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

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

February 6, 2008
Phoenix, Arizona

BEFORE THE HONORABLE: ROBERT C. HOUSER, Judge

REPORTER'S TRANSCRIPT OF PROCEEDINGS
Jury Trial

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: CV 2005-051325, Thomas and Wong Contractors, Incorporated v Jan Wallace. This is the time set for continuation of trial. The record will show the presence of counsel, the parties, and members of the jury.

Good morning. You may proceed

MR. MURPHY: Plaintiff calls Gary Blume.

THE COURT: Well, all right. We were in the midst of reading some deposition testimony, I think, when we recessed last night. Are you going to interrupt that deposition testimony to call Mr. Blume and return to that?

MR. MURPHY: I would request we do so, since he's a live witness.

THE COURT: All right, that's fine. Let's proceed.
Will you step forward and be sworn, please?

GARY R. BLUME,

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

DIRECT EXAMINATION

BY MR. MURPHY:

Q Thank you, your Honor.
Your full name, please?
A Gary R. Blume.
Q You're an attorney licensed in this state, sir?
A Yes.
Q You have represented Jan Wallace since the, oh, mid 1990s, is that correct, in various matters?
A I don't specifically recall. I worked for her for a while.
Q Sir, let me show you what has been marked for identification as Exhibit 42. Do you recognize this as invoices, the first dated March 14, 2003, the second dated May 12, 2003, the third dated June 17, 2003, regarding service related to, oh, the transaction with BDV Investments and Thomas and Wong?
A I do recognize these. They are records that are kept in the ordinary course of my business. But they do not all relate to Thomas and Wong.

Q Fair enough. But they are accurate recitations of the time billed on those matters?

A Yes.

MR. MURPHY: I would offer Exhibit 42 into evidence, your Honor.

MS. AMBROSIA: I have no objection.

THE COURT: 42 is admitted.

BY MR. MURPHY:

Q Sir, I'm going to go to the first page of this exhibit. There are time entries on your invoice of March 14, 2003, as follows: March 6, 2003, Gary R. Blume, meeting with Jan and clients regarding drafting of promissory note, security agreement and discussion, preparation for meeting with forms and discussion at meeting. Then March 8, 2003, Gary R. Blume, meeting with client. Both of those for two hours.

Do you have a recollection of those meetings, sir?

A Not specifically.

Q Do you recall who was present in your offices on March 6, 2003, with regard to that meeting listed on the invoice?

A March 6th? No, I don't.

Q Do you recall who was present on March 8, 2003?

A Not specifically.

Q Was Jan present -- pardon me, was Jan Wallace present at both meetings, to the best of your recollection?

A I believe so. I'm just unsure of the dates.

Q You did record these in your timekeeping systems at or about the time of the meetings; is that correct?
A I don't know.
Q Is that your customary practice?
A Yes, it is.
Q Do you have any reason to believe that you deviated from you're customary practice with the preparation of this bill?
A Yes.
Q What would that reason be, sir?
A That I examined the time matters, calendaring system that I had. I didn't have a record and I didn't have an entry for March 6th. I had one for March 8th, March 8th being a Saturday. So I didn't specifically recall whether that was accurate or not.
Q Fair enough. You do recall that there was a meeting on March 8 and that's consistent with your records in your office?
A I believe there were two meetings.
Q Right. Let me show you, sir, what has been admitted into evidence as Exhibit 21. Do you recognize that sir as a promissory note that you drafted at the request of Ed Tarapaski and Jan Wallace?
A I believe it was at the direction of Mr. Tarapaski and whoever might have been with him.
Q Now, sir, is it your best recollection, going back

to the invoice, and I think you've expressed some uncertainty, but you had two meetings with regard to this preparation of this promissory note. One, I gather you meet with the clients and got information necessary to prepare the note; is that generally correct?

A I don't believe so.

Q How did you get information necessary to prepare the note?

A They gave it to me.

Q Was that at a meeting?

A I believe so.

Q Then you subsequently prepared the promissory note and provided it to them?

A No, I think it was simultaneous.

Q Did you, to the best of your recollection, did you do that on March 8, 2003?

A I believe I did it at the first meeting. I don't know if it was the 8th or the 6th.

Q Your records --

A I think it was a Saturday.

Q And Saturday, according to the calendar --

A Is the 8th.

Q You've checked that?

A Right.

Q To the best of your recollection, you drafted the

promissory note on March 8, 2003, a Saturday?
A Right.
Q Now, sir, do you know why this bears a date of March 6th, 2003?
A No, I don't.
Q But to -- enough said.
Let me next show you what has been admitted in evidence as Exhibit 18.
A Could I have that exhibit, please, to look at it?
Q Surely.
A To clarify, the attachment that's to this, I don't know that that was present at the time that I did the note.
Q If you could --
A There's an attachment on here that's a fax page that's dated July of '03, a few months later. And it shows an Exhibit A, a warehouse receipt. My recollection is, is that during the drafting of this -- it wasn't really a drafting of it -- I have on my computer multiple promissory notes that I can select to give to clients to use.
This is a form that I have used, and information that's inside there I get from people. And at the time that I recall I did this, I had naked promissory notes, which is the first two pages of it. The Exhibit A that's attached to it may have been attached later. I have seen that before, but I don't think it was there at the time of the generation of the

promissory note.
Q I thank you for that clarification.
Sir, let me next show you what has been admitted into evidence as Exhibit 18, a promissory note also dated March 6, 2003, in the amount of 275,000 dollars. You've seen this note before, haven't you, sir?
A In the course of this litigation, I have seen it.
Q Let me go to your deposition in this matter, sir, and you were deposed on June 19, 2007?
A I don't recall the date.
Q You do recall having been deposed?
A Yes.
Q Let me read in some testimony, and if I could borrow the original, please, of Mr. Blume's deposition.
Could you confirm for me, sir, and I'll give the documents to make comparison, that Exhibit 2 to your deposition is a copy of a document whose text is the same, at least the first two pages, as Exhibit 21 of these proceedings, the million 500,000 dollar promissory note; is that correct so far?
A Other than the bate stamps on them, I believe it's the same document. It looks like it.
Q Could you confirm that Exhibit 3 in your deposition is another copy of the 275,000 dollars promissory note and it has the same bate stamp?
A These, are these the exhibit stamps? Okay.

Q Yes.
A Two, three, three I think is exactly the same. Oh, well, even the bate stamps are the same.
Q So trial Exhibit 21 --
A Looks like 2.
Q Equals deposition Exhibit 2?
A Well, the first two pages anyhow.
Q That's good. Trial Exhibit 18?
A Is 3.
Q And thank you. If I could have the originals back, I'll return them.
A Which ones?
Q The original exhibits to your deposition. Let me go to your deposition in this matter, sir, and I'll start at -- let me just ask this, the promissory note that is in front of you, Exhibit 21, the million five note, you typed that yourself; isn't that correct?
A I don't recall.
Q Let me go to your deposition in this matter, sir, and Page 46.
A Could I have a copy of it?
Q It will be on the screen right in front of you, sir. Question, Page 46, Line 19: Now, sir, the promissory note that is Exhibit 3, who typed it? Did you or your secretary? Answer: Exhibit 3, I don't know where it came from. Question: I beg

your pardon, Exhibit 2, the promissory note that's Exhibit 2, do you know who typed that physically? Answer: I would have done it. Question --

A Are you on the next page?

Q Yes, thank you. So your secretary didn't come in the day that that was drafted? Answer: No. Question: Does that reaffirm any impression that this might have been a weekend? Answer: No. I would have done this -- Question: Regardless of whether your secretary was there that day or not? Answer: True. Ending my quote.

That was your testimony in this matter, wasn't it, sir?

A I think that's accurate.

Q Let me next go sir to your deposition at Page 34, starting at Line 22. This refers to Exhibit 3, which, as we've established, is trial Exhibit 18. Question: If you can take a look at Exhibit 3 the promissory note also dated March 6, 2003, for $275,000. Did you draft that note? Answer: I don't believe so. Question: Do you know who did? Answer: No. Question: When did you first learn of its existence? Answer: Sometime later, after the litigation commenced. Question: When you filed suit on behalf of Thomas and Wong General Contractor in 2003, to collect debts that were due from BDV Investments, did you sue on the promissory note that is Exhibit 3? Answer: I don't believe so. Question: Did you know of its existence at that time?

Answer: I don't believe so. Ending my quote.

That was your testimony in this matter, wasn't it, sir?

A I believe that's the accurate testimony, yes.

Q That remains your testimony today?

A No.

Q That was your testimony under oath at deposition?

A Right.

Q We'll get around to your change, but let me go through the rest of your deposition testimony, sir.

I'll go to Page 36 of your deposition at Line 4.

Question: And later did you enter an appearance --

A Where are you?

Q Pardon me. Line 4.

A Okay.

Q And later did you enter an appearance in litigation on behalf of Thomas and Wong General Contractor; is that correct?

Answer: Regarding this promissory note, yes. Indicating.

Now, sir, in the course of that representation --

A Do you know in that, where it says indicating, which note was that?

Q I don't know, sir. I can only read from the transcript. Question --

THE COURT: Excuse me, counsel. You can read the transcript and introduce it as substantive evidence if you want

to or you can use it to impeach the witness. We're not going to do both. You can ask the witness a question and show him the deposition and ask him whether or not it's consistent with his testimony. Or with the witness off the stand, and you can use deposition testimony, but let's move this along.
BY MR. MURPHY:
Q I will, your Honor.
Sir, your testimony at deposition, at Page 36, was that you learned of the existence of Exhibit 18, trial Exhibit 18, the 275,000 dollars promissory note, after you filed suit on behalf of Thomas and Wong against BDV Investments; is that correct?
A That's probably correct.
Q Let's put this up on the chart, sir.
A Do you want me to look at that?
Q Oh, you can't see it. I beg your pardon.
A No.
Q Your deposition testimony was, learned of Exhibit 18 after litigation versus BDV. Is that generally accurate?
A I think the deposition says that.
Q Now, sir, you understood that the loan here was going to be for 1.5 million dollars; is that correct?
A Yes.
Q And you documented a promissory note for 1.5 million dollars; is that correct?

A I believe so.
Q And sir, you now know that there were two promissory notes, one for 275,000 dollars and one for 1.5 million dollars; is that correct?
A No.
Q Well, we have Exhibit 21 and Exhibit 18. Those notes both exist, don't they?
A I don't know.
Q You don't know about Exhibit 18?
A No, I'm unsure about it. That was my point.
Q You don't know because?
A Because I don't recognize it. When I first saw this, I filed a lawsuit for Ed for million and a half dollars. Why didn't I file it for a million 750? I just don't recall the details of this because there was some trust with Sokim Lach. I don't know even know who that was.
Q My point exactly.
A So I don't recall this particular note or a derivation of it. This looks like one of my forms because notice the way it's structured with the amounts and stuff like that.
Q Sir, did you have an understanding about how the loan proceeds of 1.5 million dollars were going to be applied at the time you documented exhibit, Trial Exhibit 21?
A Not at all.
Q You viewed yourself in this transaction as acting as

a scribner; is that correct?

A That's the phrase that I used.

Q Describe to the jury what you mean by that?

A A scribner is a person -- it's actually a derived term from the middle ages. People who just copy stuff down. Someone will tell you, the car went in the garage and you would write the car went in the garage. That's a scribner. You're not offering any content of your own to it or not telling them what to say. You're just act is as a scribner.

Many times attorneys act as scribners to be a dispassionate third-parties with it. You and you have a dispute, you want to resolve it, well tell me what to put down in resolving and I'll do that, because you're agreeing to it, as an example. That's the role a scribner takes and that's the role I viewed myself in this promissory note situation.

Q Let me contrast that, sir, on other occasions. Two parties to a transaction will each hire attorneys for the purpose of advising them regarding the transaction; is that correct?

A In some cases parties to any transaction will have their own lawyers to look out after their own interests, that's accurate.

Q That was not the role that you perceived yourself in here. You viewed yourself as drafting a document as scribner, as you described?

A I agree.

Q Let me make another note with regard to your testimony.
A That's not my spelling of my name though.
Q I beg your pardon. I'll correct that. You testified that you did not know how the loan proceeds were to be applied.
A By that, I assume you mean where the million and a half was supposed to go?
Q Right.
A Yes, that's true.
Q And you acted as a scribner?
A I would agree.
Q Sir, you now are aware there was, from your participation in this case, that there was a trust account established at Cane and Associates, a Las Vegas law firm, into which some $800,000 were deposited by Thomas and Wong. You know that now; is that correct?
A Not real- -- I don't know, I don't know the details.
Q Would it be correct in stating that when you were working on this promissory note, Exhibit 21, back in March of 2003, you didn't know anything about the Cane and Associates trust account?
A True.
Q I'll make a note on that.
Sir, were you aware, at the time you worked on this

promissory note, Exhibit 21, that Jan Wallace was joining the board of directors of BDV Investments?
A No. There was no discussion of that, that I recall. She was merely a -- I can't recall her talking about anything.
Q Sir, you're a sole practitioner; is that correct?
A Yes, I am.
Q You have an office with one conference room?
A Yes.
Q On Thursday, March 6th, 2003, was there a board meeting of BDV Investments in your law offices?
A I don't know.
Q You customarily would have been aware if something like that was occurring, wouldn't you?
A Yes, I'm generally aware of all activities in the office.
Q And you have no recollection or knowledge of a board meeting taking place in your office on March 6, 2003?
A I don't recall.
Q Let me ask this question, sir, you say you have now looked at Exhibit 18, which was Exhibit 3 to your deposition. It looks like a form similar to forms that are in your computer. Did you prepare that document?
A I don't recall.
Q And you do recall preparing Exhibit 21?
A More or less. I was -- I'm looking at it now.

There is also a statement inside here that you asked about the disposition of the proceeds. The statement says that the loan --

Q Which document?

A -- used by BDV -- this is document 21. It's a million and a half promissory note. And I -- that, that sounds familiar. They were going to buy the bank. There was a bank in Minnesota. And it says here, loan will be used by BDV to purchase the position of the Lake Bank NA of Two Harbors, Minnesota and purchase real property on Second Street. To that extent, that may have been what the proceeds were used for.

Q I think your testimony is you're not confident that there was actually a meeting in your office on March 6, 2003, but you are confident that there was a meeting related to this transaction on March 8, which was a Saturday?

A Eight, I feel good about that. The 6th, I know there were two meetings. My recollection is there were two, because they were there a couple of times. Beardmore was there I think once.

Q Question, sir, on March 6, 2003, did you advise Jan Wallace, after looking at trial Exhibit 18, the 275,000 dollar promissory note, that she could release funds in the amount of 275,000 dollars from the Cane and Associates trust account?

A No. I didn't advise anybody of anything on releasing money on any of the transactions.

Q And you had no idea that the Cane and Associates

account existed; correct?
A True.
Q At that time, you don't believe you knew of the existence of trial Exhibit 18; is that correct?
A I don't think so.
Q Sir, if you had known that there was already a promissory note for 275,000 dollars, wouldn't you logically have reduced the amount of the second note to a million 225,000 dollars?
A I don't follow that.
Q Sure. If the total amount to be furnished was 1.5 million, and there is already a note for 275,000 of that amount, wouldn't the remaining note, to document that transaction, have been in the amount of a million 225,000 dollars, if you were aware of those two different notes?
A No.
Q How is that wrong?
A Well, that's -- I don't know, that just doesn't make any sense. This could have been for a completely different transaction. In fact, if you will look at it --
Q Sir, do you know --
A It talks about a trust, and it appears to be something different. I mean it's got the same date on it, but I don't know that they're related. I just don't recall the relationship between these two, because I didn't know what deal

he was doing.

Q What is a negotiable instrument, sir? Would you inform the jury of that?

A A negotiable instrument. I don't know.

Q Is a --

A I have a general idea of a negotiable instrument.

Q Give the jury your best knowledge?

A Well, by the term itself, negotiable means it's something to be presented and you could derive an action from it. Like a bond, a bond could be a negotiable bond if I sign the back of it and get cash for it from the bank.

As an example, promissory notes can be negotiable instruments, because they have been negotiating the terms of them are all set up and I can present that for payment, for example. A check is negotiable instrument. Somebody writes it to you, and you take the check to the bank and say, give me money for it.

The key to the negotiability of it is, that it's something that you tender to somebody, and they do something in exchange for it. That's the negotiation, if you will.

Q And if there are -- looking at Exhibit 21 and Exhibit 18, on their face, those -- I'll withdraw that question, sir.

Negotiable instruments can be sold and conveyed, can't they?

A Yes. Unless there is -- you have to look at the document itself though. But in general, anything can be assigned or transferred, any contract at all, if it doesn't preclude you from doing it. Many contracts or agreements will have a non-assignment or non-transferability clauses. And if they don't, the general rule is you can assign it wherever you want to.

Q So, if there were two notes, Exhibit 21 and Exhibit 18, that did not have non-assignability provisions, those could be sold and the holders could come back and collect both notes; is that correct?

A That's right. The holders of the notes are the person to whom you're promising to make the payments. And if, in this case, BVD's promising to pay to Thomas and Wong, Thomas and Wong could assign that payment and say, okay, I'm going to give it to Acme Corporation. Now Acme will be receiving the payment from BDV. That's an assignment of the note.

Q Sir, let me move ahead to the week after the note was drafted. On March 12, 2003, did you give advice to Jan Wallace that she could release $500,000 from the Las Vegas account at Cane and Associates to Lake Bank?

A Not at all. I don't believe I had anything to do with anybody after these meetings.

Q After the last meeting of --

A Whatever second meeting I had. I don't know if it was the 8th. There were two meetings. After the second meeting

I didn't hear from anybody.

Q Sir, you are here as a witness pursuant to my subpoena. I pressure also co-counsel for Miss Wallace in this litigation; is that correct?

A That's accurate.

Q And as an attorney, you are a fiduciary, aren't you, sir?

A Yes.

Q And would you explain to the jury what a fiduciary is?

THE COURT: Excuse me, counsel approach, just a minute.

(An off-the-record discussion was held out of the hearing of the jury.)

MR. MURPHY: May the record reflect that I withdraw the question, your Honor. I have nothing further of this witness.

THE COURT: Thank you, counsel. Cross examine.

MS. AMBROSIA: Oh, thank you, your Honor.

CROSS-EXAMINATION

BY MS. AMBROSIA:

Q Good morning, Mr. Blume.

A Good morning.

Q There has been a lot of discussion about a couple of meetings and people coming to see you.

I just want to get clear, to the best of your ability that you recall, to get clear on these items.

You say there were two meetings. Is it fair to say that they were in early March of 2003?

A Yes.

Q Can you tell me who, to the best of your recollection, was at those meetings?

A I know that Ed and Jan were, and Mr. Beardmore, I believe, attended one of them, and Cortegiano.

See, this is where I'm a little unsure. Cortegiano signed a guarantee, but I don't know if he did it at the time the notes were done or if he came back later to sign them on his own, but at some time I saw Cortegiano, then I saw the guaranties that they signed.

Q Is it fair to say that when they came to see you, they weren't really there to retain your services.

Would that be a fair statement? Let me --

A Well, in a sense they were. They were seeking, I believe, ultimately, in an expansive way -- anyone that seeks attorney's advice, whether you're at a cocktail party or you're in an office, if you answer a question, you're giving legal advice.

I believe that was the setting where I was asked questions that were related to, to legal issues.

Q But was Mr. Tarapaski there that day to come -- to walk away with some forms, some sort of documents?

A That's what I think he wanted, yes.
Q Did Mr. Tarapaski pay you for either meeting?
A No.
Q Who paid you for those meetings?
A Miss Wallace did.
Q Do you know what Miss Wallace's role was in regard to Ed Tarapaski? Was that ever discussed?
A No. As far as I was concerned, she had no role.
Q Did you believe her to be an agent of Mr. Tarapaski's?
A No.
Q There was some discussion about -- I'm sorry, let me go back.
On either date that these meetings occurred, did Mr. Tarapaski come to your office with some documents?
A Yes.
Q Was one of those documents something called the DeConcini opinion letter?
A Yes. I had seen that. He put great store in that.
Q What do you mean, "he put great store in that?"
A He relied on that in order to -- the whole deal that he was doing involved gold. And gold -- there are four states in the country, Colorado, Utah, New Mexico, and Arizona, where, if you hear the word "gold," it's a fraud.
And he believed that this letter had tremendous

validity, and that because DeConcini wrote this letter, that it, it made this dream of his gold become real.

And when I saw the letter and went through it, I pointed out why that wasn't accurate. And that it's, it's an attorney's letter, doesn't say anything.

Q Did you -- were you asked for advice on what to do about this deal?

A In a generic sense, yes.

Q What was your general advice?

A The general advice was not specifically directed to it, but as I said, I have a very dim view of gold deals and I expressed that, of course.

But the other side of it was the procedures involving securing the promissory note, that, you know, if you're going to go ahead and do this... As an example, if you really think this gold exists, if you're really going to loan money against it, get a hold of it.

The perfection of collateral on a loan note -- if these guys really have it, well, make them give it to you and hold it. Didn't get any better than that.

Q Did Mr. Tarapaski have an understanding, that day, or either day in your office, that he owned the gold, that he had that -- I'm sorry, that he had a right to the gold if he entered into this transaction?

MR. MURPHY: Object to the foundation; your Honor.

THE WITNESS: Right.

THE COURT: Sustained.

BY MS. AMBROSIA:

Q Did Mr. Tarapaski express an opinion as to whether or not he felt that the DeConcini letter would give him possession -- ownership of the gold?

MR. MURPHY: Your Honor --

THE WITNESS: Yes, he did.

MR. MURPHY: -- lack of foundation.

THE COURT: She is asking whether he said it. Overruled.

MR. MURPHY: Thank you.

BY MS. AMBROSIA:

Q I'm sorry, you're answer again was?

A Yes, he did. He believed this was his ticket, essentially.

Q There has been discussion about these two notes, and I do want to go over them with you again.

Is it a fair statement to say that Mr. Tarapaski came to your office and was asking for some forms which were to be turned into promissory notes?

A Yes.

Q Did you -- first question, did you spend all your time with Mr. Tarapaski and Miss Wallace and Mr. Beardmore while they were in your office?

A No.

Q Was -- is your office generally busy during the day?
A Yes. There were, as a sole practitioner, many things going on. I didn't spend all my time in the office with them. They had their own discussions. I came and went.
Inside the conference room, there is no computer, and if I was pulling these up on the computer or putting them together, I would have had to have done it in my office, which is separate than where the conference room is.
Q Is there a guest office in your suite?
A Yes.
Q Is there --
A Well, it's not a guest. My configuration is there's an entryway and there's a conference room with a glass wall that faces it.
My office, another office, and then the paralegal administrator's office, that's how it's configured. And they were in the middle of the office, in the conference room.
Q But there was a -- there is another office with a computer?
A There are three other offices with computers, yes.
Q You can't necessarily see into the board room the whole time you're in your office; is that correct?
A I can if the door's open because it's a glass, it's a glass window, so I can look through and see.
Q But if your door is opened?

A   Yeah, if mine is open.
Q   I'd like you to take a look at those two notes again.
So, you were being asked for forms --
A   Yes.
Q   -- of documents.
Was there any discussion, ever, of an office building at 660 North Second Street that was going to be part of the collateral for this transaction?
A   I don't recall.
Q   You don't recall.
Would you have suggested to these parties who were in your office, basically, to just get some forms, that they should maybe have a promissory note on this separate piece of property?
Would that be something you would have described to them, discussed with them?
MR. MURPHY: Object to form, your Honor.
THE COURT: Read it back.
(Record read.)
THE COURT: Sustained.
BY MS. AMBROSIA:
Q   I'm going to show you Exhibit 18. Is this -- does this look like one of your form promissory notes, one of your blank promissory notes?

A Yes, it does.
Q Would this have been a form that you would have provided to Ed Tarapaski on either day that he was in your office for the meetings?
A Could have been.
MR. MURPHY: Object to the form, your Honor.
THE COURT: In what respect is the form improper?
MR. MURPHY: Hypothetical, your Honor, as opposed to fact.
THE COURT: Overruled.
THE WITNESS: Yes. This is a similar form.
The reason I'm having trouble recalling it, it's a similar form, but I just don't remember two notes. But it could have been done, man, I just don't recall.
BY MS. AMBROSIA:
Q Again, you weren't spending every second with them while they were in your office?
A Well, no, I wasn't. Every now and then they would want to talk about something. I had other things I had to do because there were two --
The Saturday meeting, I would have spent more time in there than on the other meeting because I, I recall that there was a Saturday meeting and then a meeting that occurred on a other -- on a weekday. The weekday meeting, it's harder to do that.

Q So there could have been a lot going on at that weekday meeting that you might not have had knowledge of?
A I would agree.
Q There has been a lot of discussion -- this is Exhibit 21 -- there has been a lot of discussion in this trial, Mr. Blume, about the terms of this promissory note and who, who provided the terms.
And I know it's been your testimony that they basically came in and said, we want a promissory note that says this da-da-da-da.
Do you know who was giving you the direction and giving you these terms?
A Ed.
Q You didn't take any direction from Jan on this?
A No. I don't think she knew anything about Brunei or that kind of stuff.
Q Did she -- and so the terms of the transaction itself between Beardmore and Tarapaski or between Thomas and Wong, that was coming directly from Ed?
A Well, Beardmore might have too.
Q You might have taken some direction from Mr. Beardmore?
A Right.
Q And you believe he was in your office at --
A One time, is what I recall. I don't know that I

could pick the guy out if I saw him now.

Q Did you ever come to represent Mr. Tarapaski -- or actually Thomas and Wong?

A Yes, I did.

Q When did you start working for him?

A It would have been in the summer because the note -- they put the notes together and there were short term notes, which is another reason that you figure they're not going to work. But they defaulted immediately, of course, didn't make any payments.

And I think it was May that it defaulted. And then as soon as it defaulted then he wanted to sue them. So that's when he came to me. I recall it was the summer of that year, whenever that was.

Q Do you recall how many, approximately, how many lawsuits you filed for Mr. -- for Thomas and Wong?

A Oh, man, well, it was brutal. We started out with -- you named a couple of defendants that were on it and he kept expanding it.

We ended up, I'll bet, with 20 -- we tried to get 25 or 30 defendants on this. And ultimately the court, I think they just wore down, where, you know, we got 10 or 15 defendants in.

And then he's getting the people that were the girlfriend of people that he wanted to name in lawsuits, so I don't know how many ultimately there were.

Q Did you receive judgments in most of them?
A A bunch of them.
Q Have you --
A Beardmore, Cortegiano. I mean, I'll bet there were 12 judgments against people for -- those judgments are still rolling, by the way. So they're probably up to about 10 million dollars or something by now.
Q And did Thomas and Wong execute on those judgments?
A Tried to. We ended up -- we grabbed a house. We got Beardmore's house, which I don't know the total, he netted, it was over $400,000 is what Ed got out of it.
Then he did some other collection also in New Mexico that I wasn't a party to because I don't practice over there. He grabbed a bunch of equipment. I don't know how that ended up.
Q So Mr. Tarapaski, Thomas and Wong, has received some repayment on these -- on this note at least through these lawsuits?
A Oh, yeah. Then there was -- he sued the bank too. So, he might have got something out of that. I don't know.
Q You were you involved in the suing of them?
A No. He brought -- that was a suit in Minnesota that he did. I don't know who the lawyer was up there. I don't recall his name.
He had a guy in Tucson was working for him too that was doing something in New Mexico. So I don't recall that one.

Q Is it your practice that when you draft a promissory note, that the promissory note -- that the day that funds are to be released is the date of the -- is the date of the repayment.

Let me, I'm sorry, let me strike that. Let me formulate what I want to say.

This was a 60-day note. Is it your practice that to date the promissory note and the repayment date to follow within the 60 days?

So, in other words, the date of this note is March 6th. The repayment date was March -- was May 6th. So would it -- so is it your practice then to date -- I'm sorry -- let me withdraw that question because that makes no sense even to me.

The repayment date in a promissory note, does it generally follow the date that the funds are released?

So, if funds are released on a certain day and then they're due 60 days later, would it be 60 days from the date that the funds are released? Is that generally how you draft your promissory notes?

A I guess I don't follow that directly.

A normal promissory note has an amount, and they're usually a couple of dates. There is the date there -- there is the date that you get actually get the money. Then there is the date that my payments are due. And those two terms are normally in every promissory note.

There is no standard, well, if it's 60 days it will mean this. It's customized it will say -- sometimes you have to pay in installments too, where it's not lump sum. So, it's whatever they want.

This is not an unusual promissory note. I mean, it has all the terms in it, has the date, it has when payments due, the amount, it has the interest.

The only thing makes this unusual is the huge penalty on this and it's a real short term.

Q You've testified that you didn't have any real knowledge of the, of the Cane O'Neill trust account; is that correct?

A No. I didn't think they existed. That's a Nevada law firm; right?

Q Yes.

A They never even came up -- as far as I knew, at the moment in March when this was done, there wasn't even a Cane. I mean, they didn't have anything to do with this. And the way the funds were moving, I had no information about that at all.

Q So no one discussed with you how funds were to be moved or paid?

A Oh, no. I didn't even know if this was actually going to happen.

Q Did -- there has been some discussion about this promissory note, the 275, $275,000 promissory note, and the discussion has been that at a certain point Mr. Beardmore --

there was some urgency to have this 275 paid on Mr. Beardmore's part, and there is some discussion as to giving authorization to have the funds released.

Is it your testimony that you did not give any authorization on releasing the funds?

A At no time. I had nothing to do with any of that.

Q Would you have told them that upon signing a promissory note, in general, not these promissory notes, but once promissory notes are signed funds can be released?

A No. My role in this, is, and my role as a commercial attorney in whatever I do, I assess risk.

I never tell anyone to do something or not to do something. It's not the role of a lawyer. That's a business decision.

Gee, do I really trust those guys enough to give them a million dollars based on some gold thing? That's not my call. The only -- and what I assess is, if you do this, here's the risk.

On this promissory note, when you started out with it, the idea that they had was, well, gee, this is essentially a demand note. What a demand note is about as risky as gets.

That means that I just give you a piece of paper that says if you give me a $100, yeah, I promise I'll pay you back. That's not much of anything.

So, I -- normally you collateralize it. Well, put something behind it so I know if you don't pay me I can go get something. That's where the collateralization idea came up from.

Real estate is good collateral because it doesn't move, it stays where it is. Gold is a bad collateral. Usually it doesn't exist and it's fungible. I can move it. If I've got it here today, I'll take it over here tomorrow and how do you know where it is. That's why you want to get it.

The guaranties are good too. Because all those ideas would have been risk things that I would have told him about. So, he gets the guaranties because that helps too because now I've got too human being on the hook. I had, I think, Cortegiano and Beardmore, I'm not sure. But that's my role.

Q Did you have any discussion with Mr. Beardmore or Mr. Cortegiano as to whether or not they could pay these, make these guaranties and actually follow through on them?

A No, but I didn't believe they would.

Q Did you ask Mr. Tarapaski if he had discussions with either one of them before he sought these guaranties, whether or not they could pay?

A I don't recall. But that would have been a cautionary language I would have given him.

As an example, the DeConcini letter, it's only as good as what they say. A guarantee, it's only as good as the guarantor.

A security interest is only as good as the collateral, as an example. Those are the -- I mean, that's a normal cautionary statement that says, gee, here's what you have to make sure happens.

Q Did you ever get -- I'm sorry -- can you tell us what a UCC 1 is or financing statement is?

A Yeah. You know when you buy a house, you record something about it. Everybody knows that, that's a normal course of doing it.

And that's so the bank gets protected, that if you don't -- or that if you try and take another loan out against the house, somebody can go to the recorder and look at it and say, well, there's already a million dollar loan on your house, I'm not going to give you any more money.

The problem is is some things aren't like that, where there's a system in place to do it. So they created a system called the Uniform Commercial Code system around the states.

And if you have a security interest in something like a, I don't know, like gold, you would file a UCC 1 against it in the state where it was, so the world knows that there's a security interest against that gold.

So before people loan money against things, they do a search of the UCC. It's a notification system, so everybody knows whether there's a secured loan.

Q Did you ever file any UCC 1s on behalf of Thomas and

Wong?

A Yes.

Q Do you know, do you recall which ones or where you filed them?

A Oh, man, they were all over the place. We filed UCC 1s in Minnesota, Texas, New Mexico, Arizona. I mean, one different -- I don't think I did Florida.

Ed would call up -- this is in the litigation -- almost regularly with a new story about it, gee, the gold's being moved to Florida, you're going to have to jump through a hoop and do something; oh, I think it's in New Mexico, do this; Texas has it; he thinks he's moving it into his -- for a while he thought it was going to be moved to an Indian reservation. I mean, he says that kind of stuff.

So, I was filing UCC 1s all over the place.

Q Were you ever able to collect on any of these UCC 1s?

A No, we could never find the gold.

Q Were you personally sued as a result of this transaction, other than this lawsuit?

A No. Ed's the only one that sued me.

Q You weren't sued in New Mexico, along with a judge and several other people?

A Oh, that. Well, maybe that was a suit. There was an action, I think, that -- oh, boy, I don't know.

Whatever happened, it was presented to the judge and it got dismissed. I think it was Kirby that brought that. There was something that was brought, that, that was thrown out by somebody that wanted us to pay, I think it was 10 billion dollars was the lawsuit against me and the judge and 20 other people. So, it never went anywhere.

Q When did you end your representation with Thomas and Wong?

A I don't know. It was -- I don't know, I don't know the time or the year, '06, maybe sounds about right, '07.

Q Were you owed money at the end of your representation?

A Oh, yeah, a lot of money.

Q I just have a couple quick questions.

You had said earlier in your testimony with Mr. Murphy that you didn't know what deal Ed was doing what did you mean by that statement?

A He never told -- he never told me everything. I mean, he's the kind of client would tell you what he thought you ought to know.

MR. MURPHY: Objection, your Honor; nonresponsive.

THE COURT: Your objection is nonresponsive?

MR. MURPHY: Yes, your Honor.

THE COURT: That objection is reserved for the examiner. Overruled.

THE WITNESS: No. On the deal, he didn't give me any of the specifics of it because I think he was doing a lot of it on the fly in terms of what was going on.

And I didn't know. He didn't confide in me those things, didn't ask me those kind of questions about it, and was more interested, I believe, in obtaining the form document to try and do it.

And I don't know the details of what he did, where the million and a half was coming from, why, where it was going, what he was going to do with it, how he was going to move it.

I have heard stories later about what happened, but at the moment, on March 6th, I had virtually no information about whatever he was trying to do.

BY MS. AMBROSIA:

Q I want to go back, I know that you were shown your bill, I'm thinking that maybe with a calendar in front of you, you might be able to look at your bill again, your invoice again, maybe we could clarify these dates.

If we can't, I understand, but I'd like to try.

Your statement shows that there was a -- that you billed for March 6th and that you billed for March 8th. It's been your recollection so far that they were in your office at least on a Saturday and on a weekday.

So now, looking at the calendar, you see that the 6th is a Thursday and the 8th is a Saturday.

A Exactly.
Q Now, I'd like you to take a look again at your invoice. Let me see if I can bring that part up again there.
Is it possible that your statement accurately reflects your recollection, now, looking at a calendar?
A Sure, it could, but I just don't know the specifics.
But there were two meetings and I billed for two. I have no reason to -- other than I just can't recall.
Q At the first meeting, there was actual preparation of documents occurring?
A I believe, I believe there were at both meetings.
Q And was Jan Wallace giving direction, giving instruction to Mr. Tarapaski or Mr. Beardmore?
A No, not that I remember. It was those two that were talking to me about what to do.
Q And did, at any point in that meeting or after that meeting, did anyone say to you Jan Wallace is acting as Mr. Tarapaski's agent, representative?
A No, they didn't.
Q And after the Saturday meeting, are you really contacted again until, until the litigation?
A Only when he wanted to sue did I hear about this thing again.
And I've looked through the dates on my calendar. I didn't meet with anyone else from then until he wanted to sue

them.

I think one of those billing statements starts showing where I started doing that. That would have been the time that I started talking to him again.

Q Did you handle any other matters for Mr. Tarapaski other than the Thomas and Wong lawsuits?

A Yeah. In looking at my files on it, because I, again, I couldn't remember, you're at five or six years ago, but in pulling up the information there was some real estate transaction he did, that I sent a demand letter out or something for, prior to the meetings with Beardmore.

I don't know if that was personal property that he owned or I think it was a loan that he had against personal property that he -- that they didn't pay him on, is my recollection of it.

Q Does the name Kathleen Seymore mean anything to you?

A Well, I saw that in the -- in my, my billing, but not really. I mean, I recognize that it's a name and it was in my documents, but I don't know her.

Q I just want you to take a look at these two promissory notes one more time.

This again is Exhibit 18, the promissory note for 275,000.

And upon -- and I know you haven't a chance to study this document -- but it seems to be collateralized by real

property at 660 North 2nd Street in Minneapolis, Minnesota?
A Right.
Q And this is Exhibit 21, which is the promissory note for 1.5. And if you go to the third paragraph down --
A Yes. It's got the 660 there too. It references Attachment A, so maybe that was done at the time. It could have been.
Q Okay.
A But then that doesn't make sense with his theory that gee why wouldn't you reduce it to a million two, maybe it was a million eight. I don't know
Q You don't now exactly how much money Mr. Tarapaski loaned in this transaction, did you?
A No, other than what I was told.
It was later on in the lawsuit the number that I recall we picked or that he wanted to sue for was a million five. If he give them another 300, should have added that.
Q I want to show you one more document. This is Exhibit 100.
A Right. That's the lawsuit.
Q Did you draft this lawsuit?
A Yes. I'm assuming that's the cover page.
Q But you're familiar with this lawsuit?
A Right.
Q I want to go through the factual allegations,

Paragraph 10.

Can you see that? Let me see if I can --

A Yes.

Q -- make that a little bit bigger. Is that better?

A Right.

Q Can you go down to 10.4?

A The loan funds were to be used to provide for the payment to purchase a certain real property interest described as 660 Central, Minneapolis, and purchase the position of Lake Bank of Two Harbors.

Q Paragraph 10, at the beginning, says BDV entered into a promissory note with plaintiff to provide the lending of 1.5 million to BDV under the terms and condition of the note?

A Yes.

Q And the note provided as follows.

A Right.

Q Is it possible that the 275 note, which is signed by --

A Beardmore, it looks like.

Q Beardmore and L Trust, a Minnesota limited liability company, which apparently consented to the complete transfer of their interest in this property in the event of a default, so they were at least an owner or part owner in this, is it possible that this note is then replaced by this note or incorporated as part of this note?

A Could be.

MR. MURPHY: Object to the form.

THE COURT: I'm going to sustain this objection. Rephrase this question.

MS. AMBROSIA: Okay. Thank you, your Honor.

THE COURT: The witness' answer is stricken. The jury will disregard it.

Go ahead and ask the question again.

MS. AMBROSIA: Thank you, your Honor.

Q Could the 275 that was part of the promissory note, 18, be included in promissory note Exhibit 21?

A Could be.

Well, it says in exhibit -- in the million and a half promissory note, it references it. So, it's got some relation to it. I mean, it says it's an Attachment A.

MS. AMBROSIO: I have no further questions, your Honor?

THE COURT: Thank you. Redirect.

REDIRECT EXAMINATION

BY MR. MURPHY:

Q Sir, I want to focus on some questions. You were asked about forms. You were asked is it possible that you provided forms to Ed Tarapaski. Is it possible that there was a promissory note attached as Exhibit A?

Do you know, in fact, that Ed Tarapaski was provided

promissory note forms by you in March of 2003?
A I think he was.
Q Do you know?
A That's a form.
Q Do you know, in fact, sir, that you gave him the form that became Exhibit 18?
A Which one, is that the second one?
Q Yes. Do you know in fact?
A I don't. I don't really recall.
Q So you're speculating you when you say it might have been given to him?
A It's true. It's a possibility.
Q With regard to whether there's an attachment A to Exhibit 21, promissory note for 1.5 million dollars, you have never seen that attachment, have you, sir?
A I don't recall, other than reading it, that it says it's there. So it must have existed at some time.
Q You're speculating when you say that, aren't you, sir, it must have existed?
A Sure.
Q You don't know, in fact, whether that's true or not?
A That's true.
Q Now, you say Ed gave you direction?
A Yes.
Q Isn't it true, sir, that you perceived, in the

meetings that you had in March of 2003, that Jan Wallace was your client?

A No.

Q Let me go to your deposition testimony in this case, sir, Page 15, Line 1. I beg your pardon. It would start at Line 12.

Who did you understand was retaining you? Answer: Jan. Question: Why do you say that? Answer: She paid me. She asked me to come in. Ending my quote.

Wasn't that your testimony sir?

A Right. I think that's accurate. She wasn't the client though. She was the one that paid me.

Q Now --

A He wouldn't pay, so she paid. I only did that as a favor, on a Saturday, because she asked me. I didn't know Tarapaski really.

Q You were asked questions about the release of funds on cross examination. Did you ever give legal advice to Jan Wallace or Ed Tarapaski that funds could be released from a trust account?

A No.

Q I'll make a note of that, sir.

When Ed Tarapaski said to you I would like to file suit, he did not ask you to file suit for 1 million 775,000 dollars. He asked you to file suit for 1 million 500,000

dollars; isn't that correct?
A I don't specifically recall, but that's what the suit was for.
Q 1 million 500,000?
A Again, that's one of those I'm speculating because I don't remember him -- what he told me at the start.
Q You subsequently learned, in the course of representing Mr. Tarapaski, that additional collateral had been promised to him by Lake Bank, including a home in Arizona, stock in Founders Mezzanine, Superior Financial Holdings, a Mercedes, and a boat; isn't that true?
A Right, I think that's the list.
Q You didn't know that at the time you drafted these promissory notes, but you subsequently learned that there was additional collateral; correct?
A Right. This is as far as I recall because we tried to collect on that stuff.
Q Now, with regard to the Uniform Commercial Code filing, sir, Exhibit 53 is one of the UCC filings that you prepared for Mr. Tarapaski; is that correct?
A Right. It's got, courtesy of me -- that's the standard, that's a UCC form. That's what they look like.
Q That was recorded in this case in Minnesota in October of 2003; correct?
A I don't recall. Well, whatever the dates are.

Q The filing date is listed up in this corner as 10-31-2003; correct?
A Yes.
Q Did you give Mr. Tarapaski or Ms. Wallace any advice, in March of 2003, when the documents were prepared, to record UCC 1s?
A I don't recall.
MR. MURPHY: Nothing further.
THE COURT: All right. Thank you. Members of the jury have any questions for this witness? I notice there's a sheet in the box. Robin if you will retrieve that for me, please.
Counsel approach.
(An off-the-record discussion was held out of the hearing of the jury.)
THE COURT: The record will show the Court's received a question from the jury and has conferred with counsel.
Let me ask you, if Jan Wallace was not your client and was not involved as a director in connection with the transaction, why did you invoice her?
THE WITNESS: She originally brought Ed to me. She had been a client of mine for years prior to that and asked me as a favor to see him. And I don't know what arrangement they might have had with each other, but she told me she would just go ahead and pay the bill. That's why I sent her the invoice.
THE COURT: Any further questions?

MR. MURPHY: Nothing further.

MS. AMBROSIA: Nothing further.

THE COURT: Mr. Blume, just a minute. Let me follow up with something in connection with the question, just to clarify for the jury.

Is it unusual for a third party to pay the attorneys fees incurred by a client for where that third party is not actually the client of the attorney?

THE WITNESS: No, it's not unusual. In a lot of situations, both commercial and regular, other persons will pay legal fees, whether it's a parent paying for a child or a business partner paying for another partner. Many times other persons do pay the fees of the person. However, the attorney can only represent the client and their interests and can't be influenced by that. The parent can't pay and say, now, here's what I want you to do. No. You can pay, that's fine, but I'm still representing the other person. And it's not unusual.

THE COURT: Further questions from counsel?

MR. MURPHY: Nothing further judge.

MS. AMBROSIA: No, your Honor.

THE COURT: Anything else from the jury? I don't see any indication. Thank you, sir. You can step down.

MR. MURPHY: We will proceed with the reading of Mr. Beardmore's deposition at this time.

I have a reader to help me make it a little more interesting.

THE COURT: Actually, before we do that, I'm looking at the clock here, this is probably a good point to take our morning recess, before we get started on that deposition, for a few minutes, and adjourn.

So, we'll stand in recess for 15 minutes. 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, parties, and the members of the jury.

You may proceed, whenever you're ready.

MR. MURPHY: I will continue with reading from the deposition of John Beardmore, October 26, 2007.

I would request, your Honor, that the reporter be able to start and stop only and the text will be with the transcript.

THE COURT: That's fine.

MR. MURPHY: Page 37, Line 4.

Your Honor, may I introduce Arron Edens from my office who is going to be reading in Mr. Beardmore's answers.

MS. AMBROSIA: What page are you on?

MR. MURPHY: 37, Line 4.

(A deposition excerpt has been read.)

MR. MURPHY: That ends at Page 38, Line 23.
Continue to Page 42, Line 13.
(A deposition excerpt has been read.)
MR. MURPHY: End at Page 43, Line 12.
Pick up at Page 47, Line 22.
(A deposition excerpt has been read.)
MR. MURPHY: End at Page 48, Line 24.
Pick up at Page 52, Line 10.
(A deposition excerpt has been read.)
MR. MURPHY: End at Page 53, Line 20.
Pick up at Page 57, Line 19.
(A deposition excerpt has been read.)
MR. MURPHY: End at Page 58, Line 10.
Pick up at Page 59, Line 9.
(A deposition excerpt has been read.)
MR. MURPHY: End at Page 60, Line 23.
Pick up at Page 61, Line 10.
(A deposition excerpt has been read.)
MR. MURPHY: End at Page 67, Line 16.
Pick up at Page 90, Line 16.
(A deposition excerpt has been read.)
MR. MURPHY: End at Page 90, Line 21.
Pick up at Page 92, Line 18.
(A deposition excerpt has been read.)
MR. MURPHY: End at Page 93, Line 18.

Pick up at Page 95, Line 4.

(A deposition excerpt has been read.)

MR. MURPHY: End at Page 97, Line 15.

Pick up at Page 102, Line 20.

(A deposition excerpt has been read.)

MR. MURPHY: End at Page 104, Line 12.

And that ends my excerpts from the deposition.

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

Are there any deposition excerpts from that deposition to be offered by the defense?

MS. AMBROSIA: Yes, there are, your Honor.

THE COURT: Do you want to do it now or do you want to wait.

MS. AMBROSIA: I'd like to do it later because some of it already overlapped.

THE COURT: All right.

MS. AMBROSIA: I don't want the jury to have to sit through the testimony twice.

THE COURT: I'm sure they will appreciate that.

Call your next witness.

MR. MURPHY: Plaintiffs rest their case, your Honor.

THE COURT: Very well.

Call your first witness.

MS. AMBROSIA: Well, your Honor, at this time I'd like to make a motion for a directed verdict.

THE COURT: The motion will be deemed made. Call your first witness. I'll listen to argument on it during one of the recesses. I don't want to take up time right now with it.

MS. AMBROSIA: That's fine, your Honor.

I call my first witness, I call Ed Tarapaski.

THE COURT: Mr. Tarapaski, will you come forward and take the stand. Please remember you're still under oath.

EDWARD TARAPASKI,

having been previously sworn herein, resumed the stand and testified as follows:

DIRECT EXAMINATION

BY MS. AMBROSIA:

Q Good morning, Mr. Tarapaski.
A Good morning.
Q I want to show you a document. This is Exhibit 69. I'll see how much of it I can get --
Is this a copy of a report that you gave to Homeland Security or a statement that you gave to Homeland Security?
A Yes.
Q Do you know when you gave this statement?
A In February of 2005.
Q Do you know why you gave it?
A Yes.

Q Why did you give it?
A They were going to get a search warrant for the facility in New Mexico, that warehouse.
Q The warehouse in New Mexico?
A Yes.
Q Did you contact them?
A Yes.
Q How did you go about contacting them?
A The detective contacted Gary Blume and left their number, and I phoned them back.
Q So they sought you out, you didn't seek them out?
A I first called the authorities in the summer of 2003. After the search of the warehouse and there was nothing in there, I phoned the police and I also phoned the FBI.
Q So when you say the police, you phoned the local police?
A I asked the local police to investigate the Lordsberg Police Department.
Q In New Mexico?
A When I went down there, yes.
Q Then you also contacted the FBI?
A Yes.
Q Did you ever speak to anybody at the FBI?
A It was a voice recording at the -- in the Phoenix office.

Q Instead you got a return call -- or Mr. Blume got a return call from Homeland Security?
A I don't know if that's how it worked, but I left a message on there, there was an answering machine.
Q Did you meet in person when you gave this statement?
A Yes, I did.
Q Where did the meeting take place?
A At the offices of the detectives.
Q Where, here in Arizona?
A Yes.
Q Do you know where in Arizona?
A It was very near here. I think the cross street was Thomas -- and I don't recall the exact address, but it was close to this location -- I'm sorry, the Thomas and Osborn location.
Q Okay. Who is Mr. John Bottoms?
A He's a detective with Homeland Security.
Q And Mr. David Wright?
A He's the sergeant.
Q You had an interview with them in person?
A Yes, I did.
Q And was this document, did you prepare this document that's in front of us today?
A Yes, I did.
Q Did you prepare it before your interview with them or after?

A I prepared it before. I had some interviews with them before this document and I took this document in person.
Q So you brought them this document to their offices?
A Yes, I did.
Q You did?
A Yes.
Q Are the statements that you made in this document truthful and accurate?
A This, when I started preparing this document, it was taking a long time, and they asked me to get it as soon as I could so that they could get the search warrant as soon as possible.

And I told them it would take me a few weeks because there was quite a bit of detail I was going into. And they said don't go into so much detail, just get us a document as fast as you can so we can get the search warrant under way.
Q But is the -- are the statements in the document truthful?
A Yes, as far as I can recall. I do everything from memory, I don't take notes, but to the best of my recollection, yes, it is.
Q Do you know if they ever got the search warrant?
A Yes, they got the search warrant, and I have a copy of it with me.
Q And do you know what -- did they execute the search

warrant?
A Yes.
Q Do you know what happened?
A I don't know. In relation to what?
They took samples of that concentrate that was in Lordsberg that, that Jan told me was worth a whole bunch of money, that turned out to be worth nothing.
Q So they gave you the results of their search warrant? They went -- you -- they executed on the search warrant, so they entered into the property?
A They did.
Q And they took samples?
A They took samples.
Q So they did tell you that?
A Yes. And when I went down there I saw where they cut the containers open and took samples out. And they left a copy of the search warrant on top of the containers.
Q And they -- did you ever speak with either Mr. Bottoms or Mr. Wright after they executed the search warrant?
A Yes.
Q When was the last time you spoke with them?
A Detective Bottoms sent me an e-mail at Christmas of 2006 and just wished me a Merry Christmas and said he was transferred, but he didn't say where.
Q But you didn't have any more substantive discussion

with them about the warehouse or the search warrant?

A Can you tell me the time frame that you're talking about?

Q After they executed the search warrant, and between the time they executed the search warrant and gave you the results of the gold -- I'm sorry, of the container results, to the time that you got the e-mail at Christmas, did you have any further discussion with them?

A Yes.

Q What was the discussion -- when did you have the discussion and what was it about?

A When I first got there? When I first got to their office?

Q No, no. After the, after the search warrant, they contacted you and told you they had tested the gold -- I mean tested the containers; is that correct?

A No, they didn't tell me anything about that.

Q Did they give you -- okay, let's go back.

They executed a search warrant on the warehouse, yes?

A Yes.

Q Did they tell you what they did when they went inside the warehouse?

A No. They didn't give me any information about that.

Q So who tested the containers that were in the

warehouse?
A The first time, I did. And the second time, the Homeland Security did.
Q And Homeland Security told you they tested the containers?
A Homeland Security said they had done their test, they told me, but they wouldn't tell me the results.
Q So they didn't give you the results of the test of the containers?
A No, they didn't. The containers are there to this day. And they still belong to us, but they're not worth nothing.
Q Did you have any -- so then after you spoke with them and they wouldn't tell you the results of the container tests, did you have any further conversations?
A They didn't offer the results and I didn't ask.
Q Did you have any further conversations with either Mr. Bottoms or Mr. Wright after that?
A Yes.
Q When?
A I don't recall the specific dates, if you want specific dates. I don't have them written down. I don't keep notes.
Q How many -- were those additional conversations in person or over the phone?
A There was a couple in person, but mostly on the

telephone. They told me a couple of times that they had to put this on the back burner because they had a lot more important issues of national security.

And they said they would have to delay the investigation for one time it was four months, another time it was six months. So it appeared to me that it was kind of fill-in work for them.

Q Is the investigation still going forward?
A I don't know.
Q And the investigation was against the owners of the warehouse in Lordsberg?
A The investigation, I don't know who was named in the investigation. I told them my story, and who they investigated is up to them.

There was other complaints against these people as well.

Q Homeland Security told you that?
A Yeah.
Q Did they tell you who had complained?
A A guy from New York, from AB Phoenix Financing had complained. They told me that, but they didn't tell me who else.
Q I want to show you the second page of this statement. I want to go in -- this is the second paragraph and part of the third paragraph.
A Okay.

Q And it says: A few days later John Beardmore phoned Jan Wallace and asked if we could meet him and partner Bill Cortegiano. Jan could not attend, so I agreed to meet John Beardmore and Bill Cortegiano at Houston's Restaurant on Scottsdale Road.
They told me that they could pledge additional security of their own to fully secure the 1.5 million?
A Yes.
Q U.S.?
A Yes.
Q I told them Thomas and Wong General Contractor did not have 1.5 million at the moment, but I can guarantee 800,000.
A Yes.
Q Is that a true statement?
A Yes.
Q I want to go down to the next paragraph. Can you see the next paragraph?
A I can see it.
Q I discussed the loan with Jan Wallace and learned that Lake Bank would be put into a public company shell and that she owned and listed on the stock exchange.
Is that a true statement?
A Yes.
Q I want to flip over to the next page.
A Yes.

Q The first full paragraph says, March 6, slash '03, Jan Wallace, Ed Tarapaski, and John Beardmore meet at the Law Office of Gary Blume and draft and sign a promissory note attesting to the terms of our agreement.
A Uh-huh.
Q Do you see that statement?
A Yes, I do.
Q Is that a true statement?
A Yes. Everything I wrote in there is -- was truthful at the time I was writing it and to the best of my recollection.
Q Thomas and Wong -- last sentence starts, Thomas and Wong would realize a nice profit. My moral obligation to Jan will be fulfilled and John Beardmore would have his bank back all only in 60 days.
A Yes.
Q Is that a true statement?
A Yes, I think it's pretty true. That was a reflection of how I felt at the time.
Q You say that your moral obligation to Jan would be fulfilled. What do you mean by that statement?
A I was in her house and she was taking care of me after my surgery. I was trying to help with the lady.
Q So you felt you had a moral obligation to her?
A Well, I was doing my best to help her out because, yes, I felt, you know, here's -- I'm staying in her house and

she's driving me to the doctor and driving me back, and I was -- if there was something I could do, I would do it.
Q So you thought you would help her out by putting $800,000 of your company's money into this transaction?
A At that time, as I testified earlier, I told her, is there something I can do to help. That's how I felt.
Q So you didn't feel that you had a contractual obligation to Jan?
A A what?
Q Did you feel that you had a contractual obligation to Jan?
A When, at what time?
Q At the time you made this statement that you had a moral obligation to Jan would be fulfilled, did you have a moral obligation or a contractual obligation?
A I don't know if I differentiated between those two or not. I just, at the time, when I was considering doing this, I felt sympathy for her.
Q So you didn't feel you had a contract with her?
A I don't know if I felt that way or not.
Q But you felt you had sympathy towards her?
A I had sympathy for her, sure.
Q I want to go down, it starts out then Jan then proceeded to do due diligence. Jan then proceeded to do due diligence.

A Right.
Q Then it lists 11 items.
A Yes.
Q Is this a true statement?
A I'm sorry?
Q Is this a true statement?
A As I said earlier, everything I put in here, at that time, I believed to be a true statement, of course.
Q This is the top of the next page.
A Uh-huh.
Q And I'm sorry, I don't know why this document is like this. This is the way it was produced to us.
A Okay.
Q Jan thought of most of this.
A Yes.
Q It's referring to the list on the next page?
A Yes. I can see it now.
Q I think she did a good job of protecting our interests. I really believe that she put our well-being ahead of any possible financial gain on her part.
Is that a true statement?
A At that time, at that time I thought it was basically right. There was some things I had doubt about, but basically, I, you know, I knew that some people had gone to jail on account of this investigation. And, yes, I basically believed

that at the time, yes.

Q So you did give a truthful statement to Homeland Security?

A Yes, I did, yes.

Q But you said you had reservations. Did you hold back certain things?

A There was certain things that I was suspicious about about her, yes, especially after that Kirby bill of exchange.

Here's a guy that went to jail for selling worthless bonds to a whole bunch of people in Florida, and he's writing a bill of exchange with Jan and they're bonding like brother and sister.

Yes, I had reservations. But she told me she got me the house after that, and I -- so I kind of thought that she was all right again.

Q But you failed to put these reservations in your statement?

A Yes. I didn't put it in my statement.

Q And the bill of exchange that you just mentioned, Exhibit 54 -- and I'm sorry, this is the best copy there is.

A Yes.

Q Okay. This bill of exchange --

A Yes.

Q Yes. Is between Thomas and Wong General Contractor and Richard G. Kirby and/or assigns?

A Uh-huh.

Q Where is Jan Wallace mentioned in this document, sir?

A I don't know.

Q Is she mentioned in this document?

A I don't know. I didn't draft it. Jan Wallace drafted it's.

I think she is mentioned in there. I think she's getting $250,000 out of it and I think that is in there.

If you, if you look at -- I specifically remember one of those paragraphs where she was to receive 250,000 and this warehouse guy was supposed to get some of his money back because he got hosed by these con artists.

And you'd have to read the document, I can't remember everything, but I think it's in there.

May I see that document?

Q Yes.

MS. AMBROSIO: May I approach?

THE COURT: Yes.

MS. AMBROSIA: Thank you.

Q Please take a quick look and tell me if you see that.

A I need my glasses.

MR. MURPHY: Your Honor, may I question the witness where his glasses are?

THE WITNESS: They're in that black case by the chair.

No, I don't see that in this bill of exchange, but I did see it during the course of the paperwork that they, that they were -- Jan was working on when she prepared this. And she did show that to me.

BY MS. AMBROSIA:

Q Did you have counsel prepare these documents?

A The document, when it was first mentioned, when Gary Blume was attempting to draft this document, with, with this Richard Kirby, and apparently they couldn't get, they couldn't get along, and so Jan Wallace ended up doing it.

Q Did you ever hire Cane and Associates to draft that bill of exchange --

A No.

Q -- and this escrow letter and instructions?

A No, I had nothing to do with this document, nothing to do with this at all, except when it was finished she had me sign it and initial in certain places.

Q So you had nothing to do with the bill of exchange or the escrow letter and instructions?

A No.

Q You didn't hire counsel to prepare these documents, either one?

A I know that he was attempting to get this done with Gary Blume at first and he couldn't get along with him.

Q When you say "he," you mean Richard Kirby?
A Yes, that's what I was told.
Q Who is Richard Kirby?
A He's, he's a guy that when I went to Lordsberg to try and seize these containers, he's a fellow that was trying to buy that warehouse or something like that. And he's just someone, he's someone that I met in -- during the course of trying to recover some assets in New Mexico.
Q Did he have an interest also in the gold?
A I have no idea, I have no idea.
Q He never told you that? Did he ever tell you he had an interest in the gold?
A In which, the containers or the six barrels?
Q Any of it.
A I think he mentioned, yes, he said that he had an interest in it. That's what he claimed. He claimed a lot of things, that the man is a complete lunatic.
THE COURT: Excuse me, counsel. We'll take our noon recess at this juncture.
Stand in recess until 1:30. 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 record notes the absence of the jury.)
THE COURT: The record will show the presence of counsel

outside the presence of the jury.

At this time, I believe the defendant wishes to make a Rule 50 motion; is that correct?

MS. AMBROSIO: Yes, your Honor, it is.

THE COURT: All right. You may proceed whenever you're ready.

MS. AMBROSIO: Your Honor, I'm making this motion pursuant to Rule 50(A) of the Code of Civil Procedure.

Again, your Honor, I would like to incorporate into my directed verdict motion my original motion to dismiss. Thomas and Wong General Contractors is still not in good standing in the State of Arizona, and by Mr. Tarapaski's, their representative, own testimony, they are not exempted.

A.R.S. 10-1502 B states, very plainly, No. 10, the following activities, among others, do not constitute transacting business within the meaning of the Subsection A.

Conducting an isolated transaction that is completed within 30 days and that is not one in the course of a repeated transaction of a like nature.

By the defendant's own testimony, this transaction is still continuing, and therefore it is not exempted under any of the exemptions listed in Section B of that code section.

In addition, the cause of action, as I understand it in this matter, is for breach of a fiduciary duty. The burden is upon the plaintiff to show there has been a fiduciary duty and that there has been a breach of that duty.

I submit that they have not shown that, nor can they show that. There has never been a meeting of the minds between the plaintiff and the defendant as to what their relationship was. And any conversations they had regarding this so-called agency, as the plaintiff has testified to, there were no witnesses to.

And he has now testified that he saw her in distress and felt he had a moral obligation to help her and somehow that turned into a fiduciary duty. But he doesn't seem to know the difference between a contractual duty and moral obligation. It's not one and the same.

As part of a fiduciary duty, it is that the will -- that there's a substitution of one will, of one's will for the principal's. This is not what has occurred here. Mr. Beardmore clearly stated in his deposition that they talked to Ed and Ed said great, I'm on board, let's get this deal done.

Mr. Tarapaski has always been aware of what -- of the pitfalls and the risks and the nature of this transaction. And Miss Wallace simply helped out in a clerical manner and now, he -- and now because the deal has failed to go the way he had hoped it would go, he's not been paid back, he's brought this lawsuit.

There has not been any relinquishment of control, by Mr. Tarapaski to Ms. Wallace. He always had control of this transaction and he has given her no authority to handle this transaction. Thank you, your Honor.

MR. MURPHY: Your Honor, the defense renewed its Motion to Dismiss. That Motion to Dismiss was made pursuant A.R.S. Section 10-1502 A, which provides: A foreign corporation transacting business in this state without a grant of authority shall not be permitted to maintain a proceeding in any court in this state until it is authorized to transact business.

My response, filed January 30, 2008, identifies cases, including Omnibus Financial Corporation versus Executive Search, Inc., Moynahan and Murphy Bank versus Davis, Nicola Sugar Cane, Iron and Metal Company and the cites are in the brief, which all stand for the following proposition:

Transacting business within the state, under that statute, means conducting business on a regular basis. Isolated or occasional transactions do not require authorization. And that's in line with the spirit of the statute, which is to prevent parties who regularly do business in the state from escaping regulatory authority.

This was a one shot transaction, as Mr. Tarapaski testified to, and as his declaration states. There is no justification for dismissal.

THE COURT: Doesn't the statute contemplate a one shot transaction is done within 30 days?

MR. MURPHY: Your Honor, when you say done --

THE COURT: The cases you cited, my recollection is correct, predate the amendment of the statute.

MR. MURPHY: Your Honor, could I see the -- I don't have the statute in front of me, because I wasn't aware this was going to be an issue raised again. I would like to see a copy of it, if opposing counsel could share.

MS. AMBROSIO: I don't know if I have that with me.

MR. MURPHY: I'm hard-pressed to address the statute without that in front of me. Their motion was under Subsection A. That's what I addressed. She quoted in Subsection B. I don't have that.

MS. AMBROSIO: It was in my reply.

MR. MURPHY: A document I've never received.

THE COURT: Go ahead, go ahead.

MR. MURPHY: And what completed within 30 days means, under that statute, Judge, I don't know. This has a repayment period of 60 days. Does that violate the statute? I just don't know the answer to that question without looking at the construing case law.

THE COURT: How am I supposed to decide it?

MR. MURPHY: I would -- I'm sorry, your Honor, but the reply that was mentioned here, there are two pleadings that have been ascribed to me today -- actually I learned of them yesterday in response to our non-party at fault motion. And this reply, that I simply have never received, I guess Mr. Blume was supposed to submit those, but I didn't see that document and I would request that I be given leave to do that.

THE COURT: All right. Counsel, will you make a copy of that document available to plaintiff's counsel by close of business today? He can take a look at it overnight.

I'll take the motion, at least with respect to this issue, under advisement until you've had an opportunity to review that.

MR. MURPHY: Yes, thank you.

MS. AMBROSIO: I just want to mention, this motion has been brought several times before. I believe that Mr. Blume, in this case, Mr. Blume made this motion twice before. I've made it and it was cited, the same code section was cited in his brief as well.

MR. MURPHY: Well then the prior rulings are the law of the case.

THE COURT: It's been made twice before, it's been ruled on, I'm not too sure why we're considering anything.

MS. AMBROSIO: Well, because now we have actual testimony that, as I understand Mr. Murphy's argument, was that it was a one transaction, there was one transaction.

THE COURT: All right.

MS. AMBROSIO: And the cases he cited, especially Omnibus Financial, talks about a case where there is not even --

THE COURT: Counsel, hang on. As far as your rebuttal is, whatever Mr. Murphy says in this regard, it's going to have to wait until he actually has a chance to make a argument.

The only issue that came out now, apparently, was the fact there was some ruling made because this motion has been ruled on previously, I don't when, but nevertheless ruled on previously, it's the law of the case.

Now, the law of the case normally causes a court to not revisit prior rulings in the interest of judicial economy. It's not iron clad. There are circumstance where the court may in fact wish to revisit prior rulings, such as evidence was presented that wasn't available or raised at the time the first time the court ruled initially.

I don't know what the circumstance were with those other motions. You're going to have bring that to my attention, along with everything else in connection with this. You can do that?

MS. AMBROSIO: Thank you.

MR. MURPHY: I'll address that with the Court tomorrow. The next step is somewhat unclear to me, but I guess the challenge being made is there has been no evidence presented to establish a fiduciary relationship.

THE COURT: The argument was there was no evidence to establish a fiduciary relationship or at a minimum there was no evidence presented to establish authority to act, which is the same thing.

MR. MURPHY: Our argument has the following aspect: Jan Wallace was indisputably, we have a written document which is an exhibit in trial, given the authority to transfer funds on behalf of Thomas and Wong from the Cane and Associates account.

And our claim rests in large part on the fact she did so. She was supposed to have consultation with Ed Tarapaski before that was done, and transferred funds before the conditions were satisfied, a violation of her responsibilities as a trustee.

We contend that she had duties as an agent of ours because she agreed, in Ed's absence from the country, and even while he was here, to investigate the transaction, to gather documents, and to report to him on the status, to determine whether items had been checklisted, to view the gold, to get the safekeeping certificate, to get the certificate of insurance that was supposed to protect him, and that she assumed that responsibility.

She denies that, an issue of fact for the jury to resolve.

If our version of the evidence is accepted by the jury, that there is indisputably a basis for a fiduciary responsibility based on an agency relationship, agency being simply one person's agreement to act on behalf of another, this goes to the identification of the fiduciary responsibility and whether there is evidence to do it.

The main point is that the law says as follows:

Certain relationships, such as an attorney-client relationship and an accountant-client relationship, are, per se, fiduciary, but other -- the existence of another fiduciary relationship is an issue of fact to be determined by the jury.

Ed Tarapaski testified, I trusted her and I was told by her, on specific occasions, to place trust in her willingness to take on the tasks that she had assembled and I had counted on her to truthfully report the results to me.

One of our big claims is that she accepted that responsibility and then violated it by misrepresenting facts to him, such -- and concealing facts, one, that money went out of the trust account before he had even signed a promissory note; two, that she had paid $20,000 to L Trust, when she can't even explain why that was done; three, that $4,900 was paid to Cane and Associates without his knowledge, consent, or permission.

THE COURT: Did you say transferred funds before Mr. Tarapaski signed the promissory note?

MR. MURPHY: Yes. The transfer of 275,000 dollars from that account was instructed by Miss Wallace on March 6.

THE COURT: Mr. Tarapaski was the payee, not the payor on the note?

MR. MURPHY: I understand, your Honor, but this was a release of funds from the -- maybe I've confused my syntax here.

What I'm stating is that money was sent from the Cane and Associates account, by Miss Wallace, under her written instruction of March 6, back to Minnesota, when Ed Tarapaski says I hadn't even signed the promissory note that was to make that deal. The essential condition to release of funds had not been satisfied, the execution of the promissory note. And that is very much a fact of controversy for the jury to resolve.

All of that spells -- all we have to establish is that there is an issue of fact for the jury to resolve and there's an issue of fact about whether she agreed to serve as his agent with regard to management of the accounts, investigating the background, assembling the documents to do the deal, and transferring the funds, and whether that was breached.

THE COURT: Mr. Tarapaski never had any prior business dealings with the defendant, had he?

MR. MURPHY: Not up to this point.

THE COURT: Had any prior business dealing with any of these parties?

MR. MURPHY: No, your Honor.

THE COURT: Counsel, rebuttal?

MS. AMBROSIO: Yes, your Honor. There just was no agreement between the parties.

THE COURT: Isn't that an issue of fact for the jury? I understand your client has denied it, but the question is whether or not there is sufficient evidence in the record to go to the jury, not how I would decide the case, but whether or not the jury, whether or not it's a conclusion.

MS. AMBROSIO: Your Honor, I don't believe that they have made a prima facie case to show that my client is liable, that there, that there was a relationship that rose to the level of a fiduciary duty.

I don't believe that they put on that evidence, your Honor. He's never used the term agent with her. There is no written agreement. There are no e-mails going back and forth saying, you know, you are representing me in this matter.

It's clear that she performed tasks and she's testified that she performed the tasks as a favor to him. And it's clear that she's testified that if she owed a duty, it was as to BDV as a director of their corporation. And for a while, BDV and Thomas and Wong's interests were aligned, your Honor, they were the same, they had the same goals.

THE COURT: Well, that may go to the issue of whether or not there was a breach. Admittedly, there's a serious question here as to whether or not there was a waiver of conflict, as far as I can see from this evidence.

It seems to me the way the evidence shakes out, as far as that's concerned, is that Mr. Tarapaski not only was aware of the election or proposed election of the defendant to the board of directors of BDV, may will have been instrumental in instigating it. At the same time BDV was fully aware of the claim or alleged relationship, agency relationship, alleged agency relationship, between the defendant and the plaintiff.

So from the plaintiff's perspective, I'm not sure, frankly, if there's any claim for breach of fiduciary duty predicated on the conflict, based on what appears to be undisputed evidence in the record that there was a waiver of the conflict.

That doesn't eliminate, however, the other potential claims, I suppose, predicated on an alleged breach of the duty of loyalty or perhaps an alleged failure to disclose material facts, but go ahead.

MS. AMBROSIO: No, your Honor, I'm done.

THE COURT: Well, as far as this motion is concerned, at least to the extent it's based on whether or not there was sufficient evidence to go to the jury on the existence of an agency relationship, which is really, I guess, the only issue that was raised, as far as this motion is concerned, the issue before the Court on this Rule 50 motion is simply the same as the issue would be on a motion for summary judgment; that is, given the quantum of proof required to support the claim of defense, whether or not a reasonable juror, viewing the evidence in the light most favorable to the non-moving party, could agree with the proponent of the claimed offense.

It's not a very high burden that's required to get a case to the jury, notwithstanding the fact whether the Court does or doesn't think the evidence is thin in a particular case isn't the test. The test isn't what I do, the question is whether or not, given that standard, the Court could say that no juror could ever come to an opposite conclusion on a reasonable basis.

It doesn't seem to me, the evidence in the case, I can come to that conclusion; that is, that to be forced to conclude that it's impossible for a reasonable person to conclude otherwise, that depending on the other person or jurors view as to who to believe and who not to believe in the case.

So for that reason, it seems to me that the Court must deny the Rule 50 motion with regard to sufficiency of the evidence on the issue of agency.

Enough said. Anything further?

MS. AMBROSIO: No, your Honor.

MR. MURPHY: Nothing.

THE COURT: I'll take it under advisement, the Rule 50 motion to the extent it's directed to this issue of the failure of a foreign corporation to properly be registered in the State to transact business. Anything else?

MR. MURPHY: Nothing, your Honor.

MS. AMBROSIO: Nothing your Honor.

THE COURT: All right. Could you bring in the jury, please?

(The record notes the presence of the jury.)

THE COURT: Be seated, please. The record will show the presence of the parties, counsel, members of the jury.

Ladies and gentlemen, I apologize for the delay in getting started. There were some preliminary matters I needed to discuss with counsel before we can continue with the presentation of evidence in this case.

Defense can proceed whenever you're ready.

BY MS. AMBROSIO:

Q Hello, Mr. Tarapaski.

A Hello.

Q We were talking about the Homeland Security report.

A Yes.

Q I just have a couple more pages from it I'd like to show you.

The last page we had talked about, just to refresh, was -- it was the checklist that you'd said that Jan had brought up most of this, and I think she did a good job in protecting our interest. I really believe she put our well-being ahead of any financial gain on her part.

The next -- I'm sorry, excuse me -- in this statement, which is part of the Homeland Security report, the first part says: All the due diligence was completed except for the viewing of the gold. Jan Wallace and Ed Tarapaski were informed by John Beardmore that a twin engine King Air propeller plane had been leased to fly us to Lordsburg, New Mexico.

Was this to review -- to have a viewing of the gold?

A Yes.

Q This is a true statement: That all the due diligence had been completed except for the viewing of the gold?

A   Yes.

And I want to just clarify this, that this report was done for the purpose of a search warrant, and I was under time pressure to get it done. They actually asked me to fax the first seven pages so they could start right away.

Certainly, you may be able to pick apart some parts of it. I didn't look at one single note, and I put this together from my knowledge and my presence that I was there.

And yes, that airplane was leased to look at the gold, yes.

Q   How do you know that the airplane was leased?

A   Because they told us. Bill -- I mean John Beardmore told us.

Q   John Beardmore personally told you?

A   Yes.

Q   And this document --

A   I'm sorry, he told -- I was there, Jan was there and the BDV attorney, Clark Griffith, was there when that statement was made.

Q   And your statement to Homeland Security, even though it was being used for the purposes of obtaining a subpoena --

A   A search warrant.

Q   I'm sorry, search warrant, is a truthful --

A   Yes.

Q -- statement?

A Yes. Yes, it is.

Q Thank you. Just a couple other pages.

Can you see the section that starts out May 24, 2004?

A Yes. Yes, I do.

Q I'm sorry. I finally received good news -- make that a little larger -- Jan Wallace had finally gained control of some secondary collateral, John Beardmore's house on Solano Drive --

A That's right.

Q -- is that correct?

A That's what she told me. I was out of the country and she told me that.

Later on when I was being deposed this last June, Mr. Moskowitz, the attorney for Gary Blume, told me that Gary Blume got control of the house.

So, that's a statement that Jan Wallace gave me when I was oversees. So I took it as being correct. I don't know if it is.

Q Is it possible that Gary Blume and Jan Wallace contained -- gained control of the property?

A Yes, it's possible. I don't know, I wasn't there.

Q Do you know for sure if the property was ever turned over to Thomas and Wong?

A I don't know that. I don't know.
Q Was the property seized and sold?
A Yes, it was. Yes.
Q You do have knowledge of that?
A Yes, yes, yes, I do. Yes, it was.
Q At the bottom, it says that 200,000 shares of Lake Bank were finally turned over to Gary Blume.
Is that a true statement?
A Yes.
Q Do you know who Char Seuffert is?
A Yes.
Q Who is she?
A A real estate agent that Jan Wallace asked me to hire so that she could sell the house. And she was paid $100,000 for doing it.
Q You see this paragraph, starting out here, during this entire process, lasting several months, Char Seuffert informed me she was repeatedly threatened by Clark Griffith, John Beardmore, and Bill Cortegiano?
A Yes. Char Seuffert told me that they were harassing her.
Q They were harassing her?
A Yes.
Q Do you know if they actually physically harmed her?
A No, they didn't. She said they were harassing her

and telling her not to sell the house, and I don't know, I wasn't there. She just said that they were harassing her.
Q But you never spoke directly with Clark Griffith or John Beardmore or Bill Cortegiano about that, did you?
A Yes, I did.
Q What did they say?
A I asked them. I said, if -- I said, they told me that they had turned over the property voluntarily. And I said, well, why are you harassing the real estate agent then? And they said they weren't.
So I don't know who is telling the truth there.
Q But you did attempt to investigate it?
A Yeah. She's a lady, yeah, she told me that she was being harassed.
Q You didn't turn that over to Jan Wallace to be done investigating this issue?
A It wasn't an investigation. I happened to be talking to them on the phone and I asked them if they were doing that.
Q Wasn't Jan handling all of that for you?
A I can't speak for that. I can speak to the fact that when I talked to one of them on the phone, I asked them if they had harassed her.
Q I want to show you Exhibit 18. This is the 275, the note for $275,000 dated March 6, 2003?

A Yes.

Q Did you ever receive, when you were at Gary Blume's, at any time you were at Gary Blume's, either the first or second meeting, did you receive a form promissory note from him which you prepared?

A No. That's so ridiculous. No, ma'am, I did not. I had stitches over my eyes and bandages. Where would I possibly draft this up? That's ridiculous.

Q The first time you saw this note was when?

A It was in the summer or fall of 2003 when Gary Blume phoned me to come to his office and asked me to sign a document giving him permission to do that.

And then I was really upset. I didn't sign the document. I took it back to Jan, and I said -- I didn't take the document, but I went back to her and I told her about this and she pretended to be outraged.

Q This note?

A This note, yes.

Q This is --

A This very note.

Q You had seen this note in 2003?

A The fall or late summer, yes, when he called me to his office and asked me to sign the document giving him permission to draw this note up. That's what he did.

Q So this note was drawn up in March 6th of -- I mean, in late March -- in late 2003?

A   I don't know when it was drawn up. He put that in front of me in its present form, the way it is right now, and asked me to sign another document giving him permission to do this.

Q   To do what?

A   To do this note. And I absolutely refused to sign that document.

Q   Did you testify earlier that the first time you'd seen this note was the Sunday before this trial began?

A   No, I did not.

I said the first time -- if I remember correctly, the first time I was aware of that wire transfer on the 6th or something, the first time I --

Q   This document?

A   Yeah.

The first time I saw that was when Mr. Murphy showed it to me when I came here to prepare for trial.

Q   I want to show you Page 43 of your deposition.

Let me see if I can get the whole thing on that.

This is Page 43 of your deposition in this matter which was taken on June 12 -- June 21st of 2007.

Do you see at Line 12 where it says --

MR. MURPHY: Could you please repeat the page?

MS. AMBROSIO: It's Page 43.

Q   Do you see Line 12, it says: When was first release of monies by Thomas and Wong, the 800,000 -- I'm sorry -- was the first release of monies by Thomas and Wong 800,000?

Answer: No. The entire 800,000 wasn't released in one transfer.

Question: Can you tell me what steps were the release of funds and the timing of each release?

Answer: Again, Jan was looking after that.

As I understand it there was one release after the signing, after the signing of the promissory note for the condominium.

Question: How much was that release?

Answer: I don't know. I didn't ever see any documentation on it, but as I understood it, it should have been $275,000.

And was that -- Question: And was that in March of 2003, that release?

Answer: I believe, I believe it was, yes.

A   Can you put that back, please?

Would you turn the page, please?

I'm sorry, would you go one page back?

You were asking me about Line 12. Where is Line 12?

Q   Line 12 starts was the first release of monies by Thomas and Wong, 800,000, Mr. Tarapaski.

A   What I'm trying to portray here is that on March

12th, when I gave permission to release the money, that there was one release. Two of -- one of which was for 275 going for the condominium and the remainder to Lake Bank. That's what I'm trying to get across here with this testimony.
Q   Sir, that's not what this testimony says.
A   That's what it says --
Q   No, no, sir.
A   It -- I --
THE COURT: One at a time. The court reporter can't take it down when you're talking over one another.
THE WITNESS: Sorry.
That's what I was trying to reflect in my deposition.
BY MS. AMBROSIO:
Q   Sir, it clearly states --
A   That's your interpretation. I told you what my interpretation is.
Q   Sir, this says that you knew there was a note for -- a promissory note for a condominium, that the amount being released was 275,000?
A   No, that's what you're saying.
Q   Who owned the condominium that the $275,000 went to?
A   I don't know who owned it. I don't know.
Q   Did the L. Trust own it, the L. Trust, LLC?
A   I don't know anything about that L. Trust until I

saw the second promissory note in the summer or fall of 2003.

Q Sir, your deposition testimony says that you knew about it before that --

A Can you show --

Q -- in march of 2003.

A Can you put that on the screen if you're going to make that kind of statement, please?

Okay. Now, what's the question now?

Q I'm sorry, could you read the question?

A You're asking the question.

(Record read.)

BY MS. AMBROSIO:

Q You knew about the note for the condominium for $275,000?

A I knew that $275,000 was going for the condominium. Yes, I knew that.

Q You knew that.

A Sure.

Q Did you travel to Germany with Sokim Lach and John Beardmore?

A No. I traveled there myself and met them there.

Q At that time you learned they were boyfriend and girlfriend?

A Yes.

Q Did you discuss with John Beardmore the release of

$20,000 to L. Trust?

A No. I didn't know about it then.

Q You didn't know about it then. You never discussed $20,000 going to John Beardmore?

A I had no idea that $20,000 was released from that trust account to anybody.

The first time I heard about the $20,000 was when Leo Buse sent me these production documents, and it was in those production documents that I learned about these, this L. Trust thing, and that was after the lawsuit was filed against Jan Wallace.

Q Did you ultimately ended up learning who L. Trust was?

A Yes.

Q Who was L. Trust?

A That's -- apparently it's owned by this Sokim Lach, John Beardmore's girlfriend.

Q Who is now his wife?

A That's what he says. I don't know, I didn't go to the wedding.

Q On March 12th, 2003, you sent this letter to Cane and Company?

A No. That's a letter that Jan Wallace drafted up and asked me to sign it.

Q So you never sent it?

A Looks like I did.

Q And then on March 21st, which is after March 12th, $20,000 is sent to L. Trust?

A That's what this document says. You'll have to ask Miss Wallace about that.

Q I just want to confirm that that's your understanding?

A Absolutely.

Q So $295,000 was sent to John Beardmore's girlfriend through an entity called L. Trust?

A I don't know.

Q Here's a memo showing $20,000 went to L. Trust.

A That's what it says. These are documents generated by Jan Wallace without my knowledge.

Q Here are two wire confirmations.

A I'm sorry, would you put that other one back on the screen?

That date is the 21st of March when I was already back overseas.

Q Did you speak to Miss Wallace while you were overseas?

A Yes.

Q Do you know, when you spoke to Miss Wallace -- no, you don't keep records of your phone conversations, do you?

A No.

Q So you don't know when you might have spoken to her?
A No. I talked to her many times.
Q So it's possible you spoke to her on the 20th of March 2003?
A It's possible, but I don't know when. I don't know the exact dates I spoke to her.
Q Did you speak to John Beardmore while you were out of the country?
A I think so. I spoke to him once or twice in relation to this trip to Germany, and that's about it.
Q So it's possible that you discussed $20,000 going to L. Trust?
A No, it is impossible.
Q So John Beardmore didn't ask you for any more money on any of those phone conversations you had with him after --
A No.
Q -- after you released 500,000?
A I don't know, I can't recall if I spoke to him about that or not.
I was telling him I was trying to get the 1.5. It's possible I could have spoken to him on some occasions about that too. I can't recall.
Q And all 750 -- and the other half of the 1.5, the 700,000, you sent, is that correct, to Lake Bank?
A Can you say that again?

Q Okay. 800,000 was sent through the Cane O'Neill trust account?
A Yes.
Q And the other 700,000, how was that sent?
A It was sent by wire transfer to Lake Bank. Jan gave us the wiring instructions. We sent it to them.
Q You sent it directly?
A Yeah. I gave instructions to Thomas and Wong and they sent it, yes.
Q They sent it directly?
A Yes.
Q Did you receive from John Beardmore any sort of disbursement of funds or how funds were to be used?
A No.
Q So you just went ahead and gave him the other 700,000?
A We -- Jan and I discussed that at length.
Q Why didn't you discuss it with John Beardmore?
A Because everything was going through Jan.
Q But you had met with Beardmore and you'd worked the deal out with Beardmore?
A Yeah.
Q So why didn't you discuss this with Beardmore?
A Jan was the one handling it. That's all I can tell you.

Q But Jan wasn't involved in the transfer of the 700,000?
A She gave the wiring instructions.
Q So she gave you a piece of paper with some wiring instructions on it?
A She sent a fax with the wiring instructions on it.
Q Pursuant to your instructions?
A Yeah.
Q Here's a wire confirmation showing $20,000 going to Sokim Lach at 660 North Second Street?
A Reference Jan Wallace, it says.
Q Yes. Here's $275,000?
A I have not seen any of these disbursements before I came to Phoenix this time for trial.
Q Sir, you knew that $275,000 was going for the condominium?
A Yes, I did know that.
THE COURT: Counsel, will you approach?
(An off-the-record discussion was held out of the hearing of the jury.)
BY MS. AMBROSIO:
Q So this is the wire transfer for the 275,000; is that correct?
A That's what it looks like to me.
Q So $295,000 ended up in L. Trust, which is John

Beardmore's girlfriend?
A I have no idea.
Q Did you ever attempt to recover any funds from L. Trust?
A From -- I filed suit against John Beardmore personally. And at that time I didn't know about L. Trust. So I didn't name them in that lawsuit. I found out later about L. Trust.
Q Have you ever filed a lawsuit against L. Trust?
A No, I haven't.
Q Have you investigated it?
A I have asked Beardmore about it, but I have not done any further investigations. I am worn out.
Q Did you send the 700,000 all in one wire transfer?
A As I recall it, I authorized, I authorized it in two transfers.
Q Was one of the transfers made while you were traveling in Europe?
A I can't recall. While I was traveling in Europe -- a wire transfer?
Q Yes. Did you make the authorization.
A I don't recall, but I don't think so.
Q So you would have been in Brunei when you made the authorization?
A I was in Korea during that time.

Q During what time were you in Korea?
A During the time of -- you asked me where I was during the time of the wire transfer; is that right?
Q Yes.
A I was in -- I believe I was in Korea, not in Brunei.
Q Do you know when you went to Germany with John Beardmore?
A I believe I left Korea about in the last week of April, near the end of April.
Q So you made the wire transfer before you went to Germany?
A I think so.
Q So both wire transfers were made prior to you going to Germany?
A I think there was three. One was in the beginning of April, I remember that.
And I think there was two more after that. I have a record of it, if you want me to take a look.
Q Did you sue the Lake Bank?
A I did, yes.
Q Is that lawsuit still going on?
A I don't know what the status of it. The last I heard there was technicality that was preventing it from going forward.
They recited some statute, and I don't know what

that statute really means. But right now it's not going forward. I think.

Q So you don't know if they've refiled against the Lake Bank?

A I don't know.

Q But you didn't get a judgment against them?

A No, I didn't.

Q And you haven't --

A It hasn't gone to court. I've been deposed in that lawsuit, but it hasn't gone to trial yet.

Q And again, what were your duties in regard to Jan Wallace?

A What does that mean?

Q Well, you testified that Jan Wallace had all these duties to you. She was the attorney, the --

A I was to supply the money, that's what I was there for, that's what I agreed to do.

Q But that was not -- you, you were not providing the money to Jan Wallace, you were providing the money to BDV?

A I think we've established that.

Q How much money did you pay Jan Wallace?

A I didn't pay her anything, but it looked like she paid herself a hell of a lot.

Q What do you mean by that comment?

A Well, you know, there is 50,000 bucks that went to her, that I didn't know about, that I found out about later.

That's one of the reasons I filed this lawsuit.

Q Where does it show that the $50,000 went to Jan Wallace?

A That was told to me by Billy Cortegiano in the spring of '05.

And I asked Jan Wallace about it. She said that she had received $50,000. I was pretty upset about that.

Q But you knew that Jan Wallace had a contract with BDV?

A No, I didn't know she had a contract with BDV.

Q But that's what you said in the Homeland Security report?

A No, it isn't.

Q I discussed the loan with Jan Wallace and learned that the Lake Bank would be put into a public company shell that she owned and was listed on the stock exchange.

A Yeah, there was some general conversation about that. I don't know at what stage it is.

And there was about a two-minute conversation, I told her I wasn't interested in anything about that.

Q In the public company, you weren't interested?

A Yeah.

MS. AMBROSIO: I have no further questions.

THE COURT: Mr. Murphy.

CROSS-EXAMINATION

BY MR. MURPHY:

Q Sir, I want to clarify, there's a date at the top of this document, which is Exhibit 69, the submission that you made at the request of Homeland Security of September 3.

Is that when you created that document?

A I created the document in February of '03.

Q Let me go through some of the issues that were raised on examination.

You were asked a question at Page 2 about I discussed the loan with Jan Wallace and that Lake Bank would be put into a public company.

A Yeah.

Q Did she tell you she had an outstanding contract to do that?

A No.

Q Did she tell you that she was owed money by Lake Bank for that?

A No.

Q And that's what you put there, is as much as you knew about it?

A Yeah. That was a -- that conversation lasted about two seconds -- about two minutes.

That's not what I do, public companies are not what I do.

Q Now, March -- let me go to the next page of this document, I believe it's Page 3 of Exhibit 69.

It starts March 6 '03: Jan Wallace, Ed Tarapaski, and John Beardmore meet at the law office of Gary Blume and draft and sign a promissory note attesting to the terms of our agreement.

Now, that was what you worked from -- you were working from memory at the time?

A Yeah.

Q Do you believe that's an accurate statement, in every respect, as you look at it today?

A No, it's not accurate.

Q What is inaccurate about the statement?

A The agreement was reached on the 6th of --

Could you put it back, please?

Q I beg your pardon?

A The agreement, the terms of the promissory note, were agreed to on the 6th.

And that's when the drafting, as I understood it, was going to start, but it was signed on the 8th of March, not the 6th.

Q Very well.

A Again, they told me not go into a lot of detail, just to give it to them.

Q Sir, next page: Jan thought of most of this and I think she did a good job of protecting our interest. I really believe that she put our well-being ahead of any financial gain on her part.

Was that your feeling at the time you wrote this in February of 2005?

A Mostly it was.

Q What changed your mind about that, sir?

A The biggest thing was the detectives at Homeland Security.

Q Describe why you say that.

A Well, in the, in the first meeting they asked me if I could give them any more specific information.

And I said, well, I'll try to. And -- but I said I think Jan Wallace could give you some pretty specific information as well. And so that, that meeting ended.

And then I went to my second meeting with the detectives, and they said, "Well, I thought you told us that this Jan Wallace was going to provide us with a lot of information."

They said, "We interviewed her and she was guarded, aggressive, and evasive."

And so then they had me telephone her from their office and they put me on a tape recorder and they told me to ask her about the disbursements from this Cane and Associates.

So I dialed her number, her hand phone number, but she didn't answer the phone.

Q Was it Homeland Security that first alerted you to the possibility that she might have not done things right?
A Yeah. They really had some strong suspicions about her.
Q Now --
A There was other things besides that as well.
Q Now, sir, there were some questions about Thomas and Wong, some suggestions that they were involved in some improper conduct.
Did Homeland Security investigate Thomas and Wong?
A Yes, they investigated them. That was the first thing they did, is they said they were going to investigate us. I said that's fine.
Then they asked me for permission to investigate my bank accounts. I said that's okay.
And then they asked me for permission to investigate Thomas and Wong's bank accounts six months before this and six months after.
And I told them I would have to phone Charlene Wong. And I did and they gave them permission.
Q Did you hear anything further from the Homeland Security about a problem with Thomas and Wong?
A No, I did not.
Q Sir, I'm going to -- I believe Page 6, the statement that was put in front of you, all of the due diligence was

complete except for the viewing of the gold.
A Yes.
Q Now, sir, at that time, had you investigated whether Jan Wallace had completed the due diligence?
A Well, I asked her on several occasions, yes.
Q What had she told you?
A She said she had.
Q Was that the basis of the information that you had when you wrote this report to Homeland Security?
A No. I found out other things since then.
Q Subsequently. But at the time you send that to Homeland Security, you were relying on the information that Jan Wallace had given to you?
A I'm sorry, could you --
Q At the time you made this statement to Homeland Security, you were operating on the information that had been given to you by Jan Wallace?
A A lot of it.
Q Did you subsequently investigate whether those conditions had been satisfied?
A Well, I found out other information, yeah.
Q For instance, did you ever find a certificate of insurance in favor of Thomas and Wong?
A No.
Q Did you ever find a safekeeping receipt in favor of

Thomas and Wong?

A No.

Q I'll rely on prior testimony to make sure that we move down the path.

Sir, there were some suggestions made that you drafted Exhibit 18, a promissory note of March 6, 2003 for $275,000. I'll put that up here.

Why did you hire Gary Blume, sir?

A To look after doing the legal work.

Q Did you do the legal work on this in any way?

A Not likely.

Q Did you draft that document, sir?

A No, I did not draft that document.

Q Do you have a clue who did?

A I don't know, but I saw it for the first time at Blume's office, so maybe he did.

Q Sir, let's go to the Homeland Security document, Exhibit 69. I'll go to the eighth page entry, under May 10, 2003.

I quote, "Time passed, and I was told the money was being held up in a Florida bank because the total melt was 12 million dollars and there was all kinds of paperwork to be completed.

I asked Jan why the money was in Florida.

She said, 'That was how the deal was structured with the refinery and she was in direct contact with the bank and it would be released soon.'

I told her we should not be concerned with the whole 12 million dollars and just get our share released, which was only 1,875,000."

Also it continues -- I won't complete that paragraph.

Is that the information Jan Wallace gave you?

A Yes, that's the information she gave me.

Q Is that what you reported to Homeland Security?

A Yes. I don't know why they would send the money off shore, even though I know she's got bank accounts there. I have no idea why.

Q Let me to go to Page 43 of your deposition. You were asked some questions about that.

I'm going to try and squeeze this up a little bit. I think it's legible.

Down at Line 18.

And the answer was given, again, Jan was looking after that. As I understood it, there was one release after the signing of the promissory note for the condominium.

Were you talking about a promissory note for the condominium?

Let me --

A No.

Q Which promissory note were you referring to?
A The only one that was there, the only one we picked up at Gary Blume's office.
Q That was the 1.5 million dollar promissory note?
A That's right, the 1.5 million one. The same one that Cortegiano said was the only one there.
That's the only document that was there. That's the only one that we signed.
Q You knew there was a planned release for the condominium?
A Yes, I did.
Q But you did not know that that had already been shipped back to Minnesota before you even signed the -- before the promissory note was signed?
A I had no idea about where it was shipped. What would be the point of even signing the promissory note at that point in time if I had known that?
MR. MURPHY: Nothing further.
THE COURT: Redirect?

REDIRECT EXAMINATION

BY MS. AMBROSIO:
Q Homeland Security alerted you that there might be some improprieties with Jan Wallace?
A Yeah.

Q When did they alert you to that?
A It was the second meeting when I went -- after I submitted my report.
They, they called me back for a second interview and that's when they asked me for permission to investigate me.
Q Did you ask them to investigate Jan?
A No.
Q Why didn't you provide them with an amended statement?
A They didn't ask for one, and the statement wasn't the issue. The statement was the vehicle to start the investigation.
Q And the bank accounts they reviewed for you -- or that they reviewed of yours, where were those bank accounts, here in the United States?
A The bank accounts that we have are in Brunei, under Hong Kong Shanghai HSBC.
Q Is that where your personal accounts are?
A Yes.
Q They reviewed those?
A I don't know. I gave them permission to.
Q But you had to get permission from Charlene for them to look at Thomas and Wong's?
A For theirs.
I gave them permission for mine, and then Charlene

Wong gave me authority to give them permission to investigate Thomas and Wong's bank accounts as well.

Q And they -- and you have no bank accounts in the U.S.?

A No.

MS. AMBROSIO: Nothing further.

THE COURT: Any questions from the jury for the witness?

I don't see any.

All right. You may step down. Thank you, sir.

All right. Call your next witness, please.

MS. AMBROSIO: Yes. Your Honor, can I just step outside, I think I have a witness there.

THE COURT: All right.

MS. AMBROSIO: Yes, your Honor, my witness is here.

THE COURT: Ma'am, will you come forward and be sworn, please.

Ma'am, it will be easier if you go around this way.

CHARLENE SEUFFERT,

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

DIRECT EXAMINATION

BY MS. AMBROSIO:

Q Good afternoon, can you tell us your name?

A It's Charlene Seuffert.

Q And can you tell us what city and state you live in? You don't need to give us your --
A Peoria, Arizona.
Q Can you give us, just real briefly, your work background or your employment history from, say, 2003 forward?
A Yes. I worked with ReMax Achievers. I was a realtor. I've been a realtor since 1986.
Q You're a licensed realtor?
A Correct.
Q Were you contacted by Jan Wallace around May of 2004?
A Yes, I was.
Q What was that for, do you know?
A That was to -- she had a referral. It was a friend, Mr. Tarapaski, that needed to get a house sold.
Q Did you take on that listing?
A I did.
Q Did you -- who did you enter into a listing agreement with, do you recall?
A With Eddy Tarapaski.
Q Was it with Thomas and Wong or with Mr. Tarapaski?
A It was, I believe, with Eddy Tarapaski, which was -- represented Thomas and Wong.
Q Where was the property located?
A It was on Solano Drive in Paradise Valley, on the

north slope of Camelback Mountain.
Q Was it a residential property?
A It was.
Q Do you know who the property belonged to?
A It was a very long chain of title. It belonged to -- I did not have enough notice to pull out my file, so I apologize, but it ultimately belonged to Thomas and Wong.
Q Do you know how they obtained the property?
A I know a little bit. I recall a little bit of the history.
It was collateral use for a loan, that it involved BDV Investments, the Lake Bank.
I'd have to really look at my file to recall every detail.
Q That's fine. You didn't really review any documents before you came here today?
A I did not, no.
Q Did you sell the property?
A I did.
Q What did you sell the property for?
A I think it was 1.5. I --
Q You don't recall?
A I do not recall, I apologize.
Q Did you find the buyer?
A I represented the buyer. The buyer was referred to

me from somebody else. So the buyer was handed to me basically.

Q Might that have been Gary Blume?

A Correct.

Q Is it possible that the sale was closer to 400,000?

A No.

Q Was there a mortgage on the property?

A There was a mortgage on the property, yes. The proceeds might have been around 400,000.

Q Was anybody else involved in the sale of this property?

A No.

Q Was Jan Wallace involved in the sale of the property?

A No. She, she was the person of a friend. She spent a lot of time with me just getting the house in order. It had been vacant for quite some time and needed a lot of work before it was even marketable or saleable.

Q Did Jan tell you that she was Ed Tarapaski or Thomas and Wong's agent?

A No.

Q In regard to this sale?

A No. I was --

Q Was she -- did she tell you that she was their representative in any way?

A No.

Q Did she tell you that she was the director of a corporation called BDV, that the home had one time been owned by the former president of that company?
A I believe so, yes. John Beardmore?
Q Yes.
A Yes.
Q And did you have any direct contact with John Beardmore during the sale of that house?
A No. I had some contact over the phone from a -- his attorney, Clark Griffith, and you know, some weird phone calls.
But no, not really, I've never met John Beardmore.
Q What do you mean you had weird phone calls?
A Well, I had some phone calls from -- one was Clark Griffith, that stated that, you know, what was I doing, selling the house, I didn't have the right to sell the house, that there was not, you know, anything I could or should do. And that was basically the extent.
I just said I'm very comfortable with where I'm at. Thank you for your call. Let's leave it at that.
Q Did a gentleman named Billy Cortegiano give you calls too?
A I recall the name, but I don't recall specifically talking to him.
Q Did Clark Griffith attempt, in any way, to impede the sale?

A He certainly didn't help with the sale. There were some title issues that needed to be resolved in order to close the transaction, so there was no assistance on his part.
Q But you went ahead and got those resolved anyway?
A We did, yes.
Q And was there a sale of any personal property?
A Yes.
Q Also?
A Yes.
Q What was sold?
A There was some contents in the house.
The house has been abandoned, so there was furniture throughout the house. There was a couple of pieces of art, there was some clothing, personal items.
Q Were you able to sell those items?
A They were sold.
Q Do you know how much you sold them for?
A I didn't sell them, but for $4500, I believe, was the amount roughly.
Q Who sold those?
A Jan. Jan was -- Jan helped me. Otherwise, I needed -- it wasn't my job to sell furniture, it was to sell the house. The furniture, quite frankly, was old and decrepit.
Q When you took over the house, what was the condition?

A It was terrible. It had been vacant. It was -- I had to get cleaning in there, yard crews, pool crews.

It had a beautiful, beautiful layout of the plan, you know, the yard and stuff, but there was just a lot of decay, a lot of just dirt.

I mean, there was stuff had been sitting in the refrigerator for months, at least.

So it was extensive, an extensive clean-up and an on-going clean-up, even after we closed.

Q Did you hire a cleaning crew to come in?

A I did.

Q Did you also hire a gardener?

A I believe that Jan hired a gardener for them.

Q Did you -- do you know if Jan was reimbursed for hiring the gardener?

A I don't.

Q Were you reimbursed for hiring the cleaning crew?

A No.

Q What else did you have done to the property?

A A lot of different items. Had to have a roofer come out, an electrician come out.

The pool company had to come out many, many times in order to get the pool functioning.

The sewage company, to pump the septic; just a multitude of people.

Q And who paid for all of these repairs?
A I did.
Q You did?
A I did, the ones that I ordered, I did, yes.
Q Did you ever seek reimbursement?
A No.
Q Why not?
A Well, frankly, I made a huge commission on it. And I had reduced my commission to assist -- I realized that Mr. Tarapaski had, you know, had a assumed a lot of debt with it, and I was okay with it. It was okay.
Q So you went ahead and you also reduced your commission?
A Yes. My goal was to get the house sold and done. We were in a time frame that it needed to be closed.
And sometimes you have to spend a little money to make some money and get the deal done. I was all about getting the deal done.
Q Why did you do all these things?
A I would do it for any, any client. These things had to be done in order for the house to sell.
Q Including dropping your commission?
A No. I was asked to drop my commission and negotiated with Mr. Tarapaski.
Q But you have a long-standing relationship with Miss

Wallace?

A Yes.

Q Would that play into your decision?

A It might have, perhaps. You know, I would never -- I mean, it was never requested by Miss Wallace.

Q It was requested by Mr. Tarapaski?

A Right.

Q Did you -- do you know if Jan Wallace was ever compensated for anything she did with the sale of the house?

A No, not with the sale of the house at all.

Q So you know for a fact she wasn't compensated?

A She was not compensated from me in any way, shape, or form, and I don't believe Mr. Tarapaski either.

Q Did you speak with Mr. Tarapaski a lot during this --

A Uh-huh.

Q -- transaction? How often did you speak with him?

A You know what, he was overseas a lot. So a lot of times I spoke to him via e-mail. But I was in constant communication with him.

Q Before you did anything, did you speak with him?

A Yes. Well, some things, like the repairs and stuff that needed to be done, I just got done. I didn't, I didn't run every small thing by him.

The things that were important, that applied to or

affected the transaction, absolutely, I spoke to him.
Q You got authority from him before you did anything?
A Correct.
Q Did you help in getting the title agent?
A Yes.
Q And was there some of sort of tax reimbursement that Thomas and Wong were entitled to?
A Yes.
Q I'm going to show you an exhibit. Can you see that?
A Uh-huh.
Q Is this your e-mail address?
A Yes, it is.
Q And the very top it says: Hi, Eddy. Jan has the money, 4500, the buyer gave it to her in cash. I'm not allowed to touch money in a transaction at all. So he gave it to her. She told me she would get it to you. Let me know if I can do anything.
A Yes.
Q The paper work I sent over is more likely, is more than likely 100 percent correct.
Is this -- I'm sorry.
A Because it was a foreign corporation, there were a whole bunch of different IRS rules that came into play. So that's what I was referring to.
Q Do you normally take care of that kind of paperwork

in a transaction?
A Well, I take care of all -- I mean every transaction is different.
This one was a little bit unusual because it was a foreign corporation. You know, there was a chain of title that was a little -- that needed to be corrected.
So, ambiguous answer, yes. I absolutely take care of any and all paper work that needs to be taken care of in a transaction.
This was a little bit outside of the box, but I was happy to do it.
Q You didn't charge anything extra to do this, did you? It was all part of your fee?
A Correct.
Q Did Mr. Tarapaski make any other special requests of you?
A No -- as far as what?
Q Not only on a professional but maybe on a more of a personal level?
MR. MURPHY: I'll object, your Honor; irrelevant.
THE COURT: Counsel approach.
(An off-the-record discussion was held out of the hearing of the jury.)
BY MS. AMBROSIO:
Q I want to show you Exhibit 82.

A   Okay.
MR. MURPHY: Your Honor, excuse me, I beg your pardon. I have the wrong exhibit. I apologize for getting up.
MS. AMBROSIO: Okay.
Q   Is this a -- is this the title agent's e-mail?
A   Yes, uh-huh.
Q   You found this title agent?
A   Yes, someone I've worked with for a while, felt very comfortable with, and knew she would do a really good job.
Q   She dealt directly also with Mr. Tarapaski?
A   Yes, uh-huh.
Q   Did she have any issues or problems that she told you about with Mr. Tarapaski?
MR. MURPHY: Hearsay; your Honor, and relevance.
THE COURT: The question simply was did she tell her anything.
You can answer yes or no, see what the next question is.
Go ahead.
BY MS. AMBROSIO:
Q   The next is --
THE COURT: We haven't had an answer.
MS. AMBROSIO: I'm sorry.
THE WITNESS: I don't believe she had any problems with Mr. Tarapaski.

BY MS. AMBROSIO:

Q Did you have any issues or problems with Mr. Tarapaski?

MR. MURPHY: Objection; relevance.

THE COURT: Overruled. You can answer the question.

THE WITNESS: Not with this transaction, I did not, no.

BY MS. AMBROSIO:

Q Did you deal with Mr. Tarapaski on any other transactions?

A No -- yes, but nothing that was ever closed or furthered.

So, I spoke to him afterwards, I mean, I normally stay pretty close to clients and what not.

MS. AMBROSIO: I have nothing further.

THE COURT: Cross-examine.

CROSS-EXAMINATION

BY MR. MURPHY:

Q Ma'am, what was the commission on this particular transaction, percentage terms, according to the contract?

A It was six percent of the sales price.

Q You had both the buyer and the seller of this transaction?

A Correct.

Q You stood to collect the entire six percent?

A Yes, I did.
Q What was the reduction to the percentage terms?
A I was just looking. It was $8400.
Q What percent was that?
A You know what, I don't know. I brought it down I believe to an even 90,000.
Q An even 90,000?
A Correct.
Q It's not unusual to discount a commission when you have both the buyer and seller of a transaction?
A Sometimes it is; sometimes it's not. Depends on the situation. So there is never a good way or bad way. But I was happy to do it.
Q Ma'am, going back to Exhibit 60, I believe it's Exhibit 60, let me double check. No, 59, I beg your pardon.
An e-mail that you sent to Ed Tarapaski on June 19, 2004. Hi, Eddy. Jan has the money, the $4500. The buyer gave it to her in cash.
The furnishings in the house that were sold, yes?
A Correct. Yes, I'm sorry, yes.
Q You are not able to handle cash in a transaction, as you mentioned?
A Right.
Q Jan Wallace got that money?
A Right.

Q Do you know whatever happened to it?
A I don't. I know that Jan put in a lot of time over there. And I was very comfortable -- you referenced an e-mail that said thanks for the e-mail. How much did you sell the furniture for, where is the money now?
There was never any concern on my part, so...
MR. MURPHY: Nothing further.
THE COURT: Redirect.

REDIRECT EXAMINATION

BY MS. AMBROSIO:
Q Just briefly.
A Overall, did you enjoy working with Mr. Tarapaski?
A I did.
Q And you were always in communication with him before you took on anything of great importance before you did --
A Yes.
Q -- anything of great importance?
A Uh-huh.
Q How did you contact him, by phone?
A It was by phone -- or Mr. Tarapaski would contact me by phone and a lot of it was via e-mail. A lot of it was via e-mail. There was a lot of paperwork back and forth between himself and myself.
MS. AMBROSIO: I have nothing further, your Honor.

THE COURT: All right, thank you.
Do members of the jury have any questions for the witness? Doesn't look like it.
Any reason the witness can't be excused?
MS. AMBROSIO: No, your Honor.
MR. MURPHY: None, your Honor.
THE COURT: All right. Thank you, ma'am, you're excused.
Well, why don't we take our afternoon recess at this juncture, seems like a good point.
We'll stand in recess for 15 minutes.
Please remember the admonition, don't discuss the case with anyone, don't let anyone discuss the case with you, keep an open mind.
(Recess.)
THE COURT: The record will show the presence of the parties, counsel, members of the jury.
Call your next witness, please.
MS. AMBROSIO: Yes, your Honor. We would like to read in some additional excerpts from Mr. Beardmore's deposition. And Mr. Blume is going help me do that.
Page 23 Line 5.
I'm sorry, it's Line 8.
(A deposition excerpt was read.)
Next page, Page 27, Line 22.
(A deposition excerpt was read.)

Page 29; Line 2.

(A deposition excerpt was read.)

Page 32, Line 25.

(A deposition excerpt was read.)

Page 36, Line 7.

(A deposition excerpt was read.)

Line 22, Page 36.

(A deposition excerpt was read.)

Page 38, Line 1 -- I'm sorry -- Page 37, Line 1.

(A deposition excerpt was read.)

THE COURT: Counsel, excuse me, hasn't all this been read? It certainly has a familiar ring to it.

MR. MURPHY: Yes, your Honor.

MS. AMBROSIO: Yeah, your Honor, I'm sorry. I think I may have overlapped this page.

THE COURT: All right.

MS. AMBROSIO: Can I just take a minute?

THE COURT: Go ahead.

MS. AMBROSIO: Let me skip down to Page 38, Line 25.

(A deposition excerpt was read.)

Page 41, Line 1.

(A deposition excerpt was read.)

Page 47 -- I'm sorry, Page 50, Line 1.

(A deposition excerpt was read.)

Page 55.

(A deposition excerpt was read.)

Page 58, Line 11.

(A deposition excerpt was read.)

Page 69, Line 4.

(A deposition excerpt was read.)

Page 78, Line 8.

(A deposition excerpt was read.)

Page 81, Line 9.

(A deposition excerpt was read.)

Page 82, Line 4.

(A deposition excerpt was read.)

Page 88, Line 15 -- I'm sorry, Line 14.

(A deposition excerpt was read.)

Page 93, Line 19.

(A deposition excerpt was read.)

Page 98, Line 1.

(A deposition excerpt was read.)

Page 100, Line 4.

(A deposition excerpt was read.)

Page 101, Line 9.

(A deposition excerpt was read.)

MS. AMBROSIO: Thank you. That's all I have, your Honor.

THE COURT: Very well. Call your next witness.

JAN WALLACE,

having been previously sworn herein, resumed; the stand and testified as follows:

DIRECT EXAMINATION

BY MS. AMBROSIO:

Q Good afternoon.

A Good afternoon.

Q How did you come to be on the board of directors of BDV Investments?

A When Mr. Beardmore and Bill Cortegiano and Ed Tarapaski had a conversation about Ed doing the deal, the transaction to do a bridge financing, Ed Tarapaski told them that he wanted me to sit on the board of BDV because he thought that I had experience and that I would be able to oversee their money.

Q I want to ask you about the contract that you signed with Mr. Beardmore in this matter. I'll see if we can find it in a minute.

Here it is. Jan, can you tell us a little bit about this transaction or this potential transaction that's discussed in this document?

A Sure. That document is a contract that was created, as I stated yesterday, out of a bankruptcy court, that allowed for five subsidiary companies, public companies, to be formed in order for shareholders to once again have some value, usually in the form of a reverse merger.

The contract outlines points of how the public entity, in the reverse merger, would take place. It also has outlined on it a little of the things that you must do, according to the rules of the SEC.

Q   And this is what you do for a living, isn't it?
A   This is what I have been doing since 1992.
Q   Can you tell us a little bit more in detail exactly what it is you do?
A   Sure. My background is really, basically, I transact all kinds of venture deals; that is, a lot of people will pick up the phone and call you, they have an idea, they built a widget in their garage -- as a matter of fact Bill Gates and Paul Allen, that's exactly how Microsoft was started. They did computer systems inside their garage and a venture capitalist saw what they were doing and they made a deal. That's basically, in a much smaller frame, what myself and some of my partners have done.

People will call up and need either funding or they want to go public. The reason a lot of people go public, and I advise them the only time to go public is two reasons, one is you're low on capital and you need to use the paper as a form of funding.

Every time that you issue a share, a share has a value. So if you like the idea that they were doing, you would give 10,000 dollars and they would give you shares. When you do that transaction, there is no loans on the book, so the company carries no debt and the people set back and wait on that equity to make sure that the company can grow.

Part of my deal, and what my specialty is, I specialize under the SEC side of the transaction. I put all the forms and documentation together to make sure that when they're doing these equity transactions, they're doing it all the right way. And I file all of the 10Ks. I join the boards to oversee investor's money. It's part of my duty my fiduciary duty when you join a board. And I draft all the documents and work with the SEC counsels on all of the filings and requirements made of both as an officer and a director.

Q Jan, do you have a college degree?
A Actually, I'm two credits shy of my college degree.
Q Do you have a law degree?
A No, I don't.
Q So you're not a practicing attorney?
A No.
Q And the knowledge that you acquired, that you just spoke to us about, you acquired that through your experiences in the public market?
A Actually, when I was 28 years old, I was part of a U.S. corporation called Pitney Bowes, and I was the first female executive at 28. I took that knowledge and I rolled it into my

own business, which I sold to a foreign corporation called Ascom Hasler, where they paid me 3 million dollars when I was 31 years old.

I didn't know what to do it with. I met a gentleman by the name of Stanley Young who was a venture capitalist. He told me if I reinvested my money, I would make a lot more money. He introduced me to the venture game, and I have done 17 deals since then.

Q In these venture deals, can you -- are there lots of people that are involved with these deals?

A As I just described, when somebody comes to you, they tell you that they have something of value, you do a basic due diligence, you know, you see if it's a working product. You see if fits, then you have to see if the market would accept it because if the market doesn't accept it, whatever you built isn't valuable. It has no money. So these shares would never have any value.

So, you listen to everybody's story, you look at everybody's product. You take a look at the market and whether or not the market would accept it. Then you try to go out and see if investors would actually like that transaction.

In my structure, a lot of my partners do the finance side and I do a lot of, again, the structural side. So you meet all kinds of people. I have actually sat in a flying car in California, and there really is one that exists. It's off of a prototype of a Army drone. So you see all kind of things, you hear all kinds of stories. And it's interesting.

Q You say you have partners that handle the financing side and you handle the public side. Is there at some point where you bring the parties together from both sides and you somehow help facilitate to get the deal done; isn't that the ultimate goal?

A Absolutely. If I've got a product or someone has a product that's really worthwhile, the market likes it, then it's very easy that investors want to come in and have participation. So the finance side and the regulatory sides get together and that's what you do, and actually, you, you have to file documents, which I'm sure, -- or maybe not, you have ever seen, but I think some people have heard a public offering. You have to file it with the SEC. That's the only way you can raise money. It has to be fully disclosed.

Q I'm sorry, just a moment, please. So would you help to get, if you brought two parties together, would you sometimes help them to get counsel, to get a deal, to work or get them an escrow fund opened or maybe even, I don't know, pull together due diligence for them?

A All of that. The big part of finding out whether or not the venture is going to be worth anything is due diligence. It's an automatic. As a matter of fact, again, the SEC requires you to have certain things to make sure that you're a legitimate business. They're not going to file you public and you're not going to be able to get investors' money and give them trash paper based on no information and no background.

It is standard course of business, that you have to do due diligence on everything that you do once you enter this realm.

Q Is this one of the due diligence letters that you might send out?

A Yes. When -- what's the date on that, August 12th? When they -- when I had asked John Beardmore whether or not he was going forward with the deal or not, John Beardmore said that he wanted to go forward. I said John, you never paid the 50,000. I have three other clients for the deal. He said we'll send you the 50,000. The 50,000 came across. I immediately sent back a letter. The first step after that contract is signed, is that list of things, and that's a requirement by the SEC.

Q Jan, I want to go back to when you got parties together and helping to facilitate things going forward. If you've got a funder, and a company looking for funding, and you have introduced the parties, because the company's going to go public or is public and needs additional funding, whichever the situation may be, do you -- will you do things like bring them to a lawyer, get a trust account opened for them?

A Anything they ask, anything that we think is a requirement of the client, we will help facilitate. Many times, when you do draft, like I said, these documents where you're asking people for money, when you draft those documents, the client can request anything he wants. If he wants you to do it, you do it, he oversees it, he signs off on it. All of those things are done. Everything that you need to facilitate gets done.

I live in a world that public disclosure. Everything I do, everything I say, every act I make, I am required to disclose. I have been public in six companies where I've been not only a director but the CEO of the corporation, and I have never had one mark from the SEC in all the years that I've been doing this.

Q When you say the client, in this particular transaction who was your client?

A My client was BDV. That's why the contract was with BDV.

Q When you bring the two sides together, the financing side and the entity looking for the financing to go forward to become a public company, and I understand that in this case that was not your role, your role was to bring the company public?

A Right.

Q And the company had let you know that they had had a a financing issue?

A Right.

Q Is it your -- do you, do you then come and say to both sides, you know, I'm an agent, I'm working for both sides. Is that one of the discussions that's had or what is it, the discussion that's had?

A I have never in my career, my life, personal, business, private, have never been an agent to any individual in any matter. I would never become an agent to anyone because I understand the rules of being a director and I understand the rules of fiduciary duty. It is not something I do lightly. And it is not something that I would so glibly give away to anyone.

Q There has been a lot of discussion in this case about how you -- there were certain responsibilities that you had. Is that your understanding of what you were doing -- let me rephrase that. What was your understanding of what you were doing in this transaction?

A When Casey Strunk, who was hired by BDV and paid a fee to find financing, fell through, Casey Strunk was working with Kelly Black. I have an association with Kelly Black. It's called Wallace Black. It's also public, and you can read it, if you would like.

The terms of our contract exists publicly. She raises the financing and I do all the securities work. When they couldn't get it together, and Ed came to me at La Vanishe, after he had his surgery -- actually even before he had his surgery, he came to my home before he had the surgery, he overheard me talking about the BDV transaction.

I told him I was doing the public side of the deal. He asked me about it. I told him about it. He wanted to set up a meeting. I said sure. I called John Beardmore and Ed went and met with John Beardmore and Billy Cortegiano.

Q What were, what did you -- okay -- so what did you perceive your role to be in this transaction?

A All I do was introduce two guys.

Q After the meeting, did they come back and ask you to become more involved?

A Yes.

Q In the transaction?

A Yes.

Q What did they ask you then?

A Actually, the thing that was asked was not by Beardmore or Cortegiano. Ed Tarapaski came back and wanted to talk about the deal, what did it involve. And I told them that apparently John Monroe and Duke were the first round of funders that Kelly Black and Casey Strunk was working on that. There was dore, and apparently there was a document for taking that supposed dore and turning it into a loan through A Mark, I believe was the first one there, was before Mr. Tarapaski came along. A Mark was going to do some lending against the gold.

So I explained to him the history of it. I told him my participation on the public side. He asked me if he would get any shares in the public company if he did the transaction. I said Ed, one thing at a time. Then he went forward and he started talking to Billy and John on a regular basis.

The next meeting was Billy, John, and I think they got Mr. Wark on the phone, who is the third director of BDV. Mr. Wark, and I think this is where it gets very confusing for everybody. BDV is an acronym for Beardmore Dulce Vita. Dulce Vita was a corporation that owned the six barrels of gold, dore.

Mr. Wark and Mr. Nooe, who were the principals of Dulce Vita, formed a partnership with Beardmore Investments. When they did that, that's how the dore got put up as collateral in BDV, and that is the same dore that they transferred to Ed Tarapaski as collateral for his 1.5 million investment.

Q After that meeting that you discussed with Ed the knowledge you had had about this transaction, what was the next thing that occurred?

A Eddy started talking to Beardmore and Cortegiano. Sometimes I was on the phone with it. Ed took me to meetings with them. Sometimes I didn't go along at all. I think that, unlike what I'm hearing, I record everything. I keep general calendars that I have at all times. I write notations of meetings, who I meet with. I try to stick to it, but I also have three cell phones, Blackberries. So some of them I record other things in electronically. But I write down everything because I have a huge burden on me at all times.

Q Mr. Tarapaski was aware that you were working for

Beardmore Dulce Vita?

A BDV.

Q BDV. I want to talk a little bit about your calendars. You keep calendars, like you just said. What, so if it's a, if it's a prearranged date, is it most likely in your calendar?

A I have, like I said, some electronic, I don't think I had it in 2003. I'm still even trying to figure out how to work all that. I'm a little old fashioned, I like to write things. So I always keep written books with me. But my journals that I keep, if I know of an appointment, I'll scribble it in. If an appointment comes up at the last minute, no, I don't always scribble it in. But if it's something that somebody really requests of me to do, then I will put the information on the date and the time and so on, so forth.

Q So if someone requests you to make a wire transfer of funds, would there be a notation in your calendar?

A Yes, if I knew about it ahead of time. If somebody called me out of the blue, said could you make sure the wire goes today, I don't know that I would do that.

Q If you had to get permission before you send a wire, would that be noted in your diary?

A When it comes to money or finance transactions, any time that somebody wants me to transact money, everything has to be written. I want terms. That is, this is what you're going to do, this is how you're going to do it, this is what you have to do when you're about to do it. So on and so forth. So normally I have a document from the party, where they outline exactly what they want me to do.

Q Did you have control over the Cane O'Neill trust account which had the 800,000 of Thomas and Wong funds in it?

A That is impossible because it is the Cane O'Neill trust account. That would be if you gave your money to your attorney, and they put it in a trust account that you can actually, even though it was your money, that you can go in and get it. You can't. Once you put it in a trust account, it is the officers or the duty bound people of the trust that have all the authority to hold that money.

Q Did you obtain permission from Mr. Tarapaski before you made any transfer of any funds?

A Except for the 275,000 and the 500,000, the first 800,000, Ed Tarapaski was in my home from -- I have to think, his surgery was February 25th. He was in my home the day before. So I think it was February 24th Ed Tarapaski was residing in my guest house.

On March 7th, friends of mine came down and I told him that he couldn't stay in my guest house past the 7th because friends were coming. I delivered him at the hospital on the 25th for surgery. It was an out patient procedure for a cosmetic eye repair. He came back. He was in the guest house for that time, and then I think he said that -- oh, he had to change a bandage on his eye the first night, so he ended up back in my main house and I did the changes of the bandages for him.

Q So he was in your home, when, for most of the transactions involving the 800,000?

A Ed Tarapaski ate dinner with my children and I. Ed Tarapaski had food cooked for him, Ed Tarapaski had his linens washed for him and his clothing. Ed Tarapaski was in my main house and my guest house. He used my phones, he used my daughter's computers, he did all of his business and heard all my business, while I was in that home.

When Ed Tarapaski wanted money to be wired for the first 800,000. It was done because Ed told me to do it. And he was in my space not part-time, but 24-7.

Q So you didn't feel like you really had a choice?

A When Ed Tarapaski asked if I would make sure that I sent off the notations and set up the account with Cane Clark so that the money can go through, I was the one that would say Ed, are we sending the money. Ed would say send the money. And then I would send off the notation.

Q So Ed was fully aware that you were sending the money.

A Yes. As a matter of fact, I know that this 275 keeps coming up, and I'm sure it will get cleared up eventually as we go along, but Ed Tarapaski, on the 500,000, also verbally told me to send that notification.

Q So at a certain point, let me go back. Let's talk about the 200 -- this is the 275 from the client trust account. Mr. Tarapaski says that he didn't give -- you didn't get permission from him to do this. I want to ask -- first of all did you get permission to do this from Mr. Tarapaski?

A The answer is yes.

Q My second question is do you have any interest at all in L. Trust LLC or the condo at 660 North Second Street in Minneapolis, Minnesota?

A None at all. As a matter of fact, when Ed asked me to send it, that money went from the trust account to people that he was aware of. He knew all of the transaction and the condominium, and he turned around, told me to send it. And the simple fact that I didn't get the 275,000, there is no benefit to me at all to send money from a trust account to someone else. None. I did it because he told me to do it.

Q And he was living in your home?

A He was living in my home.

Q You eventually did get a benefit in this case, didn't you, in this transaction, didn't you?

A Which transaction?

Q I'm sorry, you're right. Did you receive any funds pursuant to this agreement?

A I received those funds and it was sent to me by the approval of John Beardmore, of $50,000.

Q Did that, I'm sorry, did that money come directly out of the Cane Clark trust account?

A Never. And there is no record that indicates it anywhere.

Q Where did you get that money from?

A Lake Bank had sent a wire to me, period.

Q And did you receive any other money out of the either the 1.5 million dollar bridge loan or under the agreement you had with Mr. Beardmore?

A I received no money for any of the work that I did. The only money I ever received was for the contract that John Beardmore and BDV entered long before Mr. Tarapaski came on the scene.

Q And that the work that you did under this contract with Mr. Beardmore was different from the things that you did for Mr. Tarapaski?

A Once Mr -- once I became a member of the board of BDV, Mr. Tarapaski, as an investor, absolutely, I have a duty, just like Mr. Cortegiano, Mr. Beardmore, and Mr. Wark, that investment capital is to be looked at. That we are supposed to make sure that that investment capital is used properly for the company. We are all bound by that duty. That was nothing special I gave to Ed Tarapaski.

Q So, once you were made a member of the board of directors, your duties were that of a general director of a corporation?

A Same thing I've been doing for 17 years.

Q But your duties to BDV, under this agreement, were different. You were to sell them a public entity?

A That's it all I was doing was selling the sale of a public entity.

Q And as part of that sale, both sides were required to do their own due diligence?

A Absolutely.

Q Jan, can you shed any light on this note?

A Yes.

Q Please?

A On March 6th, the meeting that took place in Gary's office, there was myself, John Beardmore, Ed Tarapaski. There was documents that Gary had prepared. There was some documents that Gary still had to be prepared. John Beardmore and Ed Tarapaski was telling Gary Blume what they would like to see. The large penalty that is on the promissory note which is a, I think, there's a million dollar penalty, then there is 25 percent, and then they wanted some other agreement that by April something, that this, this had to be done, all of this was going on.

When this came up on the condominium, if you look at the 1.5 million dollar promissory note, the terms of the 1.5

million dollar promissory note for repayment, length of time, and address, is exactly the same as this document.

It was for 660 on Second Avenue in Minnesota. What happened was, as they were sitting around in the room, and Gary was trying to follow all of what they wanted, Gary, like he said, had a whole bunch of form documents.

Now, I know, but I didn't know then, that Sokim Lach, who had L L. Trust, needed to sign this document because this promissory note is part of the 1.5. What this promissory note did different, it added extra security for Thomas and Wong.

When the condominium was being purchased, it's a hard asset. However, if I lent you money to buy a hard asset, like an address, if you're out of of state, and you default, I have to hire an attorney, in that state, I have to pay fees, I have to serve you, like a process server, and then you enter court proceedings.

What this document was, was a step that added to the 1.5 million. What it says is that by the signature of Sokim Lach and the L L. Trust, that they would automatically turn the property over. There would be no argument. So it made it easier that if they defaulted after the 60 days, that Thomas and Wong would not have to go through as much of a process because the person who received the property also stated that they would live with the same terms.

Again at the time, nobody knew, I don't even think

Ed Tarapaski knew that Sokim Lach and L L. Trust was John Beardmore's girlfriend. So when -- and Mr. Tarapaski, even on his first day of testimony, said that John Beardmore wanted to know if we could send the money today for the condominium because they were going to lose it. And there was conversation about once it's signed, can we send it.

This document was created. It was sent to Sokim Lach while we were in the office on March 6th. She signed it, John Beardmore signed it, and sent it back.

This 275 is part of the 1.5. It was just additional documentation.

Q Jan, there were other documents that were created on March 6 that talk about a board meeting, then there has been testimony that there was actually a physical board meeting.

My question to you was, at some point, did you actually, physically meet is it Lee Wark?

A Yes, I met Lee Wark. Once.

Q John Beardmore and Billy Cortegiano in a restaurant somewhere?

A Never together. There was an occasion where Ed Tarapaski, Lee Wark, and Billy Cortegiano and I met in a restaurant and it was a meet and greet. And the funny thing about this, is Mr. Wark didn't like that there was a woman on the board. So he was actually quite rude to me.

And the meeting was short. They had some conversation, and it was a meet and greet that I do recall. Then there was another meeting. Neither one -- none of these meetings were board meetings. John Beardmore was in town, and I remember we met at Goldy's out at Shea and something, upstairs in a sports bar. And it was another -- John was in town, and everybody just got together and was chatting and knowing each other, something like that, something casual.

Q Mr. Wark and Mr. Cortegiano were there?

A Yes.

Q And first meeting you described, do you know where that occurred?

A I think that's the one that was at Village Tavern. I met them at Village Tavern, which is less than a mile and a half down from my home.

Q Was Mr. Tarapaski at that meeting?

A I believe so, yes.

Q We've been talking a lot about Lee Wark and Don --

A Don Nooe.

Q Who are they?

A Don Nooe and Lee Wark -- Lee Wark was a director on BDV. When they merged Dulce Vita into Beardmore's company and became BDV, they're the ones that put their gold dore up for collateral and became preferred shareholders of BDV.

So Wark came on the board, to protect his interest. And BDV allowed it. So, Mr. Wark wanted to make sure that things would go well with his investment, which he has a right to do.

Q So Mr. Wark is the individual who put up the gold, the six containers or six barrels of gold?

A Correct. As a matter of fact, one of my biggest disagreements with the company, and one of the reasons I was the one that wanted to resign first, was as a director in a company, when Mr. Tarapaski did not get his money, I fought with Lee Wark and told him, as a director, he must allow BDV to melt the gold to give the payment to Mr. Tarapaski.

Lee Wark told me a whole bunch of expletives, and that's when I wanted to leave the board, because as a fellow director, your duty is to make sure that you do the best you can when it comes to the company, and the best thing for the company was for them to pay Mr. Tarapaski and Thomas and Wong.

Q And Mr. Wark was on the board to protect his investments?

A That is correct.

Q When you told him that another investment of the company needed to be protected, he refused?

A Absolutely correct.

Q Now, we talked a little bit about these documents, and again, this is the board meeting, I know the first document is where you're appointed to the board and this is the second document. Again, can you tell me how this document was created?

A Sure. If you take a look at the date, March 6.

There's a whole lot of documents on March 6, 2003. I'm sure you've all seen them ad nauseam. But the other thing that took place is when we were in Gary's office and we were moving around going back and forth talking, john Beardmore came over to me, and I said, look, John, you guys are doing a lot of transactions. All of these transactions are important to a company. You have to somehow get a board to approve this. And that's where that conversation had come up, was to make sure that there would be board minutes to reflect the same note that they were signing. That's what it was done for.

Q Is this your custom and habit in your public companies is to have a board resolution accepting or approving a loan?

A If you take a look at that time, just one of the public companies I've been on, you will see that when investors, and we just had an investor that put 200,000 dollars inside of a company, a much smaller amount, not only did we have a board meeting, we had corporate resolutions, the shares that were issued, we sent off to the transfer agents. All of it went off to the SEC attorneys for approval. It had to be sent to the -- filed and in an Edgar filing, electronic filing, to be put out on public and every piece of paper that took place in that transaction is published.

Q Did you call them an actual, physical board meeting to approve that loan?

A We did not call a physical board meeting. This is the other thing, and I'm only saying this because some people think that board meetings just happen because people get together all the time. They don't. Even if a public company, your bylaws are usually standard, that you only get together every quarter. However, you have meetings in between. If I go and raise a financing, if I want to by an asset, what we do is we have a telephonic or telecommunication board meeting. That is John could be in Minnesota, Bill Cortegiano could be someplace else, I could be someplace. We call a meeting, we fax it around, people sign, and they send it back. That's a board meeting.

Q Do you know what happened to the gold dore?

A Again, the one time that we were actually legally allowed to go in the warehouse, by the time Billy Cortegiano and Sheriff Hall cut the chains on the warehouse and I walked in -- you're hearing things about containers, these containers are containers like you see on a train, you know, those big Costco containers. They're huge.

When we walked in, there was maybe two stacked high and about six or seven of those. That was most of it. Then there were fork lifts, heavy equipment, all this kind of stuff. And there were caged off areas inside of this warehouse where we were told the barrels were. We walked around the corner, and there were rings on the floor, markings from metal containers. And that's the only thing we saw.

Q And you're not an engineer, are you?
A No.
Q You have no background in precious metals, do you?
A None.
Q I know we touched on this a little, but did you feel you had a conflict of being on the board on -- I'm sorry, take that back.
Was there a conflict with you being on the BDV board?
A The only time that there was conflict with me being on the BDV board, was when Mr. Wark would not agree for the company to melt the gold. Other than that, as I stated before, when you're a director on a company, everybody's money that comes into that company, you are responsible for. So yes, I took a look at what I had to take a look at. I was given documents, I was given the Dumaine document, I was given the safekeeping document. I read them. I asked John what they were about.
Mr. Tarapaski was given them. I know he said that he didn't read it, but that's everybody's duty. You don't, you don't take someone's money, and not go out to protect it. That's your duty when you sit on a board.
So our purposes are exactly the same. If I made a checklist for me to get as much documentation as I can from the company, that was because I'm a director. That's what I'm supposed to know. That's what I'm supposed to do. Our causes

were exactly the same.

Q Whose causes?

A Mr. Tarapaski and Thomas and Wong and BDV, had the same responsibility. There was no conflict as a director. I have to lookout for his money, period.

Q What do you mean, their interests were aligned?

A For instance, if it is that Ed Tarapaski, after the 60 days and they didn't get -- Ed didn't get his money or Thomas and Wong didn't get its money repaid, if Thomas and Wong succeeded in getting judgments for the gold dore, it meant that it was the first time that we would be able, as BDV, to get the gold dore from Nooe and Wark.

They took it, hid it, moved it around, but if he got the judgment, then we could pay -- melt the gold, pay Ed Tarapaski, and BDV would get the rest of the money. There was supposed to be apparent value of 52 million dollars. Even if Mr. Tarapaski a year later was able to get the judgment and get the gold dore, it meant BDV stayed alive because Mr. Tarapaski would have been paid, I don't care what, some 2 million, 7 million, 12 million. The rest of the money would have gone to BDV. Instead, the gold was never recaptured, Mr. Tarapaski didn't get his money repaid and BDV died.

Q I want to show you this document. Can you see that note at the bottom?

A Yes.

Q Can you please read that note to us?
A Billy, please give these documents to John Beardmore so that I may travel Monday to Lordsburg. Also could you please fax me the bylaws, minutes, and incorporation documents of BVD, since I am now a director, as this -- as this is standard to the position.
THE COURT: Excuse me, counsel, we're going to take our evening recess at this juncture. Stand in recess until 9:30.
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.
I'm going stay on the bench for a few minutes to discuss some matters with counsel.
Have Laura come in, please.
(The record notes the absence of the jury panel.)
THE COURT: We discussed in chambers the fact the testimony in this case, at least defense's case, was to be concluded by the end of the day. That's obviously not happened.
How much more do you have?
MS. AMBROSIO: I have about a half hour more, your Honor.
THE COURT: Well, again, maximum of half an hour. You've already used 45 minutes. You only requested an hour and 15 minutes.
How long is the cross going to be?
MR. MURPHY: 15 to 20 minutes, I would guess, your Honor.

THE COURT: All right. That concludes the defense's case at that juncture.

How much rebuttal is there?

MR. MURPHY: I would say five minutes, if that, your Honor.

THE COURT: All right. I gave you draft jury instructions. I want these jury instructions settled sooner rather than later.

Have you had an opportunity to review them?

MR. MURPHY: I scanned them, your Honor. My initial impression is they looked fine.

MS. AMBROSIO: I haven't really had a chance to read them, your Honor.

THE COURT: What's the Court's calendar like in the morning?

We will be in here at 8:45 tomorrow morning.

We're going to settle these jury instructs. We're also going to conclude oral argument on the -- if there's anything to supplement with on the Rule 50 motion at the same time.

Any questions?

MS. AMBROSIO: No, your Honor.

THE COURT: Anything further to be addressed?

MR. MURPHY: Not from plaintiff, your Honor.

THE COURT: Keep in mind closing arguments, maximum one hour a piece, that includes rebuttal.

Stand in recess until tomorrow.

(The proceedings were concluded.)