right. 09:25:39
16 Q. You all are on a first-name basis?
17 A. Yeah.
18 Q. Yeah. And do you know how he knew that I had come to your
19 house and not met with you some other place?
20 MR. PERKEL: Objection, Your Honor. Calls for a 09:25:56
21 question about my state of mind.
22 THE COURT: Overruled.
23 Can you answer that?
24 THE WITNESS: I think I told him that, yeah.
25

TIMOTHY BARNES - Cross

1 BY MR. MINNS: 09:26:08

2 Q. Okay. Federal law requires you, as president of the bank,
3 to make sure that the source of money from an offshore business
4 comes from legitimate funds; correct?

5 A. That is correct. 09:26:32

6 Q. And you have to do that to make sure it's not money
7 laundering or any other bad things that you are protecting
8 America from; right?

9 A. That is correct, yes.

10 Q. And you won't accepted money from another country until 09:26:45
11 you have done your due diligence; correct?

12 A. That is correct, yeah.

13 Q. And you did your due diligence in this case; correct?

14 A. That's correct, yeah.

15 Q. You made the decision that it was legal for you to accept 09:26:58
16 this money that had come from legal sources, appropriate
17 sources?

18 A. Yeah. At the time it appeared so.

19 Q. Well, it appears from your testimony that your inquiry
20 began on August 9 and around that time where you have the 09:27:20
21 letter dated August 9 that you typed yourself I believe.

22 A. Right. I did.

23 COURTROOM DEPUTY: Counsel, is this an exhibit, I'm
24 sorry.

25 MR. MINNS: I apologize. 09:27:40

United States District Court

TIMOTHY BARNES - Cross

1 COURTROOM DEPUTY: Is this an exhibit? 09:27:42

2 MR. MINNS: Yes, I said -- I probably didn't,
3 Exhibit 130. Sorry.

4 COURTROOM DEPUTY: Okay. Thank you.

5 BY MR. MINNS: 09:27:57

6 Q. And the inquiry ended on August 16, seven days later when
7 you sent the letter that you've just testified from and were
8 courteous enough to read to us word for word; correct?

9 A. Correct, yeah. Could I say something? The banking
10 regulations are very strict in this, on this subject; and so if 09:28:26
11 we don't comply with it, we get really severely criticized.

12 Q. Another thing they are strict on is, for example, if you
13 open an account and don't collect a Social Security number or a
14 taxpayer ID number, the bank examiners don't like that at all
15 either, do they? 09:28:56

16 A. No, they don't.

17 Q. If I could approach the table for an exhibit, please, Your
18 Honor?

19 THE COURT: Yes.

20 If I could have Government 77, please. 09:29:16

21 MR. MINNS: May I approach for the exhibit, Your
22 Honor?

23 THE COURT: Yes.

24 BY MR. MINNS:

25 Q. I am posting Government 77. This appears to be the 09:29:39

TIMOTHY BARNES - Cross

1 account that you just testified from that was closed on 09:29:47
2 November 16, 2007, and there doesn't appear to be a Social
3 Security number or tax ID number on it. Would you agree with
4 me on that?
5 A. Right. There's not one on there. 09:30:03
6 Q. This one isn't filled out right; correct?
7 A. That's correct, yes.
8 Q. So in your research in those seven days, you did not
9 notify Mr. Parker or anybody else that the bank had filed 36
10 suspicious activity reports with the federal government? 09:30:55
11 MR. SEXTON: Objection, Your Honor. Same objection
12 as yesterday, relevance.
13 THE COURT: Overruled.
14 THE WITNESS: Do I have to answer?
15 THE COURT: You have to if you can. Only if you can. 09:31:08
16 THE WITNESS: Yeah. We did file several suspicious
17 activity reports.
18 BY MR. MINNS:
19 Q. I apologize. That wasn't my question. My question was,
20 you did not notify Mr. Parker or anybody else that you had 09:31:23
21 filed them. That was my question.
22 A. We're not allowed to do that.
23 Q. And the federal government never wrote back, "Close the
24 account, we're suspicious"?
25 A. No. We never heard anything back from them. 09:31:44

United States District Court

TIMOTHY BARNES - Cross

1 Q. Sam Parker closed the account; correct? 09:31:50
2 A. I believe that's correct, yes.
3 Q. Did you drive up here with any of the other people from
4 Oklahoma?
5 A. No. We flew. 09:32:05
6 Q. Commercial or private or --
7 A. Commercial.
8 Q. Government plane. Government put you on the plane.
9 A. Yeah. We flew Southwest Airlines.
10 Q. Were you all sitting next to each other on the plane? 09:32:17
11 A. Who?
12 Q. Cerita Walker?
13 A. No. We were on different flights.
14 Q. I see. Have you had a chance to talk to Ms. Walker since
15 you got here? 09:32:30
16 A. Yes. We're staying at the same motel.
17 Q. Have you had a chance to, you know, discuss what you're
18 doing here with Ms. Walker.
19 A. Yeah. We've talked about that quite a bit.
20 Q. Did the government instruct you that you were not allowed 09:32:41
21 to talk about the case with each other?
22 A. I don't recall if they did or didn't.
23 Q. So if Ms. Cerita Walker were to testify that she has not
24 discussed the case with you, would you agree with that or
25 disagree? 09:33:07

TIMOTHY BARNES - Cross

1 A. I would probably disagree. 09:33:10

2 Q. Now, did you take any notes when you were having the
3 telephone conversation with Jim Parker?

4 A. Yes, I did. That was the basis of the letter or the memo
5 I wrote. 09:33:29

6 Q. Did you hand those notes to the government?

7 A. No. But they did get a copy of the letter or the memo I
8 wrote.

9 Q. Just the letter, not the notes you took when you took it?

10 A. Right. 09:33:46

11 Q. Did you keep copy of those notes?

12 A. There may be a copy in the file, in the bank's files.

13 MR. MINNS: Your Honor, could we ask that the
14 government and Mr. Barnes make an effort to check those files
15 before the trial is over and if there are notes from these, 09:34:01
16 that they could be turned over to the defense?

17 THE COURT: And they should be.

18 Are there?

19 MR. PERKEL: Are there notes? I don't know, Your
20 Honor. 09:34:12

21 THE COURT: Okay. Then you can check and if you
22 don't have them, then that's the end of it.

23 MR. PERKEL: We don't have them. I don't know if
24 they exist.

25 THE COURT: If they are not in your possession, 09:34:23

TIMOTHY BARNES - Cross

1 custody, and control, then you don't have an obligation to turn 09:34:25
2 anything over.

3 BY MR. MINNS:

4 Q. Those notes would be the easiest way to know exactly what
5 was said when you and Mr. Parker, Jim Parker, were talking on 09:34:44
6 the phone; correct?

7 A. Correct, yeah.

8 Q. And did I understand you correctly, you've never had a
9 chance to meet Mr. Jim Parker personally?

10 A. No, I haven't. 09:35:08

11 Q. Okay. Well, if you want to when you leave, you can shake
12 his hand.

13 Mr. Barnes, thank you for your truthful testimony.

14 MR. MINNS: I pass the witness.

15 THE WITNESS: You're welcome. 09:35:23

16 MR. PERKEL: Your Honor, if I could have just one
17 moment, please.

18 THE COURT: Yes.

19 MR. PERKEL: No further questions. Thank you.

20 THE COURT: You may step down. 09:36:00

21 THE WITNESS: May I make a statement?

22 THE COURT: No. I'm sorry.

23 THE WITNESS: Okay.

24 (Witness excused.)

25 THE COURT: Your next witness? 09:36:09

BILL MULLINIKS - Direct

1 MR. PERKEL: Thank you, Your Honor. The government 09:36:10
2 calls Bill Mulliniks.

3 BILL MULLINIKS,
4 called as a witness herein by the Government, having been first
5 duly sworn or affirmed to testify to the truth, was examined 09:36:28
6 and testified as follows:

7 COURTROOM DEPUTY: Can you state your name for the
8 record and spell your last name, please.

9 THE WITNESS: Bill Mulliniks, M-U-L-L-I-N-I-K-S.

10 COURTROOM DEPUTY: Thank you. Have a seat over here, 09:36:49
11 please, sir.

12 THE COURT: Was this witness on your witness listing.
13 I don't see his name?

14 MR. PERKEL: Your Honor, we recently added him to the 09:37:19
15 list based on events with regards to the State Farm insurance.

16 THE COURT: Ladies and gentlemen, do any of you know
17 this individual?

18 All right. You may proceed.

19 MR. PERKEL: Thank you, Your Honor.

20 **DIRECT EXAMINATION** 09:37:31

21 BY MR. PERKEL:

22 Q. Mr. Mulliniks, could you please introduce yourself to the
23 jury?

24 A. Hi. I'm Bill Mulliniks.

25 Q. And, Mr. Mulliniks, my office recently contacted you or 09:37:41

United States District Court

BILL MULLINIKS - Direct

1 you were contacted by my office a couple of days ago. Is that 09:37:48
2 fair to say?
3 A. Yes.
4 Q. Are you employed, Mr. Mulliniks?
5 A. I'm an insurance agent for State Farm. 09:37:56
6 Q. And where is your office located?
7 A. In Carefree, Arizona.
8 Q. How long have you been an agent for State Farm?
9 A. Almost 40 years.
10 Q. Are you an employee of State Farm? 09:38:12
11 A. No. I'm an independent contractor.
12 Q. Can you tell us the difference between what a State Farm
13 agent is and what a State Farm employee is?
14 A. I am not a salaried employee. I have a contract and I
15 sell insurance. Paid based solely on commissions and they do 09:38:27
16 not direct my daily activities.
17 Q. When you say "sell insurance," what do you mean?
18 A. I market home and auto, health and life insurance products
19 for State Farm only.
20 Q. Okay. And is State Farm, then, not you State Farm agent 09:38:52
21 but the State Farm company, is that the underwriter of the
22 insurance?
23 A. Yes.
24 Q. What does that mean?
25 A. They look at a candidate or applicant and they determine 09:39:04

United States District Court

BILL MULLINIKS - Direct

1 the price that's appropriate. 09:39:09

2 Q. And as an agent for State Farm, or an agent with State

3 Farm, you represent them in the sale of some of those products?

4 A. Yes.

5 Q. Are you kind of a middleman between a client and the 09:39:24

6 underwriter?

7 A. Yes.

8 Q. Would you consider yourself in some ways an agent of the

9 client, too?

10 A. Yes. 09:39:32

11 Q. What does the word "insurance premium" mean?

12 A. This is what we charge a customer for insurance for a

13 period of time. Automobile, it would be six months.

14 Homeowners would be for a year.

15 Q. And a customer pays for the insurance through this premium 09:39:52

16 as a way of mitigating risk in the future, if there's an

17 accident or something terrible happens with the car or the

18 house?

19 A. That's correct.

20 Q. With regards to cars, how is -- how are premiums paid? 09:40:06

21 A. Six months in advance for a period. The premium that we

22 give them is what they pay.

23 Q. So every six months?

24 A. Yes.

25 Q. And for -- and with a house? 09:40:23

United States District Court

BILL MULLINIKS - Direct

1 A. For a year. 09:40:25

2 Q. And let's just switch now to cars for a second. Client
3 walks in to your agency -- and by the way, where is your office
4 located again?

5 A. I'm in Carefree on Tom Darlington which is Scottsdale Road 09:40:36
6 essentially. A little small town.

7 Q. Carefree here in Arizona; right?

8 A. Yes.

9 Q. And so let me get back to the question. Someone walks in
10 and, hypothetically, and wants to buy automobile insurance. 09:40:55
11 How does -- how do you, as the agent, calculate or generate an
12 insurance premium for that individual?

13 A. We collect the data by asking them a series of questions,
14 where they live, where -- how they use the vehicle for talking
15 car insurance. We get the year, make, model of the vehicle, 09:41:19
16 how many miles are on vehicle and how many miles it will be
17 driven in a year.

18 Q. Okay. And that information comes directly from the client
19 or the potential client?

20 A. That's correct. 09:41:34

21 Q. And then that information, what do you do with that
22 information after the client or potential client gives it to
23 you?

24 A. It's entered into our computers and they will give us the
25 premium that is appropriate. 09:41:45

United States District Court

BILL MULLINIKS - Direct

1 Q. And it's based on that information? 09:41:48

2 A. Yes.

3 Q. One of the things that you stated was biographical data or
4 something about the person. Can you tell the Court a little
5 bit about that? 09:41:58

6 A. Well, the age, date of birth, their driving history. That
7 is verified through their driver's license. And the computer
8 runs a check to see if they have tickets, accounts. If it's a
9 business use of a vehicle, we would ask how they use it.

10 Q. What is the use of the vehicle? How does that calculate 09:42:18
11 in terms of the premium?

12 A. The mileage driven per year affects it, the way they use
13 it, like if they are driving to work, say, 50 miles or 100
14 miles a week or more.

15 Q. And so the question about the use of the vehicle, that's a 09:42:31
16 standard question?

17 A. Yes.

18 Q. That's not a casual conversation type question?

19 A. No.

20 MR. MINNS: Objection. Repetitive and leading. 09:42:40

21 THE COURT: Sustained.

22 BY MR. PERKEL:

23 Q. The -- in addition to the question about the use of the
24 vehicle, you said something about the driver's history or
25 background. What are those kinds of questions? 09:43:04

United States District Court

BILL MULLINIKS - Direct

1 A. Well as I said, you would start with their personal 09:43:07
2 information and that sort of thing would have something to do
3 with it, whether a -- an older person is rated very differently
4 than a young person.

5 Q. Okay. And did there come a point in time that you became 09:43:21
6 acquainted by someone by the name of James Parker?

7 A. Yes.

8 Q. And how come?

9 A. Well, he came to our office to inquire about insurance
10 quotes. 09:43:33

11 Q. And have you had a chance to see Mr. Parker in around the
12 Carefree area?

13 A. Yes.

14 Q. And I don't know, it may have been several years since you
15 saw him; but if you can, can you recognize him in the courtroom 09:43:46
16 today?

17 A. Yes. That's Mr. Parker (Indicating).

18 Q. Okay.

19 I would like to show you what has been identified as
20 Government Exhibit 598. It's not in evidence. It may be in 09:44:01
21 front of you. It's in a folder. And there may be several
22 folders but just turn to the folder that has the number 598?

23 A. All right.

24 Q. And take your time. If you could just flip through the
25 pages, please. 09:44:24

BILL MULLINIKS - Direct

1 A. Okay. 09:44:27

2 Q. Do you recognize the documents that are contained in

3 Exhibit 598?

4 A. Yes.

5 Q. And are those records made in the normal and ordinary 09:44:34

6 course of business of State Farm, of your State Farm agency?

7 A. Yes.

8 Q. And is it in the normal and ordinary course of business

9 for your State Farm agency to maintain or keep records such as

10 this one? 09:44:47

11 A. Yes.

12 Q. And are these records, with the information inputted in

13 these records, was it inputted at or near the time of the

14 actual occurrence of the information?

15 A. Yes. 09:44:58

16 Q. And the person who makes this information or keeps this

17 information in the record, better said, the person that keeps

18 this information, is that person under a business duty to do so

19 lawfully?

20 A. Yes. 09:45:07

21 MR. PERKEL: Your Honor, at this time I ask that

22 Exhibit 598 be admitted into evidence.

23 MR. MINNS: I have only one question, Your Honor, and

24 that who is the person that makes the entry?

25 THE COURT: I thought -- well, I'll sustain the 09:45:20

United States District Court

BILL MULLINIKS - Direct

1 objection. I thought he answered that but go ahead. 09:45:25

2 BY MR. PERKEL:

3 Q. Well, let me ask you, do you make the entries sometimes in
4 this?

5 A. Sometimes I do. Most of the times I do not. My staff 09:45:33
6 does who are licensed agents also.

7 Q. And they work in your business, too?

8 A. Yes.

9 MR. PERKEL: Your Honor, at this time I ask that the
10 exhibit be admitted. 09:45:44

11 MR. MINNS: Then I do have an objection to the -- to
12 certain specific words. They are hearsay and not necessary to
13 the --

14 THE COURT: All right. Let's see it. Let's have it
15 popped up here. Why don't you enlarge it so I can see it? 09:45:55

16 And without saying precisely what it is, what are the
17 items -- where are the items? Well, let's talk at sidebar.
18 That will make it a lot easier.

19 (At sidebar.)

20 THE COURT: Okay. What is it that you are concerned 09:46:35
21 about?

22 MR. PERKEL: We're on 598.

23 MR. MINNS: I'm sorry. And also the other one would
24 be 599. It's 599. There's a hearsay statement and that word
25 is the hearsay word. 09:47:04

United States District Court

BILL MULLINIKS - Direct

1 THE COURT: Okay. Let me ask. 09:47:05

2 Response?

3 MR. PERKEL: Yes, I'll respond. It's not hearsay.

4 It's a business record and the statement itself is actually a
5 statement that's made in the normal and ordinary course of 09:47:12

6 business because it's used to calculate an insurance premium.

7 It came up directly on his testimony. I laid the foundation
8 for the record and also --

9 THE COURT: Let me stop you. Where did the
10 information come from? 09:47:23

11 MR. PERKEL: From the individual who applied for the
12 insurance.

13 THE COURT: Okay. Can you identify that as it's
14 individual because then it would be an admission?

15 MR. PERKEL: It is. The person who applied for the 09:47:33
16 insurance was James Parker.

17 THE COURT: Right. I understand. But what I need is
18 identification by him, foundation for that before it becomes an

19 admission, because I am not completely sure that it is a
20 business record unless the foundation is there. And if the 09:47:54

21 source of the foundation happens to be the defendant, then of
22 course it's nonhearsay. So we'll leave it with that. You
23 understand what foundation is?

24 MR. PERKEL: I do. And I don't mean to quarrel with
25 you, but I think that there are a couple of different things 09:48:10

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BILL MULLINIKS - Direct

1 going on here. I think the record in itself is separate from 09:48:12
2 the admission from the defendant, is a business record and that
3 is -- it's full of hearsay.

4 THE COURT: Yeah. Let me stop you and tell you why I
5 have a question. 09:48:23

6 Some things can indeed be a business record.
7 Applications for State Farm automobile insurance certainly
8 looks like it's a business record as long as, if there is a
9 particular objection, which there is, that it's made clear
10 precisely how this is prepared. 09:48:43

11 So because he says, well, it's at or near the time.
12 We've got an objection so he's going to have to be able to say
13 precisely how he fills these things out. He didn't necessarily
14 do this. He's already said that.

15 So maybe there's a custom, a practice, procedure, 09:49:03
16 that is routine and that is what makes it reliable, an
17 exception to the hearsay rule.

18 MR. PERKEL: The other thing is -- I understand what
19 you're saying, Your Honor.

20 The other thing, that I think it's also an adoptive 09:49:16
21 admission through an agent because he's testified that he
22 essentially works as an agent of the customer as well.

23 THE COURT: Well, adopted admission, what do you
24 mean?

25 MR. PERKEL: That the statement comes in as him being 09:49:34

United States District Court

BILL MULLINIKS - Direct

1 the agent of the person who made these statements to the State 09:49:37
2 Farm agent.

3 THE COURT: Well, you don't even have to call it an
4 adopted admission. All you have to do is establish that
5 Mr. Parker said that to him after he posed that question. 09:49:48

6 So it would be an admission. But you're going to
7 have to establish that. So you have two bases as I understand
8 what you're doing. And one is the hearsay exception. The
9 other is that it's nonhearsay because it happens to be an
10 admission. 09:50:09

11 Now, if it's a hearsay exception as a business
12 record, then when there is an objection, we need more in the
13 way of establishing that, in fact, every portion of this --
14 only the portion that Mr. Minns is concerned about, how that is
15 prepared in the ordinary course of business at or near the time 09:50:35
16 the transaction occurred. Is it routine, and that -- if you do
17 that, he'll answer the question.

18 MR. PERKEL: Okay. I thought he had said stuff like
19 that but I can lay more foundation. I thought --

20 THE COURT: He's going to have to focus on this, not 09:50:50
21 just the entire document.

22 MR. PERKEL: Okay.

23 MR. MINNS: And for the --

24 THE COURT: Okay. So that's taken care of.

25 MR. MINNS: For the record, my client did not make 09:51:00

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BILL MULLINIKS - Direct

1 that statement and that is another reason why hearsay is
2 important and why the Business Records Act are not supposed to
3 pull in hearsay that could be made by a mistake at the keyboard
4 when someone is typing in the different types of things and
5 everything else.

09:51:01

09:51:15

6 For this particular direct comment to come in, the
7 person who heard it is the person that should put it in, not --
8 if this gentleman didn't put it in here and has no present
9 recollection of Mr. Parker saying the word "pleasure," which he
10 never did, it should not come in.

09:51:34

11 THE COURT: I agree with you. If somebody in the
12 corporation -- it doesn't make any difference if it's General
13 Motors or happens to be a small business corporation or
14 business. He has to get into more detail to establish that
15 this is done on a routine basis robotically if he didn't do it.

09:51:59

16 So do you understand?

17 MR. PERKEL: I do.

18 THE COURT: I don't know what he's going to say and
19 that's the objection. You may as well deal with the other one.
20 What is the other one?

09:52:13

21 MR. MINNS: It's the same word only on the other
22 exhibit.

23 THE COURT: Okay. So here we go. Let's see.

24 (End sidebar.)
25

United States District Court

BILL MULLINIKS - Direct

1 BY MR. PERKEL:

09:52:47

2 Q. Mr. Mulliniks, earlier when you started testifying, we
3 started talking about how an agent like yourself, a State Farm
4 agent, determines a premium with regards to a client and you
5 discussed some of the questions that are asked of that
6 individual, biographical information, use of the vehicle, prior
7 history with regards to speeding violations, things like that,
8 type of car.

09:53:02

9 The question about the use of the vehicle, whether
10 it's used for pleasure, whether it's used for work, commute,
11 that is a question that is used when determining the premium
12 for a vehicle. Is that fair to say?

09:53:19

13 A. Yes.

14 Q. And that is a question that your business uses as one of
15 many questions to determine the premium.

09:53:34

16 A. Yes.

17 Q. And the answers to that question could be -- what are some
18 of the answers to that question? I know one is pleasure. What
19 are some of the answers that could be given?

20 A. It could be business use which would need -- someone like
21 myself could be business use. It could be commercial use where
22 you would use it as a plumber or an electrician and/or -- it
23 could be an antique car, used very little classic car.

09:53:52

24 Q. And then the term that is assigned, depending on what the
25 client says, would depend. So, for example, if it's pleasure

09:54:18

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BILL MULLINIKS - Direct

1 or business use or antique, that would affect the ultimate 09:54:23
2 premium. Is that fair to say?

3 MR. MINNS: Leading, Your Honor.

4 THE COURT: Sustained.

5 THE WITNESS: It could be -- 09:54:31

6 THE COURT: Well, I sustained the objection.

7 Ask another question.

8 BY MR. PERKEL:

9 Q. Let me ask it this way: How does the classification of
10 how the vehicle is used, how does that affect the premium if it 09:54:40
11 does?

12 A. It could. A pleasure use could be a car used in a
13 business less than half the time. So, in other words, we don't
14 have to rate it as business use if it's just used for pleasure
15 as sometimes business use. It could affect -- the rate could 09:54:56
16 be a higher premium if it's business use or commercial use
17 versus a pleasure use.

18 Q. What about the antique use?

19 A. That would mean it would be used very little and that
20 price would be much less for the premium if it's an antique 09:55:08
21 type or classic car.

22 MR. PERKEL: Your Honor, at this time, I offer the
23 exhibit into evidence.

24 MR. MINNS: We have no objection to the exhibit. We
25 still have the exception to the hearsay in the exhibit. 09:55:22

United States District Court

BILL MULLINIKS - Direct

1 THE COURT: And I am going to sustain the objection, 09:55:26
2 Mr. Perkel. The information is not clear, as I mentioned
3 before, as to exactly how the document is prepared.

4 MR. PERKEL: Okay. Let me then --

5 THE COURT: When you use the words "at or near the 09:55:44
6 time of transaction" and "in the ordinary course of business,"
7 that is not necessarily clear when there is an objection to the
8 content of the document.

9 MR. PERKEL: Thank you, Your Honor.

10 Let me follow up then. 09:56:00

11 BY MR. PERKEL:

12 Q. Let me ask you this: And let's even back up and say a
13 customer walks in and speaks to you or one of your employees
14 and you start to get this information from them.

15 A. Yes. 09:56:12

16 Q. Type of car they have, the use of the vehicle, all of the
17 sort of basic stuff that we use to calculate the premium. Can
18 you tell the Court the process in which that happens? Is
19 somebody either typing it out on the computer, writing it down,
20 inputting it? Can you explain to the Court at the time that 09:56:25
21 the event is happening, how is information being recorded?

22 A. Well, it could be handwritten and then later entered into
23 the computer. That is the way I would usually do it. Staff
24 would probably ask some questions. Sometimes it would
25 determine whether we should go forward. The first question 09:56:45

BILL MULLINIKS - Direct

1 would be your accident record. If we establish that you have 09:56:48
2 tickets and accidents that we think would exceed it, we would
3 stop there.

4 If not, we would continued forward and we would get
5 to the personal information. We would have to have where they 09:56:57
6 live, their name, age, and that sort of information. We would
7 continue writing that. The staff is faster than I am but they
8 can enter that data in the computer as they speak to someone.
9 I probably would handwrite it and then later would enter that
10 data in the computer. 09:57:14

11 But this would be a process started and, hopefully,
12 completed when you first meet someone. Usually within a few
13 minutes you get enough data to get a quote for that person.

14 Q. And let's just say assuming that the individual, then,
15 agrees to purchase the insurance and wants to apply formally, 09:57:29
16 is the data then entered into the computer system?

17 A. Definitely. It would be entered even before that because
18 in order to give them the premium, we have to enter it in the
19 computer that would tell us what that premium should be.

20 Q. So even before the customer -- 09:57:47

21 A. Decides to buy.

22 Q. -- decides to buy, that information is entered in the
23 computer?

24 A. That's right.

25 Q. And that's to give them a good-faith estimate as to -- 09:57:53

BILL MULLINIKS - Direct

1 A. That's correct. That's correct. 09:57:56

2 Q. And this is done contemporaneously with the conversation
3 with the customer?

4 A. Absolutely.

5 Q. And your office has computers that are linked up to the 09:58:02
6 State Farm Company?

7 A. Yes. Yes, sir.

8 Q. And they offer special software that interacts with the
9 State Farm Company?

10 A. Absolutely. 09:58:11

11 Q. And after entering into this data, then, the State Farm
12 Company will give you a premium?

13 A. Within minutes, yes.

14 MR. PERKEL: Your Honor, at this point, I offer this
15 exhibit into evidence. 09:58:21

16 MR. MINNS: No change in the predicate whatsoever.
17 It remains hearsay.

18 THE COURT: Overruled. It's admitted.
19 (Exhibit Number 590 was admitted into evidence.)

20 MR. PERKEL: Thank you, Your Honor. 09:58:29

21 THE COURT: And we're taking a break at this time.

22 MR. PERKEL: Thank you.

23 THE COURT: I was going to ask you, are you going to
24 move on to the other exhibit right now so we can get that out
25 of the way or are you moving somewhere else? 09:58:38

United States District Court

BILL MULLINIKS - Direct

1 MR. PERKEL: I was going to talk about this exhibit, 09:58:40
2 but I can move them all if it's better for the Court.
3 THE COURT: Let's then -- if you're going to discuss
4 this one, let's take a break. About 20 minutes. We're in
5 recess. 09:58:51
6 COURTROOM DEPUTY: All rise.
7 (Jury departs.)
8 (Recess at 9:59; resumed at 10:23.)
9 (Jury enters.)
10 (Court was called to order by the courtroom deputy.) 10:23:22
11 THE COURT: Okay. Please be seated.
12 Ready to go?
13 MR. PERKEL: Yes, Your Honor. Thank you.
14 Before we get into Exhibit 598, just for the sake of
15 expediency, 599, Your Honor, the Court's request also deals 10:23:42
16 with another vehicle and some more questions, so we seek the
17 admission of 599 based on the record.
18 THE COURT: Thank you.
19 The other objection that you filed?
20 MR. MINNS: Yes. Our position was the same, Your 10:23:57
21 Honor.
22 THE COURT: All right. Overruled. It's admitted.
23 (Exhibit Numbers 598 and 599 were admitted into
24 evidence.)
25 MR. PERKEL: Thank you, Your Honor. 10:24:02

United States District Court

BILL MULLINIKS - Direct

- 1 So let's go to 598 and if you have trouble reading 10:24:06
2 any of the exhibit in 598, we're going to put some of it on the
3 screen, which is just to your right, as well which is,
4 essentially, an image of the exhibit.
- 5 BY MR. PERKEL: 10:24:22
- 6 Q. Sir, the application for State Farm Mutual Insurance, can
7 you tell us the name of the person that is insured by this
8 application?
- 9 A. James Parker.
- 10 Q. And that's over in the top left corner of the exhibit? 10:24:34
- 11 A. Yes.
- 12 Q. What's the P.O. Box that is there?
- 13 A. In our town, the P.O. Box, everyone must have one in order
14 to receive mail. Can you not use street addresses?
- 15 Q. Oh, okay. That's in the town of Carefree? 10:24:49
- 16 A. Yes.
- 17 Q. So you also reside in Carefree?
- 18 A. Yes.
- 19 Q. And you have a P.O. Box?
- 20 A. Yes. 10:24:56
- 21 Q. And what's the P.O. Box in -- for James Parker?
- 22 A. 5722.
- 23 Q. And what's the residence address?
- 24 A. 35802 North Meander Way, Carefree 85377.
- 25 Q. And what's the year and make and model of the car that was 10:25:14

United States District Court

BILL MULLINIKS - Direct

1 insured? 10:25:18

2 A. It is a --

3 Q. And the screen might help you.

4 A. It was a 2004 Rolls Royce.

5 Q. Okay. And just the last four digits of the VIN number? 10:25:29

6 A. 07442.

7 Q. And what was the date that the insurance was obtained or

8 purchased?

9 A. July 14, 2009.

10 Q. And below that, who is listed as the principal operator? 10:25:46

11 A. James Parker.

12 Q. And what was the occupation that was recorded during the

13 time that he purchased the insurance?

14 A. Ranch owner.

15 Q. And then below that, what are the -- who are the current 10:26:01

16 drivers that are listed?

17 A. Both Samuel Parker and Jacqueline Parker.

18 Q. Okay. And one of the things that you discussed earlier,

19 some of the information that was obtained has to do with

20 employment and you just told us that Mr. Parker's employment at 10:26:21

21 the time of the application was ranch owner.

22 What was the employment that was reported for Sam

23 Parker and Jacqueline Parker?

24 A. Sam had no job at the time and we just show his wife as a

25 homemaker. 10:26:41

United States District Court

BILL MULLINIKS - Direct

1 Q. Okay. And the record below the operators of the vehicle 10:26:42
2 deals with some of the questions that we discussed?

3 A. Yes.

4 Q. And can you just read the first sentence, "During the past
5 5 years --"? 10:26:55

6 A. -- "have you, the applicant, any household member, or any
7 regular driver: Had license suspended, revoked, or refused?"

8 And then the next question is, "Had an accident or
9 loss? If yes, has the accident or loss previously been
10 recorded?" 10:27:12

11 And then, "Has been fined, convicted, or forfeited
12 bail for traffic violations? If yes, has the violation
13 previously been recorded?"

14 And we answered, "Yes."

15 Q. And, again, these are some of the questions that are asked 10:27:28
16 of a client or potential customer?

17 A. Yes.

18 Q. Okay. Thank you, sir. If we could zoom out of there and
19 just go to the bottom section of the page and there's a line
20 item that says "most recent liability carrier." 10:27:44

21 A. Yes.

22 Q. Did you learn that at some point that this car had been
23 insured by State Farm in Oklahoma?

24 A. Yes.

25 Q. And below that is a question, "How is vehicle used?" 10:28:03

United States District Court

BILL MULLINIKS - Direct

1 A. Yes. 10:28:06
2 Q. And can you read the answer?
3 A. "Pleasure."
4 Q. And then below that we get to a line just below the word
5 lien code where you see it starts with TERR. 10:28:17
6 A. That means the territory, 15, which is the rating area
7 such as North Scottsdale area and Carefree Cave Creek.
8 Q. And what's the WRK/SCL? What does that mean?
9 A. That would mean driving to work each day we would show the
10 mileage there. 10:28:42
11 Q. So you would record the mileage based on a representation
12 of how many miles estimated you drive to and from work?
13 A. That's correct.
14 Q. And what is the item in that one?
15 A. Zero. 10:28:53
16 Q. What does that number days stand for?
17 A. Number of days you drive to work. So 20 miles a day would
18 be 100 miles a week, right?
19 Q. So that also deals with the work?
20 A. Yes. 10:29:05
21 Q. Okay. In this case zero days to work?
22 A. Right.
23 Q. Well about the next estimate in mileage, what is that?
24 A. That's estimated annual mileage the car would be driven.
25 We have 5,000 for that. 10:29:19

United States District Court

BILL MULLINIKS - Direct

1 Q. And the next line item or the next word says ODOM. 10:29:20
2 A. That means that the odometer at the time we insured it had
3 2200 miles on it.
4 Q. Do you think that could be 2200?
5 A. Yes. I'm sorry. That's 22,000. 10:29:36
6 Q. 22,000. I might have misspoke as well. So 22,000.
7 And then I see there's a circle around the 6A. What
8 does that mean?
9 A. That means the driver is 50 years to 75 years old and
10 drives under 7500 miles a year. 10:29:55
11 Q. And what is the significance of the 7500 miles?
12 A. The rate is lower under 7500 than it is over.
13 Q. And the 7500 is a yearly estimate?
14 A. Yes, it is.
15 Q. Okay. And then at the bottom there is an HO status, what 10:30:09
16 does mean?
17 A. He owns his home.
18 Q. And then let's turn to the very next page of the exhibit,
19 which is page three, and highlight the top portion there. What
20 was sort of the payment for the six months starting July 14? 10:30:38
21 A. \$633.74.
22 Q. And, again, the effective date you see is July 14, 2009?
23 A. That's correct.
24 Q. I want to just turn now to page six of the exhibit. What
25 is this a copy of? 10:31:10

United States District Court

BILL MULLINIKS - Direct

1 A. This is temporary insurance card we give a customer when 10:31:11
2 they buy insurance with us. It takes a few days -- weeks to
3 get the original from the company.

4 Q. And what is the name of the person on those cards?
5 A. James Parker. 10:31:23

6 Q. And is the other information about the car, is that
7 consistent with what's on the application?
8 A. Yes.

9 Q. Let's go on to Exhibit 599 which has also now been
10 admitted into evidence. 10:31:36

11 A. Okay.

12 Q. And if we could go to the top portion of the page. Did
13 Mr. Parker at some point ask that an additional car be insured
14 by State Farm?
15 A. Yes. 10:32:01

16 Q. Can you read the name of the insured person at the top of
17 the form or insured people?
18 A. James and Jackie.

19 Q. And, again, that's the same P.O. Box?
20 A. Correct. 10:32:13

21 Q. And the residence address?
22 A. Is 35802 North Meander Way Carefree.

23 Q. You said something interesting earlier about the -- that
24 in Carefree everyone has a P.O. Box?
25 A. Yes. 10:32:26

United States District Court

BILL MULLINIKS - Direct

- 1 Q. Why is that, by the way? 10:32:26
- 2 A. The government did not deliver mail in Carefree. Our post
3 office is a substation, it's not a federal post office, and
4 they have no mail delivery to houses.
- 5 Q. Okay. What kind of car was insured with regards to this 10:32:41
6 exhibit?
- 7 A. It was an '04 Hummer H2.
- 8 Q. What was sort of the effective date of the insurance?
- 9 A. It was December 16, 2010.
- 10 Q. And, again, who are listed as the drivers for this car? 10:33:00
- 11 A. James Parker and Jacqueline Parker.
- 12 Q. Okay. And let's go down to the second batch of the
13 screen. What is the purchase date that's recorded in the
14 record?
- 15 A. August 1, 2004. 10:33:32
- 16 Q. And the vehicle, how is it used for?
- 17 A. We show pleasure.
- 18 Q. And the estimated annual mileage at the bottom?
- 19 A. 7,000.
- 20 Q. So that's under the 7500? 10:33:51
- 21 A. Yes.
- 22 Q. I'm just going to highlight back that one section, please.
23 Do you see the 7,000 that's highlighted?
- 24 A. Yes.
- 25 Q. And it's under that 7500. What does that mean again? 10:34:10

United States District Court

BILL MULLINIKS - Direct

1 A. Just means you're driving it less. 10:34:14
2 Q. Okay. And there's nothing under the work/school mileage?
3 A. No.
4 Q. Now, you see at the bottom of the screen, you can see my
5 name and an e-mail address? 10:34:28
6 A. Yes.
7 Q. Did you write that in just a few days ago?
8 A. Yes, I did.
9 Q. And that was during a conversation we had?
10 A. Yes. 10:34:36
11 Q. Let's go to page three of the exhibit.
12 A. Okay.
13 Q. And what was the six-month insurance premium on this?
14 A. \$331.32.
15 Q. Now, before we go on, I just want to -- let's go to page 10:34:56
16 10 of the exhibit and, again, what's this -- what is this a
17 copy of?
18 A. That the insurance card, temporary insurance card we give.
19 Q. And who is insured for this vehicle?
20 A. James and Jackie Parker. 10:35:15
21 Q. Now, I want to -- I'm sorry to do this but switch very,
22 very quickly back to 598, page three of the exhibit. If we
23 could just enhance the -- just the bottom portion of the
24 screen. I don't know if you can see that or not but there's
25 a -- I see your name at the bottom that says agent name, 10:35:47

United States District Court

BILL MULLINIKS - Direct

1 Mr. Bill Mulliniks. 10:35:50
2 A. Yes.
3 Q. Can you just read those remarks that are from the regional
4 office?
5 A. What's that now? 10:36:02
6 Q. Do you mind reading to the jury the remarks that are
7 contained --
8 A. Okay. "Mutual per Rose. Please add on by Cimarron River
9 Ranch, P.O. Box 5722, Carefree, Arizona. Okay to add driver
10 exclusion to this policy for Samuel Parker." 10:36:19
11 Q. What does that mean, "Okay to add driver exclusion to this
12 policy for Samuel Parker"?
13 A. Because Sam had some driving record tickets that caused us
14 to want to exclude him as a driver.
15 Q. And this is the record that pertains to the Rolls Royce? 10:36:33
16 A. When we first, I guess, ran the driving record, yes.
17 Q. Let's go to Exhibit 600 and this is not in evidence. Do
18 you recognize the two-page exhibit?
19 THE COURT: I'm sorry. You'll have to look at the
20 exhibit itself. 10:37:08
21 THE WITNESS: 600?
22 BY MR. PERKEL:
23 Q. Yes. It's in the folder in front of you.
24 COURTROOM DEPUTY: It's not post to do jury. If you
25 want to use the screen for the witness as well, you can do 10:37:23

United States District Court

BILL MULLINIKS - Direct

1 that.

10:37:24

2 MR. PERKEL: Oh, okay.

3 BY MR. PERKEL:

4 Q. Do you recognize Exhibit 600?

5 A. Yes.

10:37:27

6 Q. And are these, again -- are these records that are
7 maintained in the normal and ordinary of business by your State
8 Farm agency?

9 A. Correct.

10 Q. What do these records pertain to?

10:37:36

11 A. His home.

12 Q. When you say "his"?

13 A. Mr. Parker's house.

14 Q. Okay. And that's James Parker?

15 A. Yes.

10:37:49

16 Q. Okay.

17 MR. PERKEL: Your Honor, at this point I offer this
18 exhibit into evidence.

19 MR. MINNS: No objection.

20 THE COURT: It's admitted.

10:37:54

21 (Exhibit Number 600 was admitted into evidence.)

22 Q. Did there come a point in time that Mr. Parker asked State
23 Farm to insure the residence in Carefree, Arizona?

24 A. Yes.

25

BILL MULLINIKS - Direct

1 Q. And let's go to the named insured mailing address. It's 10:38:10
2 at the top of the screen.
3 A. It's Sunlight Financial, LLC, P.O. Box 5722, Carefree,
4 Arizona.
5 Q. And what's the effective date of the insurance? 10:38:20
6 A. September 10, 2009.
7 Q. And what is the liability or how much coverage does the
8 house have?
9 A. \$2,900,000.
10 Q. And it says policy type, rental dwelling policy, what does 10:38:37
11 that mean?
12 A. That means that the owner of the house is an entity other
13 than Mr. Parker.
14 Q. So the owner or the house was insured in another name. Is
15 that correct? 10:38:50
16 A. Correct.
17 Q. So that's a code they used for that or that term reflects
18 that?
19 A. That type of policy, yes.
20 Q. And what's the location of the premises? 10:38:56
21 A. It is the 35802 North Meander Way, Carefree, Arizona.
22 Q. And what's the year's premium on that house?
23 A. \$6,302.
24 Q. And I would like to turn to Exhibit 601. It should be in
25 a folder in front of you. 10:39:30

United States District Court

BILL MULLINIKS - Direct

1 Do those records look like records that pertain to 10:39:44
2 the residence?
3 A. Yes.
4 Q. And those are records that are maintained in the ordinary
5 course of business by your agency? 10:39:49
6 A. Yes.
7 MR. PERKEL: Your Honor, at this time I would seek
8 the admission of 601.
9 MR. MINNS: No objection.
10 THE COURT: It's admitted. 10:39:56
11 (Exhibit Number 601 was admitted into evidence.)
12 BY MR. PERKEL:
13 Q. Just going briefly to the first page of the exhibit, just
14 the top portion, again, you can see that same amount due for
15 the premium, the \$6,302? 10:40:03
16 A. Yes.
17 Q. And let's go to page four of the exhibit. Let's just do
18 the middle section of the page.
19 A. Okay.
20 Q. Where it says coverage. It's going to be on the screen in 10:40:17
21 front of you, too.
22 A. Okay.
23 Q. You described how this house was classified as a rental
24 dwelling unit. What is that -- just taking a step back, what
25 does that cover if the person who insures his house is a rental 10:40:32

United States District Court

BILL MULLINIKS - Direct

1 dwelling, what does that mean? 10:40:34

2 A. It means the home would be covered itself, just not
3 contents. To a small extent, contents would be covered; but if
4 you live in the house and have furnishings, you usually have to
5 buy a furnishings policy in addition to the home policy because 10:40:46
6 the house policy is covering the home, all of it, itself, but
7 not all of the contents.

8 Q. So in this case, because the house was insured as a rental
9 dwelling, it's fair to say, then, that other than a very small
10 amount of coverage, there really was no coverage for the 10:41:08
11 contents of the home?

12 MR. MINNS: Objection. Leading. There's no need for
13 an answer.

14 THE COURT: Sustained.

15 MR. PERKEL: Let me rephrase the question. 10:41:15

16 Q. Was additional insurance purchased by Mr. Parker?

17 A. Yes.

18 Q. And how much additional insurance did the defendant
19 purchase?

20 A. \$500,000. 10:41:25

21 Q. And can you just indicate where it is on the screen?
22 We're going to highlight it. Is that where it says that?

23 A. Yes.

24 Q. And what does it read?

25 A. Personal property coverage B, \$500,000. 10:41:35

United States District Court

BILL MULLINIKS - Direct

1 Q. And what does that \$500,000 mean? 10:41:40

2 A. That's your personal clothing, televisions, computers,
3 artwork, furniture, everything you have personally in your
4 home.

5 Q. So let's say there's a fire in the home and whole thing 10:41:53
6 burned down and there's no insurance fraud, everything looks
7 legit. And they come to State Farm and say, "Can you help us
8 cover our stuff?" What amount can that person get to replace
9 the furniture and the TVs and all of that stuff?

10 A. This particular policy would have a limit of \$500,000. 10:42:11
11 Then we would have a -- we would have to have a submission of
12 what you have in the house, a list of the items lost and value.

13 Q. Now, if this individual, if Mr. Parker hadn't purchased
14 this additional \$500,000, would his coverage for personal
15 property in the home be significantly less? 10:42:31

16 A. Yes.

17 Q. Is the \$500,000 coverage, is that automatic or a per
18 customer request?

19 A. No. No. That's not automatic. The person would tell us
20 how much they need to cover their personal belongings. 10:42:44

21 Q. So this information came from the defendant himself?

22 A. Yes.

23 Q. I would like to show you -- and there should be some
24 additional folders in front of you. I don't know if you see
25 them. 10:43:13

BILL MULLINIKS - Direct

1 A. Yes. 10:43:19

2 Q. Now, in order to insure the house, did you actually go
3 visit the residence?

4 A. Yes, I do.

5 Q. And you have been in business in Carefree for how long? 10:43:33

6 A. Since 1983.

7 Q. Are you pretty familiar with the neighborhoods and roads
8 around there?

9 A. Yes.

10 Q. I would like to show you at this exhibit only, Exhibit 10:43:44
11 Number 22 -- excuse me, Exhibit 422. Do you recognize that?

12 A. Yes.

13 Q. And what is that a photograph of?

14 A. Jim Parker's home.

15 Q. Is that a fair and accurate depiction of how the home 10:44:13
16 looks?

17 A. Yes.

18 MR. PERKEL: At this point, Your Honor, I ask that
19 Exhibit 422 be admitted.

20 MR. MINNS: No objection. 10:44:23

21 THE COURT: It's admitted.

22 (Exhibit Number 422 was admitted into evidence.)

23 Q. And if you could publish it, too, for the jury.

24 A. Yes.

25 Q. Now, you didn't take this photograph. Is that true? 10:44:30

United States District Court

BILL MULLINIKS - Direct

1 A. Yes. 10:44:35

2 Q. But this is how the home looks, generally, when you

3 visited it?

4 A. Yes.

5 Q. And let me show you Exhibits 424, 425 and 426. And do you 10:44:42

6 recognize 424?

7 A. Yes.

8 Q. And do you recognize 425?

9 A. Yes.

10 Q. And 426? 10:45:13

11 A. Yes.

12 Q. Okay. Are these exhibits also fair and accurate

13 depictions of the home?

14 A. Yes.

15 MR. PERKEL: Your Honor, at this point, I ask that 10:45:26

16 these exhibits be admitted, 424, 425, 426.

17 MR. MINNS: All pictures of the same home, all

18 irrelevant, all repetitive and all intended to prejudice.

19 THE COURT: I'm not sure why we need all of them.

20 MR. PERKEL: Some of them are closer up views and 10:45:42

21 slightly different angles.

22 THE COURT: Okay. Overruled.

23 (Exhibit Numbers 424, 425, 426 were admitted into

24 evidence.)

25

BILL MULLINIKS - Direct

1	BY MR. PERKEL:	10:45:54
2	Q. Let's just go to 424, page two.	
3	A. Okay.	
4	Q. And that is the same photo, just a closer-up picture?	
5	A. Yes.	10:46:06
6	Q. And going to 426, page two?	
7	A. Okay.	
8	Q. Do you see it on the screen?	
9	A. Yes.	
10	Q. And that's just another photograph of the house from a	10:46:21
11	different angle?	
12	A. Yes. Just closer.	
13	Q. Okay. Now, after your agency sold insurance to the	
14	defendant, did you ever have a chance to see the Rolls Royce?	
15	A. I did, yes.	10:46:46
16	Q. And where did you see it?	
17	A. I think I saw it at the office. That is my recollection.	
18	Came to the office sometime. I've seen the car in town.	
19	Q. Is Carefree sort of -- the township of Carefree sort of a	
20	small township?	10:47:04
21	A. Very small.	
22	Q. Have you had a chance to see -- did you ever see the	
23	defendant either at your agency or outside the agency?	
24	A. Yes.	
25	Q. Can you tell the jury about that?	10:47:16

United States District Court

BILL MULLINIKS - Cross

1 A. Well, my city is very close to his house and there's an 10:47:17
2 annual Christmas parade we have and he came to have an open
3 house on that Christmas parade and he came into my office as a
4 customer. We just had food and beverages for the people
5 watching the Christmas parade. 10:47:35

6 Q. And did you have a brief conversation with him about what
7 he does for a living?

8 A. I don't recall if we discussed business. I just said I
9 never knew what he did for a living other than owned a ranch in
10 Oklahoma. I knew that. 10:47:51

11 Q. Did he tell you about Oklahoma and the ranch? Is that how
12 you knew that?

13 A. I just knew it. I think we had a brief conversation about
14 he had a truck that had been to Colorado to get hay as I
15 recall. 10:48:07

16 MR. PERKEL: Your Honor, if I could have one moment,
17 please.

18 THE COURT: Yes.

19 MR. PERKEL: I have no further questions. Thank you.

20 THE COURT: All right. 10:48:13

21 Cross?

22 MR. MINNS: please, Your Honor.

23 **CROSS - EXAMINATION**

24 BY MR. MINNS:

25 Q. Good nearly morning, nearly afternoon, Mr. Mulliniks. We 10:48:35

BILL MULLINIKS - Cross

1 had a chance to meet during the break; correct? 10:48:41

2 A. Correct.

3 Q. I apologize for not meeting you sooner. Your name was not
4 originally on the government list.

5 I believe I asked you if it was possible that 10:48:54

6 Mr. Parker would have said that this was the family's ranch and
7 I believe you said yes, that was possible.

8 A. Possible, yes.

9 MR. MINNS: Your Honor, may I publish Plaintiff's
10 Exhibit 600? 10:49:13

11 THE COURT: Yes.

12 BY MR. MINNS:

13 Q. This is part of the declaration on the insurance policy
14 and the customer and the agent is required to tell you who is
15 the owner of the property, the named insured; correct? 10:49:33

16 A. Yes.

17 Q. And the owner of the property, the named insured, is
18 Sunlight Financial, LLC; is that correct?

19 A. Yes.

20 Q. And so your insurance company has also been told that 10:49:45

21 Mr. Parker is renting the home; correct?

22 A. Well, that term, rental dwelling, applies to a house that
23 someone would rent. It's the one we would use, whether a trust
24 owns it, pays -- I have customers that have a trust. Their
25 home is in a trust. They live in it. They may not be paying 10:50:13

BILL MULLINIKS - Cross

1 rent to the trust or not. I don't get into that. But that's a 10:50:17
2 description of the policy, yes.

3 Q. I gotcha. So you have other customers whose homes are not
4 owned by them but are owned by trusts?

5 A. Yes. 10:50:29

6 Q. There's nothing about that that would cause you to wonder
7 if someone was trying to commit income tax evasion?

8 A. Absolutely not, no.

9 MR. MINNS: Your Honor, I wish to publish a page on
10 Government's Exhibit 598. 10:50:47

11 THE COURT: Sure.

12 BY MR. MINNS:

13 Q. Now, I've highlighted the name Samuel Parker on the Rolls
14 Royce.

15 A. It says make at the top, Rolls Royce 2004. 10:51:09

16 Q. Now, the Rolls Royce, that car and that car alone, Samuel
17 J. Parker was named to be insured on it; correct?

18 A. Yes.

19 Q. And somebody truthfully told you in response to Samuel
20 Parker that he had an accident or a loss and he's had 10:51:34
21 something, some type of violation that has been recorded. The
22 person purchasing the policy telling you that and your
23 insurance company that?

24 A. Correct.

25 Q. So they want Sam Parker on the policy of the car but they 10:51:56

BILL MULLINIKS - Cross

1 are also telling you that the young man has had some problems? 10:52:02

2 A. Yes.

3 MR. PERKEL: Objection, Your Honor. Foundation.

4 THE COURT: Well, it's over -- overruled unless
5 you're going to ask for something else. 10:52:13

6 BY MR. MINNS:

7 Q. And later, because of those disclosures, the insurance
8 company decides they don't want the risk of Sam Parker;
9 correct?

10 A. Yes. 10:52:26

11 Q. And so they have to be put in the more expensive insurance
12 pool; correct?

13 A. Yes.

14 Q. And you don't get into the tax issues for clients;
15 correct? 10:52:48

16 A. We do not.

17 Q. As a matter of fact, when they try to ask you tax
18 questions, you ask them to go see their CPA?

19 A. That's correct.

20 Q. And because it gets complicated, even though insurance may 10:52:58
21 have some tax benefits or harm, and you just don't -- you're
22 not trained to deal with that?

23 MR. PERKEL: Objection, Your Honor. Form, foundation,
24 and opinion.

25 THE COURT: Sustained. 10:53:12

BILL MULLINIKS - Cross

1 BY MR. MINNS: 10:53:18

2 Q. And the issue of pleasure or business, you know that that

3 may affect deductibility but you do not give advice on that;

4 correct?

5 A. That's correct. 10:53:32

6 Q. But you know that they can get a bigger deduction for

7 business than they can if the category is pleasure?

8 MR. PERKEL: Objection. Foundation. Your Honor.

9 THE COURT: Overruled.

10 THE WITNESS: Yes. 10:53:46

11 BY MR. MINNS:

12 Q. But you also know that the cot of the pleasure insurance

13 is less than the business insurance?

14 A. Probably 10 percent.

15 Q. But you try to stay out of the complexities of these 10:54:01

16 particular issues; correct?

17 A. Correct.

18 Q. But your clients, you compete with other insurance agents

19 and so your clients generally want to get the best deal they

20 can for the insurance policy? 10:54:14

21 A. Yes.

22 Q. And you do advise them that -- you give them general

23 guidelines about when something becomes personal use and when

24 something is business? You just don't -- you don't want to be

25 down on the dotted line giving tax advice? 10:54:30

BILL MULLINIKS - Cross

1 MR. PERKEL: Objection, Your Honor. Foundation. 10:54:33
2 Asked and answered.

3 THE COURT: Sustained.

4 BY MR. MINNS:

5 Q. I believe when we had a moment to talk during the break, 10:54:47
6 you are teaching me a little bit about insurance and you said
7 that if it's more business than not, then it goes down as
8 business. If it's slightly less, then you're allowed to put
9 pleasure and get the 10 or 15 percent less on it?

10 A. Yes. You can have a car that you use some in business, 10:55:13
11 small amount, under 50 percent, and you can still get a
12 pleasure rate.

13 Q. But the clients, they don't come up with the categories?
14 They don't say "little bit of pleasure"?

15 A. No. 10:55:27

16 Q. I mean, these are just categories that someone has to
17 check off on the insurance form?

18 A. That's correct.

19 Q. Did you take all of these pictures of the home that you
20 just identified? 10:55:40

21 A. I assume I did, yes. I take more than one. Usually --
22 well, you've got to take at least two for the company. I
23 usually take three or four.

24 Q. Okay. All right. So if the policy is written out to
25 Sunlight Financial, there never was a claim made on the policy; 10:56:05

BILL MULLINIKS - Cross

1 correct? 10:56:08

2 A. I think we claimed some hail storm I believe in 2010 in
3 the fall. There was a claim for a hail damage. It hit
4 everyone up there.

5 Q. The check would be made out to Sunlight Financial; 10:56:21
6 correct?

7 A. Usually. And I believe in his case, I think they -- they
8 made the check to he and his wife and switched the house back
9 as I recall. I believe that was done.

10 Q. Okay. Pleasure meeting you -- I hope I'm pronouncing this 10:56:34
11 correctly -- Mr. Mulliniks?

12 A. Mulliniks, yes.

13 Q. Thank you.

14 MR. MINNS: Pass the witness, Your Honor.

15 THE COURT: All right. 10:56:44

16 MR. PERKEL: No further questions for Mr. Mulliniks.

17 THE COURT: Okay. You may step down.
18 Your next witness.

19 (Witness excused.)

20 MR. PERKEL: Thank you, Your Honor. 10:56:51

21 The government calls Marisol Cavazos.

22 THE COURT: Counsel, let me see you at the sidebar
23 at.

24 (At sidebar.)

25 THE COURT: I understand all of the witnesses you are 10:57:32

BILL MULLINIKS - Cross

1 going to call today are not ones that I read to the jury to
2 determine whether or not they knew them?

10:57:32

3 MR. PERKEL: Well, the State Farm witnesses we added
4 to the witness list late.

5 THE COURT: So the answer is yes, I didn't read their
6 names.

10:57:46

7 MR. PERKEL: Well, not all the witnesses. We have
8 some witnesses we are going to call later today that are on the
9 list.

10 THE COURT: How many witnesses? Who are they? So I
11 can ask the jury.

10:57:54

12 MR. PERKEL: Sure. It's Marisol Cavazos.

13 THE COURT: Spell it.

14 MR. PERKEL: Do you mind if I get my book real quick?

15 THE COURT: Well, let's go with who are the other
16 ones first?

10:58:05

17 MR. PERKEL: This is the e-mail that I sent with
18 their names. Marisol Cavazos and Ed McLenna and that's it.

19 THE COURT: And why were they called late?

20 MR. PERKEL: Well, the reason why is because -- a
21 couple things. One is we had a State Farm insurance agent from
22 Oklahoma who was going to come to testify who had heart
23 problems earlier and this year and didn't want to come,
24 basically; he's sick. We got a note from his doctor.

10:58:17

25 And so we needed to get some custodians to discuss

10:58:31

BILL MULLINIKS - Cross

1 the process of the insurance records. We did have a State Farm 10:58:38
2 Insurance custodian listed on our list of witnesses as well we
3 were trying to get ahold of in addition to Mr. --

4 THE COURT: Okay. Where do these people live?

5 MR. PERKEL: They live in Phoenix. I don't know in 10:58:43
6 Phoenix, but they live in the Valley.

7 THE COURT: Okay. But they are State Farm Insurance
8 agents?

9 MR. PERKEL: Yes. They are not agents. They are
10 State Farm Insurance employees. 10:58:53

11 The other reason, to answer your question about
12 calling -- well, about the witnesses is that you did -- on
13 Friday or Thursday when we discussed some of the records, we
14 discussed some of the business records. You said as long as
15 you can prove the foundation and admission of business records 10:59:07
16 in terms of getting them in, and I went back --

17 THE COURT: So are these only custodians of records?

18 MR. PERKEL: These are custodians. This is a
19 custodian --

20 THE COURT: Okay. Do you know what records they are 10:59:20
21 going to offer?

22 MS. ARNETT: I have a list of the exhibits.

23 THE COURT: Do you have objections to any those, so
24 that we can save that time by calling custodians for only
25 certain purposes? 10:59:35

BILL MULLINIKS - Cross

1 MS. ARNETT: Sure. The only objection would still be 10:59:36
2 the use of the word "pleasure." It's found throughout all of
3 these custodian of records exhibits.

4 THE COURT: All right. So, then, you can call the
5 witnesses and we can -- if you can establish the foundation for 10:59:46
6 that particular exhibit, then the rest of them can just come
7 in.

8 MR. PERKEL: Okay.

9 THE COURT: And do you have anything else to ask them
10 or just are they custodians? 11:00:04

11 MR. PERKEL: They are custodians.

12 THE COURT: I mean, do they have any personal
13 contact, that kind of thing? Do they have any personal
14 knowledge that you are going to be asking the individuals?

15 MR. PERKEL: No. They never met the defendant but 11:00:18
16 they have knowledge of the records.

17 THE COURT: So all of the records that they are
18 offering in?

19 MR. PERKEL: That's correct. And the second witness
20 is a claims representative, so he has knowledge of the claims 11:00:25
21 records.

22 THE COURT: Okay. With respect to that, are there
23 any objections to those exhibits?

24 MR. PERKEL: That's Mr. McLenna.

25 MR. MINNS: If I could respond, Your Honor. We don't 11:00:37

BILL MULLINIKS - Cross

1 have additional objections. We could make it right this second 11:00:38
2 and not make it again when we come in. Only the use of the
3 word "pleasure," if the same predicate is offered, I assume the
4 Court would make the same ruling, so we would stipulate that
5 they can offer the same predicate. 11:00:54

6 THE COURT: Counsel, with respect to this huge list
7 of custodians, why don't you talk to counsel and see so that we
8 don't have to do this at the sidebar. Has there been a strong
9 objection to custodians? Is that the reason why?

10 MR. SEXTON: We gave the Court a list in that 11:01:11
11 pleading you asked us of all of the people we are going to
12 call. This is only a substitution because of this one witness.

13 THE COURT: Yeah. But what I'm saying is,
14 ordinarily, in a case like this, unless there's an objection to
15 the custodians, they just come in. You don't have to call them 11:01:26
16 and parade them in the courtroom. We save a lot of time.

17 MR. SEXTON: Some of the records we think should have
18 somebody interpret because there's codes and other things.

19 THE COURT: That's fine. But instead of a list like
20 this, why don't you talk to counsel? Let's save a lot of time. 11:01:39
21 You can then parade these custodians in here. If you have to
22 highlight a portion of the record, you know so. But, you know,
23 that just -- all it requires is conferring with counsel.

24 MS. ARNETT: They have a list actually. They have a
25 list of the exhibits, because we got with them over a phone 11:01:57

BILL MULLINIKS - Cross

1 call of the ones that we weren't going to have -- that we 11:01:59
2 weren't going to have a problem, because they were custodians.
3 So we have over 200 exhibits that we already gave them that we
4 didn't have a problem with them.

5 MR. PERKEL: And this e-mail I sent to them, too, 11:02:12
6 last night, so I gave it to them.

7 THE COURT: All right. I know you want to save them
8 time. We all want to save time. Let's do it. Okay.

9 (End sidebar.)

10 THE COURT: Ladies and gentlemen, I have a couple of 11:02:27
11 other names for you and her name is -- first name is I think
12 Marisol Cavazos. Does anybody know her? She happens to work
13 for State Farm.

14 Okay. How about Ed McClenna? That's M-C-L-E-N-N-A.
15 He also works for State Farm. Do any of you know him? Okay. 11:02:55

16 All right. You may proceed, Mr. Perkel.

17 MR. PERKEL: Thank you.

18

19 MARISOL CAVAZOS,
20 called as a witness herein by the Government, having been first 11:03:11
21 duly sworn or affirmed to testify to the truth, was examined
22 and testified as follows:

23 COURTROOM DEPUTY: State your name for the record.
24 Spell your last name.

25 THE WITNESS: It's Marisol Cavazos. C-A-V-A-Z-O-S. 11:03:14

MARISOL CAVAZOS - Direct

1 COURTROOM DEPUTY: Have a seat right over here. 11:03:21

2

3

4

DIRECT EXAMINATION

5 BY MR. PERKEL: 11:03:41

6 Q. Ms. Cavazos, good morning.

7 Could you please introduce yourself to the jury?

8 A. Yes. My name is Marisol Cavazos. I work for State Farm
9 Insurance in the Auto Underwriting Department.

10 Q. And do you live here in Maricopa County? 11:03:52

11 A. I do.

12 Q. How long have you been working for State Farm in the
13 Underwriting Department?

14 A. 25 years.

15 Q. I'm sorry. Did you say 25? 11:04:03

16 A. 25, yes.

17 Q. And what does the word Underwriting Department mean?

18 A. Underwriting Department, we receive applications from our
19 field agents for automobile insurance and primarily verify
20 driving records, develop any information that may be missing on 11:04:19
21 an application in order to issue the auto policy.

22 Q. And what are your specific duties and responsibilities?

23 A. I am a team manager in the Underwriting Department so
24 first-line supervisory position.

25 Q. And are you familiar with the forms, documents, and 11:04:42

MARISOL CAVAZOS - Direct

1 business processes used in underwriting in order to generate a 11:04:43
2 premium?
3 A. Yes.
4 Q. And what type of financial services or products does State
5 Farm provide? 11:04:52
6 A. I'm not a subject matter expert but just awareness, the
7 life products, health products, State Farm Bank.
8 Q. You mentioned the word "State Farm agent." Is an agent an
9 employee of State Farm?
10 A. No. State Farm agents are independent contractors. They 11:05:10
11 do write exclusively for State Farm but are independent
12 contractors.
13 Q. And what type of information do you obtain from an agent
14 in order to generate a policy?
15 A. The application asks for all of the driver's information, 11:05:26
16 their driver's license number, date of birth, where they live,
17 the vehicle they are insuring, the coverages they are
18 selecting.
19 Q. Is there a question about the use of the vehicle?
20 A. Yes, there is. 11:05:45
21 Q. And that question is a necessary part of the application
22 process.
23 A. Yes, it is.
24 Q. And the use of the vehicle is a question that has to be
25 asked? 11:05:57

United States District Court

MARISOL CAVAZOS - Direct

1 A. Correct. 11:05:59

2 Q. The answer to the use of the vehicle is a factor in
3 determining the ultimate premium?

4 A. Yes, it is.

5 Q. In addition, license suspended, revoked, refused, previous 11:06:13
6 accidents are also questions that are asked of an applicant?

7 MR. MINNS: Pardon me, Your Honor. I object. These
8 exact same questions have been already asked --

9 THE COURT: Well, they are -- I'm going to sustain on
10 leading. I think I know where you're going. We'll see if you 11:06:27
11 can lay the foundation.

12 MR. PERKEL: Okay.

13 BY MR. PERKEL:

14 Q. In order to determine whether -- in order to -- why don't
15 you tell us how a premium is, in fact, calculated for a 11:06:37
16 specific customer?

17 A. There are quite a few variables but in a short summary,
18 who is driving the vehicle, where the vehicle is driven or
19 garaged, how the vehicle is used, what coverages are taken out
20 on the policy as well as all drivers who may be driving that 11:07:03
21 vehicle.

22 Q. And you get that information from the State Farm agent?

23 A. Correct.

24 Q. And that information comes in through an electronic
25 computer? 11:07:17

United States District Court

MARISOL CAVAZOS - Direct

- 1 A. On an application, yes. An electronic application. 11:07:17
- 2 Q. That's what I mean. An application?
- 3 A. Yes.
- 4 Q. And it comes in contemporaneously from when the State Farm
5 agent inputs it into your computer system. 11:07:26
- 6 MR. MINNS: Pardon me. Your Honor, I would like to
7 have a running objection so that I don't have to interrupt
8 again. One, all of these questions are leading. They don't
9 need a witness to answer them. They are answered before they
10 are asked. And, two, they are repetitive. They are not 11:07:39
11 bringing a new issue before this jury to hear that wasn't
12 already completely explored with the prior witness.
- 13 THE COURT: I will overrule the objection on the
14 second reason. But you are still leading.
- 15 And as I understand it, there's only a concern about 11:07:57
16 one particular reference in one document.
- 17 So perhaps we can get to that. Maybe you can move
18 the admission of the documents and then focus on that one and
19 see if you can lay the foundation.
- 20 MR. PERKEL: Well, the question -- 11:08:16
- 21 BY MR. PERKEL:
- 22 Q. Well, the question about the use of the vehicle, you have
23 just testified, is a required question.
- 24 A. Correct.
- 25 MR. MINNS: Again, it's leading. Objection, leading. 11:08:22

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MARISOL CAVAZOS - Direct

1 But I have no objection to him submitting the exhibit. 11:08:26

2 THE COURT: What exhibits are we talking about with

3 this witness?

4 MR. PERKEL: They are Exhibits 519 and the

5 sub-exhibits that are applicable which is 135 through 136, 520 11:08:37

6 through 530 and Exhibit 367, Exhibit 531 through 543.

7 MR. MINNS: No objections.

8 THE COURT: All right. They are admitted.

9 MR. PERKEL: Okay.

10 (Exhibit Numbers 519, 135, 136, 520-530, 367, 531-543 11:08:51

11 were admitted into evidence.)

12 MR. PERKEL: I would like you to take a look at

13 Exhibit 135 which is a sub-exhibit of 519. It's now in

14 evidence and let's turn to page two of the exhibit.

15 BY MR. PERKEL: 11:09:17

16 Q. What is the policy number pertaining to this set of

17 records?

18 A. 0589331.

19 Q. And let's turn to page three of this record. What is the

20 purchase date of this -- excuse me. What is the purchase date 11:09:29

21 of this insurance?

22 A. The effective date of the policy is July 23, 2004.

23 Q. Is that the date the insurance went into effect?

24 A. Yes.

25 Q. What was the name and mailing address of the insured 11:09:46

United States District Court

MARISOL CAVAZOS - Direct

1 party? 11:09:50

2 A. Cimarron River Ranch, care of James Parker, P.O. Box 32,
3 Kenton, Oklahoma 73945-0032.

4 Q. Let's turn to page four of the exhibit. You testified
5 about information that is obtained by an agent. Let's go 11:10:14
6 through some of that information. What was the name of the
7 principal operator?

8 A. James Parker.

9 Q. Is there a license number reflected in the records?

10 A. Yes, there. 11:10:32

11 Q. Is there a birth date reflected?

12 A. Yes, there is.

13 Q. And the driver's relation to principal operator, what does
14 that say?

15 A. That the applicant is the principal operator. 11:10:39

16 Q. What's the occupation that is reflect in the records?

17 A. Self-employed.

18 Q. And next to self-employed, does it say anything else?

19 A. Rancher. Self-employed rancher.

20 Q. And his employer? 11:10:53

21 A. Cimarron River Ranch.

22 Q. And under the class section, can you read to the jury what
23 that says?

24 A. Yes. It asks the average weekly to and from work or
25 school, the annual mileage, the odometer reading of the 11:11:06

MARISOL CAVAZOS - Direct

1 vehicle, and the use of the vehicle. 11:11:12

2 Q. And below that?

3 A. "If the vehicle is not used for commuting, how does the

4 insured get to or from work or school?"

5 And the response, "Other household vehicle." 11:11:24

6 Q. And these, again, are the questions that are asked of an

7 applicant when he wants to get insurance?

8 A. Correct.

9 Q. And, again, this applies to the insurance for the purchase

10 date of July of 2004? 11:11:35

11 A. Yes.

12 Q. Let's turn to page five of the record. What type of

13 vehicle was insured on July 23, 2004?

14 A. A 2004 Rolls Royce Phantom four-door sedan.

15 Q. And was the payment made on that date? 11:11:59

16 A. Yes. It indicates a payment of \$2,270.61.

17 Q. What does the word "streamed" in that sentence mean?

18 A. That means it's electronically transmitted. The funds are

19 electronically transmitted when the application is transmitted.

20 Q. And can you -- let's highlight the date purchased again. 11:12:18

21 A. The date the vehicle was purchased was July 16, 2004, and

22 the effective date of the policy, July 23, 2004.

23 Q. And what was the premium starting on the July 23, 2004

24 date?

25 A. \$2270.61. 11:12:38

United States District Court

MARISOL CAVAZOS - Direct

1 Q. And is that a six-month premium or a year? 11:12:41
2 A. Yes. It's a six-month premium.
3 Q. Let's turn to page seven of the record. Just highlight
4 the top portion.
5 A. These are household and policy notes that are maintained 11:12:55
6 internally as part of the file.
7 Q. And at some point was someone else added in addition to
8 James Parker to the insurance?
9 A. Yes. There are notes, in particular N5, which would
10 indicate note number five, that a memo to agent regarding the 11:13:18
11 need for wife information and to see what kind of business
12 insured is in and how the vehicle is used.
13 Q. Okay. Let's turn to page ten of this same exhibit.
14 Can you tell us what this page stands for?
15 A. That is a policy master record as indicated at the top. 11:13:43
16 Q. And this is for the same car?
17 A. Yes, it is.
18 Q. What is -- can you walk us through the payment history at
19 the bottom?
20 A. Yes. It reflects payment history, the amount that was 11:13:59
21 received, the date that payment was applied and then internally
22 that was created with that payment and then what or how the
23 payment was received.
24 Q. So if we go to February 9, 2005, we'll just do one at the
25 bottom, what's that payment? 11:14:25

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MARISOL CAVAZOS - Direct

1 A. That was the \$1,703.88 so it was posted on February 9, 11:14:26
2 2005 under 10127. An echo 336 indicates it was from the agent.
3 Echo is the agent's computer system.

4 Q. And if you look above the February 9 date, there's a June
5 17 date? 11:14:54

6 A. Correct.

7 Q. So does that amount cover the car up until June, that
8 1703?

9 A. I'm sorry. Could you repeat that?

10 Q. Does the payment in the amount of \$1,703, does that cover 11:15:05
11 the insurance up until the next payment?

12 A. That would be, yes, by my assumption, that that would pay
13 the six-month premium to the next renewal date.

14 Q. Let's turn now to Government's Exhibit 136 that's also in
15 evidence. And let's turn to page two of that. The first auto 11:15:29
16 policy we just looked at was for a Rolls Royce. Can you tell
17 us what this auto policy applies for or was assigned to?

18 A. I'm sorry. What vehicle or what policy number?

19 Q. What was the policy number?

20 A. 0606821. 11:15:53

21 Q. And I'm sorry, I didn't word the question well. Let's
22 turn to page three. What is the policy number associated with
23 this -- excuse me. What's the effective date associated with
24 this policy?

25 A. September 14, 2004. 11:16:13

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MARISOL CAVAZOS - Direct

- 1 Q. And, again, what's the name of the insured parties? 11:16:16
- 2 A. Cimarron River Ranch, care of James Parker, P.O. Box 32,
3 Kenton, Oklahoma.
- 4 Q. I'm sorry. And what are the agent remarks?
- 5 A. Used on ranch. 11:16:30
- 6 Q. And let's turn to page four of this exhibits. And who is
7 listed as the principal operator of this car?
- 8 A. Samuel Parker.
- 9 Q. And what's the use of the vehicle?
- 10 A. I'm sorry. Let me focus. Use of vehicle is utility/farm. 11:16:57
- 11 Q. Okay. So the previous car we looked at was the Rolls
12 Royce for the previous policy. What's the vehicle listed in
13 this record?
- 14 A. The vehicle on this application is a 2005 Ford F350 SD.
- 15 Q. And now, what's the VIN number associated with this car,
16 just the last four digits? 11:17:16
- 17 A. 1851.
- 18 Q. And do you know what a VIN number is?
- 19 A. Vehicle identification number.
- 20 Q. Is that a number unique to a vehicle? 11:17:29
- 21 A. Yes. It's unique to each vehicle.
- 22 Q. And what was the date that the car was purchased as
23 reflected in records?
- 24 A. September 10, 2004.
- 25 Q. Turning to page five of the record, what was the amount of 11:17:43

United States District Court

MARISOL CAVAZOS - Direct

1 premium initially for this car? 11:17:49
2 A. \$956.66.
3 Q. And I want to turn now to page six of the record. At some
4 point, was a different Ford added to this policy?
5 A. Yes. The policy change indicates on December 2 of 2004, 11:18:14
6 the vehicle changed to a 2005 Ford F250 SD.
7 Q. Okay. We'll highlight that for you. And what is the last
8 four digits of the VIN number for this one?
9 A. 4415.
10 Q. And this is a different Ford that is added to the policy? 11:18:42
11 A. It replaced the previous Ford.
12 Q. Can two cars be under the same policy?
13 A. No. Each one has a separate distinct policy.
14 Q. Okay. So this Ford replaced the old one?
15 A. Correct. 11:19:00
16 Q. Now let's go to page eight of this record. And this is
17 the history of payments reflected for one of the Fords?
18 A. Correct.
19 Q. And can you tell us the VIN number for this Ford?
20 A. The entire VIN number? 11:19:24
21 Q. Just the last four digits.
22 A. Okay. 4415.
23 Q. Let's go to Government Exhibit 525 and let's go to page
24 two of that exhibit. Can you tell us the auto policy number
25 for this record? 11:19:58

United States District Court

MARISOL CAVAZOS - Direct

1 A. 0685305. 11:20:00

2 Q. Let's go to the next page, page three. And the name of
3 the insured party in this case?

4 A. Cimarron River Ranch, P.O. Box 32, Kenton, Oklahoma.

5 Q. And then let's go to page four of the same exhibit. Who 11:20:20
6 was the principal operator for this vehicle?

7 A. Samuel Parker.

8 Q. And what's -- excuse me, not the birth date. What's the
9 occupation or employer here?

10 A. Rancher. 11:20:45

11 Q. Okay. And when did this policy become effective?

12 A. I would have to look at the prior page.

13 Q. Okay. So let's go back to page three.

14 A. May 17 of 2005.

15 Q. And I want to now go -- let's go to page five of this 11:21:13
16 exhibit. Let's go first to the bottom portion of the screen
17 under "vehicle." What vehicle was covered by this policy?

18 A. A 1997 Jeep Grand Cherokee.

19 Q. And let's go to the top of that page under the word
20 "Class," and what is listed as the use of this vehicle? 11:21:38

21 A. Pleasure use.

22 Q. Let's now turn to Exhibit 526 which is in evidence. What
23 is the policy for this home owners insurance?

24 A. 36C866175.

25 Q. And let's turn to page three of the exhibit. What is the 11:22:07

United States District Court

MARISOL CAVAZOS - Direct

1 name of the insured party? 11:22:22

2 A. Sam Parker.

3 Q. And what's the address?

4 A. 218 Turkey Track Trail, Canyon, Texas.

5 Q. And let's -- what's the location of the residence? 11:22:31

6 A. Three miles north of Kenton, Kenton, Oklahoma.

7 Q. Now, to the right of where it says Sam Parker, is there an

8 additional insured party?

9 A. Yes. Cimarron River Ranch, care of James Parker, P.O. Box

10 32, Kenton, Oklahoma. 11:22:52

11 Q. Let's go to page five of the exhibit, just the top. What

12 is the annual premium at first for this residence?

13 A. \$2,282.

14 Q. And for this residence, the residence that's the three

15 miles north of Kenton, what is the amount covered? 11:23:23

16 A. \$284,700.

17 Q. And that's dollars?

18 A. Yes.

19 Q. Let's go to page 11 of this exhibit. Let's go to the

20 first policy note or POL. What does that stand for? 11:23:47

21 A. Policy.

22 Q. Policy note.

23 Can you just read what the first one says?

24 A. Agent's office advised that application incorrectly was in

25 name of James Parker, should have been in Sam Parker's name, 11:24:00

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MARISOL CAVAZOS - Direct

1 received updated Social Security number and date of birth, 11:24:04
2 moving forward with policy. RTR.
3 Q. And what's the date associated with that note?
4 A. October 11, 2004.
5 Q. Let's go to policy note eight at the bottom of the page. 11:24:22
6 Can you read that one?
7 A. Yes. Sent A, dash, BR, and A, dash, new home. Also,
8 changing named insured to James Parker and making ranch the
9 additional insured.
10 Q. And what's the date associated with that entry? 11:24:38
11 A. August 31, 2004.
12 Q. Let's go to page 14 of the exhibit and let's just do the
13 top quarter of the exhibit, even less.
14 All right. This looks -- what is this exhibit.
15 What's the title of it? 11:25:08
16 A. It's a home owners condominium unit owner's application.
17 Q. And what is the name of the policy holder that's written
18 there?
19 A. Sam Parker.
20 Q. Does it look like a name has been scratched off? 11:25:27
21 A. Yes, it does appear so.
22 Q. Any chance you can read that name even with the scratching
23 that's right below Sam Parker?
24 A. No.
25 Q. Okay. Just below that there is a C/O, James Parker. Do 11:25:41

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MARISOL CAVAZOS - Direct

1 you see that highlighted? 11:25:51

2 A. Yes.

3 Q. Let's go to -- let's go to page 16 and just the top

4 quarter. What is this?

5 A. A home owner's condominium homeowner application and 11:26:16

6 supplemental application.

7 Q. And can you give us the mailing address that's listed?

8 A. It indicates care of James Parker, P.O. Box 32, Kenton,

9 Oklahoma.

10 Q. And what's the location of the dwelling that being -- that 11:26:34

11 the application is being submitted for.

12 A. Three miles north of Kenton, Oklahoma.

13 Q. Now, let's go to page 17 of the exhibit and what is this

14 exhibit?

15 A. It is an estimate, dwelling replacement cost estimate. 11:27:03

16 Q. And who was it prepared for?

17 A. Prepared for James Parker.

18 Q. And can you just read us the description of the dwelling?

19 A. Frame five or six corners, one-story home, year built,

20 2004, ground floor square foot area, 1495. 11:27:23

21 Q. And then below that, the features?

22 A. Family, metal roof, central air, one porch, one deck, one

23 masonry chimney, attic over garage, fireplace hearth, kitchen

24 package and then tongue and groove knotty pine.

25 Q. Okay. Let's go to Exhibit 527, page four. Is this the 11:28:01

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MARISOL CAVAZOS - Direct

1 history of premium payments associated with the home? 11:28:16
2 A. Yes.
3 Q. Let's go to Exhibit 327, page -- 367, page six, sorry?
4 MR. SEXTON: Can you repeat that?
5 MR. PERKEL: Yes, sorry. 367, page six. 11:28:40
6 BY MR. PERKEL:
7 Q. Just the top portion under Household Policy. At some
8 point did the transfer that was -- excuse me. Let me withdraw
9 that.
10 At some point did the insurance pertaining to the 11:28:59
11 Rolls Royce, was that transferred to the State of Arizona?
12 A. Yes. It appears it was.
13 Q. And the original policy that ends in '36, can you read
14 what it says next to it?
15 A. "Oklahoma policy lapsed for nonpayment effective July 23, 11:29:14
16 2008."
17 Q. And then just below that, the new policy number?
18 A. "1448810-03, effective July 14, 2009, used Oklahoma policy
19 0589931-36 as a replacement."
20 Q. Let's turn now very briefly to Exhibit 532 and is this the 11:29:48
21 policy master record after the policy was changed from Oklahoma
22 to Arizona?
23 A. Yes.
24 Q. Let's turn now to Exhibit 535. Can you tell us who this
25 letter dressed to? 11:30:49

United States District Court

MARISOL CAVAZOS - Direct

1	A.	James Parker.	11:30:50
2	Q.	And what car does this policy deal with?	
3	A.	2004 Rolls.	
4	Q.	And what is the content of this letter, without reading	
5		it?	11:31:03
6	A.	It's as indicated on the Arizona policy number and it is a	
7		letter following up for a mileage representation form to obtain	
8		a current odometer reading.	
9	Q.	If we could click out of there. Now let's go to the	
10		bottom portion of this letter. And the second paragraph from	11:31:25
11		the bottom of the letter -- is this form required to continue	
12		with the policy?	
13	A.	At that time, yes.	
14	Q.	Let's just go now to page six -- excuse me, page seven of	
15		the same exhibit. Is this the response from the letter based	11:31:50
16		on what the records reflect?	
17	A.	Yes. That's what the letter was requesting.	
18	Q.	And what -- and is this form called Mileage Representation	
19		Form?	
20	A.	Yes.	11:32:07
21	Q.	And it pertains to the same Rolls Royce; correct?	
22	A.	Yes.	
23	Q.	Let's turn to Exhibit 536. What's the date of this	
24		letter?	
25	A.	August 3, 2009.	11:32:42

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MARISOL CAVAZOS - Direct

1 Q. And the policy number, that's the same new Arizona number? 11:32:43

2 A. Yes.

3 Q. And who is this letter addressed to?

4 A. James Parker.

5 Q. And can you just read the first sentence of the letter? 11:32:51

6 A. "We have reviewed the auto experience of your household
7 and are concerned about the following driving record for Samuel
8 J. Parker:"

9 Q. Okay. And what about after the list of some of the
10 problems, what does the paragraph state after that? 11:33:10

11 A. "We believe we owe to it our policy holders to give notice
12 of unusual trends that could adversely affect their insurance
13 premium or coverage, and offer them alternatives."

14 Q. In the State of Arizona, if one of the drivers in the
15 family has prior instance involving alcohol and driving or
16 drinking and driving, what is the option that State Farm
17 provides customers? 11:33:29

18 A. According to statute, if they are not a named insured, we
19 offer driver exclusion.

20 Q. Let's turn to page six of the exhibit. Let's focus in on
21 there. 11:33:53

22 And what is this document?

23 A. This is the Driver Exclusion Agreement Form.

24 Q. And who is listed as insured under this?

25 A. James Parker. 11:34:11

United States District Court

MARISOL CAVAZOS - Direct

- 1 Q. And what is -- and what is the signature date? 11:34:12
- 2 A. August 9 of 2009.
- 3 Q. And I don't know if you can tell. Can you tell who signed
- 4 that?
- 5 A. No. 11:34:29
- 6 Q. The signature on the bottom, what does this document, in
- 7 substance, say?
- 8 A. As indicated on the form right above that, it says, "I
- 9 further agree to have the above endorsement included in any
- 10 subsequent transfers, reinstatements or renewal of such policy 11:34:42
- 11 or policies."
- 12 Q. What about paragraph A, what does that say? What is the
- 13 person signing to when he signs that?
- 14 A. They are signing that they agree that the company shall
- 15 not be liable and not have any liability should the person 11:35:01
- 16 listed on the exclusion operate, maintain, or use the vehicle.
- 17 Q. And that person is listed in paragraph A at the end as Sam
- 18 Parker?
- 19 A. Correct. Samuel J. Parker.
- 20 Q. Okay. Let's go to Exhibit 537. Page three of that 11:35:28
- 21 exhibit and just there in the middle. At some point did the
- 22 records reflect that James Parker, under the same insurance
- 23 policy, rented an RV?
- 24 A. Yes, the agent remarks indicate that.
- 25 Q. And let's go to Exhibit 538, page two. At some point does 11:36:03

United States District Court

MARISOL CAVAZOS - Direct

1 this reflect the purchase of a Hummer. 11:36:22

2 A. Yes, it does, under a different policy number.

3 Q. Let's go to Exhibit 539. Never mind. We can skip that.

4 Let's go to Exhibit 543. What's the date of this letter?

5 A. December 28, 2010. 11:36:58

6 Q. And what's the policy number for this?

7 A. 1737013-F16-03.

8 Q. And this is a policy for which car?

9 A. A 2004 Hummer.

10 Q. And is this -- is this a similar letter to what we just 11:37:14

11 previously looked at?

12 A. Yes.

13 Q. What's this letter stating again with regards to the

14 Hummer?

15 A. Again, offering a concern to the policy holder for the 11:37:24

16 driving record of Samuel Parker and offering a driver

17 exclusion.

18 Q. And let's turn to page four of the same exhibit. And do

19 you see the policy number circled and, again, what does this

20 exclusion agreement mean with regards to the Hummer? 11:37:55

21 A. Similar to the other exclusion that we shall not be liable

22 or have liability should the driver indicated maintain, operate

23 the vehicle.

24 Q. And let's go to Exhibit 541, page two. Just there, so the

25 bottom half of the screen. Does this record, in fact, show 11:38:22

MARISOL CAVAZOS - Cross

1 that Sam Parker was excluded? 11:38:28

2 A. In the notes it does, yes.

3 MR. PERKEL: Your Honor, if I could have one moment,

4 please.

5 THE COURT: Yes. 11:38:38

6 MR. PERKEL: I have no further questions, Your Honor.

7 THE COURT: All right.

8 Cross?

9 MR. MINNS: Yes, Your Honor.

10 May I proceed, Your Honor? 11:38:54

11 THE COURT: Yes, you may.

12 **CROSS - EXAMINATION**

13 BY MR. MINNS:

14 Q. Ms. Cavazos, am I pronouncing that correctly?

15 A. Yes. 11:39:01

16 Q. Ms. Cavazos, you and I have never met?

17 A. Correct.

18 Q. I am Michael Minns. Pleased to meet you.

19 A. Likewise.

20 Q. I represent Jim Parker. You never met him? 11:39:10

21 A. No, I have not.

22 Q. He's probably easy to pick out at the table.

23 A. He looks more like a Jim than the other two at the table.

24 Q. You never met Stan Manske?

25 A. No. 11:39:28

MARISOL CAVAZOS - Cross

1 Q. And you never met the cattleman Roy Young? 11:39:28

2 A. No you're not really sure completely why you were summoned
3 to be here?

4 MR. PERKEL: Objection, Your Honor.

5 THE COURT: Overruled. 11:39:36

6 MR. PERKEL: There's no question, Your Honor.

7 MR. MINNS: Yes, it is.

8 THE COURT: It is a question.

9 THE WITNESS: Could you repeat that?

10 MR. MINNS: Yes, ma'am. 11:39:45

11 BY MR. MINNS:

12 Q. You really don't know why the government summoned you to
13 be here?

14 A. Just as a subject matter expert related to the auto
15 policies or auto records. 11:39:53

16 Q. If I could show you Government Exhibit 136.

17 MR. MINNS: Your Honor, I'm publishing --

18 THE COURT: Yes.

19 MR. MINNS: Thank you.

20 BY MR. MINNS: 11:40:11

21 Q. It says principal owner, Samuel Parker; correct?

22 A. Principal operator, yes, Samuel Parker.

23 Q. It says that his occupation is rancher; correct?

24 A. Yes.

25 Q. It says that he is self-employed; correct? 11:40:24

MARISOL CAVAZOS - Cross

1 A. Yes. 11:40:27

2 Q. It also says his employer is Cimarron River Ranch;

3 correct?

4 A. Yes.

5 Q. If other State Farm records that were brought in right 11:40:35

6 before you got here on the stand said that he was unemployed,

7 one of the records would be incorrect; correct?

8 MR. PERKEL: Objection. Foundation, Your Honor.

9 Speculation.

10 THE COURT: Sustained. 11:40:49

11 BY MR. MINNS:

12 Q. Well, according to the records that you've talked about

13 today, Sam Parker works for Cimarron River Ranch as a rancher;

14 correct?

15 A. As indicated on the application. 11:41:00

16 Q. And the use of the vehicle that was being insured was for

17 utility farming; correct?

18 A. Yes.

19 Q. May I publish Government Exhibit 525, Your Honor?

20 THE COURT: Yes. 11:41:24

21 BY MR. MINNS:

22 Q. The same thing here, principal operator, Samuel Parker;

23 correct?

24 A. Yes.

25 Q. Occupation, rancher; correct? 11:41:33

MARISOL CAVAZOS - Cross

1 A. Yes. 11:41:35

2 Q. Occupation, status, employed; correct?

3 A. Yes.

4 Q. Employer, Cimarron River Ranch; correct?

5 A. Yes. 11:41:42

6 Q. If there's a third document that says he's unemployed,
7 then that would mean at least two out of three say that he's
8 employed as a rancher; correct?

9 MR. PERKEL: Objection. Foundation, argument.

10 THE COURT: Sustained. 11:42:04

11 MR. MINNS: I am going to publish a page out of
12 Government's Exhibit 526, Your Honor.

13 THE COURT: Go ahead.

14 BY MR. MINNS:

15 Q. Now, what comes out of this, apparently, there was a 11:42:17
16 mistake that something was in the name of James Parker that
17 should have been in the name of Sam Parker. Is that what that
18 says?

19 MR. PERKEL: Objection. Foundation.

20 THE COURT: Well, she can answer that yes or no. 11:42:30

21 Is that what that says?

22 THE WITNESS: That is what that note indicates.

23 MR. MINNS: A pleasure meeting you, Ms. Cavazos or
24 Mrs. Cavazos?

25 THE WITNESS: Mrs. 11:42:50

MARISOL CAVAZOS - Cross

1 MR. MINNS: I apologize. 11:42:51

2 THE WITNESS: No problem.

3 MR. MINNS: Mrs. Cavazos, I have no other questions.

4 Pass the witness, Your Honor.

5 THE COURT: Anything? 11:42:57

6 MR. PERKEL: Nothing further, Your Honor. Thank you.

7 THE COURT: Thank you.

8 THE WITNESS: You may step down.

9 Your next witness?

10 (Witness excused.) 11:43:01

11 MR. PERKEL: Thank you, Your Honor. The government

12 is calling Ed McLenna, another witness from State Farm, Your

13 Honor.

14 ED MCLENNA,

15 called as a witness herein by the Government, having been first 11:43:37

16 duly sworn or affirmed to testify to the truth, was examined

17 and testified as follows:

18 COURTROOM DEPUTY: State your name for the record,

19 spell your last name, please.

20 THE WITNESS: Ed McLenna. M-C-L-E-N-N-A. 11:43:44

21 COURTROOM DEPUTY: Thank you. Have a seat right over

22 here, please, sir.

23 MR. PERKEL: Your Honor, I just want to remind the

24 Court that this is a new witness as well.

25 THE COURT: Yes. I've already done that. 11:44:13

ED MCLENNA - Direct

1 MR. PERKEL: Okay. 11:44:14

2 THE COURT: Thank you.

3 **DIRECT EXAMINATION**

4 BY MR. PERKEL:

5 Q. Mr. McLenna, can you please introduce yourself to the 11:44:15
6 jury?

7 A. Introduce?

8 Q. Can you tell us your name again?

9 A. Sure. It's Ed McLenna.

10 Q. And how do you spell your last name? 11:44:23

11 A. M-C-L-E-N-N-A.

12 Q. Okay. Without telling us your specific address, where do
13 you live?

14 A. Gilbert, Arizona.

15 Q. And what is your educational background? 11:44:34

16 A. I have a bachelor's degree from the University of Arizona.

17 Q. Are you employed?

18 A. Yes.

19 Q. And where are you employed?

20 A. At State Farm Insurance. 11:44:43

21 Q. What do you do there?

22 A. I am a Team Manager in the Claims Department in the Total
23 Loss Unit for vehicles.

24 Q. What is your official title?

25 A. Team Manager. 11:44:57

ED MCLENNA - Direct

1 Q. And what do you do in the Claims Department Total Loss 11:45:01
2 Unit?
3 A. I supervise a team of claim adjusters and processors that
4 specialize in paying claims when a vehicle is determined to be
5 a total loss from a claim that was presented. 11:45:16
6 Q. Generally, can you tell us, what does it mean to have a
7 claim against a vehicle?
8 A. If one of our customers reports, for example, an
9 automobile accident that they were involved in and they would
10 like to have their damages paid for under their insurance 11:45:38
11 policy, they would report that to State Farm to make a claim.
12 Q. And that's the department that you work in?
13 A. Correct.
14 Q. And Marisol Cavazos that was here today, do you know her?
15 A. I do not. 11:45:58
16 Q. Do you know what department she works in?
17 A. I believe it's Underwriting.
18 Q. How is Underwriting different from the Claims Department?
19 A. Underwriting is the department that, to my knowledge,
20 deals with rates and policies and premiums and changes to your 11:46:10
21 insurance policy.
22 Q. And your department deals with just the claims?
23 A. My department deals just with the payment of claims
24 specifically on automobiles that are total losses.
25 Q. Let's turn to -- well, prior to testifying today, did you 11:46:29

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ED MCLENNA - Direct

1 have a chance to review insurance claims records with an auto 11:46:35
2 policy ending in 6821?
3 A. I don't have the number memorized but I have reviewed two
4 auto claims.
5 Q. Okay. Let's move on, then. Let's go to Exhibit 530. 11:46:49
6 MR. PERKEL: And 530 is in evidence.
7 Q. The exhibit is in front of you but we also have it imaged
8 in front of you also. Either way is easier is fine. Let's
9 highlight the top half. Can you tell us what this form is?
10 A. This is the automobile claims service record. This is 11:47:25
11 what information that the Claims Department works off of when
12 they are handling the claim.
13 Q. And what is the claim number associated with this
14 document?
15 A. It's the 36-A382-485. 11:47:43
16 Q. And the policy number?
17 A. 0606-821-36.
18 Q. Now, let's go to that section just below called Named
19 Insured. Can you tell us the name of the insured?
20 A. It says Cimarron River Ranch, care of James Parker. 11:48:01
21 Q. And there's a couple of contacts there. Can you tell us
22 who the contacts are?
23 A. There is a contact for Sam Parker and James Parker.
24 Q. Now, let's go below to the insured vehicle. And what's
25 the insured vehicle. 11:48:27

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1 A. It's a 2005 Ford F350 XLT pickup. 11:48:29

2 Q. And what are the last four digits of this VIN number?

3 A. 1851.

4 Q. And what's the principal damage?

5 A. Oh, okay. Front end. 11:48:44

6 Q. Do the records reflect that there was a claim made against

7 this car?

8 A. Yes.

9 Q. And what is the description of the injury for under the

10 driver's section? 11:48:59

11 A. It says that the driver hit his head.

12 Q. And the driver above, who was the driver?

13 A. Samuel Parker.

14 Q. Let's go to the -- let's go to page three and let's just

15 go to the facts section and enhance that section. 11:49:29

16 Can you tell us -- first of all, what is the facts

17 section for when you have a claim form?

18 A. That is what is reported from the customer to their

19 insurance agent explaining briefly what happened in the

20 accident. 11:49:49

21 Q. Can you tell us what is -- what reads there or what is

22 contained in that section?

23 A. It says, "Foot slipped off clutch. Hit the train."

24 Q. What is the date and time of that loss?

25 A. It's November 10, 2004, 3 a.m. 11:50:01

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1 Q. And the location of the accident? 11:50:09

2 A. Boise City, Oklahoma.

3 Q. Let's go to the -- just that bottom section, the parties
4 to the loss. And who is that party listed as one of the
5 parties? 11:50:28

6 A. Burlington Northern Santa Fe Railroad Company.

7 Q. Now, I want to turn to page seven of the exhibit and just
8 the top of the page where it says, "Activity Log." What is an
9 activity log?

10 A. An activity log is the record by the Claims Department of 11:50:48
11 all activity that takes place on the claim. It's basically
12 notes that the claim representative would take to capture what
13 took place during the handling of the claim.

14 Q. Why does State Farm have an activity log?

15 A. Two reasons. One, we are regulated by the Department of 11:51:12
16 Insurance and they require that we document all claim activity
17 so that in the future, if they ever questioned or anyone else
18 ever reviewed our file, they could determine what happened and
19 what activity we took during the claim handling. State Farm
20 also wants to pay everything that we owe under our commitment 11:51:39
21 to our policy holders, and our activity log documents the
22 chronology of everything that took place in the handling of the
23 claim.

24 Q. And we're not going to go through all of the activities
25 and the log or all of the different correspondence; but just 11:51:52

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- 1 looking through the record there in front of you, it's fair to 11:51:55
2 say that there are detailed records of the communication
3 between a claims officer and the injured parties or the insured
4 party?
- 5 A. Can you expand that? 11:52:08
- 6 Q. That's just one page. The record actually is page 530 --
7 excuse me, Exhibit 530. Just looking through, are there lots
8 of pages that have activity log at the top?
- 9 A. Yes.
- 10 Q. I want to turn to page 15 of the exhibit and let's just go 11:52:25
11 to the bottom section. What does it say on December 21, 2004?
- 12 A. It starts with the letter C, which stands for complete.
13 This is what was completed. "Received call from Mr. Parker.
14 He accepts our offer. He said he has already taken his title
15 to the agent's office and wants us to mail his payment. He is 11:53:01
16 out of town. He can be reached at," a phone number.
- 17 Q. Okay. And let's go to page 15 -- excuse me, page 23 of
18 the same exhibit. Just the entry that is associated on
19 11-22-04.
- 20 A. Okay. 11:53:39
- 21 Q. What does it say there?
- 22 A. Again, it starts with a completed code. Is it the one you
23 highlighted or the one above that?
- 24 Q. I'm sorry. It's the one that is highlighted, that I
25 highlighted. 11:53:50

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1 A. Phone message, call James Parker, who is Samuel's father, 11:53:52
2 and there's a couple of phone numbers listed.

3 Q. And let's go to -- well, let me ask you this: Based on
4 your previous review of this record, was, in fact, a claim not
5 paid out for the -- for this vehicle? 11:54:11

6 A. Yes.

7 Q. Let's go to page 14 of this record. Sort of right in the
8 middle at the bottom of the December 24 -- December 27, 2004,
9 first entry, there's a long list of numbers and there's an
10 amount paid out to the owner. Do you see it there? 11:54:35

11 A. Yes.

12 Q. Is this the number here on the screen?

13 A. Yes.

14 Q. Can you read us that number?

15 A. \$27,922.17. 11:54:46

16 Q. Let's go to --

17 THE COURT: Mr. Perkel, we're going to stop here.
18 Ladies and gentlemen, we're going to take a much
19 longer break. I have a number of matters that I have to attend
20 to today. So I hope that we can start at 1:30. I doubt it. 11:55:12
21 It will probably be 1:35.

22 All right. So plan to be back by 1:35.
23 And we are in recess.

24 COURTROOM DEPUTY: All rise.
25 (Jury enters.) 11:55:27

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1 (Recess at 11:55; resumed at 1:44.) 11:55:27
2 (Jury enters.)
3 (Court was called to order by the courtroom deputy.)
4 THE COURT: Okay. Please be seated. Thank you,
5 ladies and gentlemen. 01:45:43
6 All right. Mr. Perkel?
7 MR. PERKEL: Thank you, Your Honor.
8 BY MR. PERKEL:
9 Q. Before we left off, we were discussing the amount paid
10 with regards to the traffic accident with the train. That's 01:45:58
11 about the time we took our lunch break. What amount was paid
12 to the owner?
13 A. \$27,922.17.
14 Q. I would like to now turn to Exhibit 529 and let's turn to
15 page seven of the exhibit. What is this document? What does 01:46:41
16 it indicate? We've also brought it up on the screen in front
17 of you if it makes any easier.
18 A. It's a vehicle inspection report and it is a form that is
19 filled out by either State Farm, the person who inspected the
20 vehicle, or the repair facility to give a summary of the 01:47:07
21 vehicle involved, the equipment that the vehicle has, and the
22 type of damage.
23 Q. So is this report filled out after an accident?
24 A. Yes.
25 Q. And what is the name of the -- the name at the top? It 01:47:25

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1 looks like is that buyer under the claim number. 01:47:31

2 A. It may say owner. James Parker.

3 Q. And this is the vehicle that was in that accident?

4 A. Yes.

5 Q. Okay. Let's go to Exhibit 528 and let's go to page 18 of 01:47:57

6 the exhibit, if we could just focus on the check.

7 With regards to the traffic accident involving the

8 train, is this a copy of the check that was issued to fulfill

9 the claim?

10 A. Yes. 01:48:31

11 Q. And who was it made out to?

12 A. Cimarron River Ranch, care of James Parker.

13 Q. And, again, what's the amount?

14 A. \$27,922.17.

15 Q. Now, let's go to Exhibit 520 and I want to take you to the 01:48:46

16 second claim that we're going to discuss and we discussed a

17 claim record. Is this form similar to the claim record that

18 you've previously discussed?

19 A. Yes. It's for a different claim.

20 Q. If we could just zoom that in there and get the whole 01:49:14

21 claim number, let's take a look here. What's the claim number

22 with regards to this claim?

23 A. 36-A463-996.

24 Q. And what's the date of loss with regards to this one?

25 A. June 25, 2006. 01:49:36

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1 Q. And who is the named insured in this one? 01:49:43

2 A. There's two. It says Cimarron River Ranch is one named
3 insured and it also lists James Parker as a named insured.

4 Q. And there are phone numbers also associated with the named
5 insureds? 01:50:01

6 A. Yes.

7 Q. Let's go to the bottom of the screen and the vehicle that
8 was -- the vehicle that's part of this claim, let's go through
9 that. What type of car is this one?

10 A. It's a 2005 Ford F250 SD pickup. 01:50:16

11 Q. And the last four digits of the VIN number?

12 A. 4415.

13 Q. And then can you read what it says happened to the car
14 underneath?

15 A. It was parked and unoccupied. It was a stolen vehicle. 01:50:34

16 Q. Let's go to page three of this claim record and let's just
17 focus in on the top part. And under the facts section, what
18 does it say in that first box?

19 A. Stolen.

20 Q. And can you tell us the date and time and location of the 01:50:59
21 theft?

22 A. Yes. It was stolen June 25, 2006, from north parking lot
23 of Phoenix First Assembly, Phoenix, Arizona.

24 Q. Now, let's just turn briefly to page four and, again, this
25 is the activity log that we see starting on page four? 01:51:33

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1 A. Correct. 01:51:37

2 Q. And, again, the activity log records the communications
3 between a claim agent and a customer?

4 A. That is one item that is in the claim activity log. It
5 may also be activity by a claim rep. It may not necessarily be 01:51:49
6 a communication.

7 Q. Okay. We're not going to go through them all but let's
8 just go through a few. Let's go to page 14 of the exhibit and
9 let's go to -- it looks like the chronological order that the
10 activity log from bottom to top sort of goes chronologically. 01:52:16
11 Is that fair to say on the page?

12 A. Correct.

13 Q. So let's just go to the -- let's go to the first -- the
14 most bottom activity log, 7-13-2006 at 8:55 a.m. and can you
15 just read to us that? 01:52:32

16 A. Yes. "Received call from James Parker with message to
17 call him at 602-284-2380."

18 Q. And let's go to the 9:56 a.m., just a few above. And what
19 does that say?

20 A. "James Parker called back and they just got to their Texas 01:52:55
21 home and reviewed their mail. They will complete theft
22 affidavit and return to me this date."

23 Q. And what is a theft affidavit?

24 A. It's a State Farm form where we ask the customer to
25 complete the details of the vehicle theft, what happened, what 01:53:16

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1 vehicle was involved, any special equipment that the vehicle 01:53:24
2 may have.

3 Q. So this entry reflects that Mr. Parker told whoever
4 entered it that they will complete the theft affidavit.

5 A. Yes. 01:53:39

6 Q. And let's just go to the entry right above, the one from
7 11:49. What does this entry read and what does it mean?

8 A. It says, "Per new CRT procedures, we no longer have to
9 wait until the theft affidavit is received if loss has no
10 indicators present; NI" stands for named insured I presume, 01:54:01
11 "will go ahead and forward affidavit, but there is no need to
12 wait for this information to settle the total theft; the named
13 insured is Cimarron River, but James Parker is the owner and
14 his information is in the parties section."

15 Q. Let's go to page ten. And there's an activity log for 01:54:33
16 July 18, 2006, at 12:13 p.m. and starting in the third line
17 where it says W number, if you could read that.

18 A. "W number, extended offer to James Parker. He accepts.
19 He wants to conclude settlement via Fed Ex." Federal Express.

20 Q. Keep on reading. 01:55:11

21 A. "So that he can get paid this week. He is currently in
22 Phoenix, Arizona."

23 Q. And what -- keep on reading.

24 A. I'm sorry, what?

25 Q. Can you continue reading? 01:55:21

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- 1 A. Sure. "I faxed him a POA," which I believe stands for 01:55:23
2 power of attorney, to phone number there, a fax number. "He
3 will return the power of attorney, title and keys by Fed Ex,"
4 Federal Express, "which he says should arrive at our building
5 tomorrow. We will then overnight the payment to him. Insured 01:55:42
6 did not rent a car or set personal calendar, to follow up in
7 two days."
- 8 Q. Okay. Let's now go to page nine of the same exhibit and
9 let's go to the activity that is referenced by the date July
10 19, 2006, at 11:40 a.m. and it was entered by Tony Grace. Just 01:56:04
11 the first line. What does it say?
- 12 A. "Received Vehicle 1 title." Vehicle 1 is a description of
13 the vehicle that is on the policy. "Received Vehicle 1 title,
14 power of attorney and keys at my desk via Fed Ex."
- 15 Q. So this activity explicitly references the previous one in 01:56:28
16 the sense of getting the previous Fed Ex; correct?
- 17 A. Yes.
- 18 Q. And then at the top, the activity referenced by the time
19 1:56 p.m. What does that say?
- 20 A. "Insured called, says draft needs to go to Boise City, 01:56:46
21 Oklahoma, Manske law office, attention Stan Manske in Boise
22 City, Oklahoma."
- 23 Q. Now, let's go to page 11 of the exhibit and at the bottom,
24 the last line of the activity log, does it reference the amount
25 paid to the owner? 01:57:11

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1 A. It does. 01:57:13

2 Q. And what's that amount?

3 A. \$30,082.97.

4 Q. And that's for the stolen car; correct?

5 A. Correct. 01:57:25

6 Q. All right. Let's go to Government Exhibit 522 and let's

7 just go to page two of that exhibit. And you have in front of

8 you or you have the physical exhibit, so whichever one is

9 easier. The top thing says affidavit of vehicle theft. Is

10 this the affidavit of vehicle theft that you were referring to? 01:57:53

11 A. Yes.

12 Q. Can you read the name of insured in the first line?

13 A. It says Cimarron River Ranch, LLC.

14 Q. And let's go to paragraph two, the date of the theft?

15 A. It says June 25, 2006. 01:58:07

16 Q. And what time?

17 A. 11 to 12 -- it says p.m. and in the box, a.m. is checked.

18 Q. Okay. Does it give -- does the record indicate the car

19 that was stolen?

20 A. Yes. 01:58:25

21 Q. And what is that?

22 A. A Ford -- a 2005 Ford F-250 King pickup.

23 Q. And this is the affidavit that corresponds to the claim

24 that we just looked at?

25 A. Yes. 01:58:44

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1 Q. And the location from where the vehicle was taken? We're 01:58:44
2 highlighting it on the screen if it helps.
3 A. Phoenix First Assembly, Cave Creek road in Phoenix,
4 Arizona.
5 Q. And the reason the vehicle was left at this location, what 01:58:58
6 is placed there?
7 A. To attend church service.
8 Q. And the name of the people who left the vehicle at that
9 location?
10 A. James Parker and Jacqueline Parker. 01:59:07
11 Q. And then just a few lines down, it says name and address
12 of others who were present.
13 A. Yes.
14 Q. Who is listed?
15 A. James Parker, Jacqueline Parker. 01:59:20
16 Q. And then who made the discovery a couple lines down?
17 A. James Parker and Jacqueline Parker.
18 Q. Let's go to the next page, page three of this exhibit. In
19 the middle there's, like, a list of personal items that were
20 stolen from the car. 01:59:39
21 A. Yes.
22 Q. Is that common for people to list the things in the car?
23 A. Yes.
24 Q. Let's zoom out of there and let's go to paragraph three
25 and does it say where the car was purchased from? 01:59:58

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1 A. I believe that says Fenton Motors, Dumas, Texas. 02:00:06

2 Q. And there's a paragraph below that talks about

3 distinguishing features of the car and the vehicle condition.

4 A. Yes.

5 Q. Let's go to that paragraph, if we can highlight that 02:00:18

6 paragraph. What does that read?

7 A. It rates the paint, transmission, engine and body

8 according to the owner all in excellent condition.

9 Q. And what about those other distinguishing features?

10 A. "Offroad package, new," I think it says, "All terrain 02:00:38

11 knobby tires, red shock absorbers, polished chrome wheels,

12 off-road package and fog lights, four-wheel drive."

13 Q. Now, when State Farm is determining the claim amount, does

14 it take into consideration the vehicle condition as reported by

15 the owner? 02:01:07

16 A. Yes.

17 Q. And the form itself is pretty clear; correct? It's asking

18 you to list the condition and the distinguishing features?

19 A. Yes.

20 Q. So the individual could make the claim that they believe 02:01:22

21 that they are owed for a stolen car or damaged car?

22 A. Yes. Um --

23 Q. Yes.

24 A. It wouldn't be for a damaged car. This form is actually

25 only used in a theft circumstance. 02:01:40

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1 Q. I correct myself. That's correct. 02:01:42

2 Let's go to page four, which is the next page of the

3 exhibit, and up at the top just do the top half of that page.

4 At the top it says name and address of service

5 station garage. What does it read there? 02:02:02

6 A. It says new vehicle.

7 Q. Is that the correct spot where you're supposed to enter

8 that in if you know?

9 A. I believe that that question asking for where you have

10 your vehicle maintenance or work done on your vehicle. 02:02:23

11 Q. Okay. And then right below there's a date the car was

12 purchased. What's the date of that?

13 A. December 3, 2004.

14 Q. And the purchase price?

15 A. \$36,029. 02:02:38

16 Q. And then it lists the Fenton Ford as the dealer; is that

17 correct?

18 A. Yes.

19 Q. And then how does it say the car was paid for?

20 A. Cash, and then written in wire transfer. 02:02:52

21 Q. Let's go to the bottom portion of the screen. The last

22 question with regards to this exhibit is who signed as the

23 policy holder, if you can read that.

24 A. I can't make out the first name. The last name appears to

25 be Parker. 02:03:21

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- 1 Q. Would it be fair to say that that first name looks like an 02:03:22
2 S?
- 3 A. It looks like an S.
- 4 Q. Let's go to Government's Exhibit 523 which is in evidence,
5 page five. Now, you discussed -- well, you didn't discuss. 02:03:37
6 You explained a couple of records where there was a mention of
7 a power of attorney. Take your time, by the way, if you want
8 to look at the exhibit.
- 9 A. What page?
- 10 Q. It's Exhibit 523, page five. 02:04:01
- 11 A. Thank you.
- 12 Q. Why, in cases where a vehicle is stolen, does the insured
13 give a power of attorney to State Farm?
- 14 A. When State Farm pays a customer on a vehicle that is a
15 total loss, either by auto accident or a total loss via an 02:04:18
16 unrecovered theft, in essence, we're purchasing that vehicle
17 from the customer. We own that vehicle on a theft claim that
18 has not been recovered at the time of settlement. After that
19 transaction, State Farm owns that unrecovered vehicle so,
20 therefore, if it is ever recovered, State Farm is the owner. 02:04:42
- 21 So we require a power of attorney in order to
22 transfer title documents from the previous owner into State
23 Farm's name so we can sell the vehicle, or what's left of it,
24 when it's recovered.
- 25 Q. And so at this point, when this power of attorney is 02:05:03

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1 issued, has there already been a decision made about paying the 02:05:06
2 customer for the claim?
3 A. I believe so. The power of attorney part of our
4 settlement documents.
5 Q. Okay. And let's just highlight the third line of that. 02:05:24
6 Based on the records, who appears to have filled out this power
7 of attorney?
8 A. James Parker.
9 Q. And what does this power of attorney give State Farm the
10 ability to do? 02:05:41
11 A. It gives "State Farm Insurance Company true and lawful
12 attorney to execute on my behalf and in my name and any and all
13 documents in connection with the sale and/or transfer of the
14 following described motor vehicle," and that's the 2005 Ford
15 F-250. 02:06:00
16 Q. That's the car that was reported stolen; correct?
17 A. Yes.
18 Q. And I don't know if you can read the signature at all or
19 the date.
20 A. It appears to say James Parker and the date is July 18, 02:06:12
21 2006.
22 Q. I want to move on now to Exhibit 524 and you discussed a
23 little bit ago to the records reflect a claim was paid for the
24 car?
25 A. Yes. 02:06:37

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1	Q. And let's go to page four of this exhibit and take your	02:06:37
2	time, by the way. Do you see the page in front of you?	
3	A. Yes.	
4	Q. Is this the check that was eventually issued with regards	
5	to the stolen vehicle?	02:06:52
6	A. Yes.	
7	Q. And can you read to -- it says, "Pay to the order of."	
8	A. "Cimarron River Ranch and James Parker."	
9	Q. And what is the amount of the check?	
10	A. \$30,082.57.	02:07:04
11	Q. And what about the date, can you read the date at the top?	
12	A. I think it says June 25 -- I'm sorry. I was looking at	
13	the loss date. The issue date is I believe July 18, 2006.	
14	Q. And then let's go to the next page, page five of this	
15	exhibit. And if you could focus in just on the endorsement	02:07:32
16	section of the check, this is a copy of the back of the check.	
17	Just give us a second here.	
18	And can you read who endorsed the check?	
19	A. Yes.	
20	Q. What does it say?	02:07:58
21	A. James Parker for Cimarron River Ranch and James Parker.	
22	Q. Okay. It looks like there's a printed James Parker as	
23	well.	
24	A. Yes.	
25	MR. PERKEL: Your Honor, if I could have one moment,	02:08:15

PAUL WEDEPOHL - Direct

1 please. 02:08:16

2 THE COURT: Yes.

3 MR. PERKEL: No further questions. Thank you.

4 THE COURT: All right.

5 Cross? 02:08:23

6 MR. MINNS: No, Your Honor. Thank you.

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

8 (Witness excused.)

9 (The following portion was previously separately

10 transcribed and is incorporated herein.) 02:08:26

11 THE COURT: And your next witness?

12 MR. SEXTON: Paul Wedepohl, we're going to recall him

13 from last week.

14 PAUL WEDEPOHL,

15 called as a witness herein by the Government, having been 02:09:08

16 previously duly sworn or affirmed to testify to the truth, was

17 further examined and testified as follows:

18 THE COURT: Good afternoon, Mr. Wedepohl. You are

19 under oath.

20 THE WITNESS: Thank you. 02:09:15

21 **DIRECT EXAMINATION** (Continued)

22 BY MR. SEXTON:

23 Q. Good afternoon.

24 A. Good afternoon.

25 Q. When we broke with you -- first off, do you have 02:09:27

PAUL WEDEPOHL - Direct

1 Exhibit 446 in front of you, the archived history? That may be 02:09:33
2 of use to you in refreshing your recollection from time to
3 time. Is that big document still up there?
4 A. 456?
5 Q. 456 -- 446, sir. 02:09:48
6 A. 446. Yes, I do.
7 Q. Okay. And turning to page 21, I think we just finished up
8 with your conversation with Mr. Greg Robinson on March 11,
9 2004, which is noted at the bottom of your archive history.
10 A. Yes. 02:10:21
11 Q. At the end of that conversation, did you leave it with
12 Mr. Robinson that you were going to give him some time in order
13 to produce some records?
14 A. Yes, I did.
15 Q. Approximately how much time do you recall that you were 02:10:37
16 asking him to get your records by?
17 A. He agreed to get records to me within 30 days following.
18 Q. Pardon me?
19 A. Within 30 days following our discussion.
20 Q. Did you, in fact, get the financial information you were 02:11:02
21 looking for within 30 days?
22 A. If I could look here for just a moment. No, I did not
23 receive the information at all.
24 Q. At this point, when is the next time you have any
25 communications with Mr. Robinson in regard to this collection 02:11:35

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PAUL WEDEPOHL - Direct

1 matter? 02:11:38

2 A. I had communication through a phone call I received from

3 Mr. Robinson on May 7.

4 Q. Of 2004?

5 A. Yes, sir. 02:11:49

6 Q. And is it a phone call just between the two of you?

7 A. Yes, sir.

8 Q. Do you remember who initiated the call, you or he?

9 A. He did.

10 Q. As best you can, would you use your notes as necessary to 02:11:58

11 refresh your recollection? Would you tell the jury and the

12 Court the substance of your conversation with Mr. Robinson that

13 day?

14 A. Yes. Our discussion revolved around the collection

15 information, financial statements that I was expecting to 02:12:14

16 receive. Mr. Robinson indicated that he was unable to secure

17 the information because Mr. Parker has been too busy to provide

18 it and as much as he was out trying to earn money is what he

19 told me.

20 He indicated that he has gone to Belize, in fact, to 02:12:30

21 try to, quote, put out some fires.

22 Q. You're using the word "he." I want to make sure that --

23 A. Yes, sir. Mr. Robinson told me that Mr. Parker had gone

24 to Belize to put out some fires.

25 Q. And earlier when you were talking about too busy, who was 02:12:47

United States District Court

PAUL WEDEPOHL - Direct

- 1 too busy, Mr. Robinson or was Mr. Robinson telling you that 02:12:50
2 Mr. Parker was too busy?
- 3 A. It was Mr. Robinson telling me that Mr. Parker was too
4 busy.
- 5 Q. What else do you recall from this conversation? 02:13:03
- 6 A. We talked about a pending collection due process appeal
7 that was in place and I was trying to communicate with
8 Mr. Robinson at that point about that appeals case in terms of
9 explaining to him that going to appeals was a simple waste of
10 time because without financial statements, appeals was not 02:13:32
11 going to be able to help him out either.
- 12 Q. And any response or what happened next in the conversation
13 after you said that?
- 14 A. I'm sorry. In addition to Mr. Robinson -- or I indicated
15 to Mr. Robinson, I should say, that an interim installment 02:13:56
16 agreement wouldn't be appropriate either because of unfiled
17 returns. So we were talking about options I guess at that
18 point, Mr. Robinson and I.
- 19 Q. And when he was telling you about where Mr. Parker was
20 during this conversation, was there any discussion at all 02:14:15
21 between you as to what Mr. Parker was doing in Belize?
- 22 A. No.
- 23 Q. And from the standpoint of the discussion on this
24 collection due process hearing that had begun and I believe we
25 talked about it with the jury the last time we were together -- 02:14:44

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PAUL WEDEPOHL - Direct

1 A. Yes. 02:14:47

2 Q. -- did you tell him what you were going to do with that or
3 what was the status of the collection effort in light of that?

4 A. Well, the status of the collection effort was that I could
5 not continue with the collection while the appeal was in 02:14:56
6 process, that my hands were tied from moving forward.

7 Q. As a collection officer, when this due process hearing is
8 in place, are you still allowed to continue your investigation
9 as opposed to your more specific collection efforts?

10 A. Yes. 02:15:21

11 Q. Now, if you would, looking forward, what happened next as
12 you can recall from your archive on this collection method?

13 A. In terms of?

14 Q. What's the next thing that happened in terms of your
15 collection efforts? And I would direct you to your -- pages 26 02:15:50
16 and 27 of your archive to see if that jogs your memory of the
17 next --

18 A. Well, at this point I was trying to secure some summons
19 information from Bank of America that I had requested and so I
20 was communicating with an official with the Bank of America 02:16:12
21 over that.

22 So my efforts were focused in on trying to get some
23 of the information.

24 Q. And does there come a time where you gather information
25 about the status of the collection due process hearing, whether 02:16:28

PAUL WEDEPOHL - Direct

1 it was going forward or whether it had been withdrawn? 02:16:32
2 A. I'm sorry. Could you ask that again?
3 Q. Sure. This collection due process hearing that's causing
4 you to sort of stand down for a moment --
5 A. Sure, yes. 02:16:41
6 Q. -- do you subsequently learn some information as to what
7 the status is of that request for a hearing?
8 A. I did. I received the CDP, or the request for due
9 process, referral back from the office which it was assigned to
10 which happened to be in Oklahoma City. The information I 02:17:03
11 received was that Mr. Robinson withdrew that CDP.
12 Q. Approximately when was that information learned by you?
13 A. On July 6, 2004.
14 Q. After you learned that, did you have any conversations
15 with Greg Robinson after that? 02:17:36
16 A. Yes, I did.
17 Q. When was the next conversation you had with him?
18 A. It was the same day, July, 6 when I talked to
19 Mr. Robinson.
20 Q. And just the two of you and was it a phone conversation? 02:17:51
21 A. It was a phone conversation.
22 Q. What was the substance of what you and he talked about?
23 A. We talked about the fact that Mr. Robinson confirmed to me
24 that he had sent the offer to Memphis, an offer in compromise
25 to Memphis, Tennessee. 02:18:06

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PAUL WEDEPOHL - Direct

- 1 Q. And so is this the first offer in compromise that was 02:18:08
2 presented in this particular file, to your knowledge?
- 3 A. Yes.
- 4 Q. Why Memphis? Did he say?
- 5 A. He did not -- to my recollection, he did not indicate why 02:18:28
6 he sent it to Memphis specifically.
- 7 Q. After you got a copy of that offer in compromise, is that
8 normally a document in this collection process when that's
9 filed, is that something that you review for your collection
10 purposes? 02:18:54
- 11 A. Yes, it is.
- 12 Q. Explain to the jury what you do with that information
13 after reviewing it if you disagree or see something that you
14 disagree with on the offer in compromise? What do you do?
- 15 A. Sure. Typically, when a case is assigned to a revenue 02:19:08
16 officer such as myself in the field and an offer in compromise
17 is filed, nine times out of ten the offer filed is with the
18 revenue officer that is working the case because of the
19 communication that had been ongoing between the revenue officer
20 and the representative or the individual. 02:19:27
- 21 And when that's done, it's easy. I can look at the
22 paperwork and determine what I think of that offer, the
23 validity of that offer.
- 24 In this instance, since the offer was sent to
25 Memphis, I had to run down that information and finally got it 02:19:43

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PAUL WEDEPOHL - Direct

1 so that I could review it and determine what I felt the type of 02:19:45
2 validity that offer held.

3 So, in other words, I look at the offer to see if I
4 agree with it or make a decision on whether I would recommend
5 it for acceptance or recommend it for rejection for a variety 02:20:04
6 of reasons.

7 Q. So do you have authority, in the reviewing of an offer in
8 compromise, to put your two cents' worth into the process if
9 you disagree with what's in the offer in compromise?

10 A. Absolutely. 02:20:25

11 Q. Now, after the offer in compromise is made it to your
12 desk, did you have a conversation with Mr. Robinson about
13 anything that you thought was not listed on that offer in
14 compromise?

15 A. Yes, I did. 02:20:46

16 Q. Where was that conversation?

17 A. That conversation was on July 6, 2004.

18 Q. And just was it a telephone conversation again, sir?

19 A. Yes, it was a telephone conversation.

20 Q. And to your memory, was it just the two of you on the 02:20:59
21 phone?

22 A. Yes, it was just the two of us.

23 Q. And what did you and he talk about with regard to that?

24 A. Well, I indicated to him that based on my cursory review
25 of the financial statement, something that kind of stood out to 02:21:11

PAUL WEDEPOHL - Direct

1 me was there was no residence or home listed on the financial 02:21:16
2 statement.

3 A financial statement, again, lists assets and
4 income, liabilities and expenses. A home is an asset and there
5 was no home on that financial statement. So I asked about 02:21:33
6 that, why the financial statement had no residence on it.

7 Q. And what was the response?

8 A. The response from Mr. Robinson was that -- if I could hear
9 see in my notes. Mr. Robinson indicated to me that the reason
10 that the residence wasn't on the financial statement was 02:21:55
11 because the house was owned by a family trust for the benefit
12 of the children, his children.

13 Q. So we talked a second ago that when the collection due
14 process hearing is pending, you have to stand down?

15 A. That's correct. 02:22:16

16 Q. So when the hearing was withdrawn, when an OIC, or offer
17 in compromise, is put, does that affect your collection process
18 at all?

19 A. Yes.

20 Q. In the same manner? 02:22:32

21 A. Absolutely. We are to stand down. We cannot take any
22 collection action.

23 Q. Do you have Exhibit 104 in front of you, sir?

24 MR. SEXTON: This is in evidence, Judge. This is the
25 first offer in compromise. 02:22:51

PAUL WEDEPOHL - Direct

1	BY MR. SEXTON:	02:22:53
2	Q. Starting on page three. Is this the offer in compromise	
3	that you got a copy of in this collection process?	
4	A. It looks like so. It is, yes.	
5	Q. Now, is it in any way significant to your collection	02:23:13
6	process that the taxpayer is making a compromise only as to	
7	collectability as opposed to liability? Is that significant in	
8	your questioning?	
9	A. Yes, it is.	
10	Q. Explain that.	02:23:31
11	A. Well, an offer to doubt liability is when an individual	
12	asks for the Service to compromise a liability because they	
13	believe that the liability is not correct or it's inaccurate.	
14	An offer for doubt to collectibility is one where the	
15	individual says, "Please accept my offer in compromise because	02:23:50
16	I can't pay." So they are not disputing the liability; they	
17	are just saying, "I can't pay."	
18	Q. If we go to page 12, we'll put it on the screen here.	
19	When I say page 12, it's the lower right-hand corner Bates	
20	stamp number at the bottom.	02:24:15
21	A. Okay. All right.	
22	Q. What's the date that this was signed?	
23	A. June 18, 2004.	
24	Q. Now, if you could, put Exhibit 203 on the screen.	
25	COURTROOM DEPUTY: What exhibit?	02:24:48

PAUL WEDEPOHL - Direct

1 MR. SEXTON: Exhibit 203 in evidence. 02:24:52
2 COURTROOM DEPUTY: I don't have that listed as in
3 evidence. 203.
4 MR. SEXTON: Okay. Hold on a second. I messed up
5 somewhere. 02:25:00
6 THE COURT: Do you know what exhibit it is and do you
7 have an objection to its admission?
8 MR. MINNS: Ashley is checking.
9 MR. SEXTON: Actually, it's my mistake, Judge. I
10 think I have the right one. Exhibit -- one second here, 123. 02:25:20
11 I'm sorry about that.
12 BY MR. SEXTON:
13 Q. So that offer in compromise was signed June 18, 2004?
14 A. Yes.
15 Q. Go to the last page of this memorandum of sale. First of 02:26:10
16 all, do you see this sale here, do you see item number six down
17 below on the purchase price?
18 A. I do.
19 Q. How much is the amount there?
20 A. \$6 million. 02:26:27
21 Q. And what are the names of the entities, vendor entity up
22 above?
23 A. The vendor entity is MacKinnon Belize Land & Development
24 Limited.
25 Q. Is that entity in any way listed as a business entity for 02:26:41

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PAUL WEDEPOHL - Direct

1	Mr. Parker in that offer in compromise, Exhibit 104?	02:26:46
2	A. Excuse me one moment. I do not see that entity listed	
3	anywhere.	
4	Q. Go to I think it's like the signature page of this	
5	document. Is that page 10 or of 11 on the screen?	02:27:20
6	A. Yes.	
7	Q. What's the date of that memorandum of sale?	
8	A. It's dated seventh of June, 2004, the effective date.	
9	Q. Just a few days before that offer in compromise?	
10	A. Yes.	02:27:44
11	Q. Is there anything in that offer in compromise that deals	
12	with a recent land sale in Belize associated with Belize	
13	MacKinnon Land and Development?	
14	A. No, sir.	
15	Q. Does it anywhere list Mr. Parker as the chairman and/or	02:28:00
16	president of that entity at that time?	
17	A. No, sir.	
18	Q. In that offer in compromise, do you see any listing for a	
19	bank account associated with the country -- located in the	
20	country of Belize?	02:28:20
21	A. No.	
22	Q. Is there an entry therein that would indicate that there	
23	is any remaining unsold land still in Belize?	
24	A. No.	
25	Q. Was this offer in compromise accepted?	02:28:54

United States District Court

PAUL WEDEPOHL - Direct

1 A. No, it wasn't. 02:28:58
2 Q. What's the next -- looking back on your Exhibit 446,
3 what's the next sort of substantive thing that occurred in your
4 collection efforts in this regard?
5 A. Subsequent to this offer being received? 02:29:12
6 Q. Yes.
7 A. Well, my efforts involved at that point, since I was
8 prohibited from collecting, I needed to resolve the stay issues
9 or the stand-down issues that the offer brought. So I was
10 trying to work with the offer managers and other employees to 02:29:28
11 try to get that offer rejected so I could then get back on my
12 collection mode.
13 Q. There was an amendment to the 2002 tax return. Do you
14 remember that?
15 A. Yes, I do. 02:29:47
16 Q. Did you have any conversation with Mr. Robinson before
17 that amendment was filed as to the 2002 tax return?
18 A. Yes, I did.
19 Q. Would you -- approximately when did you have that
20 conversation in relation to that -- 02:30:00
21 A. If I could look here just a second.
22 Q. If you look at the bottom of page 28 --
23 A. Thank you. Yes. I see this here. I received a letter
24 from Mr. Robinson when I received that amended 2002 return.
25 Q. Had you spoken to him prior to that about the fact that 02:30:33

PAUL WEDEPOHL - Direct

1 the home interest had been deducted by Mr. Parker and 02:30:39
2 Mrs. Parker personally?

3 A. I believe I did, if I could find it here. I can't seem to
4 find it offhand, but I do recall having a conversation with
5 him. And I asked him why the interest was on the tax return 02:31:22
6 when the financial statement showed they owned no property and,
7 therefore, had no mortgage or interest.

8 Q. Was that prior to when the 2002 tax return was amended to
9 remove the interest?

10 A. I believe it was, yes. 02:31:43

11 Q. Did there come a time when another offer in compromise was
12 filed after the first one was rejected?

13 A. Yes.

14 Q. Looking at page 31 of your archive, is this an offer in
15 compromise that you obtained as well and reviewed? 02:32:17

16 A. Yes, it is.

17 Q. Were there any materially substantive issues associated
18 with this other than what you already testified to as to the
19 first offer in compromise?

20 A. Yes. 02:32:37

21 Q. What were the differences?

22 A. Well, I believe the first offer in compromise omitted two
23 tax years. This offer in compromise included those tax years
24 that were omitted from the first one.

25 Q. Anything else that you thought was materially different 02:32:56

PAUL WEDEPOHL - Direct

1 than what you've already testified about the first one? 02:33:00

2 A. Well, there were some -- as far as the financial

3 statements go?

4 Q. Yes.

5 A. Sure, there were some -- a few items listed on the 02:33:10

6 financial statement. And when I say "items," assets. A couple

7 of jet skis and a trailer, an automobile, an older Cadillac

8 that is, a gun, basically assets valued under \$15,000 in

9 totality along with also a couple of credit card bills that

10 were also listed on the financial statement. 02:33:40

11 Q. Well, we're looking at the offers in compromise. Did they

12 list a personal bank account of any sort for Mr. and

13 Mrs. Parker?

14 A. No.

15 Q. In your experience, is that uncommon? 02:33:53

16 A. Yes.

17 Q. Why is that?

18 A. Well, my experience, when somebody lives in a \$2 million

19 house got a checking account, they got a bank account, they got

20 money, they got income. And this financial statement showed 02:34:07

21 none of that.

22 Q. What about as to the assets were you just talking about,

23 the smaller items, did you review to see whether or not you

24 thought the contents of the Carefree home were adequately

25 covered in this financial statement? 02:34:22

United States District Court

PAUL WEDEPOHL - Direct

1 A. Did I review it for that? 02:34:24

2 Q. Yes.

3 A. I reviewed the financial statement and I felt that there's
4 got to be more stuff inside that house than a gun and, you
5 know, a couple of jet skis and a car, but I was not -- I did 02:34:37
6 not go in the house. I had not been in the house so I didn't
7 know for sure.

8 Q. We'll come to that.

9 On March 2 if you look at your entry on page 44, did
10 you have another phone conversation on March 2 of 2005 with 02:35:03
11 Mr. Robinson?

12 A. Yes, I did.

13 Q. Was it a phone conversation?

14 A. It was a telephone conversation, yes.

15 Q. And it was just the two of you again? 02:35:15

16 A. Yes, it was.

17 Q. Would you tell the jury what you and he talked about in
18 that telephone conversation?

19 A. Well, in that instance, Mr. Robinson indicated that he
20 wanted to reopen the offer in compromise that had been 02:35:25
21 previously returned and that he indicated -- Mr. Robinson
22 indicated he was going to speak to the group manager about,
23 that is the offer in compromise group manager, to try to get it
24 reopened and, again, caused me to back off.

25 Q. What else? 02:35:44

United States District Court

PAUL WEDEPOHL - Direct

1 A. I, however, advised Mr. Robinson that, nonetheless, I was
2 going to continue with collection action and I was going to
3 file a nominee lien on the residence to protect the
4 government's interest.

5 Mr. --

6 Q. Go ahead.

7 A. Shall I go on?

8 Q. Yes.

9 A. Mr. Robinson indicated that, in fact, he essentially
10 conceded that as part of the offer in compromise, Mr. Parker
11 was going to have to offer up the equity in the residence.

12 Q. Did he specify how much equity was in the residence at
13 that time?

14 A. No, he didn't.

15 Q. And you said a second ago that you would continue to work
16 on a nominee lien. I don't remember if you defined that for
17 the jury the last time we were together. Would you explain
18 what a nominee lien is and the function of it?

19 A. I will. I believe last time I explained it in the context
20 of somebody holding title to a car for the true owner of the
21 car. I'll use house in this instance since that's what we're
22 talking about. You have a nominee situation where, for
23 example, the title of my house I put into my neighbor's name
24 essentially for no reason, no consideration, just for
25 convenience, yet I still live in the house. I pay for the

United States District Court

PAUL WEDEPOHL - Direct

1 mortgage payments, I pay the taxes, I take care of the 02:37:09
2 maintenance, I paint the house, you know, I water the yard.
3 The utilities are in my name. It's my house, but I just have
4 it titled to another person called a nominee. And I was going
5 to file a lien showing that a nominee, i.e., Sunlight, held 02:37:24
6 title to the Parker residence.
7 Q. And what's the effect of a nominee lien on that property
8 as it pertains to Sunlight?
9 A. Well, the effect of the nominee lien would essentially be
10 that you would have a tax lien showing all of the income tax 02:37:45
11 liabilities that were owed by the Parkers, but it would say
12 Sunlight Financial, nominee of James and Jacqueline Parker, and
13 then it would have the home address. There would be some
14 wording on that lien also that specifies that this lien is a
15 specific lien and attached to that house and to that house only 02:38:07
16 and it would describe the address of the house, probably with a
17 legal description.
18 Q. Now, after you had the conversation on March 2, 2005, with
19 Mr. Robinson regarding the equity in the Carefree home, did he
20 call you back the next day? 02:38:26
21 A. I received a message to call Mr. Robinson back the next
22 day.
23 Q. And when did you next talk to him?
24 A. I talked to him on March 3.
25 Q. Is that the next day? 02:38:40

United States District Court

PAUL WEDEPOHL - Direct

1 A. That's the next day, yes. 02:38:41
2 Q. A telephone conversation again?
3 A. It was just a telephone conversation.
4 Q. Just the two of you?
5 A. Just the two of us. 02:38:50
6 Q. Would you tell the jury and the Court what that
7 conversation was about?
8 A. Yes. Mr. Robinson indicated to me that he had spoken to
9 the Parkers about the residential issues, the nominee issues,
10 and Parkers' ability to offer a good -- or to make a good offer 02:39:05
11 in compromise that could be accepted. Mr. Robinson told me
12 that Mr. Parker at this point was going to sell the jet skis
13 and get maybe 6,000 or 8,000 to put towards the offer in
14 compromise.
15 Mr. Robinson also indicated that the business in 02:39:27
16 Belize has been down since -- or slow I should say, slowing
17 down since 9-11, since 2001, and that a hurricane had hit
18 shortly thereafter affecting the business.
19 Mr. Robinson also further indicated that the reason
20 the house was not in his -- in the Parkers' name was because of 02:39:53
21 the type of business that Mr. Parker was in Belize. And so
22 inasmuch as he was possibly open to liability for whatever
23 reason in conjunction with his business in Belize, risking
24 being sued and whatnot I presume, that he put the house in
25 somebody else's name to avoid possibly a creditor trying to get 02:40:13

PAUL WEDEPOHL - Direct

1 the house at some point. 02:40:19

2 Q. Was there any discussion about trying to get some of the

3 equity out of the Carefree home?

4 A. Yes. Mr. Robinson indicated that the Parkers could not

5 qualify for a conventional loan and so, therefore, they would 02:40:32

6 have to borrow from some high-rate lenders.

7 Q. What was Mr. Robinson's position, if anything, in regard

8 to your efforts to pursue a nominee lien?

9 A. Well, Mr. Robinson said that the Parkers wanted to leave

10 the residence to Rachel Harris and so they didn't want that 02:40:52

11 lien.

12 Q. Was there any discussion about another offer in compromise

13 being submitted in the near future?

14 A. Yes. Mr. Robinson indicated that he was working up some

15 new data and wanted to know if an offer in compromise in the 02:41:15

16 amount of \$3,008 would be acceptable.

17 Q. And did he want you in any way to endorse that?

18 A. I think that's what he was asking me for. He was seeing

19 if I would, you know, entertain such an offer, if I could

20 recommend such an offer. 02:41:39

21 Q. Did you ever inquire as to what the fair market value was

22 as to the home with Mr. Robinson?

23 A. Well, when he asked me about the amount, we didn't talk

24 about the amount. My issue was I've got to determine what the

25 equity is in the house because that has a factor on what's 02:42:10

United States District Court

PAUL WEDEPOHL - Direct

1 offered. The offer must at least be for the equity in the 02:42:13
2 house or preferably one dollar more.

3 So I didn't know what the equity was at that point or
4 the fair market value exactly. It hadn't been determined.

5 Q. As part of your research on that issue, did you visit the 02:42:26
6 Carefree residence on Meander Way?

7 A. Yes, I did.

8 Q. Looking at your entry on 45 and 46, what day did you go
9 out to the home?

10 A. I went out to the home on March 9, 2005. 02:42:44

11 Q. And is this something you call a field call?

12 A. We call those field calls or field visits, yes.

13 Q. And what's your goal when you do a field call?

14 A. In this instance, my goal was to inspect the house and the
15 property and do the things I needed to do make an assessment of 02:43:00
16 the fair market value.

17 Q. If Exhibit 422 can be put on the screen. It's in
18 evidence.

19 Is that the home that you visited that day?

20 A. Yes. 02:43:27

21 Q. Is that the home at 35802 Meander Way in Carefree,
22 Arizona?

23 A. It sure is.

24 Q. Now, let's look at, there should be in front of you, sir,
25 three pictures of the back view of the home. Would you look at 02:43:40

PAUL WEDEPOHL - Direct

1 Exhibits 432, 430, and 429. Starting with 432. 02:43:45

2 A. I have 432 open.

3 Q. Is that an accurate picture of the back of the Meander
4 home from the mountain side?

5 A. Yes, it is. 02:44:07

6 Q. And is the one that is 429 a slightly closer view from the
7 rear of the residence?

8 A. Yes, sir.

9 Q. And then is Exhibit 430 sort of an angled view to one
10 direction sort of the side back of the house? 02:44:28

11 A. Yes.

12 MR. SEXTON: We would offer all three of those into
13 evidence.

14 MS. ARNETT: No objection.

15 THE COURT: They are admitted. 02:44:43

16 (Exhibit Numbers 432, 430 and 429 were admitted into
17 evidence.)

18 BY MR. SEXTON:

19 Q. Let's put 432 on the screen if we could. Is that the back
20 of the Meander Way residence? 02:44:55

21 A. Yes.

22 Q. And then the other two shots, without putting them on the
23 screen, are slightly angled views and closer views?

24 A. That's right.

25 Q. Let's put 424 -- is that in evidence? Yes. Put 02:45:10

United States District Court

PAUL WEDEPOHL - Direct

1 Exhibit 424 on the screen. 02:45:16

2 On this day, did you try to go inside to view the
3 house?

4 A. I did.

5 Q. Okay. Explain to the jury where you were with your car 02:45:32
6 and what efforts you made to try to get an inside view of this
7 house.

8 A. Sure. Well, you see the wrought iron gates there or what
9 appear to be wrought iron gates. There's a little bit

10 extension of the driveway this side of the gates toward the 02:45:49
11 street. I was parked right there at the bottom of that

12 driveway on the street and I called Mr. Robinson and I said,

13 "Hey, I'm out at the residence. You wanted to know what the
14 fair market value was so you could submit an offer for the

15 equity in the residence. I'm here to help. I'm at the house 02:46:06

16 right now. I would like to go up and look at it. Could you

17 make a phone call to the Parkers and see if I could have

18 permission to go view the property"?

19 Q. What happened next?

20 A. Mr. Robinson said he would inquire and call me right back 02:46:24

21 and he called me right back and he said, "No, you may not enter

22 the property." So I was limited to, basically, the views that

23 these photos reflected in terms of my inspection of the

24 property.

25 Q. And then did you do your own research in public records to 02:46:48

United States District Court

PAUL WEDEPOHL - Direct

1 try to get a measure of what the value of this home was? 02:46:53
2 A. Yes, I did.
3 Q. And what value did you determine?
4 A. I came up with an approximate value of \$2.965 million.
5 Q. And from what source do you recall that you generally went 02:47:14
6 to in order to arrive at that kind of a number?
7 A. Sure. Well, it's pretty difficult to do comps, check
8 comparables in an area like this because nothing is comparable
9 to one another. I secured data information off of other
10 listings of property for sale and determined the square footage 02:47:33
11 based on their asking prices, the dollar amount per square foot
12 attached and I made a formula to run the calculation based on
13 the Parker residence square footage times the approximate value
14 of square footage of other properties in the area and I came up
15 with my figure. 02:47:58
16 Q. Now, you made this field call on 3-9-2005?
17 A. Yes.
18 Q. According to your records, is the next day when this file
19 was reassigned from you to another collection offer?
20 A. Yes, it was. 02:48:09
21 Q. And who was the collection officer it was reassigned to on
22 3-2-2005?
23 A. It was assigned to revenue officer Jerry Carter.
24 Q. So you're not working on it but does there come a time
25 where, like all government bureaucracies, it comes back to you 02:48:27

United States District Court

PAUL WEDEPOHL - Direct

1 again? 02:48:31

2 A. You have been working for the government for a long time.

3 Yes.

4 Q. Turn to page 54. Does that tell when you this file came

5 back to you again? 02:48:36

6 A. Yes, it does.

7 Q. What is the date that it became your file again?

8 A. November 14, 2005.

9 Q. In reviewing the archive, other than working on the

10 nominee lien, did you have any more substantive conversations 02:49:01

11 with Mr. Robinson during this time?

12 A. No.

13 Q. And, ultimately, this was reassigned away from you again

14 to Mr. Carter on 12-20 of 2006?

15 A. I believe that's correct, yes. 02:49:19

16 Q. Look at your entry on page 59.

17 A. Thank you.

18 Correct, 12-20-2006, it was reassigned back to

19 Jerry -- excuse me. It was assigned to Jerry Young at that

20 time. 02:49:38

21 Q. Is that a pseudonym?

22 A. Yes.

23 Q. So when we see Jerry Young in the record, that's the alias

24 name that Jerry Carter was actually using during this period of

25 time? 02:49:53

PAUL WEDEPOHL - Direct

1	A.	Correct.	02:49:54
2	Q.	And then the file never came back to you again for	
3		collection purposes?	
4	A.	No, it didn't.	
5	Q.	And you retired when?	02:50:03
6	A.	I retired September 11, 2009.	
7	Q.	Now, during the time the file was yours, were you ever	
8		given access to the Carefree home?	
9	A.	Never.	
10	Q.	Were you ever provided any photographs of the inside of	02:50:23
11		the Carefree home?	
12	A.	Never.	
13	Q.	Were you ever provided any bank records from Sunlight as	
14		to how it was paying for the care and upkeep of this home?	
15	A.	Never.	02:50:41
16	Q.	Were you ever provided any records of any borrowings	
17		against the equity in this Carefree home?	
18	A.	Provided by whom?	
19	Q.	By either Mr. Robinson or the taxpayer, Mr. Parker?	
20	A.	Never.	02:50:57
21	Q.	Were you ever provided any information about a Rolls	
22		Royce?	
23	A.	No, I wasn't.	
24	Q.	How about a Hummer?	
25	A.	No, I wasn't.	02:51:18

PAUL WEDEPOHL - Direct

1 Q. A Ford truck? 02:51:19
2 A. No, I wasn't.
3 Q. Were you ever provided any information about any residence
4 at 218 Turkey Track Trail in Canyon, Texas?
5 A. No. 02:51:31
6 Q. How about a residence at 103 Gentawood Drive in Canyon,
7 Texas?
8 A. No, sir.
9 THE COURT: We're going to take a break now.
10 Ladies and gentlemen, we'll see you back here at 02:51:41
11 about 15 minutes after three.
12 COURTROOM DEPUTY: All rise.
13 (Jury departs.)
14 (Recess at 2:51; resumed at 3:27.)
15 (Jury enters.) 03:27:14
16 (Court was called to order by the courtroom deputy.)
17 THE COURT: Please be seated.
18 Okay. Mr. Sexton?
19 MR. SEXTON: Thank you, Judge.
20 BY MR. SEXTON: 03:27:56
21 Q. Before we broke, I actually had one more question and that
22 is, were you provided any information about any investments
23 going on in Oklahoma?
24 A. No.
25 MR. SEXTON: That's it for me, Judge. 03:28:09

United States District Court

PAUL WEDEPOHL - Cross

1 THE COURT: Okay. 03:28:10

2 Cross?

3 MS. ARNETT: May I proceed, Your Honor?

4 THE COURT: You may, Ms. Arnett.

5 MS. ARNETT: Thank you. 03:28:30

6 **CROSS - EXAMINATION**

7 BY MS. ARNETT:

8 Q. Hi, Mr. Wedepohl. I'm Ashley Arnett and I represent
9 Mr. Parker. And we haven't had a chance to meet; correct?

10 A. That's right. 03:28:38

11 Q. And you've met Mr. Liggett; right?

12 A. Mr. Who?

13 Q. Mr. Liggett?

14 A. Yes.

15 Q. In his Gilbert office; correct? 03:28:45

16 A. Yes, ma'am.

17 Q. And he had stacks of papers all over his office. It was
18 pretty disorganized when you were out there?

19 A. Looked like a CPA's office to me.

20 Q. Small, cramped, messy? 03:29:01

21 A. I was comfortable. We met in the conference room I
22 believe.

23 Q. Would you say that Mr. Liggett was competent?

24 MR. SEXTON: Objection. Foundation and calls for an
25 opinion from this witness. 03:29:19

PAUL WEDEPOHL - Cross

1 THE COURT: Well, I'll allow her to ask the question 03:29:20
2 but only if there is foundation laid.
3 MS. ARNETT: Thank you, Your Honor.
4 BY MS. ARNETT:
5 Q. You've worked with many CPAs as power of attorneys in 03:29:29
6 collections; correct?
7 A. Yes.
8 Q. And you've worked with competent CPAs and incompetent
9 CPAs?
10 A. I didn't give them tests. I worked with lot of different 03:29:43
11 CPAs.
12 Q. And some of them did really good jobs for the taxpayers
13 and cooperated with you; correct?
14 A. I guess you could say that.
15 Q. And some of them didn't do such a good job for their 03:29:54
16 client; correct?
17 A. I guess you could say that.
18 Q. And you never met Mr. Parker?
19 A. No, I haven't.
20 Q. And you have met Mr. Robinson? 03:30:09
21 A. Oh, yes.
22 Q. And you testified on May 31 that you had a historical
23 relationship with him?
24 A. I said I had historical experiences with Mr. Robinson,
25 yes. 03:30:20

United States District Court

PAUL WEDEPOHL - Cross

- 1 Q. Yes, sir. And you also said that he was involved in some 03:30:21
2 other cases where there had been similar problems to the
3 Parkers'?
- 4 A. Yes.
- 5 Q. What types of other problems did Mr. Robinson have? 03:30:36
- 6 A. I'm not sure I know how to describe to you to answer your
7 question what type of problems did he have. I mean, every case
8 is different. Every issue and every case is different. So I'm
9 not really sure how to answer your question.
- 10 Q. Okay. You know that Mr. Robinson is an ex-IRS lawyer? 03:31:04
- 11 A. Yes.
- 12 Q. And you know that he is board certified in tax law?
- 13 A. I don't know that. I assume so.
- 14 Q. And during your collection history with Mr. Parker, you
15 started investigating Mr. Robinson? 03:31:24
- 16 A. No.
- 17 Q. Well, you filed -- you turned him in to the Office of
18 Professional Responsibility?
- 19 A. I did.
- 20 Q. And you turned him also over to the Lead Development 03:31:31
21 Center?
- 22 A. No, I didn't.
- 23 MS. ARNETT: If I could show the witness -- I have --
24 just for refreshing his memory. It's not marked as an exhibit.
25 May I approach the witness? 03:31:53

United States District Court

PAUL WEDEPOHL - Cross

1 THE COURT: Yes. 03:31:55
2 MR. SEXTON: May I see it before she shows it to him?
3 THE COURT: M'hum. All right.
4 Christine?
5 MS. ARNETT: Thank you. 03:32:24
6 BY MS. ARNETT:
7 Q. If you could take a look at footnote one.
8 A. Yes.
9 Q. And this was a memo prepared by you; correct?
10 A. Yes. 03:32:44
11 Q. So do you recall that Mr. Robinson was turned in to the
12 Lead Development Center?
13 A. I believe he was but not by me.
14 Q. Okay. Well, you know that the purpose of the Lead
15 Development Center is to investigate fraud, correct, abusive 03:32:59
16 tax claims?
17 A. That is a function, I suppose.
18 Q. And you turned Mr. Robinson in to the Office of
19 Professional Responsibility; correct?
20 A. I sure did. 03:33:16
21 Q. And when you turned him in -- and you also turned him in
22 to criminal investigation for the IRS; correct?
23 A. No, I didn't.
24 Q. Could you refer to Exhibit 1010 that is already in
25 evidence. I apologize. The document that you have in front of 03:33:43

PAUL WEDEPOHL - Cross

1 you that hasn't been marked as an exhibit, this is the fraud 03:33:52
2 referral form prepared by you; correct?
3 A. This memorandum dated January 25, 2007?
4 Q. Yes, sir.
5 A. No. 03:34:10
6 Q. I'm sorry. This memo that says from Paul Chase.
7 A. The memo is from me but not the form.
8 Q. If you could turn to the back page that's marked 014514,
9 it's signed off by fraud technical advisor 11C. Paul Chase?
10 MR. SEXTON: Is there another copy for us to refer 03:34:39
11 to?
12 MS. ARNETT: Yes.
13 MR. SEXTON: Thank you.
14 MS. ARNETT: No problem.
15 THE WITNESS: Could you repeat your question? 03:34:47
16 BY MS. ARNETT:
17 Q. Yes, sir. On the page marked 014515 and box 11C--
18 A. Yes.
19 Q. -- it says fraud technical advisor --
20 A. Yes. 03:35:04
21 Q. -- Paul Chase?
22 A. Yes.
23 Q. That's your electronic signature?
24 A. Yes. But this form is not from me.
25 Q. I understand but you signed off on -- 03:35:09

PAUL WEDEPOHL - Cross

1 A. I did but I did not initiate the form, and you asked me if 03:35:12
2 I did the form and I did not.

3 Q. Yes, sir. So you signed off on the referral report of
4 potential criminal fraud cases; correct?

5 A. Yes, I did. 03:35:22

6 Q. And if you could flip to the page 14514 --

7 A. Yes.

8 Q. -- and it lists Gregory Robinson, correct, under 1C? He's
9 one of the names listed; correct?

10 A. Yes. 03:35:40

11 Q. And he is listed as a POA, possible promoter; correct?

12 A. Yes.

13 Q. Now, when the IRS investigates promoters, they have a list
14 of tax fraud promoters; correct?

15 A. I believe so. 03:36:00

16 Q. And then they also have a list of victims; correct?

17 A. I don't know if they call them victims but -- can you
18 rephrase that?

19 Q. Well, they have a list of former clients that are -- the
20 promoter is ordered to pay back the clients for the harm that 03:36:16
21 they caused.

22 A. Promoters have clients. I don't know what they pay back
23 or -- I don't know. I'm not sure I guess I understand your
24 question. I'm sorry.

25 Q. When the IRS investigates possible promoters -- 03:36:31

United States District Court

PAUL WEDEPOHL - Cross

1 A. Yes. 03:36:35

2 Q. -- they have a list of the promoters of the tax fraud
3 schemes; correct?

4 A. Yes.

5 Q. And then also they have a list of victims of the 03:36:41
6 promoters?

7 A. Clients.

8 Q. Clients of the promoters?

9 A. Yes.

10 Q. Okay. And if they had a list of clients of the promoters 03:36:50
11 of Greg Robinson, Mr. Parker would be on that list?

12 A. I don't know.

13 Q. Well, Mr. Robinson represented Mr. Parker; correct?

14 A. Yes.

15 Q. And Mr. Robinson represented Mr. Parker in the offer in 03:37:04
16 compromises that he submitted to you; correct?

17 A. Yes.

18 Q. And Mr. Parker hired Mr. Robinson to fill out those forms
19 and admit them to you; correct?

20 MR. SEXTON: Objection. Foundation. 03:37:20

21 THE COURT: Overruled.

22 THE WITNESS: I guess so. You say hired. I assume
23 so.

24 BY MS. ARNETT:

25 Q. Okay. And the role of the power of attorney is to put 03:37:29

PAUL WEDEPOHL - Cross

- 1 kind of a wall or a space between you and the taxpayer; 03:37:34
2 correct?
- 3 A. I wouldn't phrase it as a wall. I would phrase it as a
4 representative of the taxpayer.
- 5 Q. Somebody to speak on behalf of the taxpayer? 03:37:52
- 6 A. Absolutely.
- 7 Q. And you don't know what Mr. Robinson told Mr. Parker?
- 8 A. I have no idea.
- 9 Q. And you don't know what Mr. Parker knew about the
10 conversations that you had with Mr. Robinson? 03:38:07
- 11 A. I have no idea.
- 12 Q. So you don't know that -- you don't know if Mr. Parker was
13 aware of the promises that Mr. Robinson made to you and he
14 broke?
- 15 A. No. 03:38:22
- 16 Q. And you felt that Mr. Robinson was breaking the rules?
- 17 A. I felt that he was short-circuiting the process. I don't
18 know about breaking the rules. I'm not the judge on that. My
19 job is to report when I see possible irregularities or
20 situations that are inappropriate, I report. Somebody else 03:38:45
21 investigates and makes the call.
- 22 Q. There were times that you told Mr. Robinson he couldn't do
23 what he was doing on behalf of the taxpayer?
- 24 A. For example?
- 25 Q. Yes. If you could refer to Government 446, I think it's 03:39:04

United States District Court

PAUL WEDEPOHL - Cross

1 your history notes. 03:39:13

2 MR. SEXTON: Did you say a page?

3 MS. ARNETT: I'm getting there. One second.

4 BY MS. ARNETT:

5 Q. If you can refer to page 17. 4460177. Under the entry 03:40:00

6 for February 20, 2004 --

7 A. Okay.

8 Q. -- you state that you need to contact Robinson and explain

9 how to properly --

10 MR. SEXTON: Objection. She's reading from an 03:40:18

11 exhibit that is not in evidence.

12 THE COURT: Okay. Ask him a question and you can ask

13 him if it refreshes his recollection.

14 MS. ARNETT: Thank you, Your Honor.

15 BY MS. ARNETT: 03:40:26

16 Q. Do you see the entry under February 20, 2004?

17 A. Yes, ma'am.

18 Q. And do you see the third paragraph?

19 A. Yes, ma'am.

20 Q. And does that refresh your memory in having to tell 03:40:36

21 Mr. Robinson how to properly do things?

22 A. Yes.

23 Q. Do you feel that Mr. Robinson was breaking the rules or

24 not submitting things properly?

25 A. I don't know if he was breaking the rules. In my view, 03:40:51

PAUL WEDEPOHL - Cross

1 what he was submitting was to waste my time and I explained to 03:40:54
2 Mr. Robinson only as a formality because I'm required to make
3 sure everybody is aware of their rights, even seasoned veteran
4 attorneys. So I explained to him how to do a CDP, a collection
5 due process submission. I went through the ABCs, the remedial 03:41:16
6 process, so he could not later say he didn't understand.
7 Q. And even after you went through the ABCs with him, you
8 still had problems with him; correct?
9 A. You bet.
10 Q. So even though you explained to him, "You have to follow 03:41:32
11 the ABCs," he still didn't do it?
12 A. Right.
13 Q. So the only thing you know is what Mr. Robinson -- the
14 only thing you know about Mr. Parker is what Mr. Robinson or
15 what Mr. Liggett were telling you? 03:41:52
16 A. Correct.
17 Q. And you know that Mr. Robinson was telling you that
18 Mr. Parker only owed 1/10 of the tax liability?
19 A. Mr. Robinson tells me that on every case I work.
20 Q. If you could look at Exhibit 1010. 03:42:14
21 A. Sure.
22 Q. And if you could turn to what is -- it's IRS file 013077.
23 A. 01377 or '077, I'm sorry.
24 Q. '077.
25 A. Yes. 03:42:37

United States District Court

PAUL WEDEPOHL - Cross

1 MS. ARNETT: And this has already been admitted into 03:42:37
2 evidence, Your Honor.

3 THE COURT: Okay.

4 BY MS. ARNETT:

5 Q. If you could read the second paragraph that starts with 03:42:45
6 "their power of attorney.

7 A. Read this second paragraph? I'm sorry.

8 Q. I'm sorry. Could you read starting with, "Their power --
9 "Their prior," I'm sorry.

10 A. Sure. "Their prior attorney Henry Tom handled those years 03:43:04

11 before the United States Tax Court. Because of economic

12 circumstances with the Parkers, Mr. Tom suggested that they

13 concede the liabilities even though the correct amount of tax

14 would be approximately one-tenth of that asserted by the

15 Internal Revenue Service. He suggested that they file an offer 03:43:23

16 in compromise. My feeling is that an offer in compromise

17 shouldn't be filed until the follow up years with Revenue Agent

18 Hunt are completed. In the interim I suggest that the Parkers

19 pay an installment payment and receive an installment

20 agreement. I have consulted with Mr. & Mrs. Parker and they 03:43:41

21 will agree to a payment plan of \$1500 per month. I believe

22 this is in line with the income that he has made in the last

23 two years."

24 Q. Thank you.

25 So it would appear that it's not just Mr. Robinson 03:43:53

United States District Court

PAUL WEDEPOHL - Cross

1 saying that they only owe 1/10, it's also Henry Tom? 03:43:56
2 A. Well, that's his opinion, yes, m'hum.
3 Q. So every single case that you had with Mr. Robinson, he
4 told you that the clients only owed 10 percent of the tax
5 liability? 03:44:15
6 A. Well, I -- you know, every single case, you got me. Maybe
7 not every single case. But the greater majority of the cases,
8 Mr. Robinson starts out with the sad tale that nobody has got
9 any money and that the liabilities are incorrect.
10 Q. If Mr. Robinson told the clients that they only owed 10 03:44:36
11 percent, would you expect the clients to believe that they only
12 owed 10 percent?
13 A. I have no idea.
14 MR. SEXTON: Objection to form of the question.
15 THE COURT: Sustained on form. 03:44:46
16 BY MS. ARNETT:
17 Q. Did you ever tell Mr. Liggett that you thought that
18 Mr. Robinson wasn't following the ABCs of the collection
19 process?
20 A. No. 03:45:03
21 Q. Did you ever tell the Parkers that Mr. Robinson wasn't
22 following the ABCs of the collection process?
23 MR. SEXTON: Objection. Foundation as to whether
24 there was ever a conversation with the Parkers.
25 THE COURT: Well, that's okay. Overruled. 03:45:14

United States District Court

PAUL WEDEPOHL - Cross

1 You may answer that. Did you ever? 03:45:16

2 THE WITNESS: Not in those words.

3 BY MS. ARNETT:

4 Q. You did tell Mr. and Mrs. Parker something about Greg
5 Robinson? 03:45:24

6 A. I did not tell them. I sent them a final notice and
7 demand which is the Internal Revenue Service notification that
8 the train is about to crash and it's time to pay up.

9 Q. And if somebody has the power of attorney, they normally
10 send those letters off to the power of attorney for them to
11 respond; correct? 03:45:40

12 A. I do not know, ma'am.

13 Q. Well, sending them the final collection letter wouldn't
14 tell them that Mr. Robinson wasn't following the ABCs of the
15 collection process. 03:45:56

16 A. It doesn't say it, in my humble words; but if I get a
17 letter that says the Internal Revenue Service's next step is to
18 levy, seize assets, I'm thinking something is not going well.

19 MS. ARNETT: One second, Your Honor?

20 THE COURT: Yes. 03:47:01

21 BY MS. ARNETT:

22 Q. So normally in your collection process, the offer in
23 compromise would go directly to you. You testified -- I'm
24 sorry.

25 A. Preferably, when a case is being worked in the field by a 03:47:18

PAUL WEDEPOHL - Cross

1 Revenue officer and we usually have discussed the possibility 03:47:22
2 of an offer between the representative or taxpayer and myself
3 and I request that they send it to me. They don't have to
4 because I don't work the offer per se. I just make the
5 recommendation on the offer. The offer is actually worked in 03:47:39
6 Memphis, Tennessee, unless there's a reason to bring it to the
7 local office. In this case, there was that reason.
8 Q. But Mr. Robinson had filed it in Memphis; correct?
9 A. Yes, ma'am.
10 Q. So he made the process much more difficult for you; 03:47:57
11 correct?
12 A. He drug things out because I had to communicate with
13 Memphis and -- you know, try to get that paperwork out here and
14 so forth. So, yes.
15 Q. Now, when you were looking at the offer in compromise with 03:48:22
16 Mr. Sexton, you stated that the Belize company wasn't on the
17 offer in compromise. Do you remember that?
18 A. Yes.
19 Q. Now, if Mr. Parker didn't have a controlling interest in
20 the Belize company, he didn't need to put it on the offer in 03:48:36
21 compromise; correct?
22 A. Not necessarily so. If he had a one percent interest in
23 the company, he should put it on the financial statement.
24 Q. But if his power of attorney, an attorney told him he
25 didn't have to put it on the offer in compromise because it 03:48:49

United States District Court

PAUL WEDEPOHL - Cross

1 wasn't his, and that is what was submitted to you, then he 03:48:53
2 didn't have to put it on there according to his power of
3 attorney; correct?

4 MR. SEXTON: Objection to the form of the question as
5 to what the attorney was told from -- in this process. 03:49:04

6 THE COURT: I'm not sure we're talking in this
7 question about the attorney but I will sustain it on
8 foundation. We're talking a power of attorney. You need to
9 lay some foundation for this.

10 MS. ARNETT: Yes, Your Honor. 03:49:25

11 BY MS. ARNETT:

12 Q. Could you look at what's marked as 1019 and 1020?

13 A. I have 1019 and 1020.

14 Q. Thank you.

15 These are form letters. Well, 1020 is a form letter 03:49:58
16 dated February 4, 2005, from the IRS to James and Jackie
17 Parker?

18 A. Yes.

19 Q. And it also has some handwritten notes on it; correct?

20 A. Yes. 03:50:14

21 Q. And the government agreed it's Mr. Parker's handwritten
22 notes. Did you send this letter?

23 A. No.

24 Q. Is it a letter that you recognize in the collection
25 process? 03:50:22

PAUL WEDEPOHL - Cross

1 A. Yes. 03:50:22

2 Q. As coming from the IRS?

3 A. Yes.

4 MS. ARNETT: Could we admit 1010 -- 1020. I'm sorry.

5 MR. SEXTON: This witness hasn't seen the exhibit 03:50:34

6 with the handwriting on there --

7 THE COURT: Well, he's just identified it. I'm not

8 sure what you're talking about.

9 MR. SEXTON: There's additional handwriting on it.

10 THE COURT: Okay. So the foundation has not been 03:50:43

11 laid for the entire document. I'll sustain it on that basis.

12 I don't know what's written on the document. So apparently

13 that is the government's objection.

14 MS. ARNETT: Thank you, Your Honor.

15 BY MS. ARNETT: 03:51:23

16 Q. So as a collection agent, some of the tools that you have

17 in your job is to show up to a house and tow a car away;

18 correct?

19 A. Could you ask me that again?

20 Q. In your role as a collection agent, one of the tools that 03:51:33

21 you have to perform your job is to show up to a house and tow a

22 car away; correct?

23 A. We do seize vehicles.

24 Q. So if you -- if there was a car that the Parkers owned,

25 you could have towed it away to help in the collection process; 03:51:49

PAUL WEDEPOHL - Cross

1 correct?

03:51:53

2 MR. SEXTON: Can we have some foundation as to when
3 and what we're talking about here? When in the process are we
4 talking about?

5 THE COURT: Sustained.

03:52:03

6 MS. ARNETT: Okay.

7 BY MS. ARNETT:

8 Q. During your work on the Parkers' collection file in 2004
9 and '5, if there was a car that the Parkers owned such as a
10 Rolls Royce and you could prove that the Parkers owned that
11 car, you could show up to the house and tow it away; correct?

03:52:18

12 A. Well, you make it sound very simple but after an
13 investigation and verification of certain items and approval, I
14 can't do that on my own. I have supervisors. It is often
15 feasible to seize a vehicle, if that is the appropriate way to
16 resolve the liability.

03:52:38

17 Q. And you didn't seize any of the Parkers' cars; correct?

18 A. No, ma'am.

19 Q. The same thing with the house. If you felt the Parkers
20 owned the Carefree house, if you could prove that the Parkers
21 owned the Carefree house, then you could foreclose on the house
22 during your collections in 2004 and 2005?

03:52:56

23 A. You said if I could. I did and I can prove it's their
24 house and I was going to seize that house. I just didn't get
25 to it yet.

03:53:14

United States District Court

PAUL WEDEPOHL - Cross

1 Q. The house is still there; correct? 03:53:17

2 A. Yeah. We don't remove it. But it's still there.

3 Q. But you haven't foreclosed on the house?

4 A. No, ma'am.

5 Q. And you know that Sunlight Financial owns the Carefree 03:53:32

6 house?

7 A. As a nominee of James and Jacqueline Parker only.

8 Q. Well, you had talked about, with Mr. Sexton, if you title

9 in your neighbor's home, even though you work it and control

10 it, it's still yours; correct? 03:53:52

11 A. Yes.

12 Q. Well, during your investigation of Mr. and Mrs. Parker, if

13 I could refer you back to 446, you did some research into the

14 Parkers' home; correct?

15 A. Yes. 03:54:07

16 Q. And if you could refer to page 45.

17 A. Thank you. All right.

18 Q. When you researched the property taxes, you discovered

19 that none of the property tax payments came from Mr. and

20 Mrs. Parker; correct? 03:54:33

21 A. They did not come from an account -- the Parkers

22 themselves directly did not pay the property taxes, correct.

23 Q. And you also saw evidence of the Parkers paying rent;

24 correct?

25 A. No. 03:54:53

PAUL WEDEPOHL - Cross

1 Q. No? 03:54:53
2 A. No.
3 Q. Okay.
4 MS. ARNETT: One moment, Your Honor.
5 I'm sorry. Could we give the witness Exhibit 1076? 03:56:19
6 THE WITNESS: Yes, I have 1076 right here.
7 BY MS. ARNETT:
8 Q. Does this appear to be a check written from I think
9 American Sterling Bank?
10 MR. SEXTON: If counsel wants to offer it, we have no 03:56:55
11 objection.
12 MS. ARNETT: Okay. We'll offer it.
13 THE COURT: All right. It's admitted.
14 (Exhibit Number 1076 was admitted into evidence.)
15 MS. ARNETT: Thank you. 03:57:03
16 THE WITNESS: And the question again, please.
17 BY MS. ARNETT:
18 Q. Yes. Could you read the memo of the check?
19 A. The memo section says, "For rent, 35802," I think, "North"
20 I guess that's "Meander 8-3 through 7-4." 03:57:18
21 Q. And the address is the address of the taxpayers; correct?
22 A. Yeah, I think it is, yes.
23 Q. Now, lots of people put homes in family trusts; correct?
24 A. Sure.
25 Q. And they do that for estate planning purposes; correct? 03:57:47

United States District Court

PAUL WEDEPOHL - Cross

1	A. Sure, yes.	03:57:50
2	Q. And there's nothing wrong with putting a home in a trust	
3	for estate planning purposes; correct?	
4	A. Absolutely not.	
5	Q. So during your collection process with the Parkers, you	03:58:14
6	filed a nominee lien on the Parkers' Carefree home; correct?	
7	A. No.	
8	Q. There's a nominee lien on the home?	
9	A. Yes.	
10	Q. Somebody else filed it?	03:58:24
11	A. Yes.	
12	Q. And in the language on the nominee lien, it also states	
13	that it will affect your ability to apply for credit and borrow	
14	money; correct?	
15	A. I am -- I am retired. I don't remember what it says on	03:58:38
16	there word for word. I don't know.	
17	Q. It says something to that effect?	
18	A. I don't know.	
19	Q. So on the day that you showed up to Mr. Parker's house for	
20	a field visit, you called Mr. Robinson to see if you could	03:59:08
21	inspect the inside of property; correct?	
22	A. Well, I don't know if I asked him if I could inspect the	
23	inside. I asked him if I could enter the premises. Remember	
24	the gate was closed, and I asked if we could enter that gate to	
25	go up and get closer to the house.	03:59:24

PAUL WEDEPOHL - Cross

1 Q. Do you recall seeing a car in the driveway? 03:59:26
2 A. I believe so.
3 Q. Did Mr. -- do you remember Mr. Robinson telling you that
4 the Parkers weren't home?
5 A. No, he didn't tell me that at all. 03:59:37
6 Q. Did you ever try to set up a scheduled visit to come to
7 the Parkers' house?
8 A. No.
9 Q. And so after you left your field visit, you determined the
10 fair market value of the house? 03:59:50
11 A. I estimated the fair market value as best I could, yes.
12 Q. Do you have any real estate training?
13 A. I have two officers with me who have extensive real estate
14 backgrounds with me and they assisted me.
15 Q. And you valued the house at? 04:00:09
16 A. I think it was 2.9 and some change million.
17 Q. And do you know that the Parkers later -- that Sunlight
18 Financial later got a loan on the house for 1.5?
19 A. I don't know that they did when I was working the case. I
20 don't believe they did. 04:00:28
21 Q. Okay.
22 MS. ARNETT: One second, Your Honor.
23 BY MS. ARNETT:
24 Q. During your investigation, you found out about Sunlight
25 Financial; correct? 04:02:10

United States District Court

PAUL WEDEPOHL - Cross

1 A. Yes. 04:02:11
2 Q. And did you find out about Cornerstone?
3 A. Yes.
4 Q. And Cornerstone was created in 1994; correct?
5 A. I believe so. I would have to go back to be positive on 04:02:20
6 that but I think so.
7 Q. It was created before any of the collection process
8 started; correct?
9 A. Yes.
10 Q. And Cornerstone transferred the Carefree home into 04:02:28
11 Sunlight Financial; correct?
12 A. Yes.
13 Q. And Cornerstone, like any other trust, there's not a
14 problem if a trust is set up for family estate planning;
15 correct? 04:02:44
16 MR. SEXTON: Objection. Calls for a legal
17 conclusion.
18 THE COURT: Overruled.
19 THE WITNESS: Could you rephrase your question or
20 restate your question, please. 04:02:51
21 BY MS. ARNETT:
22 Q. If a family trust is set up for estate planning, that's
23 okay; correct?
24 A. Yes.
25 Q. And lots of people do it? 04:03:00

United States District Court

PAUL WEDEPOHL - Cross

1	A. Yes.	04:03:02
2	Q. And you do -- you used to deal with it all the time in	
3	collections; correct?	
4	A. Quite often, yes.	
5	Q. And before any offer in compromise was submitted you knew	04:03:35
6	about Sunlight Financial?	
7	A. Yes.	
8	Q. And when you got the first offer in compromise, did you	
9	tell Greg Robinson, "Sunlight Financial wasn't on this offer in	
10	compromise"?	04:03:51
11	A. I don't believe so.	
12	Q. Did Greg Robinson tell you that Sunlight Financial didn't	
13	need to be on the offer in compromise because the Parkers	
14	didn't own it?	
15	A. I don't remember him telling me that at all.	04:04:03
16	Q. Did you turn to Mr. Robinson to the Office of Professional	
17	Responsibility for any of his other clients?	
18	A. Yes.	
19	Q. Do you know what happened to those claims?	
20	A. I have no idea, ma'am.	04:04:59
21	Q. So Cornerstone first bought the Carefree home; correct?	
22	A. Yes.	
23	Q. And then a new trust was set up for the Parker children;	
24	correct?	
25	A. I don't know about the timing of it. The family trust?	04:05:39

PAUL WEDEPOHL - Cross

1 Q. The Sunlight. Cornerstone went -- was -- bought the 04:05:43
2 Carefree home; correct?

3 A. Correct.

4 Q. And then Cornerstone transferred the Carefree home to
5 Sunlight? 04:05:52

6 A. Yes.

7 Q. And Mr. Parker couldn't borrow against the Carefree home
8 unless his children signed on that -- on the lending papers;
9 correct?

10 A. I don't know. 04:06:01

11 Q. Well, if he didn't own the home and Sunlight owned the
12 home, Sunlight would have to sign on borrowing papers; correct?

13 A. I don't know what the lender's policies are. I have no
14 idea, ma'am.

15 Q. You know that the Carefree home is not legally in 04:06:16
16 Mr. Parker's name?

17 A. I don't know about right now; but when I worked the case,
18 it was not titled to the Parkers.

19 Q. And you can't ignore title; correct?

20 A. No. 04:06:33

21 Q. You can't say it was faked if it's titled in Sunlight
22 Financial; correct?

23 MR. SEXTON: Objection to the form of the question
24 and the legal conclusion that it's asking for.

25 THE COURT: Well, I'll sustain it on foundation. 04:06:49

United States District Court

PAUL WEDEPOHL - Cross

1 This witness seems to have more expertise. If it's legal and 04:06:55
2 I'm not quite sure that's what the question was. But if you
3 can lay more foundation, then I'll allow it.
4 BY MS. ARNETT:
5 Q. So you can say that the home is really Mr. Parker's but 04:07:07
6 you have no -- he has no legal ability to transfer title,
7 borrow, or sell without his children's signature?
8 A. I don't know.
9 Q. And the IRS would not have accepted a deed from Mr. Parker
10 because title is not in his name? 04:07:32
11 A. That was never offered or brought up. I don't know. I
12 haven't looked into that.
13 Q. If you could go back to Exhibits 1019 and 1020.
14 A. Yes, ma'am.
15 Q. And you already stated that 1019 is a form letter that is 04:08:53
16 sent out by the IRS; correct?
17 A. It looks like one of our letters although I'm not totally
18 familiar with this one.
19 Q. 1020 you are familiar with?
20 A. Yes. 04:09:14
21 Q. And you see the note at the bottom; correct?
22 A. The handwritten note?
23 Q. Yes.
24 A. Yes.
25 Q. You know who Greg Robinson is; correct? 04:09:42

United States District Court

PAUL WEDEPOHL - Cross

1 A. Yes. 04:09:45

2 Q. And you know who Jim Parker is; correct?

3 A. Yes.

4 Q. Does it not surprise you that Mr. Parker would ask

5 Mr. Robinson what else do we need to submit because we gave 04:10:03

6 them everything?

7 MR. SEXTON: Objection. She's now testifying from

8 that which is not in evidence by framing her question in that

9 fashion.

10 THE COURT: Well, it's not in evidence yet so you 04:10:08

11 need to -- if you intend to rely on it, you need to ask

12 questions to establish the admissibility and you are asking him

13 a question to speculate. So sustained.

14 MS. ARNETT: Thank you, Your Honor.

15 BY MS. ARNETT: 04:12:42

16 Q. You know that Greg Robinson and James Parker had a

17 relationship; correct? Mr. Robinson represented Mr. Parker;

18 correct?

19 A. Yes.

20 Q. They had an attorney-client relationship? 04:12:55

21 A. Yes.

22 Q. And 1020 is a form from the IRS; correct?

23 A. A form letter, yes.

24 Q. Yes.

25 And this is a way that you communicate with taxpayers 04:13:24

PAUL WEDEPOHL - Cross

1 all the time; you send them form letters? 04:13:26
2 A. Myself?
3 Q. The IRS.
4 A. Generally. There's a form letter for everything.
5 Q. Yes, sir. And you see Mr. Parker giving his attorney 04:13:37
6 instructions on what to do in the collections, correct, at the
7 bottom?
8 A. Of 1020?
9 Q. Yes, sir.
10 A. I see a note but I don't know -- I don't know if -- I 04:14:00
11 guess if you say we need to talk is an instruction.
12 MR. SEXTON: Don't read from -- this is in the
13 handwritten portion.
14 THE COURT: It's not admitted yet.
15 THE WITNESS: I don't know if that's an instruction 04:14:14
16 or not.
17 BY MS. ARNETT:
18 Q. Do you see Mr. Parker asking his attorney a question;
19 correct?
20 MR. SEXTON: Objection. 04:14:25
21 THE COURT: Ms. Arnett, you're asking about the
22 content of the letter that isn't admitted. So whatever it says
23 is not relevant until it is admitted.
24 MR. MINNS: Your Honor, could I assist on this
25 predicate, please? 04:14:56

United States District Court

PAUL WEDEPOHL - Cross

1 THE COURT: If Ms. Arnett allows you to. 04:14:58
2 It's up to you. Do you want him as your -- to help
3 you out?
4 MS. ARNETT: Yes, please.
5 THE COURT: That's fine. 04:15:10
6 BY MR. MINNS:
7 Q. Mr. Wedepohl, am I pronouncing your name correctly?
8 A. Wedepohl. Call me Paul.
9 Q. Paul. Yes, sir.
10 What you have in front of you, that exhibit, 04:15:26
11 taxpayers frequently write on these letters that the IRS sends
12 them and sends it back to the IRS; correct? You've gotten
13 letters back on your own forms from taxpayers who handwrite
14 messages back to you?
15 A. Yes. 04:15:43
16 Q. And if you received this note, you would read it, would
17 you not?
18 A. Sure.
19 Q. And you can gather from this note that is now in your
20 hands -- would you pick it up, please. 04:15:57
21 A. I will.
22 Q. And it's now in your hands --
23 A. Yes.
24 Q. -- and it answers one of the questions that you have
25 brought up in this case about what Mr. Parker -- was going 04:16:11

PAUL WEDEPOHL - Cross

1 through Mr. Parker's mind, does it not? 04:16:12

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

3 THE COURT: Well, I'm going to allow that. It's
4 introductory at this point because you haven't said --

5 So you can answer that yes or no. 04:16:28

6 THE WITNESS: Could you ask the question again?

7 BY MR. MINNS:

8 Q. It answers a question that you brought up during the
9 direct testimony about what Mr. Parker's communication was with
10 his lawyer; correct? 04:16:39

11 A. I guess so.

12 Q. Okay.

13 MR. MINNS: We offer it into evidence, Your Honor.

14 THE COURT: I'm not sure what it is. Is there an
15 objection? 04:16:48

16 MR. SEXTON: Sure. There's no evidence that this was
17 sent to the IRS. There's no evidence that he's ever seen this
18 document.

19 THE COURT: Well, and let me talk to counsel at the
20 sidebar. Let me see the document. 04:16:59

21 (At sidebar.)

22 THE COURT: The problem, Mr. Minns, is I presume you
23 mean this is your client?

24 MR. MINNS: Yes.

25 THE COURT: Well, he's got to be able to identify 04:17:21

PAUL WEDEPOHL - Cross

1 that as his handwriting or it doesn't come in. 04:17:23

2 MR. MINNS: And I thought -- and if we're wrong, the
3 government can correct me now. I thought we had an agreement
4 that it was going to be identified and we were identifying
5 their handwriting samples. If they are breaking their 04:17:36
6 agreement, I need to know now.

7 MR. SEXTON: No. What I am expecting to have is the
8 person who testifies about this isn't a person who has never
9 seen this document and it never ever was sent to the IRS. I
10 was expecting either Mr. Robinson, Mr. Parker, or Mr. Liggett, 04:17:49
11 whose files I think this came from, would be testifying that
12 this comes from my files. But this gentleman here has no
13 knowledge of this letter. It was never sent back to the IRS.
14 He has no knowledge of this. So this is not --

15 THE COURT: Let me stop you for a second. 04:18:05

16 Is this a document you have never seen before?

17 MR. SEXTON: No. I've seen this document before.

18 THE COURT: Is this a document -- if it didn't have
19 this on it, is this a document that you would claim is not --
20 there is no foundation for it and you would not -- you would 04:18:20
21 not admit this document?

22 MR. SEXTON: No. I probably would say this is a form
23 letter and probably could come in through this witness as being
24 recognized as a typical form letter. It's the additional
25 information that was never seen by this guy, never sent to the 04:18:32

United States District Court

PAUL WEDEPOHL - Cross

1 IRS that should not come through this witness. It should come 04:18:35
2 through one of three other witnesses: Mr. Liggett,
3 Mr. Robinson, or Mr. Parker but note through this witness.

4 THE COURT: But you don't deny that that is
5 Mr. Parker's handwriting? 04:18:52

6 MR. SEXTON: That we've talked that looks like his
7 handwriting and we don't have an issue with it probably being
8 his handwriting at this point. But we don't think this is the
9 proper witness to get this document in through that because it
10 was never sent to the IRS. It has never been seen by this 04:19:09
11 gentleman.

12 THE COURT: By Mr. Wedepohl?

13 MR. SEXTON: Correct.

14 THE COURT: So you're saying with another witness it
15 comes in? 04:19:20

16 MR. SEXTON: I would say the three witnesses I've
17 listed: Liggett, Robinson, or Mr. Parker himself.

18 THE COURT: I'm not sure what he said so far but he
19 said he recognized this kind of document.

20 MR. SEXTON: Right. 04:19:34

21 THE COURT: But he can't recognize the handwriting.
22 So we're not going to allow it at this point even though the
23 government may eventually agree that's his handwriting.

24 (End sidebar.)

25 THE COURT: Okay. The objection is sustained. 04:19:58

United States District Court

PAUL WEDEPOHL - Cross

1 MR. MINNS: I had one more question, Your Honor, with 04:20:02
2 the Court's permission, and then I'll turn this back over to
3 Ms. Arnett.
4 BY MR. MINNS:
5 Q. You've taken no training on title; is that correct? 04:20:10
6 A. Yes, I've had training on title.
7 Q. So you're an expert on real estate title?
8 A. I'm not going to proclaim to be an expert, but I've had
9 title training and I've done it for 27 years.
10 Q. So you're saying that a chain of title can vest in someone 04:20:25
11 who has never been in the chain of title?
12 A. Repeat, that please.
13 Q. Yes, sir. Mr. Parker was never in the chain of title.
14 You've put him in the chain of title by your legal opinion?
15 A. I'm not a lawyer but my opinion is yes. 04:20:46
16 Q. You've put him in the chain of title?
17 A. Absolutely. Have you ever heard of a fraudulent
18 conveyance?
19 Q. In 1994, 10 years before you began your investigation,
20 you're claiming a fraudulent conveyance took place? 04:20:58
21 A. I'm not saying that was fraudulent.
22 Q. Are you claiming Mr. Robinson conveyed it falsely using
23 the people whose names were on the deeds?
24 A. I'm not saying that at all. I'm saying there was a
25 fraudulent conveyance. 04:21:12

United States District Court

PAUL WEDEPOHL - Cross

1 Q. Explain how someone can sign a deed over when they are not 04:21:14
2 in the chain of title? Explain how they can legally do that?
3 A. How much did Cornerstone get paid from Sunlight?
4 Q. Are you going to refuse to answer the question how someone
5 can legally sign a deed -- 04:21:28
6 A. No, I'm not.
7 Q. -- when they are not in the chain of title?
8 A. No. Anybody can sign any deed they want. It doesn't make
9 it legitimate or valid.
10 Q. That's correct. They have to be in the chain of title; 04:21:38
11 right? Right?
12 A. No.
13 Q. Oh. So you can sign a deed over to this courthouse if you
14 want?
15 A. I can sign anything I would like to sign offer. It 04:21:49
16 depends on the intent.
17 Q. So assuming the truth of the matter, that in 1994, before
18 you were on this case, this title was vested for probate and
19 estate planning in the Parker children, that Mr. Parker and
20 Mrs. Parker had no signing rights on it, assuming that 04:22:12
21 Mr. Robinson then conveyed it using the children's signatures,
22 how can you interpose Jim Parker's even right to sign on the
23 title?
24 MR. SEXTON: Objection to the form of the question.
25 Foundation. Argumentative. Hearsay. 04:22:32

United States District Court

PAUL WEDEPOHL - Cross

1 THE COURT: I'm going to overrule the objection based 04:22:34
2 upon the answer of this witness concerning fraudulent
3 conveyances, so overruled.

4 MR. MINNS: Thank you, Your Honor.

5 THE WITNESS: And your question, sir? 04:22:45

6 BY MR. MINNS:

7 Q. How can you give someone the power to sign title when they
8 are not in the chain of title and have no legal right to do so?

9 A. I don't understand what you mean when how do you give
10 somebody power. I don't understand what you are saying. 04:23:03

11 Q. Well, you were a very powerful man and you had the power
12 to seize homes. You had the power to seize cars but you did
13 not have the power to write title opinions; correct?

14 A. I do not write title opinions. I write recommendations.

15 Q. And you were not empowered -- Jim Parker was not empowered 04:23:20
16 if he had agreed to give you that house, he didn't have the
17 legal right to do it?

18 A. Maybe not technically but he called the shots.

19 Q. Well, as you have testified under oath and admitted that
20 you were mistaken, first you testified that Mr. Robinson told 04:23:43
21 you 100 percent of the time that his clients only owed 10
22 percent. Now I'm asking you --

23 MR. SEXTON: Objection. He's testifying and he's not
24 asking a question.

25 THE COURT: All right. Sustained. Foundation. 04:23:59

PAUL WEDEPOHL - Cross

1 BY MR. MINNS: 04:24:03

2 Q. I'm asking you, if Mr. Parker wrote a deed right now,
3 signed a deed, you've said you've had evidence that it would be
4 good. How could it possibly be good if it's not -- if he's not
5 in the chain of title? 04:24:20

6 A. Your example makes no sense to me, sir, because we're not
7 dealing with facts. You're talking about a what-if, a
8 for-example, and I can't relate to that in this case.

9 Q. Relate to the facts. The title is --

10 A. I'm trying to. 04:24:36

11 Q. The title is in the children's trust.

12 A. Right.

13 Q. The title is moved to another trust that is owned by the
14 children, by the children by instruments drawn up by
15 Mr. Robinson. 04:24:46

16 A. M'hum.

17 Q. Mr. Parker, Jim Parker, is not in that chain of title.
18 You've said you had evidence that he could have
19 signed that over. Where is it?

20 A. The evidence I have is based on my nominee investigation 04:25:00
21 and that evidence revealed that Mr. Parker made all decisions,
22 communicated with lenders personally and the children never
23 did. Now, they signed some documents. But I also found that
24 the Parkers maintained their residence, lived in the residence,
25 used the residence for their personal home because, remember, 04:25:24

PAUL WEDEPOHL - Cross

- 1 the kids don't even live in this city. 04:25:28
- 2 Q. Isn't that --
- 3 A. All facts point to reality that we have a nominee
4 situation, and I can't break that situation with the facts that
5 I uncovered showing that the true owner is the Parkers. 04:25:40
- 6 Q. Isn't that the fact with every single home in Arizona and
7 the United States where it is put in a trust and the parents
8 still live in it but it is left for the children to avoid
9 probate? Isn't that the fact with every one of them, the
10 parents maintain it? 04:26:02
- 11 A. Well, that might be, but most of those other people pay
12 their taxes. They don't put the house beyond reach and then
13 say, "I don't own it. I don't have any right to it,"
14 conveniently, legally, "so I can't pay you." You can put any
15 asset you want to in a trust anytime you want to in a trust. 04:26:19
- 16 Pay your taxes.
- 17 Q. Isn't that one of the reasons why people set up trusts, to
18 take it out of their reach so that if bad things happen, for
19 example, an argument with the IRS ten years in the future or a
20 lawsuit or other things, that the property is protected for the 04:26:44
21 benefit of the beneficiaries of the trust? Isn't that the only
22 reason trust law even exists in the United States?
- 23 A. No. I call that tax evasion, sir.
- 24 Q. So your sworn testimony is that tax evasion committed in
25 1994, 10 years before your investigation culminated? 04:27:01

United States District Court

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1 A. No. There's nothing wrong with putting that house in any 04:27:07
2 trust 100 years ago but along -- when the day comes along that
3 there's a tax liability, then assets exclusively controlled by
4 that individual, and it's only in a nominee's name as a facade,
5 then we'll go after that asset. 04:27:29

6 Q. Well, in fact, if you can prove in a court of law that it
7 is a facade, you can take it; correct?

8 A. We have a nominee lien filed now, sir, so I'm pretty sure
9 that was approved and not by me.

10 Q. It has never been approved by a court of law. 04:27:45

11 A. Sue us.

12 Q. You got me there. You're too big to sue.

13 MS. ARNETT: I have nothing further. Thank you.

14 THE COURT: All right.

15 How much time are you going to take on redirect? 04:28:14

16 MR. SEXTON: None.

17 THE COURT: Okay. You may step down.

18 THE WITNESS: Thank you.

19 (Witness excused.)

20 (End of excerpted portion.) 04:28:20

21 THE COURT: And, ladies and gentlemen, we're starting
22 a little late tomorrow but we'll get going. We'll start at 9
23 o'clock, so you have a little extra time to make that train in.
24 I heard somebody had a little trouble with that train.

25 All right. We are adjourned for the day. Have a 04:28:38

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1 nice evening. 04:28:42

2 (Jury departs.)

3 THE COURT: Okay. Counsel, how are we doing with
4 witnesses? I'm not asking you how you're doing with the jury
5 because I'm sure Mr. Minns would like that, too. 04:29:18

6 MR. SEXTON: No. I meant with the witnesses.

7 THE COURT: Well, let me just use my little
8 highlighter here and get as happy as you are.

9 How many more witnesses do we have here?

10 MR. SEXTON: Oh, we're about at the -- 04:29:36

11 THE COURT: Let me give you this and then you can
12 mark those ones that you think --

13 MR. SEXTON: Well, it's in that pleading that we
14 filed with you, the 29 witnesses. There may be a few less
15 because the parties may reach something -- 04:29:50

16 THE COURT: I like this one. So I'll have you mark
17 it.

18 MR. SEXTON: And do it right now?

19 THE COURT: Yes. Would you?

20 You can do it afterwards. Let me just go to the 04:30:07
21 final verdict question, which is how much time are you going to
22 take?

23 MR. SEXTON: Well, I think we're ahead of the
24 schedule that we projected to the Court. We are ahead of the
25 times that we projected in our pleading to you and we're ahead 04:30:21

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1 of the schedule. So we are probably going to put on four or
2 five more witnesses tomorrow and then we have a week off. We
3 are going to be very close. We may bleed into that next week
4 but we are very close in that next three-day week that you have
5 to being finished.

04:30:24

04:30:46

6 THE COURT: Okay. That the starts the 18th so it
7 will be the 19th, 20th, 21st.

8 MR. SEXTON: Right. That's my best estimate with
9 this; but if we go into the next week, I would be surprised
10 because that's the week that you have us set for five days. I
11 believe we'll rest on that -- if we don't rest the week before,
12 I think we're going to rest very early in the next week. So
13 we're ahead of schedule.

04:31:00

14 THE COURT: Okay.

15 And how much time, Mr. Minns and Ms. Arnett, do you
16 think you're going to need?

04:31:12

17 MR. MINNS: My estimate would be three or four trial
18 days.

19 THE COURT: Okay. So we may well finish at the end
20 of June; right? Okay. I see some nods there. That is good
21 news.

04:31:30

22 Okay. And I appreciate counsel working together.
23 This has been a pleasure. But work together some more on these
24 documents so if they are -- Mr. Perkel needs to perk up here
25 and get with counsel.

04:31:55

United States District Court

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1 MR. SEXTON: Do you still need me to highlight these? 04:31:57

2 THE COURT: Yes. I have no problem with, as I said
3 at the sidebar, for you noting in certain documents something
4 that you want to display to the jury and red flag for the jury.
5 But if counsel are working with you about foundation, 04:32:12
6 admissibility, then we don't have to waste a lot more time.

7 I'm not sure how many more documents we have. Are we
8 going through documents or are we doing people now?

9 MR. SEXTON: They will not be document-heavy people.
10 They will be -- except for perhaps -- I don't mean it that way, 04:32:30
11 except perhaps a little bit more with, like, the summary
12 witness at the end might have a few more things to refer to.
13 But, generally speaking, not like the first witness.

14 THE COURT: Okay. All right. Good.
15 We're adjourned. 04:32:44

16 (Whereupon, these proceedings recessed at 4:32 p.m.)

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C E R T I F I C A T E

04:32:45

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.

04:32:45

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.

04:32:45

DATED at Phoenix, Arizona, this 5th day of August,
2012.

04:32:45

s/Elaine M. Cropper

04:32:45

Elaine M. Cropper, RDR, CRR, CCP

United States District Court