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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

THOMAS & WONG GENERAL CONTRACTOR, INC., Plaintiffs,	)	
vs.	)	CV No. 2005-051325
BLUME LAW FIRM, et al., Defendants.	)	

February 4, 2008
Phoenix, Arizona

BEFORE THE HONORABLE: ROBERT C. HOUSER, Judge

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Lisa H. Vitoff
Certified Court Reporter
CCR #50251

A P P E A R A N C E S

FOR THE PLAINTIFFS:
MR. BRYAN F. MURPHY
Attorney at Law

FOR THE DEFENDANTS:
MS. CLAIR AMBROSIO
Attorney at Law

P R O C E E D I N G S

THE COURT: Ladies and gentlemen, those of you who were not selected as a jurors in this case are excused and free to go. I want to thank all of you for your participation here today and for your willingness to serve on this jury. As I said, you're now excused and free to leave or you may stay, if you wish, and observe the proceedings. Thank you, again, for your time.

All right, ladies and gentlemen. I just told you to sit down. Will you please stand and be sworn.

(The Trial Jury Panel was duly sworn upon their oath.)

THE COURT: Ladies and gentlemen, now that you have been sworn, I'm going to briefly tell you something about your duties as jurors and give you some instructions. At the end of this case, I'll give you more detailed instructions and those instructions will actually control your deliberations.

It's going to be your duty in this case, to decide the facts. You must decide the facts only from the evidence presented in court. You must not speculate or guess about any fact. You must not be influenced by sympathy or prejudice.

You will hear the evidence, decide the facts, and then apply the law that I will give to you at the end of this trial to those facts. That's how you will reach your verdict.

In doing so, you must follow the law whether you agree with it or not. And you must not take anything that I may say or do during the course of this trial as indicating any opinion that I have about the facts. You and you alone are the judges of the facts.

Jury service is an important part of our system of justice with a long and distinguished tradition in western civilization. In the very beginning, American law has viewed the the jury system as an effective means of drawing on the collective wisdom and experience and fact-finding abilities of persons such as yourselves.

While it may be an occasional inconvenience or perhaps sometimes worse, jury service is an important responsibility for you, one which I know you will take seriously.

At this time, I'm going to give you a brief description of the claims that have been made in this case and the issues to be proved.

The plaintiff, Thomas and Wong General Contractor, claims that the defendant, Jan Wallace, agreed to serve as it's agent and representative in the loan transaction with BDV Investments. On this claim, the plaintiff has the burden of proving the following by a preponderance of the evidence:

One, that Jan Wallace agreed to serve as the agent or representative of Thomas and Wong;

Two, that Jan Wallace breached fiduciary duties she owed to Thomas and Wong as its agent;

And three, that Thomas and Wong suffered damages as a result of such breach.

The defendant, Jan Wallace, claims that she never agreed to serve as the agent or representative of the plaintiff Thomas and Wong.

The defendant, Jan Wallace, has the burden of proving the following by a preponderance of the evidence:

One, plaintiff, Thomas and Wong, knew all the liabilities and assumed the risk;

Two, plaintiff, Thomas and Wong, was the cause of its own damages;

And three, Thomas and Wong has failed to mitigate its damages.

Now, the party who makes a claim has the burden of proof and must persuade you by the evidence that the claim is more probably true than not true. This means the evidence that favors that party outweighs the opposing evidence.

In determining whether a party has met this burden, you must consider all of the evidence, whether produced by the plaintiff or the defendant.

Now, you will decide what the facts are from the evidence presented here in court. That evidence will consist of the testimony of witnesses, any documents and other things that are received in evidence as exhibits, and any facts stipulated or agreed to by the parties for which you are instructed to accept.

You will decide the credibility and weight to be given to any evidence that's presented in the case, whether it is direct or circumstantial evidence.

Direct evidence is a physical exhibit or the testimony of a witness who saw, heard, touched, smelled, or otherwise actually perceived an event.

Circumstantial evidence is the proof of a fact from which the existence of another fact may be inferred.

You must determine the weight to be given to all the evidence without regard to whether it is direct or circumstantial.

The admission of evidence in court is governed by rules of law. I will apply those rules and resolve any issues that arise during the trial concerning the admission of evidence.

When an objection to a question is sustained, you must disregard the question and you must not guess what the answer to the question might have been.

If an exhibit is offered into evidence and an objection to it is sustained, you must not consider that exhibit as evidence.

If testimony is ordered stricken from the record, you must not consider that testimony for any purpose.

Do not concern yourselves with the reasons for my rulings on the admission of evidence. Do not regard those rulings as any indication from me of the weight or credibility that you should give to any evidence that has been admitted.

Now, in deciding the facts of the case, you should consider what testimony to accept and what to reject. You may accept everything that a witness said or part of it or none of it.

In evaluating testimony, you should use the tests for accuracy and truthfulness that people use in determining matters of importance in everyday life, including such factors as the witness' ability to see or hear or know the things to which the witness testifies; the quality of the witness' memory, the witness' manner while testifying, whether the witness has any motive, bias, or prejudice; whether witness is contradicted by anything that the witness said or wrote before trial or by other evidence; and the reasonableness of the witness' testimony when considered in light of the other evidence. Consider all of the evidence in light of reason, common sense, and experience.

Now, a witness who is qualified as an expert by education or experience may state opinions on matters in that witness' field of expertise and may also state reasons for those opinions.

Expert opinion testimony should be judged just as any other testimony. You're not bound by it. You may accept it or reject it in whole or in part. You should give it as much weight as you feel it's entitled to considering the witness' qualifications and experience, the reasons given for the opinions, and all the the other evidence in the case.

Now, the Rule of Exclusion of Witnesses is in effect in this case and will be observed by all witnesses until the trial is over and the result is announced.

This means that all witnesses will remain outside the courtroom during the entire trial except for when they're called to the witness stand. They will wait in the areas directed by the bailiff, unless some other arrangements have been made with the attorney who is calling them.

This rule also forbids witnesses from telling anyone but the lawyers what they will testify to or what they have testified about.

If witnesses do talk to the lawyers about their testimony, other witnesses and jurors should avoid being present or overhearing.

Now, counsel are directed to inform all their witnesses of these rules and to remind them of their obligations from time to time as may be necessary.

The parties and the counsel should keep a careful look out to prevent any potential witness from entering the courtroom, in the event they do inadvertently enter.

Now, as I mentioned earlier, it's going to be your job to decide what the evidence is -- excuse me -- what the facts are from the evidence that's presented here in court.

There are six rules that I want to give to you on what is and is not evidence, as I've already alluded to in some of the earlier preliminary instructions.

First of all, evidence to be considered.

You are to determine the facts only from evidence of witnesses and from exhibits received in evidence.

Ordinarily, statements or arguments made by the lawyers in a case are not evidence. The purpose is to help you understand the law and the evidence.

However, if the lawyers for both parties agree, or stipulate, on some particular fact, agree that that's true, then you should accept it as true.

Questions to a witness.

By itself, a question is not evidence. A question can be used only to give meaning to a witness' answer.

Objections to questions, as I mentioned to you before, if a lawyer objects to a question, I don't allow the witness to answer, you must not try to guess what the answer might have been.

You must also not treat the objection as evidence or guess the reason why the lawyer objected in the first place.

Rejected evidence.

At times during the trial, testimony or exhibits will be offered as evidence. However, I may not allow them to become evidence.

Since they never became evidence, you must not consider them.

Stricken evidence.

At times I may order some evidence to be stricken or thrown out. Because it's no longer evidence, you must not consider it.

Now, at the end of this trial, you're going to have to make your decision based upon what you can recall of the evidence.

You won't be given a written transcript of any testimony. Accordingly, you need to pay close attention to the testimony as it's given.

You've been provided with notepads and pens. I will encourage you to take notes during the course of trial, if you wish to do so. However, do not let notetaking distract you so that you are mis-hearing or seeing other evidence in the case.

You may take your notes with you when you leave the courtroom for recesses and you can use them during any discussions with jurors in the jury room during the trial and during your deliberations at the end trial.

Until that time, however, please keep your notes to yourself. If you do not want to take your notes with you during the trial, just leave them on your seat.

Whether you take notes or not, you should rely on your own memory of what was said and don't be overly concerned by the notes of other jurors.

After you've rendered your verdict, the bailiff will collect your notes and destroy them.

Do not be influenced by my taking notes from time to time. What I write down may have nothing to do with what you will be concerned with in this trial.

Now I'll give you -- say to you a few words about your conduct as jurors, I'll give you some do's and don'ts, frankly mostly don'ts, which I'm going to call the admonition.

First of all, you're to wear your juror badge at all times in and around the courthouse so that everybody knows you're on a jury.

Do not do any research or make any investigation about this case on your own. Don't view or visit any locations where the events of the case took place. Do not talk to anyone about the case or about anyone who has anything to do with it.

Don't let anyone talk to you about those matters until the trial has ended and you have been discharged as jurors.

Until then, you can tell people that you're on a jury. You can tell them the estimated length of the trial, but don't tell them anything else except to say you can't talk about the case until it's over.

Now, if someone should try to talk to you about the case, just stop them or walk away.

If you overhear others talking about the case, likewise, stop them or walk away.

If anything like that does happen, please report it to me or a member of my staff as soon as you can.

Now, to avoid even the appearance of improper conduct, don't talk to any of the parties, the lawyers, or the witnesses about anything at all until this case is over, even if it doesn't have anything to do with the case.

Now, there is one and only one limited exception to the foregoing rules. During recesses from the trial, you can discuss the evidence that's presented at trial, but only among yourselves, only when all of you are together, and only in the jury room.

Now, even though you can discuss the case under the very limited conditions that I've just described, do not form any final opinions about any fact or about the outcome of the case until you've heard and considered all of the evidence, the closing arguments, and the rest of the court's instructions that I'll give to you at the end of the case.

Keep an open mind during the trial. Form your final opinions only after you have had an opportunity to discuss the case with each other in the jury room at the end of the trial.

Now, before each recess, I'm not going to repeat this entire admonition. I'll probably simply refer to it by saying please remember the admonition, or something like that.

However, even if I forget to mention the admonition prior to each recess, please remember that it applies at all times during the trial.

Now, if at any time during this trial you have difficulty hearing or seeing something that you ought to be hearing or seeing, or if you get into personal distress for some reason, please raise your hand and let me know.

If you have any questions about parking, which is usually not a problem up here, restaurants, or other matters that relate to jury service, please feel free to ask one of the court staff.

However, remember that the admonition that I just gave to you applies to the court staff, just as it does to everybody else. So, don't try to discuss the case with any members of the staff.

Now, if you have a question about the case or for a witness -- or a question for a witness, just write it down, but don't sign it.

Now, you'll notice that there's a basket on the railing in front of the jury box there and in that basket are some forms. So, if you have question, if you would just write the question on one of those forms. Please don't sign it.

If your questions is for a witness about to leave the witness stand, just signal the bailiff or me before that witness leaves the stand.

I'll try to remind you at the conclusion of each witness' testimony, if you have any questions for the witness, you may ask them.

Counsel and I will discuss any questions that you've got. The Rules of Evidence or other rules of law may prevent some questions from being asked. If the rules do permit the question to be asked and the answer is available, the answer will be given to you at the earliest opportunity.

Now, when we don't ask a question, it's no reflection on the person submitting it. You should attach no significance to the failure to ask a question. I'm going to apply the same legal standards to your questions as I do to any questions that are asked by counsel.

If a particular question is not asked, please don't guess why or what the answer might have been.

Now, as I in mentioned to you this morning, this trial is expected to last through Thursday. We're going to do our best to move this case along, but delays sometimes occur. Those delays aren't going to be anybody's fault. So please don't hold them against any of the parties.

Delays occur because the attorneys and I frequently need to resolve certain legal matters before evidence can be presented to you in court or because I'm busy with emergencies in other cases.

As I said, the usual hours of trial are from 9:30 a.m. to 4:30 a.m. We'll take a short recess mid-morning, mid-afternoon. And then we'll take our noon recess around 12 and begin again at 1:30.

Unless a different starting time is announced prior to recess for the evening, you can assume we're going to start at 9:30 a.m. the next day.

Now, at the beginning of the day, please assemble in the jury room for this division. My bailiff will show you where that jury room is a little later. However, please do not come back into the courtroom at any time until you're called to do so by the bailiff.

Soon you will begin hearing evidence in this case. Before that, each side is entitled to make an opening statement.

Now, an opening statement is not evidence. It's an outline of the expected evidence. It's offered to you to help you understand and follow the evidence that will be presented during the course of the trial.

Next, the plaintiff will present witnesses and the defendant can cross-examine. After that, the defendant can present witnesses and the plaintiff can cross-examine them.

Plaintiff may then present further evidence.

After the evidence has all been presented, the attorneys will make their closing argument. I will then instruct you on the law you're to apply in deciding the case. Following that, you are going go to the jury room to deliberate and decide the case.

Now, the final instructions that I give to you at the end of the trial may differ from these preliminary instructions. The preliminary jury instructions will be replaced by the final jury instructions that I do give to you at the end trial. It is those final jury instructions that will govern your deliberations.

Counsel, are there any additions or corrections to the preliminary instructions as read by the Court.

MR. MURPHY: None, your Honor.

MS. AMBROSIO: None, your Honor.

THE COURT: All right, very well. Thank you.

Ladies and gentlemen, as I told you a moment ago, at this time counsel have an opportunity to present their opening statements.

As I also told you just a moment ago, the opening statement is not evidence. It's simply offered to help you understand the evidence that's going to be presented during the course of the trial.

Counsel, you may proceed whenever you're ready.

MR. MURPHY: Thank you, your Honor. I'll get the computer up and running.

I will have the privilege to address you directly twice in this case, during this opening statement, and at the conclusion of the case with the closing argument.

And the phrase closing argument is chosen carefully, as is the phrase opening statement. It is my opportunity, at this time, to argue our case to you and state why we believe the evidence should lead to a verdict in our favor. This is my opportunity to review what we believe the evidence will be, to give you an outline of the facts.

We're fortunate in this case that counsel, in our pretrial work, have agreed to admit many of the exhibits you'll see. I'm actually able to show you bits and pieces of the documentary evidence you will see in the course of my opening statement.

This is our claim. Thomas and Wong lost 1.1 million dollars in a loan that Jan Wallace arranged. He claimed that Jan Wallace agreed to represent Thomas and Wong's interest in this transaction and hence became their agent and their fiduciary. A fiduciary is a person in whom you repose trust.

We claim that Jan Wallace violated the duties of trust, loyalty, and full disclosure that she owed to Thomas and Wong as its agent and representative in this transaction. Jan Wallace denies she owed Thomas and Wong any duty to represent in this transaction.

Here is the evidence that we say will demonstrate that. I will repeat a portion of what the Judge read to you in his preliminary instructions. Your job, you serve as the finder of fact. Your job is to hear the conflicting evidence and determine who is most probably correct.

The standard is not beyond a reasonable doubt, as it would be in a criminal case, but by a preponderance of the evidence. You may have doubt about who should win, but at the end of the day, it is who you think is most likely telling the truth that should govern your decision on the evidence.

And now the parties, the plaintiff, Ed Tarapaski is a Canadian citizen. He will testify he ran a crane company in Canada. After a divorce, he moved to Brunei, which has been described near Malaysia. He will give us much more specific testimony about the geography involved.

He went to work for a corporation called Thomas and Wong General Contractor, which is a small contracting company. Thomas and Charlene Wong are the principals in that company, and hence the name Thomas and Wong.

They do contracting work, pretty much on a small scale, but Ed's principle job is to buy and sell cranes and heavy equipment, and he does this around the world. And the concept is buy low and sell high and they make a profit on trading this heavy equipment. That is Ed's principle responsibility.

Jan Wallace is the defendant. Jan Wallace is also a Canadian citizen, but she resides in Scottsdale. She describes herself in her deposition a venture capitalist, stated that what she does is she raises money for start-up companies as they're underway. She often takes over as CEO, Chief Executive Officer. She has been CEO of five or six companies are which publicly traded companies whose shares are traded in the public market place. She's currently CEO of a skin care company.

We believe her litigation history is significant and that will be developed in her testimony. I won't go through in detail about it.

I'll talk about the introduction of Ed Tarapaski and Jan Wallace. Ed will testify he's been coming to Arizona for years. And he golfs and he vacationed here.

He came in 2003 to have some corrective eye surgery done. He had some extra skin taken off an eye in Scottsdale in 2002. The surgery didn't go well. He came back to have that corrected in February 2003.

And in the course of one of the first few days of his trip in February, he met Jan Wallace at a hair removal salon that she had on Scottsdale Road at the time. And through the facts that he'll describe, he ended up staying as a guest in her guest house.

While he was staying at her house, he overheard discussions involving a company called BDV Investments. BDV had a plan to open portable check cashing facilities in Arizona and elsewhere.

And in the course of conversations, Jan Wallace explained to Ed Tarapaski that BDV needed a bridge loan, a temporary loan, of 1.5 million dollars while they awaited funding of a much larger loan, I think in the range of 35 million dollars, from company called Dumaine.

Ed listened to this and they began discussing it.

Jan Wallace then arranged meetings between principals of BDV Investments and Ed Tarapaski. Over a couple of meetings that Ed will describe, they discussed a loan secured by, oh, gold dore, D O R E. It's pronounced dore. And that is partially refined precious metal. It includes a mix of gold and silver. It is precious metal, but not purified and it's not been separated. But gold dore was going to be principal collateral for this loan, they were told was stored in a secure warehouse in New Mexico.

Ed was shown an opinion letter from a Tucson law firm that appeared to legitimize the existence of this gold. He was also shown a certificate that had given transfer title to the gold to BDV. I've noted those are exhibit numbers. You will see the certificate of conveyance for the gold from various entities involved. One of them including Victor Wark to BDV Investments and that was done in February 2003.

You will also see the opinion letter from DeConcini McDonald Yetwin & Lacy dated February 26th which talked about the Dumaine loan of 35 million dollars and that the firm had been retained to, oh, give opinions regarding that. And that evidence will be presented to you. It's a fairly lengthy opinion letter.

We say the evidence will show the following: That Jan Wallace took charge of this transaction. Ed will testify that, on several occasions, Jan Wallace said to him, "This is what I do for a living. You leave this to me. I'll take care of the paperwork," and she, in effect, took over negotiating this transaction.

She advised him on loan terms. She arranged the logistics and meetings with other parties. She introduced him to her lawyer in Scottsdale, Gary Blume, to document the transaction. She set him up with a Las Vegas firm called Cane and Associates that she had worked with on prior occasions to escrow money related to this transaction.

We say the evidence will show she agreed to act for Thomas and Wong as its agent with regard to releasing the escrow funds. The funds were being held until the conditions of the loan had been satisfied.

The escrow conditions are very important. You will hear testimony on those. Escrow is necessary because in their consultations a checklist of conditions to releasing the funds was worked up, largely with the advice of Jan Wallace.

Exhibit 73 includes a list of these conditions, that Ed later typed up. He'll describe when he did so. 1, the gold was going to be viewed; 2, Lake Bank, which was involved with the transaction, had to confirm that the collateral that it was transferring to Ed would be turned over to Thomas and Wong on transfer of the funds; 3, a safekeeping receipt, making sure that the gold stayed in the warehouse, would be given in favor of Thomas and Wong; 4, an insurance policy would be issued protecting Thomas and Wong for the loss of the gold; 5, a credit search would be done; 6, an opinion letter would come from BDV's lawyer, that this Dumaine loan, which was going to be the source, the principle source of repayment to Ed was actually coming; 7, that would be confirmed directly with Dumaine; 8, corporate resolutions and directors of BDV will be confirmed; 9, have Jan Wallace appointed as a board member of BDV to represent Thomas and Wong's interests; and next, the final issue, was no money would be disbursed until all of these conditions were met. That's what Ed Tarapaski came up with.

We will also show you Exhibit 10. This is a partial list. Ed will testify he was given a box of documents at some point, and included in this was a handwritten list of these conditions, in the handwriting of Jan Wallace. It's partial, in the sense that there was first page that we don't have a copy of.

But this starts with Item 3, insurance coverage; Item 4, Mr. Wark to sign agreement; 5, Beardmore to sign personal guarantee; 6, safekeeping receipt; 7, opinion letter from DeConcini McDonald; 10, articles of incorporation. That is Jan Wallace's own handwriting, and Ed will testify to the circumstances under which that document was created by Miss Wallace.

Jan Wallace joins the board. Jan Wallace agreed that she would join the BDV Investment's board of directors, the entity or people that ran that company, as a representative of Thomas and Wong.

And we believe the testimony will show, from Bill Cortegiano, one the BDV directors that will testify in this trial, Ed Tarapaski will so testify, we'll hear Miss Wallace on this point too, that she was going to be on the board to represent Thomas and Wong's interests. She was appointed to the board of BDV on March 6, 2003, and that will be shown on Exhibit 15.

We get to funding of the loan, and dates are going to be very important here, so I'm going to talk about them, then I'll show you a calendar.

March of 2003. There will be three very important dates that I'll note. Saturday, March 1, that was the date of the first meeting between Ed Tarapaski, Jan Wallace, Gary Blume, and John Beardmore of BDV at Gary Blume's office in Scottsdale.

Thursday, March 6. That was the date of the meeting at which Beardmore, Wallace, Ed Tarapaski, and Gary Blume sat down and began negotiating out terms of the promissory note that was going to document the loan.

Saturday, March 8. That is the date when a promissory note for 1.5 million dollars was signed from BDV Investments in favor of Thomas and Wong.

Now, money started coming in. I'll show you Exhibit 14, which is a wire transfer confirmation of March 5, 2003, showing that on that date, just about $550,000, there was a small deduction for a transfer fee, was wire transferred from Thomas and Wong into accounts of Cane O'Neill Taylor.

Who is that? Cane O'Neill Taylor is a Las Vegas law firm that Jan Wallace had used for years for public trading companies, et cetera. And she'll testify to the relationship. And she introduced Ed Tarapaski to them and, said they would serve as the escrow agent and hold the funds. This was the first deposit of money that Thomas and Wong made into the escrow account. It wasn't ready to be released yet, but they had to get the money in the country so that if the loan funded it would be available.

A second transfer is an almost identical document dated March 7, 2003, where an additional amount, just about $250,000, was wire transferred from Thomas and Wong into the Cane O'Neill trust account in Las Vegas.

Now we get to the promissory note. On March 8, 2003, again that's a Saturday, back up to the calendar, March 8, 2003, the parties got the promissory note at Gary Blume's office. In fact, they had to wait a couple of hours for him to finish up the work.

And Ed will testify that he knows it was a Saturday because they had difficulty finding a notary public. They didn't have one in the office because it was a Saturday. They went to Jan Wallace's bank and that was closed, and they finally ended up at a bank, it was at a Home Depot somewhere, where they found a notary public to notarize the document.

The promissory note was signed on that date, but much of the checklist, I showed you, needed to be done. Now, when you look at Exhibit 21, and I say look at it, because it's admitted in evidence, you will see it projected in the ELMO screen, of course at the trial, as we have testimony from it, you will be able to take a copy of it into the jury room during your deliberations and examine it.

I'm flashing a lot of documents in front of you now, you'll have plenty of opportunity to pay attention to any document that you think is important, so long as that is admitted in evidence by the Judge.

The note itself said there would be a certificate of insurance in favor of Thomas and Wong, a warehouse safekeeping receipt in favor of Thomas and Wong, and various documents regarding a Minnesota condominium that was going to be part of the security they got.

Now, Ed will testify to the following: As they awaited the completion of the promissory note in Gary Blume's law offices on Saturday, March 8 of 2003, John Beardmore of BDV Investments said, hey, once this promissory note is signed, could the $275,000 that's going to be used to acquire this condominium be released? We're using this for a check cashing location. There's a competing buyer. It's urgent we get that money out quickly.

Ed will testify that John Beardmore asked that question. Jan Wallace turned to Gary Blume and said, what do you think? Gary Blume said, once the note is signed, it will be okay to release the $275,000, and that will be the testimony that Ed Tarapaski gives regarding that specific issue.

There is no doubt that the note was signed on March 8, because as you look down in the lower left-hand corner, you can see that a notary public -- it was signed in front of notary public on that very day. It had a typewritten date of March 6, but the signature date was March 8 of 2003.

We get to an issue of importance to our evidence: What Ed Tarapaski wasn't told before that promissory note was signed. Jan Wallace had been involved with the company called M.D. Medical and that went into bankruptcy.

And as part of the bankruptcy disbursement, she received what's called a shell corporation, a subsidiary in which she owned 95 percent of the shares, that had been part of the public traded company, but was no longer active.

And that had market value. It had market value because if you merged that publicly traded company with another entity, you could avoid all of the complications of starting the public offering process from the beginning. So it had value.

In December of 2002, some four months before this transaction with Ed Tarapaski took place, Jan Wallace had signed a contract with John Beardmore to sell this subsidiary, called M.W. Asia, for $250,000.

What's significant is, $50,000 of that money was due to Jan Wallace by January 31, 2003, a little more than a month before Ed Tarapaski entered the picture. And here is a portion of the contract of December 6, 2002, between Jan Wallace and John Beardmore.

The plan was there would be a merger of BDV Investments and M.W. Asia, and Jan Wallace would end up having shares in BDV, as well as $250,000. And Jan Wallace started doing her due diligence on this transaction in December of 2002, as Exhibit 94 shows.

This is a due diligence checklist. You can see Jan Wallace's handwriting on the top of the page, and a date of December 23, 2002. The point of the evidence is, that Jan Wallace had an existing contractual relationship with BDV

Investments before she ever met Ed Tarapaski.

She also found out the following in the course of this discussion: January 2003, John Beardmore told Jan Wallace he needed 1.5 million dollars as a short-term loan to cover some debts that he owned to Lake Bank.

His company owned a large portion of the Lake Bank shares and there were regulatory problems with him having loans from a related party that were in default and he needed to take care of that.

Now, Exhibit 8, which you will have in evidence, are some handwritten notes, appeared to have been taken by Jan Wallace in January. You'll see that when we look at the second page of the document, that referred to the use of the proceeds of this loan. Some $500,000 was going to be paid to Lake Bank. They were going to use some to set up ATM installations, which was going to be the business of the company, etc.

What's also important, as you will see reference down there to the fact that these were in default at Lake Bank.

I put an e-mail of January 14, 2003, from a Duke -- someone called Duke Durango, of Durango Capital, to Jan Wallace, reference a security and pledge agreement, just to indicate that she was in the loop with regard to efforts to get this loan lined up back in January. Again, well before Ed Tarapaski entered the picture. We say the evidence will show this created a conflict of interest.

Ed Tarapaski and Thomas and Wong were counting on her to give them advice with regard to the terms of this loan transaction, which she herself had a self interest in getting money into BDV Investments so that this merger could proceed forward and she could be paid the $50,000 that was already due to her, but couldn't be paid because the company, at that point, didn't have any money.

Ed Tarapaski will say I heard something about a public trading merger from Jan Wallace, but I was never told that there was any contractual relationship that she had struck with BDV Investments, and he didn't know of any debt that was due from BDV Investments to Jan Wallace at that time. That will be his testimony.

Now, we get to a very important point in the evidence. I've told you already that on March 8 of 2003, a promissory note for 1.5 million dollars was signed. We look at the notarization seal showing that was, without doubt, the day it was signed. On March 6, 2003, Jan Wallace was appointed to the BDV board of directors. That day, as soon as she was elected, they proceeded with a board meeting. And the board then voted not to approve one promissory note, but two promissory notes, one for $275,000, one for 1.5 million dollars.

Was BDV was intending to borrow 1.75 million dollars from Thomas and Wong? No. The evidence will show that was never the intention. But there was no doubt that that occurred. No. 1

because the minutes say it, and the minutes include the following statement: The undersigned being all of the directors of BDV Investments consent to all actions taken hereby. You can see Jan Wallace's signature as a director on those March 6 meeting notes.

You also have handwritten notes of the meeting that Jan Wallace took. You can see they're dated March 6, 2003, and there is reference to two actions: 1, to approve a promissory note dated March 6, March 7, to be attached; second action, to approve the loan from Thomas and Wong General Contractors for the purchase of property. Two promissory notes were referenced in her own handwritten notes that day.

These dates are not disputable. And I say that for this reason: Jan Wallace's testimony at deposition, and perhaps at trial, will be, well, sure the meeting minutes were dated March 6, but that doesn't mean that's when they actually occurred. They might have been typed up at a later date.

We know that the $275,000 note I've been referring to was signed by March 7, 2003, because we have, you can see a telefax header at the top, that that $275,000 note was telefaxed from a company called the Literacy Company on March 7 of 2003. That is a company owned by Bill Cortegiano, one of the directors of BDV Investments, who will testify, in this courtroom, and who was on the board and voted for this transaction. So there is no doubt that the note was signed by March 7 because it was telefaxed in signed form that date.

And there is no doubt that the meeting minutes were done then for the following reason: Here are the meeting minutes of the board of directors of BDV Investments from March 6, 2003. You can see the telefax header at the top, which shows that they were telefaxed on March 6, 2003, from La Vanishe. That is the hair removal company that Jan Wallace owned on Scottsdale Road. So, we believe that the evidence shows, very concretely, that the meeting, in fact, occurred on March 6, 2003.

What do we believe the evidence will show? Why were there two promissory notes? On the afternoon of March 6, 2003, Jan Wallace sent an instruction to Cane and Associates, the Las Vegas law firm, to transfer $275,000, of Thomas and Wong's money, back to Minnesota to buy the condominium.

We will show you, and there is no doubt that that instruction was given, because here is her signed instruction dated March 6, 2003, which will be Exhibit 19 of these proceedings, that shows an authorization, signed by Jan Wallace, to transfer $275,000 on March 6, 2003, to Minnesota.

Here's the wire transfer confirmation, showing that that money was, in fact, sent on March 7, 2003, from the Cane O'Neill Taylor trust accounts back to Lake Bank in Minnesota. Actually it was sent to a law firm involved in that transaction on that date.

Here is another document we received from Cane O'Neill and Taylor, an e-mail dated March 6, 2003, in which Susan

Johnson of their office, says, "I took one for the team. Jan was a little upset about the wire not going tonight. I told her I couldn't reach you because you were in a meeting, and the wire transfer section of the bank closed at 4 p.m."

According to that document, Jan Wallace was upset that the money could not be transferred on March 6 and had to wait until March 7th.

We believe this shows the following: Jan Wallace authorized a transfer of $275,000 of Thomas and Wong's money, before Thomas and Wong had even committed to the transaction on March 8, 2003, at the law offices of Gary Blume.

Gary Blume -- mistyped Gary Blume there -- will testify he didn't know of this and he did not draft that $275,000 promissory note. I will tell you, members of the jury, to this day, I don't believe you'll hear evidence from that witness stand about who actually did it, except that the lawyer that Ed Tarapaski had hired to draft documents, will testify, he didn't do it.

Ed Tarapaski will testify to the following: If I had known that Jan Wallace had sent $275,000 of Thomas and Wong's money back to Minnesota before I had even committed to the transaction, and without my knowledge, I would have canceled the whole deal. The deal would have been off. That will be his testimony. But the promissory note was signed, and Ed had no knowledge of these events at that time.

They proceeded to complete the checklist so the gold -- pardon me -- the money could be released legitimately from the account. After the March 8 promissory note was signed, they started working together through that checklist of items to get them touched off. The most important issue was this: I need to confirm that this gold exists. Let's go look at it.

Ed was told this is in a warehouse, it's so secure you need to provide identification and to have a clearance check run. And Ed, who was scheduled to leave the country on March 17th, couldn't stay around that long to do that.

So Jan Wallace agreed that she would do that for Ed Tarapaski, would attend the viewing as Thomas and Wong's representative. You will see -- hear testimony, you also have a handwritten note that Jan Wallace said as follows: Billy -- that's Bill Cortegiano, I'm referring to Exhibit 40 -- please give these documents to John Beardmore so that I may travel Monday to Lordsburg -- the warehouse was in Lordsburg, New Mexico -- also could you fax me the bylaws, minutes, and corporate documents of BDV, since I'm now a director, and this is standard to the position.

It confirmed she was a director. It confirmed she was trying to get one of the checklist items, the articles of incorporation, and it confirms she was supposed to go to Lordsburg to view the gold. That did not occur.

Ed left the country. I think he went to Korea next, but I could be wrong on that. He got back in touch with Jan Wallace. He said, hey, did you view the gold? He'll testify she said, well, there had been a viewing. He understood from that, that Jan Wallace had attended the viewing.

In fact, the testimony will be, and we'll have this testimony from John Beardmore -- I will say testimony -- John Beardmore is a resident of Minnesota. We can't make him come to Arizona to testify at trial, but we did subpoena him to give a deposition, sworn testimony, in front of a court reporter back in Minnesota. And we will read you the testimony that Mr. Beardmore gave to -- the Court has not made rulings on what portion of it will come in. But we will read you his testimony, and that will be sworn testimony of Mr. Beardmore.

John Beardmore said he and a fellow named John Oly of Dumaine viewed some sealed containers -- they never broke the seals to see what was inside -- at a storage site in Chandler, Arizona. And this is noteworthing, in the sense that Ed Tarapaski was told this gold's in a secure warehouse in New Mexico. It can't even be moved without your permission. But they saw this gold in Chandler.

Dumaine, the company that was supposed to fund the 35 million dollar loan, backed out of the transaction after this, and that loan never closed.

Now, we get to some other facts that we say should have been revealed to Ed Tarapaski. John Beardmore owed more than $500,000 to the Lake Bank in Minneapolis. Ed Tarapaski generally knew money was owed to the Lake Bank. Here's a document that was sent in January, e-mail from -- to Bill Cortegiano, stating the amount was 570,000.

Beardmore also owed a court judgment for almost two million dollars based on some litigation back in Minnesota, an unpaid judgment. Ed will testify, I didn't know a thing about that judgment, but we know Jan Wallace knew about it, because her handwritten notes, here's a blurb of the judgment in the civil case showing at that time it was 1.9 million dollars.

Here's some handwritten notes that Jan Wallace took, we believe in January 2003, where she refers, at the bottom, judgment entered, 1.96 was put up pay out, but was pulled off the table. That shows she had conscious knowledge of the existence of this judgment before the transaction was done. A fact that we say should have been revealed to Ed Tarapaski as he was making a decision about loaning money to this gentleman.

Now we get to the Lake Bank transaction. March 8, when Ed signed the promissory note, it was a Saturday and no funds can be transferred then because banks were closed. March 10 was a Monday and Ed will testify that there were various discussions and meetings involving the parties.

But on March 12, they had a very important discussion. A gentleman named Tom Kell, president of the Lake Bank, spoke on the speaker phone with Jan Wallace and Ed

Tarapaski. Now, at this point, the various conditions to release of the funds hadn't been met. The gold hadn't been viewed, various other issues hadn't been done.

But Lake Bank wanted that 500,000 and some dollars released to pay off its debt. They said the regulators are coming to do an audit, we need that money fast, and we will make you a deal. If you will get us that money released, we will give you additional collateral.

And telefax was sent from Tom Kell, that day, March 12, 2003, stating they would get additional collateral upon receiving the funds.

A second mortgage on Beardmore's Arizona home, which they said there was a million dollars of equity; a Mercedes Benz automobile; and ski boat; and shares in two corporations, Founders Mezzanine and Superior Financial Holdings, which supposedly had a combined value of 350,000 dollars. They gave extra collateral.

Ed said -- and Jan Wallace was present in these conversations -- Ed said, what should we do? Jan said, let me go talk to Gary Blume. Ed went back home. He had to lay down because eyes were sore, his surgery had been recent. And Jan Wallace jumped in her car and said she was going to go check with Gary Blume to see if this was okay.

Gary Blume will testify he never saw the telefax from Mr. Kell, that he had nothing to do with the loan transaction after March 8 of 2003, and had no role in advising anybody about this deal.

But Ed did authorize disbursement, and here are the circumstances that surrounded it. After Ed went home, Jan Wallace joined him there. They began discussions about whether they should transfer funds to Lake Bank. And Ed will state, I asked her -- he was still hesitant -- I'm not so sure the money should go yet. What if they move the gold?

He will say Jan Wallace told him, do you know what a safekeeping receipt is? A safekeeping receipt says they can't move that gold without your permission. You're worrying about nothing.

The next day, March 13th, Ed authorized Jan Wallace to transfer funds to Lake Bank. Ed believed this was the first transfer of money out of that account when, in fact, $275,000 had already gone out on March 7th, 2003, as we have shown you, without his knowledge or permission.

Now, one of the issues that you will have to address in this case is, was Jan Wallace serving as an agent and representative of Thomas and Wong. We state the following. We'll show you Exhibit 28, a document dated March 12, 2003, signed by Ed Tarapaski, which says as follows: Thomas and Wong General Contractor hereby authorizes Miss Jan Wallace to release funds from your trust account on our behalf.

He gave her written authority to serve as their agent and representative with regard to disbursement of funds, and he did so not knowing that she had already done that on March 7th, 2003.

On March 12, 2003, Jan Wallace exercised her authority as representative, and sent an instruction to Cane O'Neill Taylor, please use this letter as your authorization to wire transfer $500,000 from the Cane O'Neill trust account to the following account, and then she put the Lake Bank wire transfer information.

We say this is concrete proof of her representation and agency. And here is the wire transfer of March 13, 2003, that actually happened as a result of that instruction from Jan Wallace back to Lake Bank.

As I said, Ed left the country on or about March 17th. On March 21, occurred the L Trust disbursement. The documents show that on March 21 -- this is a memo from the Cane O'Neill Taylor account, Exhibit 35 -- on March 21, 2003, Jan Wallace signed an instruction as follows: This letter will authorize Cane O'Neill Taylor to make a wire transfer in the amount of 20,000 U.S. dollars from the money being held in trust account to Thomas and Wong at the following account, Wells Fargo bank account named L Trust. You will see right on this document the name Sokim Lach.

Sokim Lach was John Beardmore's girlfriend. L Trust was a company that she controlled. This was, in effect, a transfer of money from the Thomas and Wong's money to John Beardmore's girlfriend.

The claim will be made, I believe, if Miss Wallace's testimony is consistent with that in her deposition, that Ed Tarapaski authorized this. And Ed Tarapaski will testify that he had never heard of L Trust and first learned of it after litigation to collect this debt was commenced. That will be his testimony.

Jan Wallace also testified at deposition that she didn't know why this transfer had ever been made, although it's indisputable that she signed the authorization to send the money out. And here is the transfer, wire transfer confirmation, that Cane O'Neill Taylor sent that money on March 24, 2003, $20,000 back to the benefit of L Trust.

Now that -- we've already talked about $800,000 going into the trust account at Cane O'Neill Taylor, but Thomas and Wong had agreed to loan up to 1.5 million. They funded another $700,000 directly. One of the issues will be what was Jan Wallace's involvement in that? Why should she be responsible for money that wasn't under her direct control?

We believe the evidence will show that because she still acted as the agent and representative of Thomas and Wong, she advised them to move that money, and that's part of the responsibility that she showed.

And an example of this is as follows: Ed called up, he was helping make these wire transfer arrangements to get the other $700,000 in, and he asked Jan Wallace, have the conditions on the checklist been met? To which she answered yes. He believed the conditions to release the loan funds had been satisfied, and Jan Wallace was responsible for doing that and so informed him that this had occurred.

On March 31, 2003 -- pardon me, in March 2003, Jan Wallace sent a handwritten telefax to Charlene. Charlene is Charlene Wong of Thomas and Wong, stating Edward is wanting $300,000. It's really imperative that the funds be posted on Monday, March 31, 2003.

We say this shows her the continuing involvement in trying to get money, that didn't go into the Cane O'Neill account, to Lake Bank.

Then what happened? I told you earlier that Jan Wallace was owed $50,000 under the transaction where she was going to sell M W Asia to BDV Investments, but they could not pay it. After the Thomas and Wong money came in, she got her $50,000. She will testify that that came from Lake Bank. She acknowledges that this payment was made as part of the December 2002 agreement that she'd made to sell M W Asia.

But what is significant in this regard is the following. Lake Bank was not a party to that agreement. Here's the signature line to the agreement with regard to M W Asia, showing a company, Beardmore Investments, Inc., was the party to it. Lake Bank was paying $50,000 of the money, and we will present testimony that Jan Wallace was told this came from a financing that Lake Bank had received. That financing was the Thomas and Wong money.

The loan was for two months, it was supposed to be paid on March 6, 2003. That day came, nothing was paid. We, again, state that it's important to demonstrate that Jan Wallace was acting as an agent and representative. On March 13 -- pardon me, May 13, just after the default, Ed Tarapaski sent an e-mail to Jan Wallace confirming that she authorized Gary Blume, the lawyer, and her, to act on their behalf regarding collecting on the promissory note. Again, agency and representation, and hard documentation of that.

Now, the first question that Ed had to say was okay, if they're not paying me, let's melt down the gold. Well, they went to the warehouse, Jan Wallace and Bill Cortegiano went there.

Jan Wallace testified in her deposition testimony it was the weirdest thing she had ever seen. It was a warehouse, but it had boarded up windows. They met with the owner, a guy name Adair Merril, who was a cranky old fellow, who said, I'm not letting anyone in there until you pay me the back rent that's due on it. They finally got a court order to enter the warehouse. And in there, there was some containers. Ed Tarapaski had them tested, and there was no gold.

Ed will also testify to conversations he had with Jan Wallace in about this time, along the following lines: There's a melt being conducted, the gold dore bullion is being taken to Salt Lake City. It's going to be melted down there.

And he talked to her again and she said it was melted. 12 million dollars was realized from the sale of that gold. Where was that money, said Ed. It was sent off shore and it's come back to a Florida bank. And I've been in touch with the Florida bank representative. He says that the release is imminent.

Ed will testify that he had several conversations to this effect, until, finally, he was told, at some point, oh, there was never a melt. That is when he got on a plane and came to Phoenix to take charge of this circumstance, after having been told that the money had already been raised and discovering that that was not true.

Now, Jan Wallace will say, I was terribly disturbed by the fact they didn't repay Ed Tarapaski. She'd been on the board of directors. She said she resigned from the board. We'll read to you John Beardmore's testimony to the effect that the board tried to remove her, but did not succeed in doing so.

Jan Wallace testified at her deposition that she was so upset she wasn't going to do any business with these people any more after they failed to repay Thomas and Wong. But we will show you that in August of 2003, long after the default had occurred, she was still writing to Mr. Beardmore and to Mr. Cortegiano of BDV Investments about doing the due diligence to go forward with the merger transaction that she had been talking about and signed a contract with them on -- in December of 2002, despite the fact they hadn't repaid Thomas and Wong.

The Lake Bank collateral that was supposed to help Ed. Lake Bank refused to cooperate in turning it over. They found out there was another lien on the Minnesota condominium, that was never collected. The bank stalled on everything else. Finally in August 2004, he got the stock certificates and title to the vehicles and the boats. He never recovered the vehicle and boat. I don't know where they were physically. The stock was, at that point, worthless.

He started litigation on behalf of Thomas and Wong and Gary Blume represented him. All of the defendants defaulted. Multi-million dollar judgments were entered against them. Nothing has ever been collected. And here's a quick list from the Maricopa County Court records of the judgments taken against Beardmore, against Stephanie Harris, against Donald Noe, Victor Wark, BDV Investments. Big judgments, but nothing behind them.

Ed filed a suit against Lake Bank. He was able to get some recovery, a house in Phoenix that John Beardmore owned was sold, and after mortgages were paid and expenses were deducted, they recovered $432,000. He also got $20,000, it says from the sale of some containers. It was actually some old fork lifts, some equipment that they found, but they got another $20,000 there. So, they realized about $450,000 of the million five that went out.

Thomas and Wong filed suit against the Lake Bank, but that never went to trial and Ed never testified there. It got dismissed on a legal technicality. But Ed kept working, trying to find some way out. He got a call from a fellow in New Mexico named Richard Kirby.

Richard Kirby said, you have all these judgments against BDV Investments, I'll buy them from you. I'll pay you about $4.5 million to do it. The essence of it is, Ed backed out of that deal, but Jan Wallace stepped in and began negotiating on his behalf, and an agreement to that effect was negotiated where Cane O'Neill and Taylor, her attorneys up in Vegas, would take -- would, in effect, escrow these funds, and this was in January of 2006. I put this up just to show the Kirby and Thomas and Wong were in this deal and it was a Cane O'Neill Taylor identified as the transaction.

Here's what's also important. In February of 2004, Jan Wallace and Ed Tarapaski signed a deal that once Kirby paid this $4.5 million, she will receive $250,000, once that money came in. Ed then got a call from Kirby. Actually, he was told of this by Jan Wallace, as I recall. He wants $10,000 to sign the transaction.

Ed said what do you mean, he wants $10,000 to sign.

He's going to be paying me $4.5 million, but he won't do it without 10. Ed said no. She came back and said he'll take five. Ed said no, I'm not paying the money. She finally came back and said, he'll sign the agreement if you pay him $1,500.

And Ed said, I'm not going to do it, and she ordered him -- he was staying in the guest house at that point, and she told him, get out of my guest house. And Ed relented, gave in, paid the $1,500, and of course never saw anything again from Mr. Kirby.

The last of the money. $800,000 had gone into the Cane O'Neill trust account, there was still $4900 left. Jan Wallace approved the transfer of those funds, in August of 2003, to Cane O'Neill to pay off attorney's fees. And her testimony at deposition was that was to pay off the attorney's fees in the Richard Kirby deal. The Richard Kirby deal was in January of 2004. Those funds were released in August of 2003, before that transaction had even been conceived.

What have they lost? Thomas and Wong paid $1.5 million. It's recovered $452,000. We believe the evidence would show the following: If Jan Wallace had disclosed the true facts, one, that money had been transferred out of the account before Ed authorized it or knew about it; two, that John Beardmore was hopelessly in debt and was not creditworthy and should not have been given funds; three, that there were other unauthorized transfers from the accounts with regard to Sokim Lach and L Trust attorney's fees, that the deal never would have gone forward, the losses would have been avoided, and 1 million 48,000 dollars in principal would have been saved.

We believe that is what the evidence will show in this case.

THE COURT: Thank you, counsel.

Counsel, you are ready to proceed?

MS. AMBROSIO: Good afternoon. Ladies and gentlemen, I wanted to thank you very much for taking time out of your busy schedules to be here with us to try this case.

I know you have a very important task in front of you. I'd like you to keep an open mind while you're hearing the evidence and remember there are two sides to every story.

The facts and the issues in this case are simple, and as they relate to the defendant, Jan Wallace. And while you've seen a lot of snippets of exhibits today, it's not the full exhibit and all the exhibits in this case will tell the defendant's side of this story as well.

Jan Wallace is a single mom here in the Paradise Valley area. She has always been involved in the public market, which means she has put together and run public companies.

Back in early 2003, she was introduced to Ed Tarapaski, who claims to be a representative of a company called Thomas and Wong General Contractors.

He became an acquaintance. He ended up saying at her guest house.

She works out of her home. He came to learn about some of the things she was involved in. At the time she was involved in selling a public shell, which he knew that's what she was doing, selling a public shell to an entity called BDV Investments out of Minnesota.

The evidence will show that there was never an agreement, written or oral agreement, between Miss Wallace and Thomas and Wong Contractors or Ed Tarapaski for her to act as an agent and representative, or in any capacity for them.

Jan Wallace was never compensated for any of the work that she -- for any -- excuse me. Jan Wallace was never compensated by Thomas and Wong for anything in this matter.

She had no duties to them nor was she told she had any duties to them. She had no authority to act for the plaintiff or its representatives, and third-parties required further documentation to even be able to take simple requests from her, such as the wire transfers.

All the authorizations that you've seen in exhibits today were required by the third-parties from Thomas and Wong or Mr. Tarapaski before they would allow anything to occur.

The evidence will show that John Beardmore is a -- was an owner of the Lake Bank, and that all funds that came out of the Lake Bank, came from the BDV account.

It will also show that there was no conflict of interest. BVD's interests and Thomas and Wong's interests were aligned for most of this transaction. BDV was using this bridge loan in an attempt to get additional funding to go forward, to move their company along.

Jan Wallace is -- was appointed to the board of BDV, and she was then asked to -- she was a director of the company.

Thomas and Wong were provided with copies of all of the exhibits you have seen today prior to them making this bridge loan. They were well aware of the risks. They did not provide Miss Wallace with any authority to act as an agent and furthermore she was not compensated for that.

I ask you to take a look at this evidence that you'll hear over the next couple of days and understand -- I ask you to take an open -- to look with an open mind at the evidence you'll hear over the next couple days regarding these transactions. It will be shown that there was not a lot of detail done on Thomas and Wong's side and now Thomas and Wong is left with a loss.

As you know, again, it was not pointed out, that currently one of their witnesses, Mr. Cortegiano, will be testifying for them, but yet they have a five and a half million dollar judgment against him. That was not brought out.

It will be facts of that nature that I'd like you to keep in mind because there are two stories being told, and the stories and the facts will show that Miss Wallace never acted as an agent, never acted as a representative, always disclosed what she was doing and always got authorization before she did anything.

The $275,000 note will be discussed in detail, but it will be shown that Miss Wallace had nothing to do with the transfer of that money, that that was done solely by Mr. Tarapaski.

So, again, I know it's been a long afternoon, so I appreciate you guys taking the time. Thank you.

THE COURT: Thank you. Counsel, call your first witness, please.

MR. MURPHY: Plaintiff calls Ed Tarapaski.

THE COURT: Sir, come forward and be sworn, please. If you will come over here, please, so our clerk can swear you in.

EDWARD TARAPASKI,

having been duly sworn herein, took the stand and testified as follows:

DIRECT EXAMINATION

BY MR. MURPHY:

Q Mr. Tarapaski would, you tell the jury, give them some information about your background, where were you born, sir?

A Near Edmonton, Canada.

Q How long did you live in Canada?

A All my life except, when I moved overseas in the mid 1990s, 1997.

Q Could you pull the microphone just a little bit closer, sir, you speak softly?

Sir, would you tell the jury how you were -- first, about your education, what's your educational background?

A I have high school.

Q After high school what did you do to make a living?

A I spent three years building houses and then I worked as a crane operator.

Q Did you have your own company at some point?

A Yes.

Q What did that company do?

A We rented cranes and bought and sold them.

Q Sir, at some point did you determine to leave Canada?

A Yes, I did.

Q What happened to your business?

A I gave it to my wife.

Q Why did you leave Canada? When you say gave it to your wife, did your marriage end, sir?

A Yes, it did.

Q What year was that?

A 1992 or three, I think.

Q When did you leave Canada?

A I was working back and forth between Canada and the U.S. So around 1992, I came to the U.S. for a few years then I went overseas.
Q When you say overseas, where specifically did you go first?
A I went to Korea.
Q What did you do there?
A I bought cranes.
Q Were you working for yourself?
A I was basically working for myself, yes.
Q Describe how you became affiliated with Thomas and Wong General Contractoror.
A I was in Singapore. I heard from a mutual acquaintance that there was some cranes in Brunei that were for sale.
Q Let's clarify for the jury -- I haven't done a pretty good job, goofing up the geography, where the heck is Brunei?
A It's on the island of Borneo near Singapore. It's about a eight-hour flight from the Middle East. It's in Asia.
Q Now, sir, I asked you to describe how you became affiliated with Thomas and Wong, and I interrupted you. Would you please, continue?
A I met Thomas Wong. He said he had four cranes that he needed to sell and he didn't know how to go about that. He

had them on rent with Shell Oil and they came off rent and he needed to sell them because he couldn't afford to keep them.

Q Why had you gone over to Asia? What about the crane market over there attracted you?

A Well, my friend from America, from the U.S., was there, that I was working with in Atlanta. And he told me it was very busy there, there was a lot of opportunity, and I should come and take a look.

Q Who were the principals in Thomas and Wong General Contractor?

A It's a husband and wife, Thomas and Charlene Wong.

Q What is the general business of the company?

A My part or --

Q No, just the company generally?

A They do some contracting work at the refineries in Brunei. They have oil field equipment that they buy and sell.

Q What is your specific job responsibility with the company?

A I was buying and selling heavy equipment for them and sometimes I'd look over stuff in the yard.

Q You're still employed there today?

A Yes.

Q That's still your job responsibility?

A Yes.

Q Where do you do your buying and your selling?

A All over the world.
Q Charlene and Thomas Wong, are they both Brunei residents?
A They're residents but they're not citizens, even though they were born there and their parents before them. They're not allowed to have citizenship because the regulations in Brunei are that you have to be Malaysian to have citizenship.
Q So they're residents, lifelong residents, but not citizens?
A Yes.
Q Let me talk about your connection to Arizona. When did you first start coming to Arizona?
A In the '70s.
Q What for?
A Vacations.
Q Did you have work contracts there at that time?
A No. No, I did not have any contacts. I just liked it here.
Q Sir, I mentioned in opening in 2002 you had some eye surgery in the Scottsdale area; is that correct?
A Yes.
Q What was that for?
A It's -- it was just cosmetic surgery. I just needed to -- I just wanted to look a little better.
Q How did that go?

A   It didn't go well. The surgeon made a mistake. It didn't go well.
Q   Did you come back to have corrective surgery?
A   Yes.
Q   When did you do that?
A   February the 17th, 2003.
Q   Now, sir, how did you meet Jan Wallace?
A   When I came here, I checked into a hotel, and I called my friend, Jeff Halibert and we went golfing.
Q   Sir, you arrived, I think, on about the 17th, you said. When was your surgery scheduled, the corrective surgery?
A   I believe it was February 25th.
Q   So you had some time before you were scheduled to have your treatment?
A   Yes, because the time change is 16 hours. I needed to be rested up.
Q   Mr. Halibert, you said, introduced you to Jan Wallace. What were the circumstances?
A   While we were golfing, I had some hair on my back. I told him I'd like to get it removed, and he told me he knew somebody in that business.
Q   Now, sir, I mentioned in opening statement you ended up staying in her guest house. Describe the circumstances that led to that?
A   We went to Jan's place of business on Scottsdale

Road. La Vanishe Salon. Jeff introduced me to Jan, through a friend of hers, Kelly Black, I think it was, yeah.

And we got a long very well. I think I spent five or six hours there. We had a lot of discussions. We got a long very well, I liked her.

Q I just need to get this out of way, did you ever have a romantic relationship with her?

A No.

Q Sir, I asked you how you ended up staying in her guest house. Could you finish up that?

A When I got to Phoenix, the hotel was only booked for one night. And I tried to extend and they were booked up. So Jeff was trying to get me another hotel room. And then when we were at Jan's shop, Jeff was calling some hotels and he found one and so I made a reservation. And Jan said, well, if it doesn't work out, you can stay at my guest. Well, she told me I could stay at her guest house instead of the hotel.

Q You did so?

A No, I went to the hotel. I went to the hotel because, you know, I just didn't want to --

Q Sorry, but time is short, we better move along. You eventually stayed there. How did you hear about BDV Investments, sir?

A Okay. I was staying at Jan's house and I overheard her speaking with someone on the telephone. And after the conversation, she looked upset. She was, she was upset. So I asked her what was wrong.

Q What did she say in response?

A She said that she was trying to do a business deal with a guy named John Beardmore and that the money was going to be used to pay some loans that he had at Lake Bank that, that he needed to pay those off because the bank wasn't supposed to lend money to a shareholder, something like that.

Q Now, sir, did she, at that point, tell you that John Beardmore or his company owed money to her?

A No.

Q Did she ever tell you that?

A No.

Q How did you eventually find out about that, sir?

A From you.

Q Was that after this litigation was commenced?

A Yes.

Q Now, sir, let's talk about the BDV transaction. How did it develop, describe the circumstances that led you meeting with Mr. Beardmore?

A Jan called John Beardmore and said that she had someone in from out of town, maybe, maybe I could help with his money problem.

Q When did that meeting occur?

A It was just a day or two or probably two days after

I was in her guest house.
Q Do you recall where the meeting took place?
A Yes. The Marriott Mountain Shadows Resort on Lincoln Road.
Q Who was in attendance at that time?
A There was John Beardmore, myself, and Jan Wallace.
Q Describe what was discussed at that meeting?
A It was explained to me that they needed some money to pay to this Lake Bank. Then another fellow came in about 15 minutes later, his name was Oudo Shieken, a friend of John's and Jan's, and they introduced me to him. He was an investment banker from Germany.
Q Was there discussion at that time about what would be used to secure your repayment, what collateral there would be?
A Yes. They said they had gold dore bars. They wanted to borrow some money against them.
Q What did you say with regard to the collateral?
A I said that Thomas and Wong would have to have physical possession of the gold, that we would want to test it.
Q What did Mr. Beardmore say in response?
A He said that he couldn't make that decision, and he called someone else, named Lee Wark.
Q Was an agreement reached that Thomas and Wong would be given physical possession of the gold if they made the loan?
A No. They said that 1.5 million was too small of an

amount to encumber 50 million for 60 days.
Q The amount of the loan that was being proposed was 1.5 million?
A Yes.
Q The proposed term was?
A 60 days.
Q Now, how did that meeting end?
A Well, when he phoned Lee Wark, Lee said no, we couldn't have it. So I said, well, just give us one barrel, you know. So he phoned Lee Wark back. They said no. And I said, well, you know, some dore bars then. And they said no, it would contaminate the lot or that they would have to assay it all over again.
And I said, no, there is just no chance, we can't do that. I said, there is no, not even a starting point for a loan here. I said I can't do it.
Q Did you have further contact with Beardmore?
A Yes. Yes, we went home after that and then my surgery was a few days later.
Q Now, where --
THE COURT: Counsel, excuse me, I have to take our afternoon recess at this juncture. Stand in recess for 15 minutes, ladies and gentlemen.
Please remember the admonition don't discuss the case with anyone, don't permit anyone to discuss the case with

you. Please keep an open mind.

(Recess)

THE COURT: The record will show the presence of counsel, the parties and the members of the jury. You may proceed.

BY MR. MURPHY:

Q Before the break we had talked about your first meeting with John Beardmore and Jan Wallace at the Scottsdale Marriott.

A Yes.

Q Was there a second meeting with Mr. Beardmore?

A Yes, there was.

Q Where was that?

A At Houston' restaurant.

Q Where is that located more specifically?

A Scottsdale Road.

Q And who attended that meeting, sir?

A There was John Beardmore, Bill Cortegiano, and myself.

Q When was that relative to your eye surgery; do you recall?

A I think it was two days after, one or two days after.

Q Were your eyes bandaged?

A Yes.

Q What had been done in that surgery with regard to

your eyelids?
A Well, they made an even bigger mistake the second time. They cut the tendons on the sides of my eyes.
Q Were your eyelids partially sewn shut?
A Yes.
Q Now, did Jan Wallace attend the second meeting you had with Mr. Beardmore?
A No, Jan wasn't there.
Q Would you describe what was discussed at that meeting?
A That John Beardmore told me that they had additional security collateral to offer me.
Q What was it that he described?
A He said that he could offer the collateral that the Lake Bank had for collateral.
Q Did he describe the specifically what that was?
A Yes. There was a second mortgage on his house in Arizona and in Paradise Valley, there was bank stock, there was Founders Mezzanine stock, there was a car, and a boat.
Q Did that change your position on getting involved?
A Yes, that was something I could buy and sell, something I was used to.
Q What course of action did you settle on at that meeting?
A I told him that I was more comfortable with that

and, you know, and that maybe I told him we did not have a million five, but I had about 800,000 that I felt that I could loan, you know. Perhaps we could fund that amount. And he said, he said that would take care of his most pressing problem which, he said, was the condominium and the bank loan.

Q After that meeting, did you have discussions with Jan Wallace about it?

A Yes. Before I left, I told him I had to talk to Jan. So I went back to Jan's house.

Q What did she do then?

A We discussed it. I told her that they were offering additional security, and we discussed it.

Q Sir, let me show you what has been admitted in evidence as Exhibit 69. I'll put the first page up for identification purposes.

Do you recognize that document, sir?

A Yes, I do.

Q What is that?

A It's the a statement I gave to detective John Bottoms and Sergeant Wright from Homeland Security.

Q Do you recall roughly when you gave that?

A Yes, it was in early 2004.

Q There's a date up at the top of September. Do you believe that's inaccurate?

A Yes. That's not when I did it.

Q Sir, let me go to the third page of Exhibit 69 and I'll show you some information that I showed briefly to the jury in opening statement. Did you draft that?
A Yes, I believe I did.
Q What do those 11 numbered items represent, sir?
A This is a list that Jan and I made up after the second meeting with John Beardmore and Bill Cortegiano.
Q Where did you make that list up with --
A At Jan's house.
Q And was it on the same day of the second meeting that you had with Mr. Beardmore?
A Yes. When I got back, we discussed this additional security and, and we were discussing whether to go forward or not.
Q Who came up with these items?
A I came up with No. 1, No. 6, and No. 7.
Q Who came up with the rest of the conditions?
A Jan.
Q Were you impressed with that?
A Yes, I was.
Q Describe why.
A Well, it's things that I wouldn't have thought of. I thought she was pretty experienced at this.
Q Let me also show you, sir, Exhibit 3 in evidence. Beg your pardon, that would be Exhibit 10 instead.

Whose handwriting is that, sir?
A That's Jan's.
Q Did you see her create this document in her own handwriting?
A Yes.
Q Where was that created?
A At her house.
Q When was this done?
A We started drafting that the night -- the day that I came back from the second meeting at Houston's Restaurant.
Q This appears to be the second page of a document. Was there more to it at the time you saw it created?
A Yes, there was. There was at least three pages.
Q How did you get this particular -- do you have the other pages?
A No.
Q Do you know where they are?
A I don't know.
Q How did you get this page, sir?
A This was in a box of documents that, that I was told -- removed from Jan's property when she told me to leave the guest house.
Q But it is your testimony that that document was created at the time of this meeting in late February of 2003 at Jan Wallace's house that you just described?

A   Yes, that's the checklist.

Q   Now, sir, I asked you before if you were impressed with her suggestions. Did you complement her on the fact that she'd come up with good ideas about how to investigate this transaction?

A   Yes. When I came back from the meeting and told her that there was additional security, she was pretty happy about it. I told her the only thing that I was worried about was the stocks because I don't deal in stocks.

Q   What did she say in response to that?

A   She said, hello? That's what I do for a living. She said I live in a paper world, that's what I do for a living.

Q   Did she discuss that she would be involved in helping you on this transaction?

A   Yes. She said that -- she asked me if I had a stock account, which I said no. She said, well, she could just put those stocks in one of her accounts and sell them if we had to. And so I, I said yeah, that's all right.

Q   Sir, she said this is what I do for a living?

A   Yeah.

Q   Did she describe that more specifically?

A   Yes. She said that she had a lot of experience at it. She said just that she would do the paperwork and I would look after lending the money.

Q   Did you rely on her expertise?

A Yes, yes, absolutely.
Q Did she make similar statements to you at other times, sir, with regard to the fact that she would tend to the paperwork and the details if you would get the money assembled?
A Yes. That happened about at least three times that I can remember.
Q Did you consider that she was representing Thomas and Wong's interests in this transaction?
A Yes. I mean, this is something I don't do.
Q What did she propose to you?
A She told me that she wanted to be on the board of directors of BDV, and that she said that if she was on the board of directors of BDV, that she could keep track of what was going on. If it looked like something was not going right, that she'd let me know and make sure everything stayed on track.
Q Did you consider that a good idea?
A Oh, yes, yes, a very good idea.
Q Did you agree to it?
A Yes.
Q Are you comfortable up there?
A No, I'm not.
Q Have you ever testified before?
A No.
Q Deep breath. And let's plow ahead, sir.
Let me talk about your meetings with Gary Blume. In

your conversations with Jan Wallace, did she recommend that you retain counsel to help you document this transaction?

A Yes.

Q Who did she recommend?

A She asked me if I had a lawyer, and I said no. Then she said she had a lawyer and she asked me if I wanted to arrange a meeting with him and I said yes.

Q Who was that lawyer?

A Gary Blume.

Q Do you recall the first time you met him?

A Yes.

Q Where was that?

A At his office.

Q Approximately where is that; do you recall?

A It's north of Shea on -- I don't know the address.

Q That's fine. Let me do this, sir. I'm going to put a calendar for 2003 up on the screen. I'm trying to zoom in on March. What day of the week was your first meeting with Mr. Blume?

A It was Saturday. I think it was March first.

Q Who was present at that meeting?

A There was myself, Jan Wallace, and Gary Blume.

Q Who arranged the meeting?

A Jan.

Q What was discussed in the course of your meeting with Mr. Blume, Jan Wallace, and yourself?

A When we walked in, Jan introduced me, and Gary asked me, he asked me if I had authority to enter into this deal. I said yes. And then Jan pulled out her checklist, and there was also that DeConcini opinion letter. She had a copy of that. They put it on the table and we started discussing it.

Q You made reference to the DeConcini opinion letter. Showing you what has been admitted as Exhibit 7, I'll just have the first page of this put up on the screen.

Is that the document you're referring to?

A I'm sorry, what?

Q Is that the -- you mentioned the DeConcini opinion letter. Is the Exhibit 7 the document you were referring to in your testimony?

A I think so.

Q You said you think so. There is quite a few --

A Wait a minute -- I don't know. Yes, I think it is.

Q Were you able to read well at that time?

A I could see. No, I couldn't read very well.

Q Did you read the entire DeConcini opinion letter?

A No, I didn't. I didn't read any of it.

Q It's quite a thick document, but you did see it presented to Mr. Blume that day?

A Yes.

Q Now, sir, as those documents were presented,

continue with the conversation that occurred regarding the potential transaction with BDV Investments?
A I'm sorry, what?
Q Continue with the conversation that occurred regarding the proposed loan with BDV Investments, after the documents were put on the table?
A Okay. We just went over the checklist. Jan and Gary were discussing the checklist with me and just trying to figure out how to satisfy those items on the checklist.
Q Do you recall if Mr. Blume was given a copy of that checklist?
A I think so. When we left, Jan left that letter behind, that DeConcini one, and I think the checklist stayed there too, or a copy of it.
Q You believe that meeting was on Saturday, March 1. Let's go back to the calendar again. After that, sir, did you have a meeting at Mr. Blume's office that involved John Beardmore?
A I'm sorry, what was the question?
Q After that meeting on Saturday March 1, 2003, did you have a meeting at Mr. Blume's office that involved John Beardmore as well?
A Yes, yes, there was another meeting.
Q Who was present at that meeting, sir?
A There was Jan Wallace, myself, John Beardmore, and

Gary Blume.

Q Now describe what was discussed at that meeting?

A We came into Gary's office and Jan introduced John Beardmore to Gary Blume. Gary Blume asked him who he was, if he had authority to do this deal. Then he asked him for ID and we started going over the checklist again.

Q Now to the best of your recollection, sir, on what date did that meeting occur at Mr. Blume's office?

A It was a few days after first one. It was within that week. I'm not sure.

Q Sir --

A Two or three days maybe.

Q I'm going to show you a document to you. I won't put it on the screen because it's not been admitted in evidence at this point. I'm referring to Exhibit 42 marked for identification.

Sir, do you recognize that as an invoice of Mr. Blume's regarding this transaction? If you can answer that yes or no, sir?

A Yes.

Q That refers to dates with regard to meetings with you. Does that document refresh your recollection about when this meeting occurred?

A It appears that the first meeting was February -- I'm sorry -- March -- no, February 28.

Q That first meeting being a meeting with whom, sir?
A I don't know.
Q Very well. Why don't we just move on. We'll work with other witnesses on the specifics of that day as best we can.
A I haven't seen this before.
Q That's just fine.
At the meeting that occurred between Mr. Beardmore, yourself, Jan Wallace, and Gary Blume, describe the terms of the loan that were discussed?
A Are you talking about the second meeting?
Q Well, sir, I just need to focus on this. You've testified to the jury that you had a meeting where John Beardmore met Gary Blume at his office.
A Yes.
Q That's the meeting I'm talking about.
A Okay.
Q What loan terms were described at that meeting?
A Okay. The loan for the Lake Bank security was discussed, the condominium, and they discussed the gold as well.
Q Was there a description -- was there a discussion about the interest rate that Thomas and Wong would be paid?
A Yes, it was 25 percent.
Q Was there a discussion about the fact there would be a penalty if payment was late?
A Yes.

Q What was the due date on the loan supposed to be?
A May 6th of 2003.
Q Now, at that meeting was there a discussion that it was urgent that there be funding for the condominium?
A Yes, there was.
Q Where was this condominium located?
A Minneapolis.
Q It's been described as a condominium. What more specifically did you understand it was?
A It was described to me that it was going to be a office where they would cash checks. It was in a strategic location where a bunch of workers had to walk by in order to leave work, and that's where they would cash checks from.
Q This was an office condominium?
A Yes, that's what I thought it was, yeah.
Q What did Mr. Beardmore state at that meeting why it was urgent this asset be locked down?
A He said that it was because it was in such a good location that he felt it would be valuable for -- to their business, and also there was another buyer that wanted to buy.
Q Was there discussion at that meeting where Mr. Beardmore was introduced to Gary Blume, about Jan Wallace going on the BDVBDB Investments board of directors?
A Yes.
Q Did Mr. Beardmore approve of that?

A Yes.
Q Was there discussion about the importance of timely repayment to Thomas and Wong?
A Yes.
Q Was that important to your company?
A Because this was a, this was quite a large loan and we wanted to open an office in Korea and we wanted to have the money back in time for that.
Q Sir, let me go to the trust account with Cane O'Neill. I'll show you what has been admitted in evidence as Exhibit 14.
Now, sir, this appears to be a wire transfer confirmation from Cane O'Neill Taylor dated March 5, showing that $549,000 and change was deposited into that account. Did Thomas and Wong make a deposit into that account on or about that date in the amount of $550,000?
A Yes.
Q Did you assist in arranging for the transmission of those funds?
A Yes, I did.
Q Why was that money deposited into a Cane O'Neill account?
A It was to remain there until the items on the checklist were done.
Q It was an escrow account then?

A Yes, at Cane O'Neill.
Q How had you heard of Cane O'Neill and Taylor?
A Jan arranged that.
Q Did you have any contact with Cane O'Neill Taylor at the time that trust account or escrow account was set up?
A No.
Q Who made those arrangements?
A Jan.
Q Did you have discussions with Jan about bringing the money, the need to get the money brought into the country?
A Sorry?
Q Did you have discussions with Jan Wallace about it was important to get the funds brought into the U.S.?
A They wanted to have the funds brought in as a show of good faith and to have them sitting there in case we made a deal.
Q Who was going to be authorized to release funds from that account?
A My trust account, Thomas and Wong's.
Q So it was supposed to be your responsibility to make decisions about when money could leave that account?
A Yes, yes.
Q Do you know whose names the account would be opened under?
A Thomas and Wong General Contractor.

Q Sir, I'll next show you what has been admitted as Exhibit 22, a wire transfer confirmation from Cane O'Neill Taylor of March 7, 2003, for just shy of $250,000. Did you arrange to have that money deposited in the Cane O'Neill account?
A Yes.
Q That arrived on or about March 7, 2003?
A Yes.
Q This was also to be under -- it was ultimately going to be your decision as to whether those funds would be disbursed?
A Yes, yes.
Q Did you meet with -- did you ever meet Michael Cane?
A Yes.
Q When was that?
A I'm not certain of the date. It was in, in March at La Vanishe, at Jan's office.
Q Sometime in March?
A Yeah. It was, I think, somewhere around the 10th or 11th, something like that.
Q Had the Cane O'Neill trust account already been established at that point?
A Yes.
Q Sir, I'll show you minutes of the BDV Investments board of directors, date of March 6, 2003. You discussed that Jan Wallace had agreed to go on the BDV board of directors and Mr. Beardmore approved of that?

A Yes.
Q Were you aware of specifically when she joined the board at that time?
A No.
Q These minutes dated March 6, 2003, did you see them at that point?
A No.
Q But you had no objection to her joining the board?
A No. I was in favor of her joining the board so that I'd know what was going on.
Q Let me talk about the promissory note itself. I'll go back to the calendar for March 2003. Do you have a specific recollection of the date that the promissory note was actually provided in completed form by Gary Blume?
A Yes, it was a Saturday, March 8.
Q Of what year, sir?
A 2003.
Q Describe -- were you in Mr. Blume's office at some point that day?
A Yes.
Q Who else was present?
A There was Jan Wallace, John Beardmore, myself, and Gary Blume.
Q What time did you get there; do you recall, roughly?
A I think it was about 10:30.

Q Was the promissory note ready when you got there?
A No.
Q Were you told why not?
A No.
Q How long were you there in the office before it was ready to go?
A It was ready shortly before noon.
Q When the note was completed did Mr. Blume sit down and review the terms with those who were present?
A Yes. We went over them all.
Q Let me show you what has been admitted in evidence as Exhibit 21.
Is this the promissory note that Mr. Blume provided in completed form on March 8, 2003?
A Yes.
Q Now, it bears a date of March 6, 2003, in the upper right-hand corner. Are you confident that it was that Saturday that you received the note?
A Yes, I'm 100 percent sure of it.
Q Sir, I'll go to the second page of that document. We'll zoom in on the notarization stamp showing it was signed on March 8 of 2003. Were you present as this document was signed?
A Yes.
Q Describe what you went through, where did you originally go to try and get the note notarized?

A When we left Gary's office. Jan said we should take it to her bank and get it notarized. We -- John Beardmore phoned Bill Cortegiano and told him to meet us there. We got there and the bank was closed.
Q Where did you go next?
A We went to a different bank and got the promissory note signed.
Q And where was that bank located?
A In north -- in a Home Depot, but I don't know the address.
Q It was a Home Depot location that had a banking facility?
A Yes, yes.
Q Now, sir, let me go back to Mr. Blume's office. On that day, March 8, as you were waiting for the promissory note to be finished, was there a conversation between the parties present in the conference room?
A Yes.
Q Was there a question posed by Mr. Beardmore regarding release of the funds for the Minnesota condominium?
A Yes.
Q Describe what Mr. Beardmore said?
A John Beardmore looked at Jan and asked if it was okay to release the funds for the condominium.
Q What did Jan Wallace say in response to that?

A She looked at Gary Blume and Gary said I don't see any reason why not once the note is signed.
Q Did Miss Wallace, at that time, tell you that the funds for the condominium had already been transferred back to Minnesota?
A No, no.
Q Now, let me, sir, show you Exhibit 19. This is a document that was provided to us by Cane O'Neill and Taylor in Las Vegas, date of March 6, 2003, from Jan Wallace to Cane O'Neill Taylor. Please use this letter as your authorization to wire transfer $$275,000 from your client trust account to the following accounts: U.S. Bank National Association, 601 Second Avenue South, Minneapolis, Minnesota, account number I will skip, Basford Lockheart Truesdale and Briggs PA.
Have you seen this document in preparation for your testimony, sir?
A I saw it yesterday.
Q In March of 2003, did you know it even existed?
A No.
Q You believe yesterday's the first time you saw it?
A I know it was.
Q Had Jan Wallace been authorized by you to release those funds from the trust account?
A No. There is just no way that would happen.
Q Sir, on that date, March 6, 2003, had Thomas and

Wong ever committed to the transaction?

A No.

Q Had the promissory note to demonstrate their commitment to repay Thomas and Wong been signed at that point?

A Not on the 6th of March, no.

Q I'm going to show you Exhibits 24 and 25, which has been admitted in evidence. Exhibit 24, a wire transfer confirmation, March 7, 2003, Cane O'Neill Taylor, to the Basford Lockheart Truesdale and Briggs account, 275,000.

Did you know that that fund transfer had occurred on March 7, 2003?

A No. When I saw this yesterday, I was shocked about it. No.

Q I'll show you another document from the Cane O'Neill files. Wire transfer detail report. Again showing $275,000 transferred on March 7, 2003. That had not been authorized by you?

A No.

Q I'm going to put another document in front of you -- I'm sorry to run through so many, but this is an important feature of our evidence and I need to make sure we proceed step by step -- this being Exhibit 18.

This is a promissory note, also dated March 6, 2003, for $275,000, signed by John Beardmore and a Sokim Lach. L. Trust LLC.

When did you first see this document, sir?
A The first time I saw that was either in the summer or the early fall of 2003.
Q 2003. Where did you see it?
A At Gary Blume's office.
Q Who showed it to you?
A Gary Blume.
Q What did he ask you with regard to that document?
A He told me that -- he tried to tell me that Clark Griffith and I had discussed this and I was to sign a document saying it was okay to do this.
Q Did you agree to do that?
A No.
Q Had you ever seen this promissory note before?
A No.
Q Did you know that it existed?
A No.
Q Had you authorized its creation on March 6, 2003?
A No.
Q Or it's execution I should say?
A No, I did not.
Q Had Thomas and Wong committed to the loan transaction with BDVBDB Investments as of the date March 6, 2003?
A No.
Q I'll show you at the top a telefax header, sir, did

you meet William Cortegiano in the course of this transaction?
A Yes.
Q That bears a telefax header at the top and I'll try and zero in on that, dated March 7, 2003, the Literacy Company. Do you know that to be a company affiliated with Mr. Cortegiano?
A When I got the documents from the sale of the house, I, yes, I learned that he was part of this Literacy Company. I didn't know it before.
Q Sir, if you had known that Jan Wallace had released these funds to the Minnesota bank account, $275,000, on March 6, 2003, without your authorization, what would you have done with regard to the deal with the BDVBDB Investments?
A Oh, no, that would be the end of it. I mean, that was -- that's absolutely dishonest and I'm really upset about even seeing it now.
Q I want to go back to Mr. Blume's office on March 8, 2003, as you're waiting for the other promissory note for 1.5 million dollars to come off the typewriter. Do you understand the scene?
A I'm sorry.
Q Go back to March 8, 2003, a Saturday, the day that the promissory note for 1.5 million dollars was given, was prepared by Mr. Blume.
A Yes.
Q Do you understand where I want --

A Yes, I do.
Q You mentioned Mr. Beardmore asked a question, with Jan Wallace present, about whether the funds could be disbursed for the Minneapolis condominium?
A Yes, he asked that question.
Q Did Jan Wallace state, at that time, that the funds had already been sent?
A No, no, no.
Q Did she ever tell you that?
A No. The first time I learned of it was yesterday.
Q Now, sir, you said it was a Saturday. Could you, to your knowledge, wire transfer funds anywhere with regard to this deal on that date?
A No.
Q The next date, according to the calendar, where it was open for business, would have been Monday, March 10 of 2003; is that correct?
A I'm sorry.
Q Yes. The next date where banking facilities would have been open would have been March 10, 2003?
A Yes, that's right.
Q Did you have conversations at or about that time with Jan Wallace about whether you could now fund the transaction?
A When the promissory note was signed, we had a

discussion at her house about the promissory note.
Q What discussion did you have at that point?
A We decided that we needed to talk to Lake Bank before any funds were disbursed.
Q So, it was your decision, at that time, that it was still not appropriate to release the funds?
A The checklist said we needed to verify and secure that Lake Bank collateral before anything was done. That was important to me.
Q Let's click back one day on the calendar to Sunday, March 9 of 2003. Did you meet a gentleman named Clark Griffith that day?
A I believe so. It was on the 9th, I think so.
Q Who was Clark Griffith, to your understanding?
A He's BVD's attorney.
Q I'll show you Exhibit 26, sir. The first page is a telefax from Mr. Griffith to Jan and Ed, dated March 11 of 2003?
A Yes.
Q That was from the Clark Griffith?
A Yes.
Q Did you see that telefax -- first the cover sheet on or about that date? Did you see this document on about March 11th?
A Yes.
Q Let me go to the second page of this document, sir.

Letter from Mr. Griffith, dated March 11, 2003.

Dear Ed, pursuant to our telephone conversation this morning, I want to assure you that it is my opinion that the BDVBDB Investments, Inc. loan will be completed by the first week of April. This opinion is based upon direct conversations with the principals at the company that is arranging for the loan, and expresses my view of their confidence and their ability to complete the process.

I'll end my quote.

Did you request send a confirmatory letter when you met him on March 9?

A Yes. When we met at the Villages restaurant, he said it was him that was arranging the loan with Dumaine for BDV. And he said he was in direct communication with them almost on a daily basis. So, I thought, well, if he's the one arranging the loan and he's an attorney, why not get a letter from him saying that.

Q Now, you said you met with Mr. Griffith on Sunday, March 9 of 2003. Was there discussion at that meeting about viewing the gold?

A Yes.

Q Tell, describe what was discussed about that?

A John Beardmore said that they had leased a airplane to fly us to view the gold.

Q Was a specific date discussed about going to see the

gold at that time?
A No. It was supposed to be within a couple of days, one or two days.
Q Who else was going to view the gold on that trip?
A John O'Neill, the president of Dumaine.
Q Please continue, I'm sorry.
A And Lee Wark, Jan Wallace and John Beardmore and myself.
Q Were you planning to go personally?
A Yes, absolutely.
Q Did complications come up in that regard?
A Yes.
Q What were they?
A They informed us that it was a really highly secure warehouse and that we had to submit information so they could do a clearance for us in order to get into this warehouse.
Q Did you discuss with Jan Wallace whether she would take care of viewing the gold on behalf of Thomas and Wong?
A Yes. She was scheduled to go, all of us were.
Q And you left the U.S. on March 17th, I believe you've testified, of 2003?
A Yes.
Q Had the gold viewing been scheduled before you left?
A It was and then it was postponed.
Q It was postponed to a date after you'd already left

the country?

A Yes. They told me that the clearances could take up to two or three weeks.

Q The clearances to get into this warehouse facility?

A Yes.

Q As you left the country, sir, did Jan Wallace agree that she would take responsibility, on behalf of Thomas and Wong, for examining and confirming the existence of the gold collateral?

A Yes.

Q Now, let's go to Wednesday, March 12 of 2003. At that date, sir, had you agreed to the release of any funds from the Thomas and Wong account at Cane O'Neill Taylor?

A No.

Q Did you have discussions that date with Tom Kell of Lake Bank?

A I don't know if it was that exact date, but I, yes, we did have discussions after the promissory note was signed. It was somewhere around March 10th or 11th in there.

Q Let me see if I can refresh your recollection on the date of your conversations with Mr. Kell. I put in front of you Exhibit 27, which is in evidence, a memorandum from Tom Kell to Jan Wallace, attention Jan Wallace, date of March 12, 2003.

Did you see that telefax on that date?

A Yes, I did.

Q Do you believe that was the date that you had the telephone conversations with Tom Kell?
A Yes.
Q Describe what those conversations entailed, what was discussed?
A Jan called the Lake Bank and asked for Tom Kell because she had the name and number from John Beardmore.
Q What was she calling them for specifically?
A To verify the collateral and to secure it.
Q When you say secure it, what did you have in mind?
A I didn't know the best way to do it. We were discussing that with this Tom Kell.
Q Now, this refers to the following: That upon receipt of wired funds, the Lake Bank will assign the following collateral to Thomas and Wong General Contractor. A second mortgage on Mr. Beardmore's Arizona home, the home is appraised at two million dollars, with a first mortgage of $999,997, equity one million dollars, a 1999 Mercedes, a 2000 18-foot mystic ski boat, 22 percent in Founders Mezzanine Stock Fund, stock in Superior Financial Holdings, Inc.
Did you understand that that collateral would be provided to you if the Lake Bank debts, that Mr. Beardmore owed, were paid down?
A Yes.
Q This telefax was received on March 12 to confirm

that?

A Yes.

Q Was Jan Wallace present throughout these conversations?

A She was the one conducting them and I was listening on the speaker phone.

Q Did Kell describe why it was urgent to get these funds released?

A He said that they needed to get that loan off the books. There was an audit coming or something like that.

Q After you completed your conversation, did you talk with Mr. Kell more than once that day, do you believe?

A Yes.

Q After you finished your conversations with Mr. Kell that day and received this telefax, what did you discuss with Jan Wallace about the next step?

A I'm sorry?

Q How were you feeling at the end of the day, sir, on March 12?

A How was I feeling?

Q Yes, how were your eyes?

A No, I was tired. We got this, I think, around 5:00, and I needed to go lay down.

Q What did Jan Wallace say she was going to do as she left that meeting?

A Take it to Gary Blume.
Q Why was she taking it to Gary Blume, to your understanding?
A To make sure it was all right. Also that's where all the documents were being kept.
Q Did you go with her?
A No.
Q Why not?
A Because I was tired and my eyes hurt.
Q Now, you went back to -- were you at her house then staying?
A Yes.
Q Did you have a discussion with Jan Wallace that night about whether the funds could now be released?
A Yes.
Q Where did this conversation occur?
A In the kitchen of her house. We were having dinner.
Q Did you still have concerns and reservations?
A Yes.
Q What were they?
A Well, I mentioned to her, you know, what if the gold was moved or something like that, and --
Q What did she say to you in response?
A She got irritated and she says, do you know what a safekeeping receipt is? And I said, well, no. And then she

said, well, without that safekeeping receipt, there is no way in the world that you can move those funds because it has to be submitted to the warehouse, the vault has to be unlocked, and the gold is brought into a viewing room, and it has to be moved by an armored car.
Q That conversation occurred in her kitchen or dining room, which room was it specifically?
A Well, it was the dining room, yeah.
Q On the evening of March 12, 2003?
A Yes. Then she went on further to say, okay, if something does happen, you still have the insurance and also DeConcini is on the hook. You know they're not going to go down. Everything is fine.
Q Had the certificate of insurance been one of the items on the checklist you created with Jan Wallace?
A Yes.
Q That was to insure Thomas and Wong in the event of the loss of the gold?
A Yes.
Q Was the safekeeping receipt, stating that the gold couldn't be moved without Thomas and Wong's permission, one of the items on the checklist that you created with Jan Wallace?
A Yes.
Q Was it your understanding that those conditions had been satisfied as of March 12, 2003?

A Yes.
Q Why do you say so?
A Because I saw them in the second meeting. The insurance was there and it was made out to BDV. And Jan said to John Beardmore, well, that will have to be assigned to Thomas and Wong. The loss payable has to be assigned to Thomas and Wong.
Q That's --
A So I saw the document there, yes.
Q How about a safekeeping receipt. Did you ever see a safekeeping receipt in favor of Thomas and Wong?
A I did, yes.
Q Do you know where and when?
A It was supposed to be at Gary Blume's office with all the documents. That's where the documents were to be kept.
Q Now, sir, I'm going to go to Exhibit 28. Up to this point, had you approved the release of a penny of Thomas and Wong's money?
A What's Exhibit 28?
Q I'll show it to, sir. I'm going set up a foundation question.

Up to this point, had you approved a release of a penny of Thomas and Wong's money?
A No, not at all.
Q I will put in front of you Exhibit 28, a document dated March 12, 2003, to Michael Cane of Cane and Company?

A Yes.

Q Let me zoom in a little bit closer on the text. Thomas and Wong hereby authorizes Miss Jan Wallace to release funds from your trust account on our behalf.

A Uh-huh.

Q Did you sign that document on March 12 or so?

A Yes.

Q Are you confident it was March 12?

A Yes, I believe it was. It was right after the conversation in the house that we had.

Q In her house on the evening of March 12th?

A Yes.

Q Why did you sign that?

A Because the items on the checklist were completed.

Q And what authority were you giving to Jan Wallace?

A I was giving her authority to transfer the funds from Cane's trust account to wherever they had to go. I understood they were going to pay for the condominium and to the Lake Bank.

Q Why did you give her that authority?

A I'm sorry?

Q Why did you give her that authority?

A Because she was handling all the paperwork and just running the whole thing really. She was -- that was her part.

Q Did you consider that she was going to act as Thomas and Wong's agent with regard to the release of the funds?

A Yes.

Q Now, sir, I'll show you a document which is admitted in evidence as Exhibit 30 -- pardon me, 29. March 12, 2003, to Cane O'Neill Taylor from Jan Wallace. Please use this letter as your authorization to wire transfer $500,000 from the Cane O'Neill Taylor client trust account to the following accounts at the Lake Bank?

A Uh-huh.

Q Were you aware that transfer was being made?

A Yes.

Q Had you approved it at that point?

A Yes.

Q And Jan Wallace was authorized to transfer those funds then?

A Yes.

Q But you were unaware that $275,000 had already been transfered from that account?

A I had no idea about that. I thought everything was being done that date.

Q Prior to your execution of Exhibit 28 on March 12, 2003, was Jan Wallace authorized to transfer funds from the Cane O'Neill Taylor trust account that were owned by Thomas and Wong?

A I'm sorry?

Q Prior to your execution of Exhibit 28, on March 12, 2003, the one right in front of you.

A Okay.

Q Was Jan Wallace authorized to transfer money from the Cane O'Neill and Taylor's trust account?

A Oh, no. No, no, no, no way.

Q Now, I want to go to the L. Trust transaction, sir. You mentioned that you left the U.S. on about the 17th of March. I'll show you Exhibits 34 and 35.

Exhibit 34 is an e-mail from Jan Wallace to Susan Johnson, dated March 21, 2003. It reads: Sue, I've already spoken to Mike regarding this. Please wire today from the trust account, under Thomas and Wong, to the following account: Wells Fargo Bank, account named L. Trust.

Were you aware that that had occurred on March 20, 21, 2003, that she had sent that instruction?

A No. The first time I saw this document was in 2005 or 6, when Leo Beus showed it to me.

Q Sir, I'll next put in front of you Exhibit 35, a memo dated March 21, 2003, from Jan Wallace to Cane O'Neill Taylor. This letter will authorize Cane O'Neill Taylor, LLC, to make a wire transfer in the amount of 20,000 U.S. dollars from money being held in its trust account, to Thomas and Wong, at the following account, Wells Fargo Bank, account name, L. Trust.

Again did you even know who L. Trust was at that time?

A No.

Q Had you approved -- did you ever approve the transmission of these funds from the Cane O'Neill trust account to L. Trust?

A No.

Q You subsequently, in 2003, learned, as you've testified, that Sokim Lach, John Beardmore's girlfriend, was affiliated with L. Trust?

A Yes. I learned that in 2003, either in the summer or the fall of 2003.

Q Now, I'll shift to -- we've talked about the 800,000 dollars that were transferred in the Las Vegas accounts at Cane O'Neill Taylor. Let me talk about the remaining 700,000 dollars. Where was the last 700,000 dollars of the loan that Thomas and Wong funded sent?

A It was sent to Lake Bank.

Q Why wasn't that sent to Cane O'Neill and Taylor?

A Jan told us that that trust account had been closed and the checklist was all finished and just wire it directly to Lake Bank.

Q Was it your understanding there was a need for escrow account since the conditions had been satisfied?

A No.

Q And do you recall specifically when Jan Wallace told you that all of the items on the checklist had been ticked off and satisfied?

A It was in March, it was in March. I don't know the exact date.

Q How did she do so, a telephone call?

A Yes, a telephone call. And also when I agreed to release the funds from the trust account, the items were satisfied on the checklist.

Q One of the items on the checklist was viewing the gold. Did you discuss with Jan Wallace whether there had been a viewing of the gold?

A Yes.

Q What did she tell you?

A She said that the gold had been viewed.

Q Did she say specifically, sir, that she was there?

A No.

Q Did you understand from her statement to you though that she had been in attendance?

A Yes. I mean, when we were at the Villages restaurant, that was the agreement, that she would look at it and be present.

Q When did you first learn that she had not actually gone to review, look at the gold and confirm its existence?

A I believe it was July of 2003.

Q After the loan had not been repaid?

A Yes.

Q Now, with regard to the money that was sent to -- from Thomas and Wong to Lake Bank directly, did Jan Wallace continue to play a role in that process?
A Yes.
Q Let me show you Exhibit 38, sir. I take that back, your Honor, it's not Exhibit 38.
With the Court's permission, I think I may have it buried up here in the stack of materials.
I'm going to go by question and answer, sir, while I dig around for this document because time is important.
In March of 2003, was Jan Wallace in touch directly with Charlene Wong?
A In March of 2003?
Q Yes.
A Yes.
Q And did that conversation and contact consider the fact that money needed to be advanced into Lake Bank by Thomas and Wong?
A Yes.
Q Were you in touch with Jan Wallace about that very issue as well?
A Yes.
Q It's Exhibit 39, I beg your pardon, that I was looking for.
Do you recognize that as Jan Wallace's handwriting?

A Yes.
Q Who was Charlene?
A She was Charlene Wong, of Thomas and Wong General Contractor.
Q I'll tilt this a bit so the text can be read.
Dear Charlene, Edward is wiring 300,000 dollars to the above bank. He wanted me to send the instructions to you so that the wire can be posted on Monday the thirty-first. It is really imperative that the funds be posted on Monday, March 31st, 2003. Please call me if you need to speak with me. Thank you for all your help.
Did you have an understanding as to why it was imperative that Lake Bank receive this additional 300,000 dollars?
A No, I didn't know. Everything was going through Jan. I had not spoken to Lake Bank directly.
Q Now, sir, I'm going to jump ahead now, but do you recall, in general terms, when Thomas and Wong funded the remaining payments by sending the money directly to Lake Bank?
A I believe it was in April.
Q So the funding was completed by April?
A Yes.
Q According to the note, the loan fell due on May 6, 2003. Were you repaid anything at that time?
A No.

Q What did you do about it?
A What did I do about it?
Q Yes. What did you do when the repayment was not made to you?
A I called Jan Wallace.
Q Describe the conversation you had with her?
A She said there was a problem with the loan.
Q Did she get more -- describe anything more specifically than that?
A Yes. She said that that Lee Wark had agreed to melt the gold and pay us.
Q Sir, I'll show you what has been admitted in evidence as Exhibit 45. Is that an e-mail that you sent to Jan Wallace on May 13, 2003?
A I believe it is, yes.
Q It reads: Thomas and Wong General Contractor hereby authorizes Gary Blume and Jan Wallace to act on their behalf regarding promissory note with BDV Investments, Inc., and/or any other names representing BDV Investments, Inc.
I'll just cut the text off there, although it continues. Why did you send that document or e-mail to Jan Wallace?
A She asked me to.
Q Were you authorizing her to act on Thomas and Wong's behalf with that document?

A Yes.
Q Did she do so?
A Yes.
Q Now, did you have conversations with Jan Wallace about whether the gold was going to be melted so that Thomas and Wong could be repaid?
A Yes.
Q Did they occur shortly after the default in early May of 2003?
A Yes.
Q What did she tell you in that regard?
A She told me that she had a conversation with Lee Wark and BDV and other board members and the melt had been approved. It was happening as we speak, she said.
Q Did she tell you where it was happening?
A In Salt Lake City, Utah, a refinery.
Q What was the name of that refinery?
A Johnson Matthew.
Q She told you that?
A Yes.
Q Who was going to be attending that melting?
A She told me Bill Cortegiano was going on behalf of BDV.
Q That was a telephone conversation?
A Yes.

Q Did you have a subsequent conversation with her about whether the melt had occurred?
A Yes.
Q When was that?
A It was either -- she told me that this process would take a week or 10 days, so it would be a week or 10 days later.
Q Did she tell you that the melt had been accomplished?
A Yes.
Q Did she tell you that the gold had been sold?
A Yes.
Q What amount of proceeds did she say were generated by that sale?
A 12 million dollars.
Q Did she discuss with you where that money was?
A She told me that it had gone off shore. And I knew she had a bank account in Bermuda, so I thought maybe that's where it went.
And then she said it was being brought back into the country. I said, well, why would you send it out of the country?
Q What was her answer?
A She said that's just the process that it has to be followed in this instance.
Q Did she tell you where the money was at that point in time?

A She said it was coming back in to a bank in Florida and that it was being held in escrow there until the paperwork could be completed.

Q Did you discuss with her whether she was in touch with that Florida bank?

A Yes. She said that she was in the touch with them every day and that, that they would be disbursing very soon.

Q Did you continue to have telephone conversations with Jan Wallace about the status of disbursing your repayment?

A Yes.

Q Did she describe that there was a delay in releasing these funds from the Florida bank?

A Yes. She said there was quite a bit of paperwork involved to release 12 million. So I said, well, just, you know, get our part released. I said they owe us a million 800, about a million 8 -- I don't know -- and change. I said just get that released. That shouldn't take very long. I said don't worry about the whole 12 million, it's not something we should be concerned with.

Q And over what period of time did these conversations with Jan Wallace occur, as best you can estimate?

A That conversation was -- this was already early June now.

Q Now, when did you find out that there had not been a melt of any gold?

A Well, first she told me that there was -- the next time I called, she said there was a problem and that the money was pulled back. And I said, well, to where? And she said, well, wherever it came from. I was really alarmed and I got on a plane and I flew to Phoenix.

Q When did you find out there, in fact, had been no gold melted, no proceeds generated?

A When I got back to Phoenix.

Q Do you recall roughly when that was?

A The end of June.

Q When you got there, did you retain counsel to help you track down your money?

A Yes. You know, when she told me that the gold hadn't been melted, I couldn't believe it. I said, how could I be mistaken about that. You know, that's ridiculous to tell me that.

Q Who did you hire to help you as counsel?

A Gary Blume.

Q And did you describe to the jury the effort that you made to try and get possession of the gold collateral?

A She said that we would have to get some replevin order or something to go into this secure warehouse in New Mexico.

Q Did you go to New Mexico?

A Yes, I did.

Q Who went with you?

A I went myself to file the papers there. They gave me the documents, Gary Blume gave me the documents, and I drove to Lordsburg and took them to the courthouse.

Q Did they get issued immediately?

A What?

Q Did the court issue the orders that you asked for immediately?

A No, no.

Q Where did you go as you were waiting for the court to take action?

A Back to Phoenix.

Q Describe what you understood about the process, the legal process in New Mexico, to get an order to enter into that warehouse?

A I was told that we needed to get a judge to sign some papers so that we could enter the premises.

Q Did Jan Wallace continue to act on behalf of Thomas and Wong in this regard?

A Yes.

Q Did she go to New Mexico?

A She did later, after, I believe it was -- well, first of all, I went there with Clark Griffith, and we asked the judge for permission to go into the warehouse. And he said that we would need to get a lawyer in New Mexico to represent us.

Q Did you hire a New Mexico attorney?
A Jan did.
Q Who paid that New Mexico attorney, do you know?
A Jan.
Q Did you eventually get an order authorizing you to get access to the warehouse?
A Yes.
Q Roughly when was that chronologically?
A It was July 9th, I think. It came fairly soon. They originally told us it would take a while. So I flew to Canada to be with my family.
Q Would you care for some water?
A Yes, please.
Q Did you personally go into the warehouse at that time?
A No.
Q Who did on your behalf?
A Jan Wallace and Gary Blume.
Q Did she describe to you what they found there?
A They told me that the barrels weren't there, but there was a bunch of containers with gold concentrate in them.
Q You said barrels and containers. What is the distinction, as you understood it?
A Well, the barrel is round and the containers were rectangular.

Q What was in the barrels and what was in the containers?
A In the barrels was supposed to be the gold dore bars and in the containers was, it's a powdery material that has to go to the refinery to be melted.
Q Now, sir, did you personally get into the warehouse at a later date?
A Yes.
Q Was this a high security warehouse with heavily restricted access, as has been described to you?
A No.
Q Describe it to the jury?
A It was just a warehouse in the middle of nowhere, with no security at all.
Q Did you yourself find containers that had what you thought was gold concentrate in it?
A I thought so, yeah.
Q Did you have those tested?
A Yes.
Q When was the testing done?
A It was done by BSI inspector on site.
Q What were the results?
A A zero, they weren't worth anything.
Q Did you also attempt to track down the barrels that had the gold dore in it?

A Yes.
Q Describe the path that you followed in that regard?
A After Jan and Billy Cortegiano went in the warehouse, they -- I was told that the viewing hadn't taken place in New Mexico at all. It was held in Phoenix.
Q Where specifically?
A An armored mini storage on Chandler Boulevard.
Q Did you go there?
A Yes.
Q What did you find out about the gold dore barrels at that point?
A That the documents showed that it was being moved as we were trying to get into that Lordsburg warehouse.
Q Now, sir, did Mr. Blume, on your behalf, file lawsuits against the various -- against BDV Investments and the various individuals who had guarantied the loan?
A Yes.
Q Quickly, show you a part of the case information history of Superior Court, Exhibit 64. Did any -- did you succeed in serving John Beardmore, Donald Nooe, Mr. Wark, Mr. Cortegiano, and BDV Investments?
A Yes.
Q Did any of them appear to defend against your claims?
A No.

Q Did Mr. Blume, on your behalf, take default judgment against all of them?
A Yes.
Q Are those amounts of those defaults reflected on that page of Exhibit 64 that I have on the screen?
A That appears to be the judgments that I have, yes.
Q Have you collected a thing from any of these people, sir?
A No.

THE COURT: Counsel, at this juncture we're going to take our evening recess. Stand in recess until 9:30 a.m. tomorrow.

Please remember the admonition. Don't discuss the case with anyone, don't let anybody discuss the case with you. Please keep an open mind.

That admonition applies to family members and friends and colleagues at work, just as it does to anybody else. So when you get home you can tell them you're on a jury, you can tell them the schedule for trial, but beyond that you can't say anything about the case until it's over. Once you're discharged as jurors, you'll be free to discuss your experiences.

Have a good evening and I'll see you tomorrow. I'll see counsel in chambers for a few minutes.

(The proceedings were concluded.)