###1

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

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

February 4, 2008
Phoenix, Arizona

BEFORE THE HONORABLE: ROBERT C. HOUSER, Judge

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Lisa H. Vitoff
Certified Court Reporter
CCR #50251

♀

###2

A P P E A R A N C E S

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

FOR THE DEFENDANTS:
MS. CLAIR AMBROSIO
Attorney at Law

P R O C E E D I N G S

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

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

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

THE COURT: Ladies and gentlemen, now that you have been sworn, I'm going to briefly tell you something about your duties as jurors and give you some instructions. At the end of this

♀ ###3

case, I'll give you more detailed instructions and those instructions will actually control your deliberations.

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

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

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

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

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

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

♀ ###4

the issues to be proved.

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

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

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

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

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

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

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

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

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

Now, the party who makes a claim has the burden of proof and must persuade you by the evidence that the claim is

###5

more probably true than not true. This means the evidence that favors that party outweighs the opposing evidence.

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

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

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

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

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

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

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

When an objection to a question is sustained, you

###6

must disregard the question and you must not guess what the answer to the question might have been.

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

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

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

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

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

###7

evidence in light of reason, common sense, and experience.

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

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

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

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

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

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

###8

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

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

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

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

First of all, evidence to be considered.

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

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

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

Questions to a witness.

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

Objections to questions, as I mentioned to you

###9

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

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

Rejected evidence.

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

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

Stricken evidence.

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

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

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

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

##10

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

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

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

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

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

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

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

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

##11

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

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

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

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

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

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

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

Now, even though you can discuss the case under the very limited conditions that I've just described, do not form any final opinions about any fact or about the outcome of the case until you've heard and considered all of the evidence, the

##12

closing arguments, and the rest of the court's instructions that I'll give to you at the end of the case.

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

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

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

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

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

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

Now, if you have a question about the case or for a witness -- or a question for a witness, just write it down, but

♀ ##13

don't sign it.

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

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

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

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

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

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

Now, as I in mentioned to you this morning, this trial is expected to last through Thursday. We're going to do

♀ ##14

our best to move this case along, but delays sometimes occur. Those delays aren't going to be anybody's fault. So please don't hold them against any of the parties.

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

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

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

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

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

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

♀ ##15

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

Plaintiff may then present further evidence.

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

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

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

MR. MURPHY: None, your Honor.

MS. AMBROSIO: None, your Honor.

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

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

As I also told you just a moment ago, the opening statement is not evidence. It's simply offered to help you

♀ ##16

understand the evidence that's going to be presented during the course of the trial.

Counsel, you may proceed whenever you're ready.

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

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

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

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

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

We claim that Jan Wallace violated the duties of

♀ ##17

trust, loyalty, and full disclosure that she owed to Thomas and Wong as its agent and representative in this transaction. Jan

Wallace denies she owed Thomas and Wong any duty to represent in this transaction.

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

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

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

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

They do contracting work, pretty much on a small scale, but Ed's principle job is to buy and sell cranes and heavy

##18

equipment, and he does this around the world. And the concept is buy low and sell high and they make a profit on trading this heavy equipment. That is Ed's principle responsibility.

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

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

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

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

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

##19

guest house.

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

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

Ed listened to this and they began discussing it.

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

Ed was shown an opinion letter from a Tucson law firm that appeared to legitimize the existence of this gold. He was also shown a certificate that had given transfer title to the gold to BDV. I've noted those are exhibit numbers. You will see the certificate of conveyance for the gold from various entities

##20

involved. One of them including Victor Wark to BDV Investments and that was done in February 2003.

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

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

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

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

The escrow conditions are very important. You will hear testimony on those. Escrow is necessary because in their

##21

consultations a checklist of conditions to releasing the funds was worked up, largely with the advice of Jan Wallace.

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

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

##22

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

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

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

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

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

##23

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

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

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

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

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

##24

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

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

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

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

The note itself said there would be a certificate of insurance in favor of Thomas and Wong, a warehouse safekeeping receipt in favor of Thomas and Wong, and various documents

##25

regarding a Minnesota condominium that was going to be part of the security they got.

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

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

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

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

And as part of the bankruptcy disbursement, she

##26

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

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

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

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

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

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

##27

Investments before she ever met Ed Tarapaski.

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

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

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

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

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

##28

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

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

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

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

##29

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

You also have handwritten notes of the meeting that

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

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

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

##30

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

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

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

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

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

##31

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

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

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

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

Tarapaski had hired to draft documents, will testify, he didn't do it.

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

##32

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

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

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

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

Ed left the country. I think he went to Korea next,

##33

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

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

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

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

Now, we get to some other facts that we say should have been revealed to Ed Tarapaski. John Beardmore owed more

##34

than $500,000 to the Lake Bank in Minneapolis. Ed Tarapaski generally knew money was owed to the Lake Bank. Here's a document that was sent in January, e-mail from -- to Bill Cortegiano, stating the amount was 570,000.

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

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

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

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

##35

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

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

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

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

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

Gary Blume will testify he never saw the telefax from Mr. Kell, that he had nothing to do with the loan

##36

transaction after March 8 of 2003, and had no role in advising anybody about this deal.

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

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

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

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

He gave her written authority to serve as their

##37

agent and representative with regard to disbursement of funds, and he did so not knowing that she had already done that on March 7th, 2003.

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

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

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

Sokim Lach was John Beardmore's girlfriend. L Trust was a company that she controlled. This was, in effect, a

##38

transfer of money from the Thomas and Wong's money to John Beardmore's girlfriend.

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

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

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

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

And an example of this is as follows: Ed called up,

##39

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

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

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

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

But what is significant in this regard is the following. Lake Bank was not a party to that agreement. Here's the signature line to the agreement with regard to M W Asia, showing a company, Beardmore Investments, Inc., was the party to

##40

it. Lake Bank was paying $50,000 of the money, and we will present testimony that Jan Wallace was told this came from a financing that Lake Bank had received. That financing was the Thomas and Wong money.

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

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

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

##41

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

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

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

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

Jan Wallace testified at her deposition that she was so upset she wasn't going to do any business with these people any more after they failed to repay Thomas and Wong. But we will show you that in August of 2003, long after the default had

♀

##42

occurred, she was still writing to Mr. Beardmore and to Mr. Cortegiano of BDV Investments about doing the due diligence to go forward with the merger transaction that she had been talking about and signed a contract with them on -- in December of 2002, despite the fact they hadn't repaid Thomas and Wong.

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

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

Ed filed a suit against Lake Bank. He was able to get some recovery, a house in Phoenix that John Beardmore owned was sold, and after mortgages were paid and expenses were deducted, they recovered $432,000. He also got $20,000, it says from the sale of some containers. It was actually some old fork

♀

##43

lifts, some equipment that they found, but they got another $20,000 there. So, they realized about $450,000 of the million five that went out.

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

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

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

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

##44

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

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

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

What have they lost? Thomas and Wong paid $1.5 million. It's recovered $452,000. We believe the evidence would show the following: If Jan Wallace had disclosed the true facts, one, that money had been transferred out of the account before Ed authorized it or knew about it; two, that John Beardmore was hopelessly in debt and was not creditworthy and should not have been given funds; three, that there were other unauthorized transfers from the accounts with regard to Sokim Lach and L Trust

##45

attorney's fees, that the deal never would have gone forward, the losses would have been avoided, and 1 million 48,000 dollars in principal would have been saved.

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

THE COURT: Thank you, counsel.

Counsel, you are ready to proceed?

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

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

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

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

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

He became an acquaintance. He ended up saying at

##46

her guest house.

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

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

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

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

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

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

It will also show that there was no conflict of

♀ ##47

interest. BVD's interests and Thomas and Wong's interests were aligned for most of this transaction. BDV was using this bridge loan in an attempt to get additional funding to go forward, to move their company along.

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

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

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

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

It will be facts of that nature that I'd like you to keep in mind because there are two stories being told, and the stories and the facts will show that Miss Wallace never acted as

♀ ##48

an agent, never acted as a representative, always disclosed what she was doing and always got authorization before she did anything.

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

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

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

MR. MURPHY: Plaintiff calls Ed Tarapaski.

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

EDWARD TARAPASKI,

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

DIRECT EXAMINATION

BY MR. MURPHY:

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

A Near Edmonton, Canada.

Q How long did you live in Canada?

##49

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

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

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

A I have high school.

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

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

Q Did you have your own company at some point?

A Yes.

Q What did that company do?

A We rented cranes and bought and sold them.

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

A Yes, I did.

Q What happened to your business?

A I gave it to my wife.

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

A Yes, it did.

Q What year was that?

A 1992 or three, I think.

Q When did you leave Canada?

##50

A I was working back and forth between Canada and the U.S. So around 1992, I came to the U.S. for a few years then I went overseas.

Q When you say overseas, where specifically did you go first?

A I went to Korea.

Q What did you do there?

A I bought cranes.

Q Were you working for yourself?

A I was basically working for myself, yes.

Q Describe how you became affiliated with Thomas and Wong General Contractoror.

A I was in Singapore. I heard from a mutual acquaintance that there was some cranes in Brunei that were for sale.

Q Let's clarify for the jury -- I haven't done a pretty good job, goofing up the geography, where the heck is Brunei?

A It's on the island of Borneo near Singapore. It's about a eight-hour flight from the Middle East. It's in Asia.

Q Now, sir, I asked you to describe how you became affiliated with Thomas and Wong, and I interrupted you. Would you please, continue?

A I met Thomas Wong. He said he had four cranes that he needed to sell and he didn't know how to go about that. He

##51

had them on rent with Shell Oil and they came off rent and he needed to sell them because he couldn't afford to keep them.
Q Why had you gone over to Asia? What about the crane market over there attracted you?
A Well, my friend from America, from the U.S., was there, that I was working with in Atlanta. And he told me it was very busy there, there was a lot of opportunity, and I should come and take a look.
Q Who were the principals in Thomas and Wong General Contractor?
A It's a husband and wife, Thomas and Charlene Wong.
Q What is the general business of the company?
A My part or --
Q No, just the company generally?
A They do some contracting work at the refineries in Brunei. They have oil field equipment that they buy and sell.
Q What is your specific job responsibility with the company?
A I was buying and selling heavy equipment for them and sometimes I'd look over stuff in the yard.
Q You're still employed there today?
A Yes.
Q That's still your job responsibility?
A Yes.
Q Where do you do your buying and your selling?
♀ ##52
A All over the world.
Q Charlene and Thomas Wong, are they both Brunei residents?
A They're residents but they're not citizens, even though they were born there and their parents before them. They're not allowed to have citizenship because the regulations in Brunei are that you have to be Malaysian to have citizenship.
Q So they're residents, lifelong residents, but not citizens?
A Yes.
Q Let me talk about your connection to Arizona. When did you first start coming to Arizona?
A In the '70s.
Q What for?
A Vacations.
Q Did you have work contracts there at that time?
A No. No, I did not have any contacts. I just liked it here.
Q Sir, I mentioned in opening in 2002 you had some eye surgery in the Scottsdale area; is that correct?
A Yes.
Q What was that for?
A It's -- it was just cosmetic surgery. I just needed to -- I just wanted to look a little better.
Q How did that go?
♀ ##53
A It didn't go well. The surgeon made a mistake. It didn't go well.
Q Did you come back to have corrective surgery?
A Yes.
Q When did you do that?
A February the 17th, 2003.
Q Now, sir, how did you meet Jan Wallace?
A When I came here, I checked into a hotel, and I called my friend, Jeff Halibert and we went golfing.
Q Sir, you arrived, I think, on about the 17th, you said. When was your surgery scheduled, the corrective surgery?

A I believe it was February 25th.
Q So you had some time before you were scheduled to have your treatment?
A Yes, because the time change is 16 hours. I needed to be rested up.
Q Mr. Halibert, you said, introduced you to Jan Wallace. What were the circumstances?
A While we were golfing, I had some hair on my back. I told him I'd like to get it removed, and he told me he knew somebody in that business.
Q Now, sir, I mentioned in opening statement you ended up staying in her guest house. Describe the circumstances that led to that?
A We went to Jan's place of business on Scottsdale
##54
Road. La Vanishe Salon. Jeff introduced me to Jan, through a friend of hers, Kelly Black, I think it was, yeah.
And we got a long very well. I think I spent five or six hours there. We had a lot of discussions. We got a long very well, I liked her.
Q I just need to get this out of way, did you ever have a romantic relationship with her?
A No.
Q Sir, I asked you how you ended up staying in her guest house. Could you finish up that?
A When I got to Phoenix, the hotel was only booked for one night. And I tried to extend and they were booked up. So Jeff was trying to get me another hotel room. And then when we were at Jan's shop, Jeff was calling some hotels and he found one and so I made a reservation. And Jan said, well, if it doesn't work out, you can stay at my guest. Well, she told me I could stay at her guest house instead of the hotel.
Q You did so?
A No, I went to the hotel. I went to the hotel because, you know, I just didn't want to --
Q Sorry, but time is short, we better move along. You eventually stayed there. How did you hear about BDV Investments, sir?
A Okay. I was staying at Jan's house and I overheard her speaking with someone on the telephone. And after the
##55
conversation, she looked upset. She was, she was upset. So I asked her what was wrong.
Q What did she say in response?
A She said that she was trying to do a business deal with a guy named John Beardmore and that the money was going to be used to pay some loans that he had at Lake Bank that, that he needed to pay those off because the bank wasn't supposed to lend money to a shareholder, something like that.
Q Now, sir, did she, at that point, tell you that John Beardmore or his company owed money to her?
A No.
Q Did she ever tell you that?
A No.
Q How did you eventually find out about that, sir?
A From you.
Q Was that after this litigation was commenced?
A Yes.
Q Now, sir, let's talk about the BDV transaction. How did it develop, describe the circumstances that led you meeting with Mr. Beardmore?
A Jan called John Beardmore and said that she had someone in from out of town, maybe, maybe I could help with his

money problem.
Q When did that meeting occur?
A It was just a day or two or probably two days after I was in her guest house.
##56
Q Do you recall where the meeting took place?
A Yes. The Marriott Mountain Shadows Resort on Lincoln Road.
Q Who was in attendance at that time?
A There was John Beardmore, myself, and Jan Wallace.
Q Describe what was discussed at that meeting?
A It was explained to me that they needed some money to pay to this Lake Bank. Then another fellow came in about 15 minutes later, his name was Oudo Shieken, a friend of John's and Jan's, and they introduced me to him. He was an investment banker from Germany.
Q Was there discussion at that time about what would be used to secure your repayment, what collateral there would be?
A Yes. They said they had gold dore bars. They wanted to borrow some money against them.
Q What did you say with regard to the collateral?
A I said that Thomas and Wong would have to have physical possession of the gold, that we would want to test it.
Q What did Mr. Beardmore say in response?
A He said that he couldn't make that decision, and he called someone else, named Lee Wark.
Q Was an agreement reached that Thomas and Wong would be given physical possession of the gold if they made the loan?
A No. They said that 1.5 million was too small of an amount to encumber 50 million for 60 days.
##57
Q The amount of the loan that was being proposed was 1.5 million?
A Yes.
Q The proposed term was?
A 60 days.
Q Now, how did that meeting end?
A Well, when he phoned Lee Wark, Lee said no, we couldn't have it. So I said, well, just give us one barrel, you know. So he phoned Lee Wark back. They said no. And I said, well, you know, some dore bars then. And they said no, it would contaminate the lot or that they would have to assay it all over again.
And I said, no, there is just no chance, we can't do that. I said, there is no, not even a starting point for a loan here. I said I can't do it.
Q Did you have further contact with Beardmore?
A Yes. Yes, we went home after that and then my surgery was a few days later.
Q Now, where --
THE COURT: Counsel, excuse me, I have to take our afternoon recess at this juncture. Stand in recess for 15 minutes, ladies and gentlemen.
Please remember the admonition don't discuss the case with anyone, don't permit anyone to discuss the case with you. Please keep an open mind.
##58
(Recess)
THE COURT: The record will show the presence of counsel, the parties and the members of the jury. You may proceed.
BY MR. MURPHY:
Q Before the break we had talked about your first meeting with John Beardmore and Jan Wallace at the Scottsdale

Marriott.
A Yes.
Q Was there a second meeting with Mr. Beardmore?
A Yes, there was.
Q Where was that?
A At Houston' restaurant.
Q Where is that located more specifically?
A Scottsdale Road.
Q And who attended that meeting, sir?
A There was John Beardmore, Bill Cortegiano, and myself.
Q When was that relative to your eye surgery; do you recall?
A I think it was two days after, one or two days after.
Q Were your eyes bandaged?
A Yes.
Q What had been done in that surgery with regard to

♀ ##59

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

♀ ##60

and, you know, and that maybe I told him we did not have a million five, but I had about 800,000 that I felt that I could loan, you know. Perhaps we could fund that amount. And he said, he said that would take care of his most pressing problem which, he said, was the condominium and the bank loan.
Q After that meeting, did you have discussions with Jan Wallace about it?
A Yes. Before I left, I told him I had to talk to Jan. So I went back to Jan's house.
Q What did she do then?
A We discussed it. I told her that they were offering additional security, and we discussed it.
Q Sir, let me show you what has been admitted in evidence as Exhibit 69. I'll put the first page up for identification purposes.
Do you recognize that document, sir?
A Yes, I do.
Q What is that?

A   It's the a statement I gave to detective John Bottoms and Sergeant Wright from Homeland Security.
Q   Do you recall roughly when you gave that?
A   Yes, it was in early 2004.
Q   There's a date up at the top of September. Do you believe that's inaccurate?
A   Yes. That's not when I did it.
♀
##61
Q   Sir, let me go to the third page of Exhibit 69 and I'll show you some information that I showed briefly to the jury in opening statement. Did you draft that?
A   Yes, I believe I did.
Q   What do those 11 numbered items represent, sir?
A   This is a list that Jan and I made up after the second meeting with John Beardmore and Bill Cortegiano.
Q   Where did you make that list up with --
A   At Jan's house.
Q   And was it on the same day of the second meeting that you had with Mr. Beardmore?
A   Yes. When I got back, we discussed this additional security and, and we were discussing whether to go forward or not.
Q   Who came up with these items?
A   I came up with No. 1, No. 6, and No. 7.
Q   Who came up with the rest of the conditions?
A   Jan.
Q   Were you impressed with that?
A   Yes, I was.
Q   Describe why.
A   Well, it's things that I wouldn't have thought of. I thought she was pretty experienced at this.
Q   Let me also show you, sir, Exhibit 3 in evidence. Beg your pardon, that would be Exhibit 10 instead.
♀
##62
Whose handwriting is that, sir?
A   That's Jan's.
Q   Did you see her create this document in her own handwriting?
A   Yes.
Q   Where was that created?
A   At her house.
Q   When was this done?
A   We started drafting that the night -- the day that I came back from the second meeting at Houston's Restaurant.
Q   This appears to be the second page of a document. Was there more to it at the time you saw it created?
A   Yes, there was. There was at least three pages.
Q   How did you get this particular -- do you have the other pages?
A   No.
Q   Do you know where they are?
A   I don't know.
Q   How did you get this page, sir?
A   This was in a box of documents that, that I was told -- removed from Jan's property when she told me to leave the guest house.
Q   But it is your testimony that that document was created at the time of this meeting in late February of 2003 at Jan Wallace's house that you just described?
♀
##63
A   Yes, that's the checklist.
Q   Now, sir, I asked you before if you were impressed with her suggestions. Did you complement her on the fact that

she'd come up with good ideas about how to investigate this transaction?
A   Yes. When I came back from the meeting and told her that there was additional security, she was pretty happy about it. I told her the only thing that I was worried about was the stocks because I don't deal in stocks.
Q   What did she say in response to that?
A   She said, hello? That's what I do for a living. She said I live in a paper world, that's what I do for a living.
Q   Did she discuss that she would be involved in helping you on this transaction?
A   Yes. She said that -- she asked me if I had a stock account, which I said no. She said, well, she could just put those stocks in one of her accounts and sell them if we had to. And so I, I said yeah, that's all right.
Q   Sir, she said this is what I do for a living?
A   Yeah.
Q   Did she describe that more specifically?
A   Yes. She said that she had a lot of experience at it. She said just that she would do the paperwork and I would look after lending the money.
Q   Did you rely on her expertise?
##64
A   Yes, yes, absolutely.
Q   Did she make similar statements to you at other times, sir, with regard to the fact that she would tend to the paperwork and the details if you would get the money assembled?
A   Yes. That happened about at least three times that I can remember.
Q   Did you consider that she was representing Thomas and Wong's interests in this transaction?
A   Yes. I mean, this is something I don't do.
Q   What did she propose to you?
A   She told me that she wanted to be on the board of directors of BDV, and that she said that if she was on the board of directors of BDV, that she could keep track of what was going on. If it looked like something was not going right, that she'd let me know and make sure everything stayed on track.
Q   Did you consider that a good idea?
A   Oh, yes, yes, a very good idea.
Q   Did you agree to it?
A   Yes.
Q   Are you comfortable up there?
A   No, I'm not.
Q   Have you ever testified before?
A   No.
Q   Deep breath. And let's plow ahead, sir.
Let me talk about your meetings with Gary Blume. In
##65
your conversations with Jan Wallace, did she recommend that you retain counsel to help you document this transaction?
A   Yes.
Q   Who did she recommend?
A   She asked me if I had a lawyer, and I said no. Then she said she had a lawyer and she asked me if I wanted to arrange a meeting with him and I said yes.
Q   Who was that lawyer?
A   Gary Blume.
Q   Do you recall the first time you met him?
A   Yes.
Q   Where was that?
A   At his office.
Q   Approximately where is that; do you recall?

A It's north of Shea on -- I don't know the address.
Q That's fine. Let me do this, sir. I'm going to put a calendar for 2003 up on the screen. I'm trying to zoom in on March. What day of the week was your first meeting with Mr. Blume?
A It was Saturday. I think it was March first.
Q Who was present at that meeting?
A There was myself, Jan Wallace, and Gary Blume.
Q Who arranged the meeting?
A Jan.
Q What was discussed in the course of your meeting

##66

with Mr. Blume, Jan Wallace, and yourself?
A When we walked in, Jan introduced me, and Gary asked me, he asked me if I had authority to enter into this deal. I said yes. And then Jan pulled out her checklist, and there was also that DeConcini opinion letter. She had a copy of that. They put it on the table and we started discussing it.
Q You made reference to the DeConcini opinion letter. Showing you what has been admitted as Exhibit 7, I'll just have the first page of this put up on the screen.
Is that the document you're referring to?
A I'm sorry, what?
Q Is that the -- you mentioned the DeConcini opinion letter. Is the Exhibit 7 the document you were referring to in your testimony?
A I think so.
Q You said you think so. There is quite a few --
A Wait a minute -- I don't know. Yes, I think it is.
Q Were you able to read well at that time?
A I could see. No, I couldn't read very well.
Q Did you read the entire DeConcini opinion letter?
A No, I didn't. I didn't read any of it.
Q It's quite a thick document, but you did see it presented to Mr. Blume that day?
A Yes.
Q Now, sir, as those documents were presented,

##67

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

Gary Blume.
Q Now describe what was discussed at that meeting?
A We came into Gary's office and Jan introduced John Beardmore to Gary Blume. Gary Blume asked him who he was, if he had authority to do this deal. Then he asked him for ID and we started going over the checklist again.
Q Now to the best of your recollection, sir, on what date did that meeting occur at Mr. Blume's office?
A It was a few days after first one. It was within that week. I'm not sure.
Q Sir --
A Two or three days maybe.
Q I'm going to show you a document to you. I won't put it on the screen because it's not been admitted in evidence at this point. I'm referring to Exhibit 42 marked for identification.
Sir, do you recognize that as an invoice of Mr. Blume's regarding this transaction? If you can answer that yes or no, sir?
A Yes.
Q That refers to dates with regard to meetings with you. Does that document refresh your recollection about when this meeting occurred?
A It appears that the first meeting was February -- I'm sorry -- March -- no, February 28.

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

Q What was the due date on the loan supposed to be?
A May 6th of 2003.
Q Now, at that meeting was there a discussion that it was urgent that there be funding for the condominium?
A Yes, there was.
Q Where was this condominium located?
A Minneapolis.
Q It's been described as a condominium. What more specifically did you understand it was?
A It was described to me that it was going to be a

office where they would cash checks. It was in a strategic location where a bunch of workers had to walk by in order to leave work, and that's where they would cash checks from.
Q This was an office condominium?
A Yes, that's what I thought it was, yeah.
Q What did Mr. Beardmore state at that meeting why it was urgent this asset be locked down?
A He said that it was because it was in such a good location that he felt it would be valuable for -- to their business, and also there was another buyer that wanted to buy.
Q Was there discussion at that meeting where Mr. Beardmore was introduced to Gary Blume, about Jan Wallace going on the BDVBDB Investments board of directors?
A Yes.
Q Did Mr. Beardmore approve of that?
##71
A Yes.
Q Was there discussion about the importance of timely repayment to Thomas and Wong?
A Yes.
Q Was that important to your company?
A Because this was a, this was quite a large loan and we wanted to open an office in Korea and we wanted to have the money back in time for that.
Q Sir, let me go to the trust account with Cane O'Neill. I'll show you what has been admitted in evidence as Exhibit 14.
Now, sir, this appears to be a wire transfer confirmation from Cane O'Neill Taylor dated March 5, showing that $549,000 and change was deposited into that account. Did Thomas and Wong make a deposit into that account on or about that date in the amount of $550,000?
A Yes.
Q Did you assist in arranging for the transmission of those funds?
A Yes, I did.
Q Why was that money deposited into a Cane O'Neill account?
A It was to remain there until the items on the checklist were done.
Q It was an escrow account then?
##72
A Yes, at Cane O'Neill.
Q How had you heard of Cane O'Neill and Taylor?
A Jan arranged that.
Q Did you have any contact with Cane O'Neill Taylor at the time that trust account or escrow account was set up?
A No.
Q Who made those arrangements?
A Jan.
Q Did you have discussions with Jan about bringing the money, the need to get the money brought into the country?
A Sorry?
Q Did you have discussions with Jan Wallace about it was important to get the funds brought into the U.S.?
A They wanted to have the funds brought in as a show of good faith and to have them sitting there in case we made a deal.
Q Who was going to be authorized to release funds from that account?
A My trust account, Thomas and Wong's.
Q So it was supposed to be your responsibility to make decisions about when money could leave that account?

A Yes, yes.
Q Do you know whose names the account would be opened under?
A Thomas and Wong General Contractor.
##73
Q Sir, I'll next show you what has been admitted as Exhibit 22, a wire transfer confirmation from Cane O'Neill Taylor of March 7, 2003, for just shy of $250,000. Did you arrange to have that money deposited in the Cane O'Neill account?
A Yes.
Q That arrived on or about March 7, 2003?
A Yes.
Q This was also to be under -- it was ultimately going to be your decision as to whether those funds would be disbursed?
A Yes, yes.
Q Did you meet with -- did you ever meet Michael Cane?
A Yes.
Q When was that?
A I'm not certain of the date. It was in, in March at La Vanishe, at Jan's office.
Q Sometime in March?
A Yeah. It was, I think, somewhere around the 10th or 11th, something like that.
Q Had the Cane O'Neill trust account already been established at that point?
A Yes.
Q Sir, I'll show you minutes of the BDV Investments board of directors, date of March 6, 2003. You discussed that Jan Wallace had agreed to go on the BDV board of directors and Mr. Beardmore approved of that?
##74
A Yes.
Q Were you aware of specifically when she joined the board at that time?
A No.
Q These minutes dated March 6, 2003, did you see them at that point?
A No.
Q But you had no objection to her joining the board?
A No. I was in favor of her joining the board so that I'd know what was going on.
Q Let me talk about the promissory note itself. I'll go back to the calendar for March 2003. Do you have a specific recollection of the date that the promissory note was actually provided in completed form by Gary Blume?
A Yes, it was a Saturday, March 8.
Q Of what year, sir?
A 2003.
Q Describe -- were you in Mr. Blume's office at some point that day?
A Yes.
Q Who else was present?
A There was Jan Wallace, John Beardmore, myself, and Gary Blume.
Q What time did you get there; do you recall, roughly?
A I think it was about 10:30.
##75
Q Was the promissory note ready when you got there?
A No.
Q Were you told why not?
A No.
Q How long were you there in the office before it was ready to go?

A It was ready shortly before noon.
Q When the note was completed did Mr. Blume sit down and review the terms with those who were present?
A Yes. We went over them all.
Q Let me show you what has been admitted in evidence as Exhibit 21.
Is this the promissory note that Mr. Blume provided in completed form on March 8, 2003?
A Yes.
Q Now, it bears a date of March 6, 2003, in the upper right-hand corner. Are you confident that it was that Saturday that you received the note?
A Yes, I'm 100 percent sure of it.
Q Sir, I'll go to the second page of that document. We'll zoom in on the notarization stamp showing it was signed on March 8 of 2003. Were you present as this document was signed?
A Yes.
Q Describe what you went through, where did you originally go to try and get the note notarized?

##76

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

##77

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

Q In March of 2003, did you know it even existed?
A No.
Q You believe yesterday's the first time you saw it?
A I know it was.
Q Had Jan Wallace been authorized by you to release those funds from the trust account?
A No. There is just no way that would happen.
Q Sir, on that date, March 6, 2003, had Thomas and
♀ ##78
Wong ever committed to the transaction?
A No.
Q Had the promissory note to demonstrate their commitment to repay Thomas and Wong been signed at that point?
A Not on the 6th of March, no.
Q I'm going to show you Exhibits 24 and 25, which has been admitted in evidence. Exhibit 24, a wire transfer confirmation, March 7, 2003, Cane O'Neill Taylor, to the Basford Lockheart Truesdale and Briggs account, 275,000.
Did you know that that fund transfer had occurred on March 7, 2003?
A No. When I saw this yesterday, I was shocked about it. No.
Q I'll show you another document from the Cane O'Neill files. Wire transfer detail report. Again showing $275,000 transferred on March 7, 2003. That had not been authorized by you?
A No.
Q I'm going to put another document in front of you -- I'm sorry to run through so many, but this is an important feature of our evidence and I need to make sure we proceed step by step -- this being Exhibit 18.
This is a promissory note, also dated March 6, 2003, for $275,000, signed by John Beardmore and a Sokim Lach. L. Trust LLC.
♀ ##79
When did you first see this document, sir?
A The first time I saw that was either in the summer or the early fall of 2003.
Q 2003. Where did you see it?
A At Gary Blume's office.
Q Who showed it to you?
A Gary Blume.
Q What did he ask you with regard to that document?
A He told me that -- he tried to tell me that Clark Griffith and I had discussed this and I was to sign a document saying it was okay to do this.
Q Did you agree to do that?
A No.
Q Had you ever seen this promissory note before?
A No.
Q Did you know that it existed?
A No.
Q Had you authorized its creation on March 6, 2003?
A No.
Q Or it's execution I should say?
A No, I did not.
Q Had Thomas and Wong committed to the loan transaction with BDVBDB Investments as of the date March 6, 2003?
A No.
Q I'll show you at the top a telefax header, sir, did
♀ ##80
you meet William Cortegiano in the course of this transaction?
A Yes.

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

♀ ##81

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

♀ ##82

discussion at her house about the promissory note.
Q What discussion did you have at that point?
A We decided that we needed to talk to Lake Bank before any funds were disbursed.
Q So, it was your decision, at that time, that it was still not appropriate to release the funds?
A The checklist said we needed to verify and secure that Lake Bank collateral before anything was done. That was important to me.
Q Let's click back one day on the calendar to Sunday, March 9 of 2003. Did you meet a gentleman named Clark Griffith that day?
A I believe so. It was on the 9th, I think so.

Q Who was Clark Griffith, to your understanding?
A He's BVD's attorney.
Q I'll show you Exhibit 26, sir. The first page is a telefax from Mr. Griffith to Jan and Ed, dated March 11 of 2003?
A Yes.
Q That was from the Clark Griffith?
A Yes.
Q Did you see that telefax -- first the cover sheet on or about that date? Did you see this document on about March 11th?
A Yes.
Q Let me go to the second page of this document, sir.
##83
Letter from Mr. Griffith, dated March 11, 2003.
Dear Ed, pursuant to our telephone conversation this morning, I want to assure you that it is my opinion that the BDVBDB Investments, Inc. loan will be completed by the first week of April. This opinion is based upon direct conversations with the principals at the company that is arranging for the loan, and expresses my view of their confidence and their ability to complete the process.
I'll end my quote.
Did you request send a confirmatory letter when you met him on March 9?
A Yes. When we met at the Villages restaurant, he said it was him that was arranging the loan with Dumaine for BDV. And he said he was in direct communication with them almost on a daily basis. So, I thought, well, if he's the one arranging the loan and he's an attorney, why not get a letter from him saying that.
Q Now, you said you met with Mr. Griffith on Sunday, March 9 of 2003. Was there discussion at that meeting about viewing the gold?
A Yes.
Q Tell, describe what was discussed about that?
A John Beardmore said that they had leased a airplane to fly us to view the gold.
Q Was a specific date discussed about going to see the gold at that time?
##84
A No. It was supposed to be within a couple of days, one or two days.
Q Who else was going to view the gold on that trip?
A John O'Neill, the president of Dumaine.
Q Please continue, I'm sorry.
A And Lee Wark, Jan Wallace and John Beardmore and myself.
Q Were you planning to go personally?
A Yes, absolutely.
Q Did complications come up in that regard?
A Yes.
Q What were they?
A They informed us that it was a really highly secure warehouse and that we had to submit information so they could do a clearance for us in order to get into this warehouse.
Q Did you discuss with Jan Wallace whether she would take care of viewing the gold on behalf of Thomas and Wong?
A Yes. She was scheduled to go, all of us were.
Q And you left the U.S. on March 17th, I believe you've testified, of 2003?
A Yes.
Q Had the gold viewing been scheduled before you left?
A It was and then it was postponed.

Q It was postponed to a date after you'd already left

##85

the country?
A Yes. They told me that the clearances could take up to two or three weeks.
Q The clearances to get into this warehouse facility?
A Yes.
Q As you left the country, sir, did Jan Wallace agree that she would take responsibility, on behalf of Thomas and Wong, for examining and confirming the existence of the gold collateral?
A Yes.
Q Now, let's go to Wednesday, March 12 of 2003. At that date, sir, had you agreed to the release of any funds from the Thomas and Wong account at Cane O'Neill Taylor?
A No.
Q Did you have discussions that date with Tom Kell of Lake Bank?
A I don't know if it was that exact date, but I, yes, we did have discussions after the promissory note was signed. It was somewhere around March 10th or 11th in there.
Q Let me see if I can refresh your recollection on the date of your conversations with Mr. Kell. I put in front of you Exhibit 27, which is in evidence, a memorandum from Tom Kell to Jan Wallace, attention Jan Wallace, date of March 12, 2003.
Did you see that telefax on that date?
A Yes, I did.

##86

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

##87

that?
A Yes.
Q Was Jan Wallace present throughout these conversations?
A She was the one conducting them and I was listening on the speaker phone.
Q Did Kell describe why it was urgent to get these funds released?
A He said that they needed to get that loan off the

books. There was an audit coming or something like that.
Q   After you completed your conversation, did you talk with Mr. Kell more than once that day, do you believe?
A   Yes.
Q   After you finished your conversations with Mr. Kell that day and received this telefax, what did you discuss with Jan Wallace about the next step?
A   I'm sorry?
Q   How were you feeling at the end of the day, sir, on March 12?
A   How was I feeling?
Q   Yes, how were your eyes?
A   No, I was tired. We got this, I think, around 5:00, and I needed to go lay down.
Q   What did Jan Wallace say she was going to do as she left that meeting?

♀ ##88

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

♀ ##89

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

couldn't be moved without Thomas and Wong's permission, one of the items on the checklist that you created with Jan Wallace?
A Yes.
Q Was it your understanding that those conditions had been satisfied as of March 12, 2003?

##90

A Yes.
Q Why do you say so?
A Because I saw them in the second meeting. The insurance was there and it was made out to BDV. And Jan said to John Beardmore, well, that will have to be assigned to Thomas and Wong. The loss payable has to be assigned to Thomas and Wong.
Q That's --
A So I saw the document there, yes.
Q How about a safekeeping receipt. Did you ever see a safekeeping receipt in favor of Thomas and Wong?
A I did, yes.
Q Do you know where and when?
A It was supposed to be at Gary Blume's office with all the documents. That's where the documents were to be kept.
Q Now, sir, I'm going to go to Exhibit 28. Up to this point, had you approved the release of a penny of Thomas and Wong's money?
A What's Exhibit 28?
Q I'll show it to, sir. I'm going set up a foundation question.
Up to this point, had you approved a release of a penny of Thomas and Wong's money?
A No, not at all.
Q I will put in front of you Exhibit 28, a document dated March 12, 2003, to Michael Cane of Cane and Company?

##91

A Yes.
Q Let me zoom in a little bit closer on the text. Thomas and Wong hereby authorizes Miss Jan Wallace to release funds from your trust account on our behalf.
A Uh-huh.
Q Did you sign that document on March 12 or so?
A Yes.
Q Are you confident it was March 12?
A Yes, I believe it was. It was right after the conversation in the house that we had.
Q In her house on the evening of March 12th?
A Yes.
Q Why did you sign that?
A Because the items on the checklist were completed.
Q And what authority were you giving to Jan Wallace?
A I was giving her authority to transfer the funds from Cane's trust account to wherever they had to go. I understood they were going to pay for the condominium and to the Lake Bank.
Q Why did you give her that authority?
A I'm sorry?
Q Why did you give her that authority?
A Because she was handling all the paperwork and just running the whole thing really. She was -- that was her part.
Q Did you consider that she was going to act as Thomas and Wong's agent with regard to the release of the funds?

##92

A Yes.
Q Now, sir, I'll show you a document which is admitted in evidence as Exhibit 30 -- pardon me, 29. March 12, 2003, to Cane O'Neill Taylor from Jan Wallace. Please use this letter as

your authorization to wire transfer $500,000 from the Cane O'Neill Taylor client trust account to the following accounts at the Lake Bank?
A Uh-huh.
Q Were you aware that transfer was being made?
A Yes.
Q Had you approved it at that point?
A Yes.
Q And Jan Wallace was authorized to transfer those funds then?
A Yes.
Q But you were unaware that $275,000 had already been transfered from that account?
A I had no idea about that. I thought everything was being done that date.
Q Prior to your execution of Exhibit 28 on March 12, 2003, was Jan Wallace authorized to transfer funds from the Cane O'Neill Taylor trust account that were owned by Thomas and Wong?
A I'm sorry?
Q Prior to your execution of Exhibit 28, on March 12,
##93
2003, the one right in front of you.
A Okay.
Q Was Jan Wallace authorized to transfer money from the Cane O'Neill and Taylor's trust account?
A Oh, no. No, no, no, no way.
Q Now, I want to go to the L. Trust transaction, sir. You mentioned that you left the U.S. on about the 17th of March. I'll show you Exhibits 34 and 35.
Exhibit 34 is an e-mail from Jan Wallace to Susan Johnson, dated March 21, 2003. It reads: Sue, I've already spoken to Mike regarding this. Please wire today from the trust account, under Thomas and Wong, to the following account: Wells Fargo Bank, account named L. Trust.
Were you aware that that had occurred on March 20, 21, 2003, that she had sent that instruction?
A No. The first time I saw this document was in 2005 or 6, when Leo Beus showed it to me.
Q Sir, I'll next put in front of you Exhibit 35, a memo dated March 21, 2003, from Jan Wallace to Cane O'Neill Taylor. This letter will authorize Cane O'Neill Taylor, LLC, to make a wire transfer in the amount of 20,000 U.S. dollars from money being held in its trust account, to Thomas and Wong, at the following account, Wells Fargo Bank, account name, L. Trust.
Again did you even know who L. Trust was at that time?
##94
A No.
Q Had you approved -- did you ever approve the transmission of these funds from the Cane O'Neill trust account to L. Trust?
A No.
Q You subsequently, in 2003, learned, as you've testified, that Sokim Lach, John Beardmore's girlfriend, was affiliated with L. Trust?
A Yes. I learned that in 2003, either in the summer or the fall of 2003.
Q Now, I'll shift to -- we've talked about the 800,000 dollars that were transferred in the Las Vegas accounts at Cane O'Neill Taylor. Let me talk about the remaining 700,000 dollars. Where was the last 700,000 dollars of the loan that Thomas and Wong funded sent?
A It was sent to Lake Bank.

Q Why wasn't that sent to Cane O'Neill and Taylor?
A Jan told us that that trust account had been closed and the checklist was all finished and just wire it directly to Lake Bank.
Q Was it your understanding there was a need for escrow account since the conditions had been satisfied?
A No.
Q And do you recall specifically when Jan Wallace told you that all of the items on the checklist had been ticked off
##95
and satisfied?
A It was in March, it was in March. I don't know the exact date.
Q How did she do so, a telephone call?
A Yes, a telephone call. And also when I agreed to release the funds from the trust account, the items were satisfied on the checklist.
Q One of the items on the checklist was viewing the gold. Did you discuss with Jan Wallace whether there had been a viewing of the gold?
A Yes.
Q What did she tell you?
A She said that the gold had been viewed.
Q Did she say specifically, sir, that she was there?
A No.
Q Did you understand from her statement to you though that she had been in attendance?
A Yes. I mean, when we were at the Villages restaurant, that was the agreement, that she would look at it and be present.
Q When did you first learn that she had not actually gone to review, look at the gold and confirm its existence?
A I believe it was July of 2003.
Q After the loan had not been repaid?
A Yes.
##96
Q Now, with regard to the money that was sent to -- from Thomas and Wong to Lake Bank directly, did Jan Wallace continue to play a role in that process?
A Yes.
Q Let me show you Exhibit 38, sir. I take that back, your Honor, it's not Exhibit 38.
With the Court's permission, I think I may have it buried up here in the stack of materials.
I'm going to go by question and answer, sir, while I dig around for this document because time is important.
In March of 2003, was Jan Wallace in touch directly with Charlene Wong?
A In March of 2003?
Q Yes.
A Yes.
Q And did that conversation and contact consider the fact that money needed to be advanced into Lake Bank by Thomas and Wong?
A Yes.
Q Were you in touch with Jan Wallace about that very issue as well?
A Yes.
Q It's Exhibit 39, I beg your pardon, that I was looking for.
Do you recognize that as Jan Wallace's handwriting?
##97
A Yes.

Q Who was Charlene?
A She was Charlene Wong, of Thomas and Wong General Contractor.
Q I'll tilt this a bit so the text can be read.
Dear Charlene, Edward is wiring 300,000 dollars to the above bank. He wanted me to send the instructions to you so that the wire can be posted on Monday the thirty-first. It is really imperative that the funds be posted on Monday, March 31st, 2003. Please call me if you need to speak with me. Thank you for all your help.
Did you have an understanding as to why it was imperative that Lake Bank receive this additional 300,000 dollars?
A No, I didn't know. Everything was going through Jan. I had not spoken to Lake Bank directly.
Q Now, sir, I'm going to jump ahead now, but do you recall, in general terms, when Thomas and Wong funded the remaining payments by sending the money directly to Lake Bank?
A I believe it was in April.
Q So the funding was completed by April?
A Yes.
Q According to the note, the loan fell due on May 6, 2003. Were you repaid anything at that time?
A No.
♀ ##98
Q What did you do about it?
A What did I do about it?
Q Yes. What did you do when the repayment was not made to you?
A I called Jan Wallace.
Q Describe the conversation you had with her?
A She said there was a problem with the loan.
Q Did she get more -- describe anything more specifically than that?
A Yes. She said that that Lee Wark had agreed to melt the gold and pay us.
Q Sir, I'll show you what has been admitted in evidence as Exhibit 45. Is that an e-mail that you sent to Jan Wallace on May 13, 2003?
A I believe it is, yes.
Q It reads: Thomas and Wong General Contractor hereby authorizes Gary Blume and Jan Wallace to act on their behalf regarding promissory note with BDV Investments, Inc., and/or any other names representing BDV Investments, Inc.
I'll just cut the text off there, although it continues. Why did you send that document or e-mail to Jan Wallace?
A She asked me to.
Q Were you authorizing her to act on Thomas and Wong's behalf with that document?
♀ ##99
A Yes.
Q Did she do so?
A Yes.
Q Now, did you have conversations with Jan Wallace about whether the gold was going to be melted so that Thomas and Wong could be repaid?
A Yes.
Q Did they occur shortly after the default in early May of 2003?
A Yes.
Q What did she tell you in that regard?
A She told me that she had a conversation with Lee

Wark and BDV and other board members and the melt had been approved. It was happening as we speak, she said.
Q Did she tell you where it was happening?
A In Salt Lake City, Utah, a refinery.
Q What was the name of that refinery?
A Johnson Matthew.
Q She told you that?
A Yes.
Q Who was going to be attending that melting?
A She told me Bill Cortegiano was going on behalf of BDV.
Q That was a telephone conversation?
A Yes.
#100
Q Did you have a subsequent conversation with her about whether the melt had occurred?
A Yes.
Q When was that?
A It was either -- she told me that this process would take a week or 10 days, so it would be a week or 10 days later.
Q Did she tell you that the melt had been accomplished?
A Yes.
Q Did she tell you that the gold had been sold?
A Yes.
Q What amount of proceeds did she say were generated by that sale?
A 12 million dollars.
Q Did she discuss with you where that money was?
A She told me that it had gone off shore. And I knew she had a bank account in Bermuda, so I thought maybe that's where it went.
And then she said it was being brought back into the country. I said, well, why would you send it out of the country?
Q What was her answer?
A She said that's just the process that it has to be followed in this instance.
Q Did she tell you where the money was at that point in time?
#101
A She said it was coming back in to a bank in Florida and that it was being held in escrow there until the paperwork could be completed.
Q Did you discuss with her whether she was in touch with that Florida bank?
A Yes. She said that she was in the touch with them every day and that, that they would be disbursing very soon.
Q Did you continue to have telephone conversations with Jan Wallace about the status of disbursing your repayment?
A Yes.
Q Did she describe that there was a delay in releasing these funds from the Florida bank?
A Yes. She said there was quite a bit of paperwork involved to release 12 million. So I said, well, just, you know, get our part released. I said they owe us a million 800, about a million 8 -- I don't know -- and change. I said just get that released. That shouldn't take very long. I said don't worry about the whole 12 million, it's not something we should be concerned with.
Q And over what period of time did these conversations with Jan Wallace occur, as best you can estimate?
A That conversation was -- this was already early June now.

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

#102

A Well, first she told me that there was -- the next time I called, she said there was a problem and that the money was pulled back. And I said, well, to where? And she said, well, wherever it came from. I was really alarmed and I got on a plane and I flew to Phoenix.
Q When did you find out there, in fact, had been no gold melted, no proceeds generated?
A When I got back to Phoenix.
Q Do you recall roughly when that was?
A The end of June.
Q When you got there, did you retain counsel to help you track down your money?
A Yes. You know, when she told me that the gold hadn't been melted, I couldn't believe it. I said, how could I be mistaken about that. You know, that's ridiculous to tell me that.
Q Who did you hire to help you as counsel?
A Gary Blume.
Q And did you describe to the jury the effort that you made to try and get possession of the gold collateral?
A She said that we would have to get some replevin order or something to go into this secure warehouse in New Mexico.
Q Did you go to New Mexico?
A Yes, I did.

#103

Q Who went with you?
A I went myself to file the papers there. They gave me the documents, Gary Blume gave me the documents, and I drove to Lordsburg and took them to the courthouse.
Q Did they get issued immediately?
A What?
Q Did the court issue the orders that you asked for immediately?
A No, no.
Q Where did you go as you were waiting for the court to take action?
A Back to Phoenix.
Q Describe what you understood about the process, the legal process in New Mexico, to get an order to enter into that warehouse?
A I was told that we needed to get a judge to sign some papers so that we could enter the premises.
Q Did Jan Wallace continue to act on behalf of Thomas and Wong in this regard?
A Yes.
Q Did she go to New Mexico?
A She did later, after, I believe it was -- well, first of all, I went there with Clark Griffith, and we asked the judge for permission to go into the warehouse. And he said that we would need to get a lawyer in New Mexico to represent us.

#104

Q Did you hire a New Mexico attorney?
A Jan did.
Q Who paid that New Mexico attorney, do you know?
A Jan.
Q Did you eventually get an order authorizing you to get access to the warehouse?
A Yes.
Q Roughly when was that chronologically?

A It was July 9th, I think. It came fairly soon. They originally told us it would take a while. So I flew to Canada to be with my family.
Q Would you care for some water?
A Yes, please.
Q Did you personally go into the warehouse at that time?
A No.
Q Who did on your behalf?
A Jan Wallace and Gary Blume.
Q Did she describe to you what they found there?
A They told me that the barrels weren't there, but there was a bunch of containers with gold concentrate in them.
Q You said barrels and containers. What is the distinction, as you understood it?
A Well, the barrel is round and the containers were rectangular.
♀ #105
Q What was in the barrels and what was in the containers?
A In the barrels was supposed to be the gold dore bars and in the containers was, it's a powdery material that has to go to the refinery to be melted.
Q Now, sir, did you personally get into the warehouse at a later date?
A Yes.
Q Was this a high security warehouse with heavily restricted access, as has been described to you?
A No.
Q Describe it to the jury?
A It was just a warehouse in the middle of nowhere, with no security at all.
Q Did you yourself find containers that had what you thought was gold concentrate in it?
A I thought so, yeah.
Q Did you have those tested?
A Yes.
Q When was the testing done?
A It was done by BSI inspector on site.
Q What were the results?
A A zero, they weren't worth anything.
Q Did you also attempt to track down the barrels that had the gold dore in it?
♀ #106
A Yes.
Q Describe the path that you followed in that regard?
A After Jan and Billy Cortegiano went in the warehouse, they -- I was told that the viewing hadn't taken place in New Mexico at all. It was held in Phoenix.
Q Where specifically?
A An armored mini storage on Chandler Boulevard.
Q Did you go there?
A Yes.
Q What did you find out about the gold dore barrels at that point?
A That the documents showed that it was being moved as we were trying to get into that Lordsburg warehouse.
Q Now, sir, did Mr. Blume, on your behalf, file lawsuits against the various -- against BDV Investments and the various individuals who had guarantied the loan?
A Yes.
Q Quickly, show you a part of the case information history of Superior Court, Exhibit 64. Did any -- did you

succeed in serving John Beardmore, Donald Nooe, Mr. Wark, Mr. Cortegiano, and BDV Investments?

A Yes.

Q Did any of them appear to defend against your claims?

A No.

Q Did Mr. Blume, on your behalf, take default judgment against all of them?

A Yes.

Q Are those amounts of those defaults reflected on that page of Exhibit 64 that I have on the screen?

A That appears to be the judgments that I have, yes.

Q Have you collected a thing from any of these people, sir?

A No.

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

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

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

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

(The proceedings were concluded.)

###1

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 5, 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

###2

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 General Contractor, Incorporated versus Jan Wallace. This is the time set for continuation of trial. The record will show the presence of counsel, parties, and members of the jury.

Good morning. Welcome back. Are we ready to proceed?

MR. MURPHY: Yes, your Honor.

THE COURT: All right. Whenever you're ready.

###3

DIRECT EXAMINATION continued

BY MR. MURPHY:

Q Good morning, Ed. How are you doing today?
A I feel better, thanks.
Q As we left off yesterday, we were talking about efforts to collect on judgments that you had taken against the defendants.
Did you realize any recovery from the defendants?
A Yes, when we sold the Arizona house.
Q Who had owned that house?
A John Beardmore.
Q And what were the net proceeds that you received after that house was sold?
A 433,000.
Q Did you receive any proceeds from equipment in the warehouse?
A 20,000 dollars from a couple of fork lifts and loaders.
Q That was in the warehouse in New Mexico?
A Yes.
Q Sir, let me next shift to the transaction with Richard Kirby. Were you contacted by someone named Richard Kirby?
A Yes.
Q When was that?

###4

A I'm sorry?
Q When was that?
A It was in the spring of or the winter of 2004, around February.
Q What did he propose?
A He wanted to buy the judgments that I had.
Q Did he tell you how much he was willing to pay?
A He, I think he said that he calculated it to be 4.8 million dollars.
Q Did that deal proceed?
A Yes.
Q Describe what happened?
A He phoned me and he told me what he needed in order to go forth with the deal. And I, I had no idea what he was asking me for. It was something that I just couldn't do. So, I told him to -- that Gary Blume would handle it.
Q Did he get involved, Gary Blume?
A Yes. Gary Blume and him started doing this bill of exchange, and then he phoned me up and he was furious and he said I can't deal with this man, he doesn't know what I want, and he can't do it.
Q Who got involved in his place?
A Jan Wallace. He said Jan Wallace is the only one who knows what's going on, can I do it with her. And I said, well, you can phone her and ask her.

♀ ###5

Q Sir, let me show you what has been admitted in evidence as Exhibits 54 and 55.
Is Exhibit 54 an agreement that was signed with Mr. Kirby in early February of 2004?
A Yes, it appears that that's it.
Q Exhibit 55 is a related escrow letter with regard to that transaction?
A Yes.
Q Sir, under these agreements, let me ask this, did Mr. Kirby subsequently ask that you make a payment to him before he proceeded with this transaction?
A Not at that point in time.
Q Describe how that came about?
A It was near the, near the end of when the bill of exchange was completed. Jan came up to me in the guest house and said Richard Kirby wanted 10,000 dollars or else he wasn't going to transfer any money for this bill of exchange.
Q And did you agree to that, sir?
A No. I knew Richard Kirby for being dishonest. I told her I flatly wouldn't pay that, and for another reason, I just didn't have that much money.
Q What happened next?
A She was upset and she said okay, I'll go back and negotiate some more.
Q Did she return with another offer from Mr. Kirby?

♀ ###6

A Yes. She said, well, I've got him down to 5,000 dollars, pay him that and he will send the money for your judgments. I said no, I am not paying him anything. He's -- I've seen him do this before, he's a crook, and I'm not going to do it.
Q Did she return with another offer from Mr. Kirby?
A Yes. She said, well, I've got him down to $1500, and she said you can pay that. I said, well, no, I'm not going to pay it. I said this is what he does, he's just going to take the money and not do anything.
Q What did she say in response, Jan Wallace?
A She was furious. She said that -- she said I've done all this work, you know, now you pay this money. And I said, I said, I said, well, you pay it. I said you're going to make 250,000 dollars out of this, you pay that money. I said I need to get back home. I'm not going to pay it.
Q What did she say?
A She really got angry. She told me to get out of her guest house.
Q What did you do in response to that, sir? Did you pay the 1500 dollars?
A In the end I did. I went back to the house and because it was 10:30 at night, I had -- and then she also said, I that I couldn't drive the car to where ever I was going to be staying. So I said, look, okay, if you feel that strongly about

♀ ###7

it, I'll pay the 1500.
Q Did you do so?
A Yes, I did. I paid it the next day. I sent a Western Union to Richard Kirby.
Q You mentioned 250,000 dollars. Showing you Exhibit 56 in evidence, did you have a written agreement with Jan Wallace?
A That she --
Q To this Richard Kirby transaction?
A She put that in front of me and wanted me to sign

it. And I said, well, what if this doesn't go through, you know, then I have to pay you 250,000 dollars? And so I said, you need to put a clause in there that says if it doesn't go through, that I don't have to pay you and then I said I'll sign it.

Q After you paid the $1500 to Mr. Kirby, did he follow through and close the transaction?

A Jan Wallace came up to me and said the money would be coming in that day. He had contacted the escrow agent and said he would be transferring the money in. The money never came.

Q Sir, I'm going to put in front of you Exhibit 51, an August 28, 2003, memo to Cane O'Neill Taylor from Jan Wallace, reference money held in the name -- money held in trust in the name of Jan Wallace. The text reads: Please use this letter as your authorization to apply the funds you were holding in my name

###8

in the amount of $4,960 in satisfaction of our outstanding invoice for escrow services rendered on the Thomas and Wong matter, ending my quote.

Did you know that money had been transferred to Cane and Associates in August of 2003?

A No, I had no idea. And if I knew it was in there, I could have sure used that 5,000 bucks at that time.

Q Did you approve that disbursement?

A No. As far as I knew, that trust account was closed in March.

Q Sir, let me conclude, did Jan Wallace invite you to trust her?

A Yes.

Q When did she do so?

A There was lots of times. There was an on-going -- she reassured me it was an on-going thing.

Q Describe the first occasion that you recollect?

A The first one I remembered very well was after the meeting at Houston's restaurant with John Beardmore and Bill Cortegiano. I came back to the house and told her they offered additional security and we started doing that checklist.

And I had I told her I was unsure about how to handle the stock part of it. And she said, you know, I live in a paper world. This is what I do for a living. Leave the paperwork to me and you do -- I'll do the paperwork, you do my

###9

part, just leave the paperwork to me.

Q When was the next occasion that you recall, sir?

A Well, it -- that same day, we were -- when she said she wanted to get on the board of directors, and I said okay. And she said to me, I will get them to sign a document that says if anything looks like it's going wrong, we can melt the gold, 45 days, up to 45 days before the due date. And she put that right into the promissory note in the second meeting.

Q Sir, I'll show you Exhibit 21 marked -- which is, which has been admitted in evidence. Is that the promissory note you're referring to that includes that clause. Is that the note, sir?

A Yes, that's it.

Q Let me get my reading glasses, if I may.

A I think I need mine too.

Q Sir, we're short on time. This is admitted in evidence, the jury can review it and I'll review it in closing argument, so we can move down the path.

Sir, that was a meeting that you described in, oh, early March of 2003. When is the next occasion that Jan Wallace invited you to trust her?

A The next one that sticks in my mind, it was in the kitchen of her house when she asked me if I knew what a safekeeping receipt was and she was explaining to me how secure that warehouse was.

##10

Q What did she say to you on that occasion?
A She said to me, she said to me, I live in a man's world and I -- something to the effect that she had beat them at their own game. And she was going on and on. And then she said to me, I've protected you pretty well to this point. Now, will you just release the funds and trust me the paperwork is done. Then I agreed to release.
Q That was on the evening of March 12, 2003, from your prior testimony?
A I'm sorry?
Q That was on the evening of March 12, 2003, from your prior testimony?
A I think that was about the time.
Q Sir, when is the next occasion you recall that Jan Wallace invited you to trust her?
A When I was leaving Phoenix.
Q What did she say to you at that time?
A She said to me, we were reviewing the Lake Bank stuff and just the whole thing in general. And we calculated everything that if something went wrong, that there was -- including in the condominium, there was about 2 million dollars that we could fall back on if anything went wrong.
And the worst case was that we could probably get about 70 percent or 60 percent of that, if we had to liquidate it, and that would cover me. And she said just go home and relax

##11

and don't worry about anything, everything is done and you're fine. Just if anything is going to go wrong, I'll be in touch with you.
Q Sir, let me show you what has been marked for identification as Exhibit 38, and I'll put this up on the screen briefly. So -- excuse me, it's not been admitted in evidence yet, I beg your pardon, your Honor.
Would you take a look at that document, please, sir?
A Okay.
Q Do you recognize that?
A Yes, I do.
Q What is it and when did you get it?
A This is a document that Jan Wallace had faxed me to in Korea. This is, this is a document that she said that she had gotten from a board of directors meeting and it showed that everything was on track and everything was fine. And she said don't worry about everything, the Dumaine loan is going to go through.
Q What were those documents as you reviewed them?
A It's an agreement between BVD and Dumaine Consulting.
MR. MURPHY: I offer Exhibit 38 marked for identification in evidence, your Honor.
THE COURT: Any objection?
MS. AMBROSIO: No, your Honor.

##12

THE COURT: The exhibit's admitted.
BY MR. MURPHY:
Q Sir, why was that document significant to you?
A Well, it was important because she said that she would keep me apprised of how everything was going. And it gave me a comfort level that she was doing that and everything was

going good.
MR. MURPHY: Nothing further.
THE COURT: All right, thank you. You may cross examine.
MS. AMBROSIO: Yes, thank you, your Honor.

CROSS-EXAMINATION
BY MS. AMBROSIO:
Q Good morning, Mr. Tarapaski?
A Good morning.
Q I wanted to talk to you about some of the things that you previously testified about.
A Okay.
Q You previously said that you did a lot of international deals for the sale or -- is it the sale or rental of heavy equipment?
A Primarily the sale.
Q Is there a lot of paperwork involved in those deals?
A Not, no. There is primarily an invoice and a bill of sale.
♀ ##13
Q Who handles that paperwork generally?
A Generally, Charlene Wong does and on my instructions.
Q Do you ever, do you ever purchase any of your equipment on a -- through a loan or through a bank loan?
A No.
Q You purchase the equipment outright?
A Yes, by wire transfer.
Q Do you ever enter into loan agreements with the client that rents the equipment from you?
A I'm sorry?
Q Did you ever enter into loan agreements with the clients that rent the equipment from you?
A Yes, I have.
Q And what kind of paperwork is generally in those kinds that transactions?
A They're pre-written or standard in the industry. There is just a few blanks you got to fill in and both parties sign it and that's all.
Q So you used that contract if they were going to rent the equipment on -- through a loan, either in Las Vegas or, say, Malaysia, it's the same contract?
A It's not a loan. It's, it's a rental.
Q It's strictly a rental agreement?
A Yeah. The title doesn't change hands on a rental.
♀ ##14
Q Does the title change hands on a promissory note?
A I don't know, I haven't done one before.
Q You've never done a promissory note in the State of Arizona before?
A No.
Q Isn't it true that you loaned 666,000 dollars to Kathleen Seymore?
A No. I lent her about 66,000, not 666,000. She was my girlfriend and we were sharing a house together.
Q Did you have a promissory note?
A I have no idea if I had a promissory note. When I gave her the money, we had -- we didn't have anything signed.
Q You didn't have anything signed?
A I don't recall. Later on, later on, after we broke up, I asked her to acknowledge the 60,000 dollars.
Q And did she?
A I think so.

Q How did she do that?
A It was just a handwritten, just a one-page agreement, acknowledgment of the money that I had given her.
Q Did you attempt to execute on that lien?
A Not right away. When I met Jan, I told her about that and she said I should give it to Gary Blume and see if he could get that money back.
Q And did he?
##15
A No. I got information that -- I called her myself and I asked her if she would return that money. And she told me she had breast cancer and she was probably not going to live, and I forgave the loan. They had removed her breast.
Q What was the reason you went to see Jan Wallace the first time in February 2003, I believe you testified?
A Yes, that's right, February 2003.
Q What was the purpose?
A I was going to get the hair, some hair removed from my back.
Q And at that meeting did you discuss with Miss Wallace that you purchased several pieces of cosmetic spa equipment?
A Yes. It was, it was just an electrical pulse machine that someone had shown me before and it felt good. It's to -- if you have an injury, it stimulates the circulation around it and helps the blood circulate better. Also it just in general helps the blood circulate better in your body.
Q Did you and Miss Wallace talk about anything -- where were you going to open the spa?
A I wasn't going to open the spa.
Q You just bought the spa equipment?
A Yeah. I was going to take it, I was going to take one machine to Canada, and the other machine I was going to send to a friend of mine overseas, and it's just one machine that you
##16
set it up in a room. It's not a spa.
Q So you weren't, so you -- did you discuss with Miss Wallace the possibility of opening a spa in Korea?
A Yes. I told her that these machines look pretty good to me and maybe it might be advantageous to her. And she said, well, we started talking about other business, and that was one of the things we talked about, yes. There was -- we had a five-hour conversation that day. We talked about a lot of things.
Q What happened to that spa equipment, do you know?
A I think it's at Jan's house. It's not even opened yet, still in the box. And another reason --
Q Sir, there is no question pending.
A Oh, I'm sorry.
Q That's all right. Did Jan Wallace allow you to stay in her guest house?
A Yes.
Q When was that about, do you recall?
A It was several days after I got to Phoenix. I would say right around 19th or 20th.
Q I'm going to put up here, because we've been talking about a lot of dates in February and March, and I think it's easier if we have the calendar in front of us.
A Okay.
Q When do you believe you got to Arizona?
##17
A I looked on my car rental receipt. I got there February 17th.

Q When did you look at a car rental receipt?
A I looked at it about on this last trip I made to Brunei, because I wanted to have it clear on my mind, in my mind when I got there.
Q Sir, you were asked in your deposition if you retained any records of your travels or your appointments and you said no. Are you now changing that testimony, sir?
A I told you that I don't carry them with me in my travels. I believe that's what I said.
Q Well, I'll find that testimony and we'll read it back.
A All right.
Q So you do keep records of your travels and appointments?
A No, not generally. The receipt happened to be there and I looked it up.
Q This was on your last trip to Brunei?
A Yeah. I -- that box that I took from Jan Wallace's house, that I took with me, had those receipts in it and that's why I -- they were available. They were in that box. And I was looking through that box to see if there's any documents that I had missed.
Q When was that?
##18
A This last trip to Brunei.
Q What date was the last trip to Brunei?
A I was there in late -- I was there in December of this, this year of 2007, just a month, a month ago.
Q Sir, do you live in Brunei?
A That's where I have my residency. I travel a lot. That's what I consider to be my home yeah.
Q Do you have a home there do you own an actual physical dwelling?
A I don't own it. I stay in a house.
Q Is that where you pay taxes, sir? Is Brunei where you pay taxes, sir?
A There is no income tax in Brunei.
Q Do you pay taxes anywhere else?
A No.
Q Does Thomas and Wong pay taxes?
A I don't know. There is -- when we complete a deal, if it starts or ends in a country, we pay taxes.
Q When you say "we," do you mean Thomas and Wong?
A I mean Thomas and Wong.
Q You don't personally pay taxes when you finish and start a deal?
A Myself, personally?
Q Yes.
A No, I don't.
##19
Q But the company would, if they did a deal where they were subject to taxes --
A Yes.
Q -- is that correct?
A I believe so. I know of two occasions of that is when we sold property to do this deal, and that's why I know about that, that there was property or taxes that we paid when we sold that property.
Q This property was the property in the Caribbean?
A Yes.
Q So, Thomas and Wong paid taxes in the Caribbean when they sold that property?
A Yes.

Q But Thomas and Wong is not in the business of buying and selling real estate?
A No. We took a real estate in trade on heavy equipment. I did that deal.
Q Was that a one-time deal or do you do that?
A No, that was a one-time deal. I did it with a company in Florida.
Q I want to get back to when Miss Wallace invited you to stay in her guest house. She invited -- I'm sorry, you said you came on February 17th to Arizona?
A Yes.
Q So when do you believe you met Miss Wallace?
##20
A It was very shortly after that, within a day or two. I think it was probably the 19th, the 20th.
Q When did you -- when did she invite you to stay in her guest house?
A That same day that we had the meeting at her office, at La Vanishe.
Q When she invited you to stay in her guest house, did she give you a time frame in which you could stay?
A No. She gave me her telephone number and I declined the offer because I had made a -- Jeff had made a reservation for me at a second hotel and I said I would just stay there. I was okay staying in a hotel. I was fine with that. I didn't really want to stay at the guest house, to be honest with you. I was fine in the hotel.
Q What changed your mind?
A I got to the hotel and the reservation was for one night and they said that they were full the next night and I would have to move hotels again.
Q When did you contact Miss Wallace?
A That night after I checked in. I said, I told her, I said Jan, if it's okay with you, I'll take you up on your offer to stay at your guest house because it was getting close to my surgery and I didn't want to be changing hotels every day.
Q At that time, did she give you a time frame in which you could stay in the guest house?
##21
A No.
Q So she didn't mention -- when was your surgery?
A I believe it was the 25th of February.
Q So Miss Wallace did not mention to you, at any time, that the guest house was already to be occupied from the week of March 7th, that there were other guests coming?
A Not that I can recall.
Q Did you ever move from Miss Wallace's guest house into a guest room in her main home?
A Yes.
Q When was that?
A I don't know the date, but I did move from the guest house to the main house, yes.
Q Was it after your surgery?
A I don't remember.
Q Why did you move from the guest house to the guest room in the main house?
A I can't recall the reason she asked me to move into the main house there.
Q While you were staying at Miss Wallace's, where did you have your meals?
A Sometimes I ate with Jan and sometimes I ate out.
Q Did you take Miss Wallace out to dinner while you were staying with her?

A Sometimes I did.

♀ ##22

Q Do you have copies of those receipts of those dinners?
A No.
Q Did you purchase any groceries while you were staying with her?
A Yes.
Q Do you have copies of the receipts of those groceries?
A No.
Q Did you cook while you were there staying with her?
A No. I don't cook.
Q Did you --
A I had groceries in the fridge.
Q Did you clean or offer to have the home cleaned while you were there?
A I kept that guest house pretty clean.
Q How long were you in the guest house?
A Are you talking about --
Q In the February, March?
A When I moved in?
Q Yes.
A Until I left Phoenix on the 17th or 18th of March.
Q Sometime during that period of February 20th or 21st through March 17th, did you move to the main house?
A I was in the main house, but I don't know when I

♀ ##23

moved in there. I just don't remember that.
Q Did you offer to have the main house cleaned while you were there?
A No, I didn't.
Q Did you use Miss Wallace's vehicles while you were here?
A Yes.
Q Did you offer to reimburse her for the use of the vehicles?
A No.
Q Did you put gas in them?
A Yes.
Q Did you have any damage -- did you cause any damage to her vehicles while you were using them?
A No.
Q Did you borrow her cell phones?
A Not in the beginning. She gave me a cell phone after the loan was defaulted on, she gave me a cell phone. I don't know if I had one when I got there the first trip, but eventually she had given me a cell phone, yes.
Q Did you reimburse her for the use of the cell phone?
A No, I didn't.
Q Miss Wallace just gave you all of these things?
A Yes.
Q When you moved actually from the guest house into

♀ ##24

the house, what did you do? Were you just recuperating?
A I was recuperating, yes.
Q You were at home most of the time?
A Except for these meetings that she arranged, yes.
Q And do you know where -- do you know Miss Wallace works from her home?
A She worked from her home and also from the La Vanishe.
Q Did you listen to a lot of Miss Wallace's telephone

calls while you were staying with her?
A I heard some of her phone conversations, yes.
Q In some of these phone conversations, is this how you learned of John Beardmore and BDV?
A Yes.
Q What did you learn in those phone conversations?
A Just overheard her talking to someone on the phone. I didn't know who it was at that time.
Q Did you ask to speak to Mr. Beardmore?
A I asked her if -- when she was in obvious distress, I asked if there was something I could do to help.
Q Why was she in distress?
A After she hung up the phone, she appeared to be in distress. I don't know why.
Q So while you were listening to these phone conversations, wasn't it clear that Miss Wallace was involved in

a public -- let me rephrase that.
While you were listening to these phone conversations, wasn't it clear that Miss Wallace wasn't raising money for Mr. Beardmore, but rather entering into a sales transaction with him?
A I'm sorry, what?
Q When you were listening to the phone conversations, wasn't it clear that Miss Wallace was not raising money for Mr. Beardmore, but rather entering into a sales transaction with him?
A I didn't know what she was doing with him. I noticed her reaction after she hung up the phone, and that's when I asked her if there was something I could do to help.
Q The first time you spoke to Mr. Beardmore, was it by phone?
A No. It was in the lobby of the Marriott Hotel.
Q So you never spoke to Mr. Beardmore in Jan Wallace's home in her office?
A I don't recall speaking to John Beardmore, no.
Q But you could have, you could have spoken to him by phone?
A I don't recall speaking to him by phone.
Q And the lobby, who was at the meeting -- what was the date of the meeting in the lobby at the Marriott?
A I don't know the exact date of that meeting, but if I was going to estimate, it was before my surgery, so it was

sometime previous to the 25th of February.
Q Who was at that meeting at the Marriott lobby?
A There was myself, Jan Wallace, and John Beardmore in the beginning.
Q So you didn't meet the first time with John Beardmore and Billy Cortegiano without Miss Wallace present?
A No.
Q You did not have the first meeting without her?
A No.
Q Were you provided any documents at that first meeting?
A No. The first meeting was -- I told them I was not interested in, I couldn't help them, at the first meeting, because they were offering this gold that they wouldn't give possession of or let me test it. So I -- there was no basis for a deal.
Q Did they tell you what -- did Mr. Beardmore tell you what he needed the money for?
A Yes. I believe he said that he had to -- he owned a bank in Minneapolis and he said he had to -- had a loan from that

bank and he needed to clear it off his -- get that loan off the bank's books so that they could qualify for this loan coming from Dumaine, which would collateralize his bank. That's how I remember it.

Q Was there anything else that they were going to use

##27

this loan for?

A They didn't mention anything else at that meeting.

Q Did they mention something else at another meeting?

A Yes. At the second meeting they went into more detail.

Q When was the second meeting?

A I think it was after my surgery, I think a couple of days after.

Q Why did you have a second meeting with them if you felt that you couldn't help them?

A Because when Jan picked me up from my surgery, she said that John had phoned and asked for a second meeting, and asked me if I would meet with him and I said okay.

Q Who was at the second meeting?

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

Q What was discussed at that meeting?

A John Beardmore explained to me that they could offer more collateral if I could consider loaning them some money.

Q What was that collateral?

A They said it was the collateral that the Lake Bank was using for their loan.

Q Did they go into detail as to what that collateral was?

A Yes.

##28

Q Do you recall what that was?

A Yes, I do.

Q What was it?

A It was -- he had his Arizona house as security. There was Lake Bank shares, I believe it was 200,000 shares. There was shares in another fund, I think that was the Founders Mezzanine. And he said it was -- he was getting some -- he had those stocks and he was getting money from those stocks every year, but I don't remember how much it was. There was a car and a boat.

Q And the bank that Mr. Beardmore was an owner of, was that Lake Bank?

A I believe it was, yes, it was Lake Bank.

Q That was disclosed to you at either the first or second meeting?

A That was disclosed to me at the second meeting.

Q Miss Wallace was not at that meeting, correct? Was Jan at that meeting?

A No, she was not at that meeting.

Q Did they, at that meeting, was it discussed in depth what the loan would be used for, what the use of the proceeds of the loan would be?

A They discussed it in more detail, yes.

Q What was that?

A I think there was some mention of some ATM machines

##29

that they were going to set up. I didn't, I couldn't follow too much of that. Primarily, we were discussing this Lake Bank collateral, but they did go into more detail about what they had planned for the bank. I know they said they were going to open up some ATMs and some check cashing facilities.

Q Did they talk about the purchase of anything else or what -- other than paying off Lake Bank and getting these ATMs set up?
A No, that was all.
Q They didn't mention to you they were going to buy a commercial condo?
A Yes, that's right, they did. I'm sorry, yes.
Q Now, I want to be clear because we've been talking about a condo from yesterday to this morning. I want to be clear that you and I have both the same understanding.
It is that it was a commercial condo in a strip mall that was to be used as office space; is that your understanding?
A The way it was described to me, that it was a condominium in a strategic location where a lot of workers had to pass by after they got off work. And they, they felt that if they opened that a check cashing facility there, that they would get a lot of business from these people.
Q But it wasn't a residential housing unit?
A At that time, I understood it to be a condominium they were going to use as an office.
♀ ##30
Q But was it a residential home?
A I don't know. I wasn't clear.
Q You never went and saw the property?
A No.
Q When you did the deal in the Caribbean for the bartering of the or swap of the equipment for the property, did you go and view the property before you did the deal?
A No. I've never seen it to this date.
Q So it's your custom and habit to not review property before you get involved with a transaction where it's involved?
A At that time, in that the particular deal, there was very little money left owing on that property because I had gotten a very good price on that heavy equipment. And the money that was remaining in that property was so small that there was just no way we could lose money on it.
Q In this deal, did you ever go to Minnesota and see the property?
A No, I didn't, not right away. I went after the default on the loan, but I didn't see it previous to the loan, no.
Q Did you see any documentation on this condo?
A No. At the second meeting, I remember that documentation was to be submitted to Gary Blume and Jan Wallace.
Q Had you retained Gary Blume by the second meeting with Cortegiano and Beardmore?
♀ ##31
A Well, I certainly felt that I had, yes.
Q And you had this meeting shortly after your surgery?
A Yes.
Q So that was before March first?
A I think it was March first because I remember that when Jan was paying Gary's bill, that's the last thing she did before we left. She said, who else do you know that would come in on a Saturday for 400 bucks, or something like that.
Q So your first meeting with Mr. Blume was on March first?
A I believe so. It was a Saturday and it was shortly after my surgery. So, I would think it would be the first.
Q So your meeting with Mr. Beardmore and Mr. Cortegiano was on either the 26th, 27th, or 28th of February; is that your --
A Yes, that's my understanding.

Q -- that's your understanding?

A Yes.

Q At that second meeting with Mr. Beardmore and Mr. Cortegiano, did they provide you any documentation at all?

A No, there was no documentation at all. I can't remember the exact date of that meeting, that second meeting. I don't keep notes, I'm sorry. I don't know, but I believe it was after my surgery, yes.

Q Okay. I'm -- just bear with me, I'm just trying to

##32

understand the facts here. You told me that at that second meeting, you told Mr. Beardmore and Mr. Cortegiano to forward the documents to Mr. Blume, but you don't meet with Mr. Blume until March first; is that correct?

A No, I didn't say anything about documents at that -- are you talking about the meeting at Houston's restaurant?

Q No. I'm talking -- is that where the second meeting took place?

A I'm sorry, who is the meeting with?

Q Your second meeting with Mr. Cortegiano and Mr. Beardmore, where did that take place?

A I had a second meeting with John Beardmore and the first meeting with Bill Cortegiano. That's the first time I had met him.

Q Where was that meeting?

A At Houston's restaurant.

Q Did they provide you any documents then?

A No, none.

Q At that meeting, did you tell them to send the documents to Jan Wallace and Gary Blume?

A No, I didn't. We didn't talk about documents at that meeting. I said I would go and discuss what they had told me with Jan.

Q Did you go back and discuss what they had told you with Jan?

##33

A Yes.

Q Did you come back from that meeting and tell Jan that you needed a lawyer to document the deal?

A No.

Q So why did you --

A I didn't know if there was going to be a deal at that time. We were discussing it, I needed her input.

Q So did you discuss in detail the terms of the loan with Mr. Cortegiano and Mr. Beardmore at Houston's?

A No. I said I would discuss what they had told me with Jan, to see if there was a way to go forward with this loan.

Q Why did you go and see Mr. Blume on March first?

A Because Jan and I had discussed it in detail that evening and also I think the following day. And we had decided that, that possibly it was worthwhile to go forward.

Q So what did you need Mr. Blume for?

A Mr. Blume was -- he's an attorney and we needed to get him to document what we were doing, the legal work.

Q You, so you felt that you needed a lawyer to document the deal?

A Jan felt we needed a lawyer to document the deal, and I agreed with her because it's not something I could do.

Q So did you, so did you ask Miss Wallace for an attorney?

A The -- she said she had an attorney, and asked me

##34

if, if she -- if I wanted her to call him and I said okay.

Q I believe yesterday you said though that you didn't have an attorney and you asked her to provide one for you?
A I don't recall what I answered yesterday. I know that we ended up calling Gary Blume.
Q I want to show you two exhibits. These have been previously marked. This is Exhibit 1.
A Okay.
Q Did you provide this document to Gary Blume on the first meeting, in March, March first, that Saturday, 2003?
A I didn't provide Gary Blume with any documents. I didn't have any documents.
Q Have you -- strike that. What about this document, which has been previously marked Exhibit 7, did you provide this document to Mr. Blume?
A No, I didn't, I didn't.
Q Was Mr. Beardmore at that first meeting in March 1st, 2003?
A Are you talking about in Gary Blume's office?
Q Yes, in Gary Blume's office.
A No. John Beardmore was not at the first meeting.
Q Did you speak to Mr. Beardmore by phone at that meeting?
A I don't recall speaking to Mr. Beardmore by phone from that meeting. I recall that Jan phoned Mr. Beardmore on the
♀ ##35
way home after the meeting, but I don't know if anyone called him from the meeting. I don't recall.
Q Were there any documents at all at that meeting, that first meeting of March 1st?
A Yes, there was.
Q Which documents were there?
A There was the checklist that Jan and I had worked on and there was an opinion letter from this DeConcini law firm.
Q Would this be this opinion letter previously marked as Exhibit 7, sir? Would that be that letter?
A I believe so.
Q Do you know how that -- where -- how did that letter get to this meeting, sir?
A Jan took this letter to that meeting.
Q So Jan Wallace took this letter to that meeting?
A I think so.
Q What other documents were there?
A The checklist.
Q And anything other than this letter and the checklist?
A I don't recall any other documents at that meeting.
Q Is it possible that Exhibit 1 might have been there, the safekeeping receipt?
A I don't know. It could have been.
Q Have you ever read the safe -- did you read the
♀ ##36
safe -- have you ever read the safekeeping receipt?
A I read it at some point in time, but not at the first meeting.
Q Did you read it before you did the transaction?
A Before I did --
Q The transaction, before you made the loan?
A I think I read it before.
Q Did you understand it?
A No, not really. It's not something I normally deal in. I've seen the document, I've seen it before, but I don't know the exact date of the first time I saw it.
Q What about what's been previously marked as Exhibit

7, what is being referred to as the DeConcini opinion letter?
A Uh-huh.
Q Did you read that at that meeting?
A No, I didn't.
Q Have you ever read this document?
A I read it after, but it was quite a long time after. I did not read it before the transaction, no.
Q So wasn't the opinion letter one of the items on the checklist?
A Yes.
Q So the fact that it was provided was enough for you, you didn't feel you needed to read it?
A I couldn't read the thing in its entirety. It was

##37

really thick, and I couldn't read the document at that time. My eyes were --
Q Sir, you had a minor procedure, did you not?
A I did not have a minor procedure. I was unconscious. I was given anesthesia and I was unconscious for that whole afternoon.
Q For the afternoon that you had the surgery?
A Yes.
Q But you stayed in Arizona -- you left Arizona March 17th; is that correct?
A Yes, March 17th or 18th.
Q And you had your first meeting on March 1st which was with Mr. Blume?
A Yeah.
Q Which was at least four days after your surgery. The anesthesia had worn off, had it not?
A The anesthesia had been worn off.
Q So, my question is, did you ever read this letter before you did the transaction for the bridge loan of 1.5 million dollars?
A No, I had not. And yes, the anesthesia had worn off, but I was still taking medication for pain. I have a document that when I had my surgery, it says right on it, pain medication.
Q I want to ask a question here, so they -- the 1.5

##38

million dollars, which I understand the first part was 800,000, was that your money?
A It's Thomas and Wong's money.
Q So you had these meetings where you discussed a potential loan of 800,000 dollars of your company's money?
A Yes.
Q While you were on pain killers and not in the best of health or at the top of your game, so to speak?
A Yes.
Q Did your superiors know that?
A There was no reason to tell them that.
Q But is it --
A I wasn't doing the transaction at that meeting.
Q When did you finish taking the pain killers?
A I don't know.
Q Was it before you left Arizona?
A Oh, yeah. No, I only took them for a day or two after I got finished with the surgery. That's how I remember it. I, I wasn't taking pain medication at -- by the time I had gotten to Gary Blume's office.
Q So, if you weren't on pain medication by the time you had gotten to Gary Blume's office, why didn't you read this document?

A Because my eyes were, were stitched. I had my eyes stitched and bandages on. And the opinion letter was explained
##39
to me as well, so I didn't read it.
Q Are you always in the habit of pledging monies that aren't yours on the say so of other people?
A No. And no, I am not in the habit of pledging money that isn't mine on the say so of other people, no, I'm not.
Q So why did you do that in this case?
A I didn't do that in this case.
Q So you did read this letter?
A No, I didn't read the letter.
Q But you relied on this letter as one of the item in the checklist?
A No, I didn't rely on the letter.
Q You didn't rely --
A It was on the checklist, but I did not rely on this letter solely to do this transaction.
Q But it was one of the items --
A It was.
Q -- that you relied on?
A It was one of the items Jan Wallace said was very important to do this deal. And it was explained to me and I took it -- I took her at her word that this opinion letter transferred the collateral from, from Wark to BDV.
Q Is Miss Wallace an attorney?
A I don't know.
Q Did you ever ask her?
##40
A No.
Q But you just took her word on this opinion letter?
A Yes. To me, this opinion letter wasn't something that I would base the whole deal on any way. It was one of the things.
Q What were the other things?
A There was, there was the Lake Bank collateral, there was everything on that checklist, there was the Lake Bank collateral, there was insurance, there was speaking directly with Dumaine. There was the safekeeping receipt, there was viewing the gold, there was having Wark sign the document.
Q I want to go back, viewing the gold was on the checklist?
A Yeah.
Q Why wasn't viewing the condo in Minnesota on the checklist?
A I don't know. I guess we didn't think of it. At least I didn't.
Q Did Gary Blume refuse to review these documents that day, March 1st?
A Not that I recall.
Q So Mr. Blume took the time and read this document?
A I don't know if he read that document. I have no idea.
Q While you were in the office, did he read this
##41
document?
A I don't recall.
Q So you don't know if Mr. Blume read that document?
A I don't know. Jan Wallace left that document there and I don't know what he did with it.
Q Wasn't it true that you had the terms of the deal worked out with John before you met with Gary on March 1st?
A No. We had nothing worked out with John.

Q What did you discuss, other than the collateral and these documents, on March 1st?
A The -- Gary asked me if I had authority to enter into the deal. I said yeah. And he said, can you give me something in writing and I said yes. And then the checklist was gone through. The checklist was the focal point of the meeting. And Jan and Gary were discussing that checklist and I was present.
Q Was --
A The three of us were discussing that checklist.
Q Was the discussion of the trust account held, of opening a trust account had at that meeting?
A No.
Q Do you know when you opened the trust account with Cane O'Neill?
A The trust account was discussed after we left Gary's office. Jan said, well, I think you need to open up a trust
##42
account and we can put, we can put the money in there until all the documents are completed.
Q Have you seen this document before, this is Exhibit 12. It's dated March 13th, 2003?
A I don't, I don't recall seeing this document.
Q Do you know what this document is?
A It's wiring instructions for Lake Bank.
Q So on March 3rd, Lake Bank sent a -- I guess it's a fax to Susan, who I believe has been shown on other documents to be in Cane O'Neill's office, for wiring instructions for Lake Bank. So, is March 3rd the date that the trust account was opened?
A I don't know the exact date when the trust account was opened. Jan opened the trust account.
Q Isn't it true that Jan opened the trust account because you didn't want your name on the trust account or Thomas and Wong's name?
A No, that isn't true. That trust account was opened in the name of Thomas and Wong.
Q So why did it have Jan's name on it?
A I don't know that it -- if it did, it shouldn't have had.
Q So you opened the trust account in Thomas and Wong's name?
A Jan opened the trust account in our name.
##43
Q In your name. Does that mean you have an ownership in Thomas and Wong?
A No, I have no ownership.
Q You tend to do that, you refer to them as we, ours, us.
A Yes.
Q But there is no ownership?
A No ownership.
Q When did you transfer -- let me go back. Why did you transfer $800,000 into the trust account?
A There was some urgency to. Beardmore had said that there was some urgency to buy the condominium, and Jan suggested that we transfer that, in a show of good faith, that, that we were going to try and do the deal, and so she, she said that a trust account would be appropriate to do it.
Q Who is Thomas and Wong's bank?
A HSBC.
Q Are they a national bank?
A Yes.

Q Are they an international bank?
A Yes.
Q Was a discussion of a letter of credit being put in place ever discussed?
A No.
Q So instead of putting, opening a letter of credit,
##44
you didn't yet have a deal; is that correct, did you?
A What?
Q When did you have -- when you transferred the money, did you have a a deal with Mr. Beardmore in place?
A When I transferred the money where?
Q Into the trust account.
A No, there was no deal in place.
Q So why did you transfer the money rather than opening a letter of credit? You were with an international rated, A rated bank?
A The money was transferred there, being held in escrow until we decided what vehicle we were going to use to do this thing, if we were going to do it.
Q You do understand that Cane O'Neill is a law firm?
A Yes.
Q You do understand that the interest on trust account did not go back to Thomas and Wong?
A I didn't know there was interest on the trust account.
Q The 800 -- yesterday you testified that the 800,000 was going to be used to expand your business, the business, Thomas and Wong, into Korea?
A What 800,000?
Q The 800,000 that you transferred into Cane O'Neill?
A I don't know what you're talking about. That money
##45
in the Cane O'Neill trust account had nothing to do with it at all. I don't know where you have that connection.
Q Okay, let's walk through this. This is plaintiff's Exhibit 14. It's dated March 5th, 2003. Do you see that?
A Yes.
Q It's a wire transfer confirmation do you see that?
A Yeah.
Q It's from Cane O'Neill. It's on account of Cane O'Neill Taylor?
A Yeah.
Q And it shows HSBC Brunei USD clearing account, and it's just under 550,000?
A Yes.
Q Was this the money you transferred from Thomas and Wong's account to Cane O'Neill's trust account?
A Yes. At the second meeting I told John Beardmore that, that we didn't have 1.5 million available, but we had 800,000. I knew we had 800,000 available.
Q Where did that 800,000 come from?
A Thomas and Wong.
Q That was the profit you made on the sale of the property in the Caribbean?
A That is, that money is money that Thomas and Wong had.
Q It wasn't necessarily from that transaction?
##46
A Well, I'm sure part of it was, but I don't know if that's where it all came from. I don't know that. That's money that was generated, probably mainly by myself. I generated a lot of money for Thomas and Wong over the seven years and I had a lot

of trust with them.
Q Do you not have trust with them any more?
A Yes, I do. They're fine people.
Q Not do you have trust for them, do they have trust for you?
A Yes, they trust me.
Q Even though this transaction fell apart?
A Yes. It's, you know, this, this is a bad thing, but they absolutely still trust me. I've explained to them what happened and, you know, sure, this, this has really been a hardship for us, but they still trust me, yes, and we were still friends.
Q Are you still working for them?
A Yes.
Q Do you receive a salary?
A I do.
Q You do receive a salary from them?
A Yes.
Q So the 500,000, what was this earmarked for? What was this to be used for?
A This 500,000?

##47

Q Uh-huh, this 550,000, I'm sorry.
A Part of it was going to go to pay for the condominium and the remainder would have went to Lake Bank to pay for that loan that John Beardmore had with Lake Bank.
Q And did you -- and you had, you had permission from Thomas and Wong to make this wire transfer?
A Yes. I called them and I asked them to transfer the money. They certainly knew about the wire transfer because they sent it.
Q And there was a second wire transfer; is that correct?
A Yes.
Q I'll get that in a moment. This is marked as Exhibit 22, it's dated March 7, 2003. Again, this is another wire confirmation?
A Yes.
Q It's to -- it's into Cane O'Neill's account again from HSBC Brunei USD clearing account. Was this again from Thomas and Wong's account into Cane O'Neill?
A I believe so, yes.
Q The amount was originally 250, it looks like 250,000. It looks like $20 was taken off for wire fees, I guess?
A Okay.
Q So these are the two, these are the two wire transfers that we are talking about that you made to Cane

##48

O'Neill?
A Yes.
Q They equal 800,000?
A I believe so.
Q Prior to this deal coming along, what were these funds to be used for?
A I have no idea. They weren't going to be -- that money was in the bank and there was no specific use for it at that time, that I knew of. I don't know.
Q When you transferred this money that we've been talking about, this 800,000, how long did you intend on keeping this money out of the Thomas and Wong account?
A About 60 days. It should have been repaid in about 60 days.
Q When you transferred this money, you did not yet

have a deal?
A No, we did not have a deal.
Q So how long did you -- how long did you intend to keep this money out of the account until you made the deal, 10 days, 15 days?
A I'm sorry, what?
Q Okay. Actually, strike that question.
When was the next meeting that you had with Mr. Blume?
A It was a few days later after the first one. I'm
##49
not sure of the exact date, but it was within days of the first one.
Q Does March 6 sound correct?
A It could be correct, yes.
Q Isn't it true that you requested that Miss Wallace become a member of the board of directors of BDV?
A Miss Wallace suggested --
Q It's a yes or no question, sir.
A Miss Wallace suggested that, that's my answer.
Q Miss Wallace suggested that?
A Yes.
Q Do you know that Miss Wallace -- do you know how long Miss Wallace had been dealing with Mr. Beardmore before you met her?
A No.
Q Was safe to say a couple of months before?
A I didn't know.
Q You didn't know that Miss Wallace had been dealing with Mr. Beardmore before you met her?
A No, I did not know.
Q Sir, you testified that you were living in her house, listening to her phone conversations. Wasn't it clear from the phone conversation she had not just met Mr. Beardmore?
A No, it was not clear. I, I wasn't sitting there listening to -- if they knew each other before a meeting or not.
##50
I saw her in distress. I asked her if I could help.
Q When Miss Wallace became a member of the board of directors of BDV Investments, Inc., before she did that, did you and she have a conversation about this?
A Yes.
Q Did she tell you, at that conversation, that once she became a member of the board of directors of BDV, her first duty would be to the company?
A No. She told me that, that big advantage of that to me would be that she could keep the deal on track and tell me if anything was going to go wrong with it.
Q Why would she care what the advantage to you was?
A Because we had discussed that, we had an agreement, that she told me to trust her.
Q What kind of agreement did you have with her? Was it a written agreement?
A No.
Q Was it an oral agreement?
A Yes.
Q What were the duties of this agreement?
A She said that she --
Q Wait. What were the -- what were your duties under this agreement with Miss Wallace?
A My duties?
Q What were your duties?
##51

A If the deal went forward, my duty was to provide the money.
Q Was that a duty to Miss Wallace that you were to provide the money?
A I don't know what you're asking me.
Q It's a simple question.
A Okay, tell me.
Q What were your duties to Miss Wallace under this supposed oral agreement between you and Miss Wallace?
A I had no duties to Miss Wallace. My end of the deal was to provide the money.
Q But you didn't provide it to Miss Wallace, you provided it to BDV Investments?
A Yes.
Q You had a promissory note with them?
A Yes.
Q What were Miss Wallace's duties under this agreement?
A Her duties were outlined on the checklist.
Q So those were her only duties, those ones outlined on the checklist?
A That was the main part of her duties, yes.
Q There were other parts of her duties?
A I don't know, the duties that, that we had discussed were clearly made on the checklist.
♀ ##52
Q Do you know what, do you know what an agent is?
A What kind of agent?
Q Any kind of agent.
A I think so.
Q Well, can you tell me?
A An agent is someone that, that acts on behalf of another or assists in that capacity.
Q So under that terminology, under that definition, you would be an agent of Thomas and Wong's; is that correct?
A Yes, that's right.
Q So you owe -- do you know what the duties are that you owe to Thomas and Wong as being an agent?
A I knew them very well. I worked for them for seven years and I fulfilled my duties 100 percent over those seven years.
Q So it's your duty to -- is it fair to say one of your duties is to disclose everything to Thomas and Wong?
A Yes.
Q So did you disclose to Thomas and Wong that when you originally started that you -- when originally had the first two meetings regarding this deal, that you were on pain killers and not 100 percent at the top of your game?
A That's not true. I was not on pain killers when I made this deal.
Q Sir, you just testified that the two meetings that
♀ ##53
you had with Mr. Beardmore, and the second one that you had with Mr. Beardmore, and the first time you met Mr. Cortegiano, was after your surgery and you had -- and you were on pain killers?
A I was on pain killers when I left the hospital and maybe for a day.
Q Maybe for a day?
A Yeah. At least a day, yes.
Q So --
A It could have been longer than that, but not much.
Q Well, some time within the two or three days after your surgery is when you had the meeting with Mr. Cortegiano and

Mr. Beardmore?
A Yes.
Q So you could have been on pain killers at that meeting?
A At that meeting?
Q Yes.
A It's possible.
Q So again, you contemplated doing this deal under the influence of a pain killer?
A I don't know if I was on them or not. And at that point in time there was no deal. We were talking about the possibility of there being a deal.
Q Let's go back to the meeting on March 6th -- I'm sorry, I want to go back to your conversation about an oral
##54
agreement with Miss Wallace.
A All right.
Q Did you ever say to Miss Wallace, Jan, you're my agent?
A In those exact words?
Q Yes.
A We --
Q It's a yes or no question, sir. Did you ever say to Jan, Jan you're my agent?
A That certainly was discussed, yes.
Q And you actually used the term, Jan, you're my agent?
A No, I didn't use -- I don't know what terminology was used, if I said agent or not. I don't know.
Q Do you know what a fiduciary duty is?
A I have an idea of what a fiduciary duty is.
Q What is your idea of a fiduciary duty?
A A fiduciary duty is when you, when you rely on another person to conduct certain things on your behalf.
Q Is that it?
A Yes, that's my definition.
Q So do you owe a fiduciary duty to Thomas and Wong?
A Yes, I absolutely do.
Q Do you feel that you breached your fiduciary duty to them?
##55
A I don't think so.
Q You don't think so?
A No.
Q Were they repaid the 1.5 million in 60 days?
A No.
Q You don't feel you breached a fiduciary duty to them?
A No. I feel I took very reasonable steps to and responsible steps to -- are you ill -- to safeguard the money, and that we were horribly betrayed. That's what I think.
Q But you're still receiving a salary from Thomas and Wong?
A Yes, now I am.
Q When did you -- were you not receiving a salary from Thomas and Wong?
A For a while I told them that I would forego my salary. And then, at the deposition, I -- the lawyer tells me that I would have to deduct that off the amount of the judgment. That was unbelievable.
So I went and told Thomas and Wong that, and we immediately reinstated my salary with the back pay because that absolutely insulted me, that I should pay money to the people who

had, who had betrayed us. It's ridiculous.
Q Well, what lawyer told you that?
A Mr. Moskowitz.
##56
Q That wasn't your lawyer?
A No.
Q He told you that money would have to be deducted off the judgment?
A Something to that effect, yes. I believe that it was something to that effect. It really insulted me.
THE COURT: Perhaps this is a good point in which to take our morning recess.
MS. AMBROSIO: Okay, thank you.
THE COURT: 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, the parties, members of the jury.
You may proceed.
MS. AMBROSIO: Thank you, your Honor.
Q Mr. Tarapaski, I want to clean-up a couple of quick points, very quickly, very, very quickly.
A All right.
Q You arrived February 17, 2003. You meet Miss Wallace the 21st or 22nd, and sometime around that time you move into her home; is this correct?
A Yes.
##57
Q On the 25th you have surgery around your eyes; is that correct?
A Yes.
Q On the 26th or 27th or 27th or 28th you have a meeting with Mr. Beardmore and Mr. Cortegiano?
A Yes, I believe that's right.
Q Your first meeting with Mr. Beardmore, was that the 24th, the day before your surgery?
A I'm not sure of the exact date. It was before my surgery.
Q It was before your surgery?
A I believe so. Again, I don't take notes. I can't be specific as to exact days.
Q That's fine. I want to go over this timeline with you.
A Okay.
Q March 1st is a Saturday. You have a meeting with Gary Blume and Jan Wallace at Gary's office?
A Yes, that's right.
Q You don't bring any documents to that meeting?
A No.
Q But you said Jan Wallace did?
A Yes.
Q How -- do you know where she got those documents?
A We had generated the checklist, between her and I.
##58
And as far as where she got the opinion letter was, I don't know.
Q You don't know where she received those documents?
A I know where the checklist came from. I don't know --
Q I'm sorry, let me be clear. So, I don't want to waste anyone's time. Let me be very clear.
So you don't know where the other documents came

from?
A Which other documents?
Q The other documents, other than the checklist, that were at that meeting?
A The way I remember it, the opinion letter was at that meeting. I only remember the opinion letter and the checklist from that meeting.
Q But there may have been other documents?
A I don't know.
Q You don't recall?
A I don't recall, yes, ma'am.
Q On March 3rd you open up a trust account at Cane Clark, Monday, March 3rd, 2003?
A I believe that's probably right, yeah.
Q And then we've looked at the two wire transfer confirmations, Exhibit 22 and Exhibit 14. And so 550,000 is transferred on March 5th, 2003; is that correct?
A Yes.
♀ ##59
Q And at that point, you don't yet have a deal with Mr. Beardmore?
A That's correct.
Q On March 1st, did you have Gary begin drafting the promissory notes?
A I didn't have him doing anything at that point in time. And at that point in time, there was -- he said he would have to speak to someone from BDV, and another meeting was arranged. There was nothing drafted and nothing agreed to at that first meeting.
Q When is the next meeting you had with Mr. Blume?
A A few days later, within that week, and I believe it was the 6th.
Q So before anything is drafted and before you have a deal, you do transfer money, you transfer 500,000 on March 5th; is that correct?
A Yes, correct.
Q Who is -- the meeting on March 6 takes place at Gary Blume's; is that right?
A On March 6th, yes, that's right.
Q Who is at that meeting?
A There was myself, Jan Wallace, John Beardmore and Gary Blume.
Q What happened at that meeting?
A Jan introduced John Beardmore to Gary Blume. Gary
♀ ##60
and John had had some general questions regarding what his position was with BDV, if he had signing authority for BDV, and asked him for identification. I remember that. And then we started discussing the items on the checklist.
Q And what was that -- let me go back.
A Before we started discussing that, Jan gave Gary and John an overview of the whole thing, of what we were trying to accomplish. She was explaining what we were trying to accomplish.
Q Why weren't you explaining what you were trying to accomplish?
A Jan was the spokesperson. She always had the lead in this thing. Everything went through her.
Q But Jan's not an employee of Thomas and Wong?
A No.
Q You're the employee of Thomas and Wong?
A That's right.
Q Aren't you ultimately responsible for this money?

A Yes.
Q So why didn't you take the lead at this meeting?
A Because we agreed, when we were doing the checklist, that she would do the paperwork because she said she was an expert at this and she said leave the paperwork for me, this is what I do for a living.
Q So her duties were more clerical than -- they were

##61

in the clerical nature?
A I don't know how you would describe it. Her duties were to do the paperwork, all of the paperwork.
Q So she really didn't have the authority to bind Thomas and Wong?
A No, she did not.
Q So was she an agent?
A I considered her to be, yes.
Q You considered her an agent, although she did not --
A It was clearly understood that she was.
Q It was clearly understood by who?
A Me and Jan, because we had that discussion when we started doing that checklist. That was clear, there is no chance of confusing that.
Q But she had no authority to bind?
A I'm sorry?
Q She had no authority to bind Thomas and Wong; is that correct?
A Bind?
Q Yes, to bind them to the transaction.
A No.
Q To any part of the deal?
A No, no, that's true.
Q This checklist, on March 6, you went through the checklist and were items checked off that they had been received

##62

or handled?
A I don't know if they were checked off. We -- the checklist was gone through.
Q And --
A Discussed in detail, yes.
Q So were the items on the checklist completed?
A Not at that point in time.
Q Were some of them completed?
A No.
Q But you go ahead and you draft the promissory notes that day; is that correct?
A I don't know when that promissory note -- what day that promissory note was drafted. It was decided on that day that this would be secured by a promissory note. I don't know when it was drafted. I could tell you when it was signed.
Q No, well, okay, when was it signed?
A The 8th of March, a Saturday.
Q Okay. Let's go back to exhibit -- this is Exhibit 21. I'm going to show you the first page. It's the promissory note. The date on this promissory note is March 6, 2003.
A Uh-huh.
Q It's for 1.5 million; is that correct?
A Or a portion thereof. I had always made it clear that I wasn't sure if we could raise the whole 1.5 million. And it was understood that if I couldn't, that the terms wouldn't

##63

change.
Q Did you raise the 1.5 million.
A In the end, yes.

Q So that's not really an issue whether you, whether it's a portion or not. The total amount loaned was 1.5 million; is that correct?
A Yes. Yes, ma'am.
Q All right. Now, I'm assuming -- the two dates that I see on this document are March 6, 2003?
A Yes.
Q Do you see that up on the top?
A Yes, I do.
Q Then the second date, when you get to the signature page --
A Right.
Q -- there was no other date, other than, down here on the bottom, the foregoing instrument was acknowledged on or before March -- I'm sorry -- it was acknowledged before me this 8th day of March 2003, and then it's Lindsey Wool signature, the notary; is that correct?
A Yes, I believe so.
Q Is that the date this document was signed?
A Yes.
Q Are you certain of that?
A Yes.
##64
Q Is it maybe just the notary's date is March 8th?
A No. That was the date because when we picked up the document, we went to Jan Wallace's bank.
Q Let's go back --
A It was closed because it was a Saturday.
Q This document was drafted on March 6th in Gary Blume's office, with you and John Beardmore and Jan Wallace; is that correct?
A That's right. I'm sorry, did you ask me if the document was drafted then?
Q Yes.
A No, the document was not. The decision was made that the instrument that they would use for this was a promissory note, but at that time it was not drafted yet.
Q What was the term of this note. It was -- the repayment term of this note when were you to be repaid on this note?
A May 6th.
Q May 6, 2003?
A I believe so.
Q It was a 60-day note?
A Yeah, I guess it was, yeah.
Q Sir, have you ever read this promissory note?
A I have.
Q Did you read it -- when was the first time you read this promissory note?
##65
A When we picked it up, I read it.
Q When was that?
A We went through it, that was on March 8th, at about -- before, shortly before noon.
Q When you say you went through it, what does that mean?
A When Gary Blume came out with that promissory note, he told us to go over it and make sure there was no -- everybody's name was spelled right and just look at it in general and that's about it.
Q Did you substantively read it? Did you read it for substance or just for form?
A Well, I think we read it for both substance and

form.
Q So you understood what this document was?
A I thought I did. I thought that I understood the document.
Q What's your understanding of this document?
A In what way?
Q Well, you said you thought you understood this document when you read it. What was that understanding?
A Well, I think I understood it. What more can I tell you?
Q Do you know what the rate of interest was that
##66
Thomas and Wong was to make on their loan?
A Yes, it was 25 percent.
Q Were there substantial penalties if the loan was not repaid?
A Yes.
Q And why were there substantial penalties, do you know?
A Yes. Jan and I had discussed that and we decided to put that in there so that it would induce them to pay the note on time.
Q Isn't it true that while you were in Mr. Blume's office, you actually looked up the usury laws and found there wasn't one in the State of Arizona, therefore had these large penalties added into the document?
A I know nothing about that.
Q You don't know anything about that?
A No, I don't recall that at all.
Q So, you relied on Miss Wallace to add these fees in for you?
A I'm sorry?
Q Did you rely on Ms. Wallace to add these fees in or was it your idea, these late fees?
A The late fees were discussed by myself and Jan.
Q With Mr. Blume present?
A The first time we discussed it, he wasn't present.
##67
The second time we discussed it he was present. The second time was in his office on the 6th of March. Yes, he was present then.
Q So this loan was for 1.5 million and to be repaid within 60 days at the rate of 25 percent interest; is that correct?
A Yes.
Q In one paid installment?
A Yes.
Q And the date it was due?
A May 6, 2003.
Q You go on May 8th to pick up this document from Mr. Blume's office?
A Yes.
Q Why is this document dated May 6th?
A I don't know. I didn't draft it.
Q But he gives it to you to review for form and substance? Yes?
A Yes.
Q You know it's not May 6th, it's May 8th -- I'm sorry, it's not March 6th, it's March 8th. Isn't he asking you to make corrections to the document?
A He is not speaking to me specifically. He's speaking to the group of us.
Q Okay. Well, but your part of the group?
A Yes, I am.

##68

Q So you're in a --
A I did not pick up on that.
Q So you keep the date of this document, March 6th, with a repayment date of May 5th?
A Repayment date of?
Q May 6th?
A Yes, I -- yes, that's right.
Q Even though you don't have a deal yet?
A What?
Q Sorry, let me go back. Not that you don't have a deal.
You have this dated May 6th, but you don't close your deal with them, with BDV, until May 8th; is that your testimony?
A That is my testimony.
Q But you're given an opportunity to revise this document?
A Yes.
Q And BDV, a representative of BDV is in the room, is that correct, Mr. Beardmore?
A We were all given an opportunity to revise that document, yes.
Q But the repayment date is May 6th?
A That's right.
Q What else happens at the March 6th meeting?

##69

A The condominium is discussed.
Q What's discussed about the condominium?
A Gary asked John where it was located, what the address was, if it would -- if the amount that we were paying would be clear title, if there was any money owing on it.
Q What did he answer to that question, Mr. Beardmore? What was his answer to that question?
A Which one?
Q Whether there was any money owing on the condo?
A He said the condominium would be clear title and I think that there was supposed to be some proof of that sent to Gary Blume.
Q Did Mr. Beardmore ask for 275,000 at that meeting to be sent for the condo?
A No.
Q He never asked for 275,000 to be sent for the condominium?
A You mean to be sent that day? No.
Q No, March 6th, he never asked for 275,000 dollars to be sent?
A No. There was nothing drafted, how could he ask?
Q Even though you have a promissory note dated March 6, 2003?
A I didn't put that date on there. And I don't know --

##70

Q Sir, we've established that you have had an opportunity, according to your testimony, to correct this?
A We all had an opportunity to correct it.
Q But sir, you are the, you are the plaintiff, you are the representative of the plaintiff in this action?
A Yes, I am.
Q Okay. So we're asking you today, you had an opportunity to correct this?
A Yes, I had one.
Q Is it the reason it was not corrected is because it

was actually created on March 6th?
A I don't know when it was created. I've told you that three times now.
Q At the March 6 meeting, Mr. Beardmore did not ask for 275,000 dollars to be released?
A No, he did not.
Q Did he ever ask for 275,000 dollars to be released?
A Yes, he did.
Q When did he ask for that to be released?
A When we picked up the promissory note.
Q When you picked up the promissory note?
A Yes.
Q Did you release the 275,000 dollars?
A Absolutely not, no.
Q Why not?

##71

A Jan and I had discussed it that day, that night, and also that was a Saturday and we could not transfer that day even if we had wanted to.
Q Isn't it true that on March 6th, when you met with Jan Wallace, John Beardmore, and Gary Blume, in his office, these promissory notes were drafted, the discussion of the 275 was had, and the reason this document wasn't signed until the Saturday is because Mr. Cortegiano was not present; is that correct?
A No. Well, the way the meeting ended was Gary Blume said that the best way to document this transaction was a promissory note and that he would draft it. And we went home.
Q And you went home?
A Yes.
Q On March 6, there is 550,000 dollars, there about, in the Cane O'Neill trust account for Thomas and Wong; is that correct?
A On March 6th?
Q On March 6th.
A I authorized the money to be transferred on March 5th so it could have been there, yes.
Q On March 6th, when 275,000 is asked to be released, this is the memo that's prepared. Did you ever see this memo?
A Would you ask me that again?
Q Okay. Exhibit 19 is a memo dated March 6, 2003. There is 550,000 dollars in the trust account.

##72

A Yes, that's right.
Q And 275,000 is being transferred?
A No, it is not being transferred. What are you talking about?
Q Why is it not being transfered. Here's what the memo is for?
A I hadn't seen that memo until Sunday, until the day I came, before I came to trial. I got to tell you, yesterday I had a difficult time because I was pretty shook up by what I saw.
Q Sir, are you telling me that you don't know anything about this 275,000 dollars before the Sunday before this trial began?
A That's exactly what I'm telling you.
Q Sir, this is Exhibit 100. It's a complaint filed on behalf of Thomas and Wong Contractors, your employer, against Audrey Wark and a variety of other people.
A Yes.
Q It is -- it has been filed in the Superior Court of the State of Arizona in and for the County of Maricopa. It's dated February 15th, 2005.
A Okay.

Q Do you know about this lawsuit, sir?
A Yes, I do.
Q Is this one in a series of lawsuits that you authorized Mr. Blume to file for you?
♀ ##73
A Yes.
Q Go ahead to Page 3 of this document. See where it says factual allegations?
A I do.
Q Do you see 10.4?
A Yes, I do.
Q Can you read that to me, sir?
A The loan funds were to be used to provide for the payment to purchase a certain real property interest described as 660 North Second Street, Minneapolis, Minnesota, and purchase the position of the Lake Bank N.A. of Two Harbors, Minnesota.
Q Is it still your testimony that you didn't know about the 275 until the Sunday before this trial began?
A What are you asking me in relation to the 275?
Q You -- the statement you just made, sir, is that you didn't know that the 275 had been transferred for the condo at 660 North Second Street?
THE COURT: Just a minute. One at a time. Don't talk over each other. The court reporter can't take it down.
MS. AMBROSIO: Sorry, your Honor.
THE COURT: All right. Go ahead.
THE WITNESS: The statement I made is that before yesterday, I did not know that Jan Wallace had released 275,000 dollars from that trust account without me knowing about it. Are you clear now?
♀ ##74
BY MS. AMBROSIO:
Q Sir, on March 6th, where were you living, 2003?
A At Jan Wallace's.
Q You did not know that Jan Wallace was transferring 275,000 dollars?
A I had no idea.
Q Did you ever --
A There is no way that that --
Q Strike that. Sir, there is no question pending?
A The trust account was in my name.
THE COURT: Sir, wait until you're asked a question. Go ahead.
MS. AMBROSIO: Thank you, your Honor.
Q This is, this has been marked as Exhibit 18. Do you know what this document is?
A Yes, I do.
Q What is this document?
A It says it's a promissory note.
Q Did you review this document on March 6, 2003?
A No.
Q You never saw this document on March 6, 2003?
A Absolutely not, no.
Q Is this document for 275,000 dollars?
A It appears to be.
Q At the rate of 25 percent interest?
♀ ##75
A That's what it says.
Q Is it also within 60 days?
A I don't know. It appears that way, yeah.
Q It is to complete the transfer of real property at 660 North Second Street, Minneapolis, Minnesota?
A I don't know what the purpose of this promissory

note was because I was not involved with this promissory note. I was not involved.

Q Did you see Mr. Beardmore sign any documents on March 6, 2003?

A No.

Q You didn't see him sign any documents?

A No, I didn't.

Q Do you know if there was a discussion about L. Trust, LLC?

A I don't recall that.

Q Do you know what L. Trust, LLC is?

A I do now. I did not know on March 6th.

Q Is that because it hadn't been discussed or it had been discussed?

A I don't recall L. Trust being discussed.

Q But it could have been?

A I don't recall that.

Q When Mr. Beardmore asked for the 275,000 dollars to be released, what did you tell him?

##76

A He didn't ask me.

Q Why didn't he ask you?

A He asked Jan Wallace.

Q Why would he ask Jan Wallace?

A I don't know.

Q You told me Jan Wallace didn't have any authority to bind Thomas and Wong?

A She didn't.

Q So why did you ask him -- why did he ask her?

A I don't know.

Q Were you in the room?

A I was right beside her.

Q What did you say?

A I didn't say anything.

Q Why not?

A They didn't ask me.

Q Aren't you ultimately responsible for this money, sir?

A Yes.

Q And you were standing there?

A I assume it was because Jan was doing all the paperwork, all the communications. Everything was going through Jan Wallace.

Q Sir, but wasn't the true that you were absolutely aware of where every dollar of that money in the trust account

##77

went?

A I thought I knew where it went. I now know that I wasn't aware of where it went.

Q I want to get back to the discussion, when is next the time you have a meeting with John Beardmore?

A What?

Q When is the next date upon which you have a meeting with John Beardmore?

A You mean after March?

Q After March 6th.

A After, it was March 8th that we had another meeting. We picked up the promissory note.

Q Do you meet with him Friday, March 7th, with Oudo Shieken?

A No.

Q When did you -- when -- do you ever have a meeting with John Beardmore and Oudo Shieken?

A Oudo Shieken was at the first meeting that we had in the lobby of the Marriott Hotel. He came later. There was me and Jan and John and then he came about 15 or 20 minutes later.
Q What was the date of that meeting?
A I'm not certain. It was before my surgery.
Q Is that the only time you meet with Oudo Shieken?
A No, during the course of after the loan was defaulted, I had -- I mean, I'm sorry, in April of 2003, I had
♀ ##78
met with Oudo Shieken.
Q And where was that?
A In Germany, and we went to Africa.
Q Why did you go to Africa?
A John and Jan had told me about a housing project that, that was available in Ghana, Africa, to build low cost houses there. And that a friend of theirs had a connection with that -- with the Ghana government, that they felt that perhaps we could get that contract.
Q Is that what you discussed with Oudo at your first meeting?
A No.
Q What do you discuss with Oudo at the first meeting?
A I didn't have -- I didn't say very much with him. He was introduced to me as another guy that John Beardmore was going to borrow money from for this Lake Bank.
Q The Lake Bank transaction?
A Yeah. He said something -- see, he said something about that he was an investment banker and that he was -- John and him were working on something, but it wasn't stipulated to me what.
Q Did not you --
A It was a friend of John Beardmore and Jan Wallace.
Q Didn't you request that Jan excuse herself from that meeting?
♀ ##79
A No.
Q At that meeting with Oudo and John Beardmore, did you discuss off shore matters or off shore transactions?
A I don't recall discussing that.
Q When did you discuss traveling to Germany with Oudo?
A I didn't discuss it, traveling to Germany with Oudo. Jan and John told me about this deal in Africa and asked me if perhaps I would be interested to build some houses there, and I said yes, I would be.
Q So how did you end up going to Germany?
A I got on an airplane and I flew there.
Q Who invited you to Germany?
A Jan and John Beardmore.
Q Did Jan Wallace go to Germany?
A No, no.
Q Who went to Germany?
A There was me, John Beardmore, Oudo Shieken, and also a friend of mine from Korea.
Q Did a lady name Sokim Lach also attend?
A Yes, she did.
Q Is it at that time that you learned that she was John Beardmore's girlfriend?
A Yes. I knew she was John Beardmore's girlfriend.
Q When did you learn she was John Beardmore's girlfriend?
♀ ##80
A In Germany.
Q So you didn't know that before then?

A No.
Q And she is -- is this the same Sokim Lach with the L. Trust, LLC?
A I think so.
Q Who made the arrangements, who invited you to go to Germany?
A Jan and John.
Q Did Jan have any ownership in the Ghana project?
A There was no ownership in Ghana. We were going there to see if we could make a deal in Ghana in regards to the housing. And this John Beardmore was -- had some experience in doing water treatment plants or something like that. So, he would be going to discuss that as well.
Q Was there going to be paperwork involved in this Ghana project?
A Yes, I believe so.
Q Wasn't Jan handling paperwork for you?
A Yes.
Q So why wasn't she in Germany?
A The paperwork she was handling was specific to this deal in Phoenix.
Q So you were going to handle the paperwork on the Ghana project?
♀ ##81
A If -- there was no paperwork to handle at that time. We were going there to see if perhaps we could make a deal there.
Q And was that the basis of the deal, that it was 2000 homes to be built in Ghana, Africa, to be financed by Oudo Shieken for 32 million or thereabouts?
A 32 million?
Q Uh-huh?
A That's not how I recall it. I believe there was -- the amount was 10 million dollars.
Q That's all that this deal was going to be, was 10 million dollars?
A I think that's the amount that was discussed, to start it off. I don't know how much it would ultimately be. We never got to that point.
Q Was it to build 2000 homes in Ghana, Africa?
A It was to build homes. I don't know. I can't remember the exact amount, but it was in that neighborhood, yes.
Q And Beardmore felt there would be a possibility for Thomas and Wong to provide equipment for the project?
A To provide equipment and also to build low cost housing. They needed some low cost housing for about 10,000 dollars per homeowner. They were very basic. Just have to put four panels together and lift them up with a crane.
Q And after you returned from this meeting in Germany, it's when, in April? Isn't that what you said, April 2003; is
♀ ##82
that correct?
A That's when we left.
Q When did you return?
A I think it was early May.
Q When did the rest of the 1.5 million transferred to Beardmore for the BDV loan?
A I believe it was in April.
Q Who transferred that money?
A Thomas and Wong, on my direction.
Q So while you were meeting with Oudo and John, talking about a 10 million dollar project for Africa, you transferred the rest of the 700,000; is that correct?
A I believe it was transferred before we left.

Q And before you left, you knew what the purpose of the trip was for?
A Yes.
Q Did you meet with John Beardmore in person to discuss the purpose of the Germany trip?
A No. We didn't discuss that until we met in Germany.
Q So you went to Germany not knowing what the purpose of the meeting was for?
A No, I knew what the purpose of the meeting was for. I was talking to Jan from Korea and she was talking to John Beardmore.
Q What were you doing in Korea?
##83
A Buying heavy equipment.
Q Were you looking to open another branch of Thomas and Wong in Korea?
A We were going to open an office there, yes. We were considering doing that, that's right.
Q Was part of the money in the Thomas and Wong bank account, which you transferred to Cane O'Neill, was that to be used to open that Korean office?
A I don't know if that money was, specifically was, but there was money that would have had to be spent to open that office, yes.
Q How much money?
A I don't know the exact amount, but it would be in the neighborhood of, well, we needed to buy an office, that would have been about 200,000 dollars, and I would say between two and two to three maybe 400,000 dollars.
Q So almost half of what you transferred to Cane O'Neill?
A Yes.
Q And you got permission to transfer the 800,000, even though the company was looking to use 400,000 to expand?
A Yes.
Q Was there a board meeting held?
A No, we don't have board meetings.
Q Do you sit on the board of directors of Thomas and Wong?
##84
A No. There is no board of directors. There is two people.
Q Have you ever sat on the board meeting of Thomas and Wong?
A No, they don't have board meetings.
Q Have you ever sat on a board meeting? Have you ever set on the board of directors of any company?
A No.
Q When you had your own crane company, did you have any directors?
A It was me and my wife.
Q Was that a corporation?
A Yes, it was a limited corporation, an LTD.
Q That was a Canadian entity?
A Yes.
Q Is the name of that company Jake's Cranes?
A No.
Q Was any part of the condominium that we've been talking about, at 660 North Second Street, in Minneapolis, Minnesota, owned by Jan Wallace?
A Would you repeat.
Q Was any part of the condo, at 660 North Second Street, in Minneapolis, Minnesota, owned by Jan Wallace?

A Not to my knowledge.

##85

Q So why would Jan send $275,000 to this condominium?
A You tell me. I don't know. You have to ask her that.
Q But you, sir, have said testified today that she did not have the authority to bind?
A That's right, she didn't.
Q So why would she do this?
A I have no idea why she would do that. That is dishonest and probably illegal.
Q Is it because she had your authority to do it, just --
A Absolutely no chance in the world that I did that.
Q She had your authority to send every other dollar in the trust account?
A Not at that time. On March the 12th, the 13th is when she had authority to transfer money.
Q Sir, the memo that I showed you, did you open the trust account with Cane and O'Neill?
A Jan Wallace did on my behalf, on Thomas and Wong's behalf.
Q Did you provide any information with which to open this trust account?
A I think so. It was -- she had a copy of our -- of my authorization to act for Thomas and Wong by that time and also the address and phone number.

##86

Q The address and phone number of Thomas and Wong?
A Yes.
Q Why didn't you just open the trust account?
A Why didn't I open it?
Q Yes.
A Because I didn't have an attorney there and she offered to open it, and I didn't have an objection to that. I figured a lawyer is a trustworthy person and a trust account is a safe entity. I didn't have any objection to that, but I'm wondering now why --
Q There is no question --
A -- why Gary Blume -- okay, sorry.
Q Your agreement with Jan Wallace, did she ever agree to be your agent?
A Yes.
Q She did?
A Yes.
Q She used those words?
A No, she used that word specifically.
Q She used what word specifically?
A Agent.
Q She used the word agent?
A I said I don't know if she used the word.
Q I'm sorry, I didn't hear you.
A We discussed what each one of us will do at length

##87

and she absolutely assured me that she would do the paperwork. And, you know, she, she said that she runs public companies for a living and the paperwork is really complex and everything and she would have no problem doing this.
Q What was she to be compensated for acting as an agent?
A It was no agreement to pay her anything at that point in time. All I knew was that John Beardmore was supposed to pay her 12,000 dollars and she told me that she had shared

that with this Kelly Black, part of it.
Q What was the 12,000 dollars for?
A I don't know.
Q Did she --
A She just told me she was receiving 12,000 dollars. I don't know what it was for.
Q Did she ever show you an agreement?
A No.
Q So, it's your understanding that Miss Wallace would act as an agent and not be paid?
A That's my understanding. I didn't offer to pay Jan, but I knew that somehow or another that this Lake Bank that she was working with would give her some money somewhere along the road.
Q Do you know what Lake Bank was going to give her money for?

♀ ##88

A No.
Q This is Exhibit 3. Have you ever seen this document before?
A I'm sorry, can I just back up a bit on that Lake Bank? There was some discussion about this Lake Bank going into a public company, but I didn't know the logistics of that. I was not involved in that. So I knew there was some incentive for her to do this, but I don't know what it was. I don't know all the details.
Q When you say do this, do what?
A To see this funding go through.
Q Isn't it true that Miss Wallace had a contract with Beardmore, John Beardmore, Beardmore Investments, to take BDV public?
A I didn't know of any agreement to do that.
Q Well, sir, you just said you knew that there was some sort of agreement for her.
A She said she was working on something to do with her public company, but I don't know the details of it.
Q You don't know the details of it?
A No.
Q You never agreed to compensate her?
A No, I didn't.
Q But you, as an agent of Thomas and Wong, are compensated; is that correct? You received payment from Thomas

♀ ##89

and Wong?
A You mean my salary?
Q Yes, your salary.
A Yes.
Q And you are an agent for them?
A Yes.
Q Under your own definition?
A I'm working for Thomas and Wong, yes.
Q Do you know what your fiduciary duties to Thomas and Wong are?
A I know what I do for them. If you want to describe them as fiduciary, I don't know about -- if that's how I would describe it. I work for Thomas and Wong and I'm responsible to them, yes.
Q You're responsible for this loan?
A I'm responsible to Thomas and Wong.
Q For this loan, for any transaction?
A Yes. I'm accountable to Thomas and Wong, yes. Yes, I am.
Q But you're not sure what your fiduciary duties to

them are?
A What are you asking me?
Q I'm asking you do you know what a fiduciary duty is?
A I have told you that I have an understanding of what fiduciary means. I work for Thomas and Wong, period, and I have
♀ ##90
to -- and I know that I'm responsible for what I do. Is that fiduciary? Is that what you're asking me?
Q Was there a March 7th meeting with Mr. Beardmore?
A A March 7th meeting?
Q Yes.
A No, not that I recall, no.
Q At some point you testified yesterday about additional collateral being pledged by Tom -- by BDV?
A Yes.
Q When did you have that, when was that discussed?
A The first time?
Q The first time.
A It was at Houston's restaurant.
Q Is that after your surgery?
A I think so.
Q And who is at that meeting?
A Me, John Beardmore, and Bill Cortegiano.
Q Is this, is the additional collateral the basis upon which you make this loan? Is this what turns your decision?
A Yes, I think it was definitely an influencing factor. I did not want to fund against gold. I wanted to -- the -- that was definitely an influencing factor, yes.
Q So you have that meeting before your first meeting with Mr. Blume on March 1st, the meeting with Mr. Cortegiano and Mr. Beardmore, where the additional collateral is discussed?
♀ ##91
A Yes, yes.
Q So is it fair to say that on March 1st you had a deal with Mr. Beardmore and Mr. Cortegiano?
A No, it is not fair to say.
Q Is there a second meeting on this collateral?
A Yes.
Q When is the second meeting?
A A few days later, which I believe to be the 6th of March.
Q And at that meeting, it's Mr. Beardmore, yourself, Mr. Blume, and Miss Wallace?
A Yes.
Q Mr. Cortegiano is not there?
A No, he's not.
Q The additional collateral is discussed?
A Yes.
Q Is that when you enter into your deal?
A That's when we agreed that there would be a deal.
Q You agreed there would be a deal on March 6th?
A Yes.
Q And at that time, doesn't Mr. Beardmore ask for the 275 to be released?
A No, he does not.
THE COURT: All right. We're going to take our noon recess at this juncture. We'll stand in recess until 1:30.
♀ ##92
Please remember the admonition. I'll see counsel in chambers for a few minutes.
(Recess)
THE COURT: The record will show the presence of the parties, counsel, and the members of the jury.

You may proceed when you're ready.
BY MS. AMBROSIO:
Q Good afternoon, Mr. Tarapaski.
A Good afternoon.
Q I just have some brief questions for you. Were there any witnesses to the oral discussions you had with Jan Wallace about being an agent?
A I don't think so.
Q So it was just you and her at these meetings, at these discussions?
A I think so, yeah.
Q And you are suing Jan as an agent, as your agent for breach of a fiduciary duty. Is that the basis of your lawsuit today?
A Yes, that's one.
Q Do you understand what it is you're suing her for?
A Yes.
Q Is Thomas and Wong authorized -- is Thomas and Wong in good standing in the State of Arizona?
MR. MURPHY: Objection, your Honor; irrelevant.
##93
THE COURT: Sustained.
BY MS. AMBROSIO:
Q Is Thomas and Wong authorized to do business in Arizona?
MR. MURPHY: Same objection, your Honor.
THE COURT: Counsel approach.
(An off-the-record discussion was held out of the hearing of the jury.)
BY MS. AMBROSIO:
Q How many transactions has Thomas and Wong done in the State of Arizona?
A Just this one.
Q What was the length of this transaction?
A It started on March 8th.
Q It concluded?
A Well, this isn't concluded yet.
Q So it's gone past 30 days?
A Yes.
Q And Thomas and Wong has done no other business in Arizona?
A No.
Q They've never rented cranes in Arizona?
A No.
Q Bought cranes?
A No.
##94
MS. AMBROSIO: I have no further questions, your Honor.
THE COURT: All right, thank you. Redirect.

REDIRECT EXAMINATION
BY MR. MURPHY:
Q Sir, in the course of cross-examination, you were asked questions about whether Jan Wallace ever told you that once she went on the board of BDV Investments, she wouldn't be able to give you information. Did she ever make such a statement to you?
A No. She said that was the reason that she would go on the board of directors, one of the main reasons. And she also said that she wanted to network with these Dumaine people. You know, she's -- she felt it would give her an opportunity to meet other people in her line of work as well.
Q Showing you Exhibit 21, sir, the promissory note of March 8, 2003. Let me zero in on some language relevant to this

issue.

The paragraph that I've enlarged will read: Notwithstanding the above, on or before April 20, 2003, BDV shall cause to be delivered to the lender documentation satisfactory to the lender evidencing that BDV will be able to make the payment of the full amount of the promissory note on the due date.

If BDV is unable to present satisfactory proof of payment on or before April 20, 2003, the lender agrees to commence the process necessary to sell the collateral for the
##95
purposes of satisfying the promissory note.

And I'll stop my quote there.

Who proposed that particular provision of the promissory note?

A Jan did.

Q Did you understand that would require her to share information that she learned as a director of the corporation?

A Yes. We discussed that before.

Q And sir, we looked at Exhibit 38, drafts of the Dumaine agreements that were transmitted to you on or about April -- March 24 of 2003, when you were in Korea. Do you generally recall those?

A Yes, I do.

Q Do you have an understanding as to how Jan Wallace was able to share that information with you, the draft of an agreement?

A Well, she would have to get that from the board of directors.

Q Now --

A She called me from Arizona and said she was sending it to me.

Q Sir, you were asked some questions on cross examination that you claimed that Thomas -- that Jan Wallace was Thomas and Wong's agent, even though she had no authority to bind Thomas and Wong. What responsibilities did you understand she
##96
had to Thomas and Wong as agent?

A Well, clearly spelled out in the checklist, that, that's her bible. That's what she was responsible for. And also to be truthful with us, tell us if anything was going off the course so that we could take action earlier, if we had to by melting this gold.

Q Showing you Exhibit 21, again the promissory note, questioning focused on your cross-examination about the fact there was a date of March 6 up in the corner.

A Yes.

Q Did you even notice what date was on there at the time you got it?

A It's not important to me what date the lawyer put on there.

Q On Saturday, March 8th, when you went to Gary Blume's office to get this note, was it finished?

A No.

Q How long did you -- who was there waiting to get it?

A There was me, John Beardmore, and Jan Wallace.

Q How long did you have to wait until Mr. Blume came out with the completed promissory note?

A The meeting was scheduled for around 10:00. We had to wait a good hour, about an hour.

Q You were present when it was notarized at some bank in a Home Depot location on March 8, 2006?
##97

A Yes, I was, right.

Q You were asked a question about on March 6. Did you agree to the terms of the deal with BDV and did you, at that time, come to an understanding what the terms would be?
A Yes, we had the consensus of a deal on March 6, yes.
Q When did you actually have a deal with BDV Investments?
A When the note is signed on March 8.
Q On what date?
A March 8.
MR. MURPHY: Nothing further.
THE COURT: All right. Thank you. Do the members of the jury have any questions for this witness? I noticed there were some sheets of paper in there. Could you get those, Laura? Thank you.
Will counsel approach?
(An off-the-record discussion was held out of the hearing of the jury.)
THE COURT: The record will show the Court received several questions from the members of the jury and has conferred with counsel.
Sir, let me ask you, did Ms. Wallace seem surprised that there were additional security items?
THE WITNESS: You mean after the meeting at Houston's restaurant, sir?
♀ ##98
THE COURT: Well, the question doesn't specify, but let's ask it that way.
THE WITNESS: She was, she was happy. She did not seem surprised, but she was happy that perhaps we could make a deal because the first time it failed.
THE COURT: All right. You've testified that you, you were a buyer and seller of equipment for Thomas and Wong. When did Thomas and Wong give you authority to negotiate loans.
THE WITNESS: There is not a differentiation on what I can and cannot do for Thomas and Wong. The money that I generally dealt in is money that I pretty much generated during my first seven years at Thomas and Wong. And this is when I started there, in 1996.
And that I had a broad parameter of what I could do. I did -- I bought barges, it wasn't just cranes, but I didn't generally have to ask permission. If I recommended it, they normally followed it. I hadn't been overruled at any time in my seven years of working there, prior to this.
THE COURT: Did you recommend this transaction to Thomas and Wong before you entered into the agreement?
THE WITNESS: I discussed it with them and, and I told them that I may be doing this deal, and before, before I signed it, I told them I was going to do the deal.
THE COURT: What was Thomas and Wong hoping to gain from this loan?
♀ ##99
THE WITNESS: 375,000, even when they defaulted. I never asked for that money on the dollar penalty through the whole negotiation, from May until June. If you look on my statement, the whole non-security, I was only asking for the 375. I never.
THE COURT: Correct me, if I'm wrong, the interest rate was 25 percent per annum or was it 25 percent for the 60 days?
THE WITNESS: I understood -- I don't know. It just said a one time fee of 25 percent that was due on May 6th. I don't know what -- I don't know.
THE COURT: Is there a memo or any document giving Miss Wallace authority to transfer funds from the trust account?
THE WITNESS: I'm sorry, sir?

THE COURT: Was there a memo or other document giving Miss Wallace authority to transfer funds from the trust account?
THE WITNESS: Yes, there was a document on March 12th or 13th, that I gave her authority to transfer.
THE COURT: Any follow-up questions from plaintiff?
MR. MURPHY: Nothing, your Honor.
THE COURT: Defendant.
MS. AMBROSIO: No, your Honor.
THE COURT: Any other questions from the members of the jury for this witness?
Okay. Thank you, sir. You can step down.
Call your next witness, please.
MR. MURPHY: Plaintiff calls William Cortegiano.

#100

WILLIAM CORTEGIANO,

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

MR. MURPHY: If I could take a moment to organize these exhibits, I'll be able to speed through my examination a little bit better.
THE COURT: All right, go ahead.

DIRECT EXAMINATION

BY MR. MURPHY:

Q Would you state your full name, please?
A William M. Cortegiano.
Q Where do you presently reside, sir?
A 4034 East McDowell Road, Phoenix, Arizona.
Q How long have you been an Arizona resident?
A 20 -- since 1986.
Q Would you give the jury a brief history of your employment background?
A From the beginning?
Q Well, just a quick nutshell, if you would be so kind?
A Well, I -- in Arizona here, I've been here for about over 20 years as a -- doing check cashing, mobile check cashing out here.
And in New York, I was also a check cashier, started

#101

in November 22nd 1965. And prior to that, five years with the telephone company in New York as a telephone repairman.
Q When you say check cashing, what service are you talking about more specifically?
A The cashing of payroll checks for employees at different firms, hospitals, motels.
Q When did you meet John Beardmore?
A That was in June of '99.
Q You eventually became a director of BDV Investments?
A Yes.
Q Did you ever hold stock in that company?
A No.
Q Did you have a plan of business that you were going to attack with Mr. Beardmore related to your check cashing activities?
A Yes.
Q Describe to the jury what your plans and intentions were?
A The business plan that we had put together, I had put together, was of a check cashing operation using armored vans, with windows in the side, like a bank on wheels.
And mr. Beardmore was in the check cashing business in Minnesota, as well as in some casinos out in California as a

check cashing operation.
And I was going to take over the check cashing
#102
operation, the outside, using these vans, these mobile vans for cashing checks on the premises of employers for the employees.
Q Did BDV Investments seek financing to get this operation under way?
A Yes, it did.
Q Who did you seek financing from?
A Well, other than the -- there were some -- there was some outreaches to banks and so forth, institutions.
Q Perhaps this is too complicated a question. I'll zero in.
Did you seek financing from a company call Dumaine?
A Yes, we did.
Q What was the amount of that proposed loan transaction?
A It was somewhere in the area of about 20, $30 million.
Q What was the intended use of those loan proceeds by BDV Investments?
A It was to be used for the check cashing operations here in Phoenix or the areas that we were cashing checks in, Minnesota or California, or here, but basically check cashing operations.
Q There has been testimony that in early 2003, BDV Investments sought a bridge loan or a short-term loan while an application was pending.
#103
Is that consistent with your recollection?
A Yes, it is.
Q What was the purpose of the bridge loan?
A The bridge loan was to get us from that period in, I think it was early 2003, for the next five or six months, to a loan that was coming in, a larger loan, for about 12 or 13 million dollars.
Q That was from a different company than Dumaine?
A Yes, yes. That was from another company or an individual, yes.
Q Sir, when did you first meet Jan Wallace?
A It was late 2002, early 2003.
Q Did you understand that she'd entered into a transaction with Mr. Beardmore to sell a shelf corporation that she had that was publicly traded?
A Well, I know they had entered into a transaction. The specifics of it, I wasn't aware of.
Q You were not a participant in those negotiations?
A No, I wasn't.
Q Did you at sometime meet Ed Tarapaski as well?
A Yes, I did.
Q Could you describe the circumstances under which you met him?
A I had met Mr. Tarapaski when I was -- I was called by John Beardmore, that we were getting together with a
#104
prospective lender. And we had a meeting at the Houston's on Scottsdale Road in Scottsdale.
Q Did that transaction eventually result in a promissory note being signed by you and others on behalf of BDV Investments?
A Yes, it did.
Q Did you contact Jan Wallace periodically with regard to that transaction?

A We spoke about it periodically, yes.
Q What did you understand Jan Wallace's role was in that promissory note transaction?
A I'm not sure I understand the question, what her what was?
Q What was she going to do in that transactions?
A In the note transaction?
Q Yes.
A Well, she wasn't part of the note transaction. She had brought the lender to the table, which was Mr. Tarapaski, from the meetings that I had with her.
Q Let me see if I can introduce the issue this way, sir.
You recall that you were deposed in this matter on October 19, 2007?
A Yes.
Q You gave testimony under oath, I believe, at our law
#105
offices at that time?
A Yes.
Q Let me show you some excerpts from that deposition. I will go to Page 23 of the deposition, starting at Line 8.
Question: What role did you understand Jan Wallace was playing in this transaction?
Answer: In the transaction or just generally?
Question: In the transaction involving the bridge loan from Thomas and Wong General Contractor?
Answer: Well, it was Jan who brought Eddy to the table with the -- that was going to put up the 1.5, and she was going to be -- or she brought Eddy to attorney Gary Blume.
And the note was made up at Gary Blume's office, which I wasn't there for.
And that was -- so she was there as -- she was to represent Thomas and Wong. That was her introduction to myself, as she would represent Eddy Tarapaski, both for Thomas and Wong and also BDV, as being on the board of directors of BDV.
So that was her transaction in the -- or her position in the loan.
And I'll continue at Line 24:
Question: When you mentioned that she was to represent Thomas and Wong, what did you understand she was going to do in that regard?
Answer: Well I, I was under the impression and told
#106
that she was to be acting on Eddy's behalf because of his logistics, being out of the country or moving around or whatever he had to do elsewhere. And she would act on his behalf.
And I'll end my quote. Was that your testimony at deposition, sir?
A Yes, it was.
Q Did that accurately recite your understanding of Jan Wallace's role in the transaction?
A Yes, it is.
Q How did you come to that understanding, sir?
A Well, I was introduced to Jan at a meeting that I was brought to by John Beardmore. And that was the first time that I had met Jan at Houston's Restaurant.
And there were several other people there at that meeting. That was the first I was introduced to her, and that was the start of the relationship in reference to this 1.5 loan.
Q Sir, did you at some point come to understand that she would be joining the BDV Investments board of directors?
A Yes.

Q What did you understand the reason was she was going to do that?

A I was told that she was coming on, by John Beardmore, in reference to that she was representing Thomas and Wong in the transaction, seeing that she brought them to the table.

#107

Q Sir, did you understand -- I'll put some notes up that were admitted already as Exhibit 10.

The first question would be -- this has been identified as some conditions that were discussed.

Did you ever see this note before, in your recollection?

A No.

Q Did you have a general understanding that there were various conditions that needed to be satisfied before the loan funds, that were provided by Thomas and Wong, were to be released to BDV Investment?

A Yes.

Q Did you understand that Jan Wallace had a role in that regard in this transaction?

A Well, it was explained that she was coming on board as a director, and that the funds were to be transferred, or she would transfer the funds from an attorney that I was told that the funds were being transferred to.

I had no direct knowledge of that, but that's what I was told by Mr. Beardmore.

Q I will return to your deposition, sir.

At Page 25, Line 19:

Question: Did you have any understanding that Jan Wallace was supposed to ensure that certain conditions were met before the funds that Thomas and Wong General Contractor was

#108

providing were released?

Answer: That was my impression, yes.

Ending my quote.

Was that your understanding at the time?

A Yes.

Q Did you have a firm handle on what those specific conditions were?

A One them was that she was to be on the board of directors and that she was going to -- or they were going to -- when I say "they," it was going to be either the attorney or Beardmore or herself or representatives, they were handling the transaction of the cash of the loan.

Q Another issue, sir, was there a viewing of the gold planned at some point with regard to the Thomas and Wong transaction?

A Yes, there was.

Q Did you participate in attempting to arrange that?

A In arranging it, yes.

Q I'll show you what has been admitted in evidence as Exhibit 40, some passport documents for Jan Wallace.

There is note at the bottom: Billy, please give these documents to John Beardmore so that I may travel Monday to Lordsberg...

Ending my quote from the document.

Did Miss Wallace transmit those to you so that she

#109

could get access to the warehouse where the gold was being stored in Lordsberg, New Mexico?

A Yes, she did.

Q Why did you understand she was going to view the

gold?
A Well, I was told that she was going to represent Thomas and Wong and John would represent -- John Beardmore would represent BDV, and the others would represent their own situation.
Q Did that gold viewing occur?
A No, not in Lordsberg, no.
Q Where did it occur?
A A viewing did occur in Tempe, Tempe, Arizona, at a storage warehouse.
Q Were you in attendance at that?
A No, I wasn't, but I was aware of the meeting or the --
Q Who do you understand was present at that viewing?
A It was John Beardmore, Don Nooe, John Ole from Dumaine, and Lee Wark, Victor Lee Wark.
Q What do you understand was displayed at that time?
A I was told there was six barrels there with serial numbers on it that corresponded to the paperwork that we had for the precious metals that were contained in those barrels.
Q Were the seals taken off so that those contents
#110
could be confirmed?
A I was told no, they were not supposed to be open.
Q You made some mention before about Jan Wallace joining the board.
I'll show you what has been admitted as Exhibit 15, meeting of the board of directors of BDV Investments of March 6, 2003.
Were you in attendance at that meeting?
A Is there another signature on there?
Q I'll zero in. The second -- is that your signature, second from the bottom?
A That's my signature, yes.
Q Do you recall having attended a meeting on March 6, 2003?
A Yes.
Q Where was that conducted?
A I'm not really sure. I don't remember where this was conducted. But if this was the --
Can I ask a question?
Q You can, to clarify mine, sir, if the Court will allow.
THE COURT: No, just answer his questions.
THE WITNESS: Okay.
BY MR. MURPHY:
Q Let me see, sir, did you go to a meeting of the
#111
board of directors at the Villages Restaurant on Scottsdale Road?
A Yes, I did.
Q Was that on March 6, 2003?
A I'm not really sure, but -- it was at that restaurant, it was four of us.
Q Sir, you executed this document. There is no date next to your signature, but there's a telefax transmittal date on the top of March 6, 2003.
To the best of your recollection, was the meeting conducted on that date?
A It could have been. I don't remember.
Q Now, sir, let me ask this question. Did you have any concern about Jan Wallace joining the board of directors as a representative of Thomas and Wong?
A It wasn't as much as a concern as a question, as far

as the conflict of interest between representing Thomas and Wong and BDV.

Q You were a director yourself of BDV?

A Yes, I was.

Q Did you understand you owed fiduciary responsibilities to the corporation as a director?

A As a director you would, yes.

Q Did you understand Miss Wallace would also owe those duties to the corporation if she joined as director?

A As a director, yes.

#112

Q Was there a concern, in your mind, if she was also representing Thomas and Wong there might be a conflict in those two roles?

A It was brought up, yes.

Q When you say it was brought up, is that something you actually discussed with other directors of the corporation?

A I had discussed that with John Beardmore.

Q Do you recall what the substance of that discussion was?

A Well, his answer was, to it, if this is the way that it was to be set up for the thing to go through, that a representative be on our corporation to see what was happening with the loan or with the transfers.

Q And I'll show you what has been admitted in evidence as Exhibit 17, BDV Investments meeting of the board of directors, March 6, 2003, 4:15 p.m.

Was that the meeting which you were in attendance at the Villages Restaurant?

A It had to be because there was only one meeting.

Q That is in the history of the company or the corporation, to your knowledge?

A That's the only time I ever attended a meeting.

Q This also bears at the top a telefax transmittal date of March 6, 2003.

To the best of your knowledge, did the meeting

#113

actually occur on that date?

A I'm not sure of the date, but it did occur at the Village Inn or the Village or the tavern.

Q Did you sign these minutes, sir?

A Yes.

Q Now, zooming out a little bit, the second page states: The undersigned being all the directors of BDV Investments, Inc., consent to all actions taken hereby.

What were the action items at that directors' meeting, if you recall?

A It was a just a gather -- this was the first time that Mr. Walk had met Miss Wallace and the four of us had gotten together as a board of directors.

Q Did you take action to approve the Thomas and Wong loan transaction there?

A I didn't take any minutes. I don't recall, but everything was discussed on what we were doing.

Q Fair enough. Do you have any reason to question that the minutes are not accurate. Let's put it that way, sir?

A No, I don't.

Q Sir, do you recall if anyone dissented -- let me withdraw that question.

Do you recall if any director of the company in attendance at that meeting dissented from approval of the Thomas and Wong loan transaction?

#114

A At that meeting, no, there was no dissent.
Q Now, I'll show you Exhibit 21, a promissory note in the amount of 1.5 million dollars. The first page, then the second page.
Do you recognize your signature first on behalf of BDV Investments, Inc.?
A Yes.
Q Then at the bottom page you also recognize your signature as a guarantor of that loan?
A Yes.
Q The notary stamp bears a date of March 8, 2003. Was the note actually signed on that date?
A Yes. I signed the note -- the notes -- that note was signed on that date in front of that notary, yes.
Q Sir, where was that notary located; do you recall?
A This notary was located at Bank of America at Tatum and Shea in Scottsdale.
Q Was that a Saturday?
A That was a Saturday, yes.
Q How were you certain of that?
A Well, I was called by, I guess it was Beardmore, that we would get together at Bank of America on Scottsdale Road, which we did.
And that was where we went in with the note and the notary wasn't there.

#115

This was the closest Bank of America that had a notary, was Tatum and Shea, and that was a Saturday. And we went up there at that moment, the three of us.
Q Now, sir, I'm going to show you what has been admitted into evidence as Exhibit 18, a promissory note that bears a date of March 6, 2003 for $275,000.
Did you sign that document on behalf of BDV Investments, Inc.?
A No.
Q Were you even aware of its existence at that time, sir?
A No.
Q When -- do you believe it was on -- at your deposition that you saw this document for the first time?
A Yes.
Q And you say that even though throughout the period of time here, March of 2003, you were a director of this company?
A Yes.
Q At the top, sir, there's a date stamp -- fax transmittal stamp, I should say, for the Literacy Company, dated March 7, 2003, 10:32.
Was that a company with which you had an affiliation?
A Yes, it was.
Q Did BDV Investments use that, from time to time, for

#116

its business as well?
A We used the office there, yes, and the facility, the fax machine and telephones.
Q Did John Beardmore sometimes get telefaxes into that number without your knowledge?
A He could have. I don't know.
Q Now, sir, you understood from prior testimony that one of Miss Wallace's responsibilities was to approve the release of funds from the account at Cane and Associates; is that generally correct?
A Yes, that's what I understood.

Q Now, I'm going to go to the promissory note that is Exhibit 21, with the March 8, 2003, notarization date.
Were you, as a director of BDV Investments, aware, on that date, March 8, 2003, that $275,000 of Thomas and Wong's funds had already been transmitted back to Minnesota?
A No.
Q When did you learn that, if ever?
A Years later.
Q Was it your understanding at the time you signed this note that one of the conditions for release of those funds was the execution of this note on March 8, 2003?
A No.
Q Let me make sure my question is clear because I speak quickly.

#117

Did you understand that the funds that Thomas and Wong had agreed to loan would not be released at least until this note was signed?
A I wasn't aware of the note.
Q Fair enough. I'm afraid we're getting tangled up. I'll rely on prior testimony.
Now, did you have information that Jan Wallace received $50,000 as a result of this transaction?
A I was told that.
Q Who did you hear that from?
A John Beardmore.
MR. MURPHY: With that, I have nothing further.
THE COURT: All right, thank you.
Cross examine.

CROSS-EXAMINATION

BY MS. AMBROSIO:
Q Good afternoon, Mr. Cortegiano. My name is Clair Ambrosio.
Have you been sued by Ed Tarapaski or Thomas and Wong?
A I believe I have, yes.
Q And do you know what happened in that lawsuit? Do you know what the result of the lawsuit was?
A It was that I signed a note for a million and a half

#118

dollars and we couldn't pay it back as BDV or myself personally.
Q Did they get a judgment against you?
A I believe so.
Q Do you know what the amount of the judgment was?
A No, I don't.
Q I'm going to show you a document which has been marked as Exhibit 64. It's called a case information sheet.
It shows the history of the case of Thomas and Wong versus BDV Investments. As you go down maybe about five names, you come to your name; is that right, William Cortegiano?
A Yeah. The F isn't right in name, but it's my name.
Q And you were served with this lawsuit, you were served with a lawsuit where Thomas and Wong sued you?
A I was never served papers personally. I received stuff in the mail, but I don't know if I've been, you know, served by this lawsuit or why.
Q You know there's a judgment against you?
A I was told that, yes. I don't know that as a fact.
Q Do you see -- I'm going to bring it up here -- do you see the third -- the second date down, it's September 17, 2004.
Under judgments, it says Thomas and Wong General

Contractors, William Cortegiano. The amount is 5.1 million and change; do you see that?
A Yes, I do.
#119
Q So there's a five million dollar judgment Thomas and Wong has against you; is that true?
A For the first time I've seen this, yes.
Q Is that why you're here today testifying? Is that what you're here today testifying?
A No. The reason I'm here today testifying, I was subpoenaed.
Q But everything that you've been testifying to today, you don't seem to have direct knowledge of. You haven't been told any -- you have no direct knowledge of any of these things you've testified to today; is that true?
A I have direct knowledge that what I was told was told to me by a person or I was there in person, that's the direct knowledge I do have of it.
Anything that I was there, I testified to. And what I heard was hearsay, I was told by John Beardmore.
I was in Phoenix Arizona. He was in Minnesota. So everything that was served, was served in Minnesota, basically, and what was said -- sent to me was copies, at times, that I received of something, and I just don't read legalese.
Q I'm not talking just about the judgments. I'm talking about all your testimony today.
A Oh, okay. What about it?
Q Do you have any direct knowledge of the testimony that you've given today in regard to the transaction with Ed
#120
Tarapaski, the promissory note, any of the testimony you've just have given?
A Direct knowledge, yeah. I testified that direct knowledge I have, I was present at the note, I signed the note.
My understanding, I was at the meeting, that's direct knowledge, as far as I'm concerned and anything that I wasn't, I was either told or notified.
Q The meeting that you're describing is this the board meeting?
A The one at the Village Tavern, yes, it was the board of directors meeting.
Q Do you know when that meeting was?
A Not by date. Three, four years ago, whatever it was, four years ago, five years ago.
Q Do you know that John Beardmore and Ed Tarapaski and Jan Wallace were together drafting the -- were together at Gary Blume's office when the 1.5 million dollar note was drafted? Did Mr. Beardmore tell you that?
A No.
Q Mr. Beardmore never told you that?
A No. I know the note was drafted because it was brought drawn from Gary Blume's office by Mr. Tarapaski and Miss Wallace and John Beardmore.
And they met me at the bank that we were supposed to have it notarized. That was the first time I saw that note.
#121
Q The first time you saw the note was March -- I'm sorry, the -- you don't know when the date of the board of directors meeting was?
A No, but it was at the Tavern.
Q It was at the Tavern?
A Yes, it was.
Q But you don't remember, it could have been March

7th, it could have been March 8th?
A Could have been the 7th, 8th, 9th, whatever it is. The only meeting was the Tavern with the four of us. I was there, I know.
Q Did Miss Wallace come with you when you signed the promissory note?
A No. She dropped -- she originally came down to the first bank where there was no notary. She left and went home.
It was Mr. Tarapaski Beardmore and myself who went over to the second bank that the first one had called to find out if there was a notary available there.
That's when I went over there and signed the note for the first time, the two-page note.
Q Did you understand you were signing a guarantee?
A Yes, I did.
Q When you signed that guarantee, were you able to perfect that guarantee?
A Does that mean pay it?
♀ #122
Q Yeah.
A No.
Q So you went ahead and signed the guarantee anyway?
A Yes.
Q Did you tell Mr. Tarapaski you were unable to pay the guarantee?
A I don't know if I said Mr. Tarapaski, I'm not able to pay it, but we did not -- I didn't have the money to put in, which was less than that.
So, I didn't have the money to pay to put it in, so I couldn't have paid it.
Q But you don't recall if you told Mr. Tarapaski that?
A No, I don't recall if I said that, that's quite a few years back.
Q Did you tell anyone that you didn't have the money to pay this guarantee?
A No, I didn't think I was supposed to.
Q Give me one moment. I don't know what happened --
At the board meeting, Jan Wallace and John Beardmore were at the board meeting; is that correct?
A There was four of us, yes.
Q Along with you and Mr. Wark?
A Right.
Q Did Mr. Beardmore tell you that he and Miss Wallace, on March 6th, were in Gary Blume's office drafting the promissory
♀ #123
notes?
A I don't recall if he did, but...
Q But you don't have any knowledge of that?
A First time I saw the note, like I said, was when I signed it.
Q What was your role in the loan transaction after the promissory note was signed?
A I don't understand the question. What was my role in the loan transaction?
Q Uh-huh, yes. Were you required to keep Mr. Tarapaski informed of what was going on?
THE COURT: Did you hear the question?
BY MS. AMBROSIO:
Q Were you in charge of keeping Mr. Tarapaski informed of the matters that were going on in getting the loan repaid?
A When I was asked by Mr. Tarapaski or I was supposed to call him, yes, and let him know that there was a note. I told him what was happening to date, yep.

Q So he contacted you directly and you gave him information directly?
A I don't recall. I assumed -- I seem to recall times that there were phone calls back and forth.
Q You testified earlier that you were a director of BDV and you understood your role, your duties as a director; is that correct?
♀ #124
A As I understood my duties as a director, generally, yes.
Q What were your duties, generally?
A To guide the company, to be responsible for certain actions of the company. I couldn't specifically state them verbatim, what they're supposed to be by law, but I have a general idea of what a director does, yes.
Q Was that to protect the company?
A To protect the company, yes.
Q When you spoke to Mr. Tarapaski, directly, was it just you and he on the phone when you updated him?
A There probably was ones or twice, yeah. I don't recall. We had multiple conversations, three-way conversations, four-way conversations. It's been a long time.
Q Did you provide him with information that was solely in your knowledge as a result of you being a director of the company?
A I don't know if solely in my knowledge as a director, but anything that I had, as far as relating it to him, if it was my knowledge, either I was told or I was part of it. But I don't know what part was related as a director.
Q When you relayed this information to Mr. Tarapaski, did you believe that you were acting as an agent of Mr. Tarapaski's?
A Was I? No, not at all.
♀ #125
Q You went ahead and provided him with corporate information anyway; is that correct?
A Corporate? I don't know what that means, corporate information.
Q All right. I'm going to show you a letter. It's marked as Exhibit 46.
Have you seen this document?
A I don't recall that is my signature and I obviously if you have it that's what I sent to him or wherever it wound up I just don't recall it's been that long there has been many, many documents and many, many pieces of paper.
Q Are these the type of communications or the type of information you were providing Mr. Tarapaski with?
A The if this is one of them I provided him with that yes I just don't recall that particular one but that is my signature on there.
Q Did anybody ever tell did anybody ever tell you that Jan Wallace was acting as an agent for Mr. Tarapaski?
A Yes.
Q Who --
A It was John Beardmore, and Clark Griffith, who was our attorney, or an attorney at the time, I'm not sure.
And in general conversation, that's -- that was the discussion, that she was to be part of the board of directors.
Q She was to be part of the board of directors of BDV?
♀ #126
A Of BDV. She was, yeah. Not that she was supposed to be, she was part of the directors.
Q Again, you're uncertain as to when the board of

directors meeting occurred; is that correct? The one board of directors meeting you had in March of 2003?

A I'm not -- I don't know the exact date. It was at the Village Inn and it was the only board directors meeting there was. So whatever date it was, that's what it was, and that was the only meeting I attended with four of us there.

MS. AMBROSIO: I don't have anything further, your Honor.

THE COURT: Very well. Redirect.

REDIRECT EXAMINATION

BY MR. MURPHY:

Q Sir, there were some questions posed to you about whether you had direct knowledge of events.

Let me can you this, sir: In your deposition of October 19, 2007, at Page 60, were you ask the following questions and did you give the following answers:

Line 16. Did Jan Wallace ever tell you she was a representative of Thomas and Wong?

Answer: Yes.

Question: When did she tell you that?

Answer: In discussions when we were talking about the proceeds of the loan and the certain things that came up.

#127

She didn't say as a representative of Thomas and Wong this is the way it must be, but she said, I have to answer to Eddy on that, Mr. Tarapaski on that. Which was, to me, she had to clear things with Mr. Tarapaski.

Ending my quote.

Were those the questions you were asked and the answers you gave under oath at your deposition?

A Yes.

Q Was that truthful testimony?

A Yes.

Q Sir, you were asked questions about the judgment being taken against you. Are you able to pay the judgment of five million dollars, sir?

A No.

Q Are you living in an apartment on McDowell, sir?

A Yes.

Q You were asked questions about your communications with Ed Tarapaski. Do you recall that after the loan went into default, he came back to Arizona to try and help track down the gold?

A Yes.

Q Did you have communications with him then?

A Yes.

Q Do you recall communications with Ed Tarapaski before the loan went into default?

#128

A No, just the two meetings before the loan went into effect.

Q Very well. Now, sir, you undertook some effort to try and track the gold down so that it could be liquidated and Mr. Tarapaski and Thomas and Wong could be repaid; is that correct?

A Yes, I did.

Q Did you work with Jan Wallace on that?

A I believe I did.

When you say, "work with her," I notified her maybe.

Q Did you go to Lordsberg, New Mexico, with her?

A Oh, yes, absolutely.

Q To try and get into the warehouse?

A Yes.

Q Who did you understand she was representing as she went to the warehouse with you in New Mexico?
A Thomas and Wong.
MR. MURPHY: Nothing further.
THE COURT: Thank you.
Any questions from the jury for this witness?
I don't see any indication.
Any reason the witness can't be excused?
MR. MURPHY: None from plaintiff, your Honor.
THE COURT: Any reason the witness can't be excused?
MS. AMBROSIO: Can I ask just one more question, your Honor?

#129

THE COURT: I don't usually permit redirect.
MS. AMBROSIO: I promise, it's only one, your Honor.
THE COURT: Well, all right. I'll hold you to that one question.
BY MS. AMBROSIO:
Q I'm going to show it to you in this form, I know it's been previously marked as an exhibit.
This is the board of directors meeting minute -- meeting minutes of March 6, the only board of directors meeting you had; is that correct?
A I don't know if it's March 6 is the only one, but if that's what you're telling me it is, that's what it is.
Q But you're unsure of the date of the meeting?
A Is that the one at the Village Tavern?
Q Yes.
A That's the only one I attended. I'm not sure of that date, no, you're right.
MS. AMBROSIO: Thank you.
THE COURT: Your witness. I'll let you have the last word.
MR. MURPHY: Nothing further, your Honor.
THE COURT: With that, is there any reason the witness can't be excused?
MS. AMBROSIO: No, your Honor.

#130

MR. MURPHY: None, your Honor.
THE COURT: Call your next witness.
MR. MURPHY: Plaintiff calls Jan Wallace.
THE COURT: Miss Wallace, will you come forward and be sworn, please.

JAN MARY WALLACE,

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

DIRECT EXAMINATION

BY MR. MURPHY:
Q Would you state your full name, please?
A Jan Mary Wallace.
Q Where do you presently reside?
A 6929 East Cheney Drive, Paradise Valley, Arizona 85253.
Q Ma'am, you were deposed in this case, and I asked you what you did for a living. I believe you described yourself as in the business of venture capital. Is that an accurate statement?
A It is a general term that applies to many actions that one may take as investments and other business opportunities, yes.
Q What does the profession of venture capital entail?
A A venture capitalist is usually an independent

#131

entrepreneur or group of individuals that go out and take a look at venture deals that are either presented to them or that they find themselves.

They structure up the deal. They take a look at the deal for its potential to the marketplace. They help fund it, they help structure it, they help produce management for the company if it goes forward, and at times they take it public.

Q And have you been through that process yourself?
A 17 times.
Q That is moving companies forward from their inception to taking them public?
A Yes.
Q You consider that you have expertise in that regard?
A Yes, I do.
Q Would that be a fair statement?
A Yes.
Q And you've been involved with 17 public companies, you say?
A I have been involved with 17 companies.
Q How many of them were publicly traded?
A I would probably say about 12 of them.
Q There have been successes and failures along the road?
A Absolutely.
Q M W Medical was one that went bankrupt?

#132

A M W Medical went bankrupt in 2000, with 327 other companies when the market fell.
Q One of the distributions from that bankruptcy to you was a subsidiary of M W Medical was called M W Asia; is that correct?
A Actually I think you have it incorrect.
Q Would you describe it accurately, please?
A Sure. I put 1.4 million dollars of my own money into M W Medical when the market started to fall. Part of my investment in was to keep the employees working and to finish an FDA approval on a cosmetic device that the company had spent money on.

After I funded it, and the market fell, the second round of investors that had contracted to continue funding fell off. At that point, the company and the board of directors decided to file a Chapter 11 bankruptcy.

Because I was the largest creditor, I was chosen to be debtor in possession. As debtor in possession, I was the sole officer of the company, the most secured creditor, and at the end of the bankruptcy, I paid the creditors debts, and I was awarded the assets.

Part of the assets was a plan to the bankruptcy court here in Arizona that said I had to do a reorganizational plan. Part of the reorganizational plan was for me to take the existing shareholders and restructure them, not in a shelf

#133

corporation, but a rough estimate of what some people call a slang term, shell corporation.

When that was done, the bankruptcy court approved the plan of reorganization and granted its shareholders five subsidiary companies, of which their shares were transferred into those entities.

As the CEO and officer of the company, and the largest secured creditor, I was left as an officer to go out and find companies to do a reverse merger, to build those companies back up so shareholders can have value.

Q You had 95 percent of the stock in M W Asia; is that correct?
A I had 95 percent of the stock of M W Asia because I owned 95 percent of the secured debt of the corporation.
Q Ma'am, you would agree that you had considerably more experience and expertise, with regard to corporate finance issues, than Ed Tarapaski; is that correct?
A I have no idea whether my expertise in finance is greater than Edward Tarapaski's.
Q Now, let me ask a few background questions. When did you form an attorney-client relationship with Gary Blume?
A Gary Blume and I have worked together as client and attorney since 1995.
Q Have you had a continuous attorney-client relationship with him from that period forward?
♀ #134
A I have had three occasions to use his services.
Q He represents you as co-counsel in this litigation; is that correct?
A Yes, he does.
Q He also participated, as the testimony has described, in the documentation of the Thomas and Wong loan transaction; correct?
A That is correct.
Q And another attorney that's been mentioned is Michael Cane, now known, I believe, as Kylene Cane?
A That is correct.
Q When did you meet Mr. Michael Cane?
A Michael Cane was met in 1998 in Las Vegas, Nevada.
Q What do you use his firm for?
A He's an SEC attorney, Securities and Exchange.
Q Did you have a continuous attorney-client relationship with him from 1998 forward?
A To this day, yes.
Q Ma'am, you appreciate that it's our position that you served as Thomas and Wong's agent in this loan transaction, a person who acts on behalf of another?
A I do not accept that term.
Q I understand. That's our position. Your position is you had no interest or role in this transaction; is that correct so far?
♀ #135
A The only interest and role I had was anything that Ed Tarapaski asked me to facilitate, because he did not want his name showing up in this country.
Q Ma'am, your deposition was taken in this matter on June 19, 2007; correct?
A Correct.
Q Page 36 of your deposition, were you asked the following question and did you give the following answer:
Line 15, question, you had no interest in this transaction? Answer: I had no interest in this transaction. Ending my quote.
Is that the truth, ma'am?
A Which transaction?
Q The Thomas and Wong loan transaction with BDV Investments.
A I had no interest in the Thomas and Wong transaction with BDV.
Q And you also state that you participated in this only to help out Ed Tarapaski, as a favor for a friend; is that correct?
A When Ed Tarapaski first met me at my spa, La

Vanishe, Ed Tarapaski came to ask me if I wanted to do a joint venture because he bought three pieces of equipment in the spa business.
MR. MURPHY: Your Honor, I would request that the witness

#136

be instructed to limit her answers to the question.
THE WITNESS: You called him a friend --
THE COURT: Ma'am, just a minute. Read back the question.
(Record read.)
THE COURT: The question can be answered yes or no. Please try to answer it yes or no. You don't know the answer, tell counsel you don't know the answer.
THE WITNESS: Thank you, sir. I don't know, I don't understand the question.
BY MR. MURPHY:
Q Page 38 of your deposition of June 19, 2007, were you asked the following questions and did you give the following answer at Line 21 to 23.
THE COURT: Can you see the monitor?
THE WITNESS: You have to pull it up, I can't see 23 or 22.
BY MR. MURPHY:
Q Line 16, question: This was identified in testimony this morning as an invoice that Mr. Blume sent to you with regard to services he provided in drafting the promissory note. Answer: That would make absolute sense. If this says Wallace versus DB Myer, it's Saturday, and because I paid it, I was not a client in the case. I was nothing in the situation between Beardmore and Ed Tarapaski, other than to do a favor. Ending my quote.

#137

That was your testimony at your deposition, wasn't it?
A That's absolutely correct.
Q Now, let me get to your relationship with Mr. Beardmore. Now, I'll put before you Exhibit 8. You recognize these as notes, some of which were in your handwriting; is that correct?
A Yes.
Q I believe your testimony was that the top portion, under use of proceeds, was -- is the phrase use of proceeds your handwriting?
A No.
Q Whose handwriting is that, do you know?
A I have no idea.
Q But your handwriting begins at the phrase John Duke and proceeds down?
A Absolutely correct.
Q Who was John Duke?
A John Duke was a gentleman that I believe was either CEO or some officer of Durango Capital.
Q Were you in contact with him regarding getting a loan for BDV Investments?
A Actually, no, I was not.
Q Did you ever discuss that subject with him?
A I later did, but it was Kelly Black who knew John

#138

Duke.
Q What was the purpose of your trying to get financing for BDV?
A I'm sorry, I was not contracted to get financing for BDV.
Q I know you weren't contracted, ma'am, but did you

try to help them get financing?
A I tried to help Kelly Black and a gentleman by the name will Casey Strunk, who did have a contract with John Beardmore to get financing for BDV.
Q Why were you helping them?
A Kelly Black and Casey Strunk, Casey Strunk was introduced to me by Kelly Black in September of 2002. He heard that I had public shell corporations, looked to do reverse mergers. I met him on that instance.
When Casey Strunk signed a deal to raise 1.5 million bridge financing for John Beardmore and BDV, Casey Strunk called Kelly Black. Kelly Black called me and asked me if I would like to come to a meeting because John Beardmore mentioned to Casey Strunk that I had a public company and John Beardmore wanted to take BDV public.
That's why I met.
Q We have before you on the screen a letter of December 6, 2002, on your letterhead, signed by you and by John Beardmore. You as CEO of M W Asia, John Beardmore on behalf of
#139
Beardmore Investments; is that correct?
A I see that signature, yes.
Q This generally proposed terms by which Mr. Beardmore's company would enter into a merger with M.W. Asia and go public?
A That's correct.
Q Ma'am, you described that as a reverse merger?
A Yes.
Q You were currently employed at Davi Skin, which is a company that's headquartered, I believe -- where is that headquartered?
A Marina Del Ray, California.
Q You were currently CEO of that company?
A That is correct.
Q Did you participate in any reverse merger with that company?
A Yes, I did.
Q Was M.W. Asia the vehicle that was used in that merger?
A No.
Q What vehicle was used there?
A M W Medical.
Q An affiliate company?
A No, the parent.
Q Very well. The agreement here, ma'am, was signed in
#140
December of 2002. This provided that you would receive, in the event the transaction closed, 250,000 dollars; is that correct so far? I'll point my finger to that figure.
A That is correct.
Q That there was a sum of $50,000 that was due on January 31, 2003, or sooner; is that correct?
A That is correct.
Q Did you get $50,000 on January 31, 2003, as contracted?
A No.
Q And ma'am, did you thereafter participate in trying to raise funds for BDV Investments?
A No.
Q Ma'am, let me go to your deposition, see if this is accurate.
Go to Page 23 of your deposition, starting at Line 23. I'll begin with the question, starts at 15, to make sure the

record is accurate.
Question: Did you introduce him the opportunity to make a loan to BDV Investments? Answer: I did not invite him. Ed Tarapaski, from being in my home and being a pleasant fellow, which was the only reason I let him be in my home, was interested in things he was doing. He had cosmetic devices arrive to my guest house. He asked me about them. We were sharing lots of conversation about lots of issues. I was talking about multiple,

#141

other multiple business issues.
He heard me talk about BDV. I explained to him that they were looking, that they were looking to doing. I told him my primary reason for doing it was to take them public. Question: When you say primary reason to help them do it, you're talking about raising bridge financing? Answer: Yes. Ending my quote.
That was your testimony under oath at your deposition; correct?
A That is correct.
Q That was you were helping them raise bridge financing with the goal of taking them forward to a public offering.
A Actually, when you just read that statement, the part that I said that helping them with the bridge financing, Kelly Black and I had entered into a contract, still stands today, called Wallace Black. It is an existing LLC.
Kelly Black and Casey Strunk had the contract to raise the money. Because Kelly Black and I had a company, I was part of that company. But I, if you read the contract, which is public, by the way, the Wallace Black contract is public, in the Davi Skin Company, and it is public in my previous company at Secured Diversified Investment, it shows that I'm responsible for the restructuring, the documentation, and the filing of, while Kelly Black is responsible for the financing of corporations.

#142

MR. MURPHY: Your Honor, I move to strike the answer as nonresponsive.
THE COURT: Motion denied. Let's go.
BY MR. MURPHY:
Q Ma'am, if BDV Investments succeeded in raising funds necessary to go public, you would have made 250,000 dollars on the sale of M.W. Asia to him, under your contract of December 2002; is that correct?
A Sir, I had five shell corporations. I sold all five of them. I had had buyers for M.W. Asia. If BDV did not get its bridge financing, I had three other people to buy that shell corporation.
Q Ma'am, if BDV Investments raised the money and consummated the contract that you had with them, you would have made 250,000 dollars; isn't that true?
A Yes.
Q You had a profit motive in seeing that they got that financing raised, didn't you?
A I entered a contract. It stated what it was, the terms. I'm a capitalist. I work and pay taxes in this country. I don't mind making money in a contract that I outlined and people agreed to.
Q I wasn't suggesting that was wrong, ma'am. I just need you to affirm you had a profit motive in seeing them get financing?

#143

A I absolutely had a business motive. And I made money if they went public in my shell.

Q You also hoped that if they went public, you would have some of the stock in the public corporation as part of your contribution of M.W. Asia; correct?
A Absolutely, along with the other five.
Q So you would have not only the $250,000, but more -- but valuable stock in a publicly traded corporation?
A Yes.
Q Now, let me get to your introduction of Ed Tarapaski to Gary Blume. You did make that introduction; is that correct?
A I was asked to find a lawyer on Saturday --
Q What Saturday was that, ma'am?
A March 1st.
Q Of 2003?
A Yes.
Q And Mr. Blume was being consulted specifically to help document a proposed loan transaction between BDV Investments and Thomas and Wong; is that correct?
A Mr. Blume was asked to show up at a meeting so that he can scribe some documents based on the terms that the parties agreed to.
Q Well, that was drafting documents; correct?
A If that's what scribing is, yes.
Q That was the only lawyer that you ever introduced Ed
#144
Tarapaski to for that purpose; is that right?
A That was the only lawyer that took a phone call on Saturday and showed up.
Q And you attended the meeting with Mr. Blume and Mr. Tarapaski on Saturday March 1st, 2003, at Mr. Blume's office; is that correct?
A With Mr. Beardmore.
Q Was Mr. Tarapaski there?
A Mr. Tarapaski was there, Mr. John Beardmore was there, I was there, and Gary Blume was there.
Q Now, so there were four of you?
A Yes.
Q Then there was a second meeting that involved those parties on March 6, 2003?
A That is correct.
Q At Mr. Blume's office; is that correct?
A Yes.
Q And then the promissory note was completed and given out for execution on March 8, 2003; is that correct?
A I have no idea of the March 8th, that that completed the contract.
Q Well, ma'am, you did go to Mr. Blume's office on March --
A On March 6th.
Q Didn't you also go there on March 8, 2003, a
#145
Saturday?
A No, I did not.
Q It's your testimony that you were not in Mr. Blume's office at all on that date?
A On March 8, no.
Q Did you meet Mr. Beardmore, Mr. Tarapaski, and Mr. Cortegiano at a Bank of America location?
A They called me and asked me to go to that bank.
Q You understood that the purpose of that was for them to execute a promissory note that Mr. Blume had drafted; is that correct?
A No, I didn't understand that.
Q Did they give you any reason that they wanted you to

attend?
A I am not a signatory on the document. There was no reason for me to attend, being at a notary.
Q Why did they ask you to go?
A They asked me to go just about every place they wanted to go.
Q And you did.
A Sometimes I didn't show up, which has been shown in the testimony.
Q On this particular occasion though, ma'am, when you met them, they had a promissory note that had been drafted by Mr. Blume; is that correct so far?
♀ #146
A On the 8th?
Q Saturday, March 8, 2003.
A I was called, I was asked if my bank, at Lincoln and Scottsdale, was open for a notary. I said, I think that they are open for a notary. They asked me to show up in case somebody didn't want to do it. I had several bank accounts there and they felt my relationship with the bank would help them secure a notary to sign a document of which I had no part of.
Q Ma'am, my question is, you knew, when you went to that bank on March 8, 2003, that they were signing the promissory note?
A No, I did not know that.
Q What document did you understand they were struggling so hard to get notarized?
A I just told you, they asked me to come on a Saturday, tell them a bank, if my bank had a notary. If I could show up, so that once they stepped into the bank, if there were any problems because I had a long-standing relationship, that I can ease the situation through. I showed up, there was no notary on a Saturday, I left.
Q Is it your testimony that you did not know what document that they were trying to get signed before a notary public?
A I did not know when they called me what document they were trying to procure.
♀ #147
Q When you got to the bank, did you learn?
A I saw the document once I got to the bank.
Q So you knew, at that time, they were trying to get the promissory note signed on March 8, 2003; correct?
A I knew that they were procuring a signature. I don't know that that was the only document that was ever written.
Q Now, ma'am, let me go to -- I will end, one final question on that, this document is notarized March 8, 2003. Do you have any reason to question that that was the date it was signed, ma'am?
A I'm looking at the document. They told me they went to a notary. I was not there. I'm willing to accept that that document has that date. As to who signed it, what date it was signed, I was not present.
Q You have no reason to dispute the date recited on the document; correct, ma'am?
A I have no reason to dispute it nor accept it.
Q Now, ma'am, let me show you Exhibit 10 in evidence. This has been shown to the jury on various occasions so far. Do you recognize this has a document in your handwriting, don't you?
A Correct.
Q You undoubtedly prepared that; is that right?
A I wrote that document.
Q What is it?

A Funny you should ask. As I remember, that document

♀ #148

has no date on it. And when I wrote that document, I wrote it in my home, as to points after I was asked to be a director on BDV. That is my standard course, when asked to be a director on BDV, that I write down a list of things that are pertinent to the corporation that I am taking responsibility for. That document was taken from my home by Ed Tarapaski.

Q Let's go to your deposition testimony, Page 67, ma'am.

A Sure.

Q I'll start at Line 6. You've just testified specifically to what this document represented. Wasn't this your testimony at deposition, under oath, on June 19, 2007.

Line 6, question: Did you do anything to try and assemble information consistent with this checklist? Answer: First of all, you're calling this a checklist. I don't know if this is a memo. Once again, I will say it, I don't know if it's a memo that someone asked me to write. I don't know if I was present at a meeting and I took notes. You're asking me a question, but you're ascertaining that this is a checklist. I don't know what this is.

That was your testimony under oath, ma'am; is that correct?

A Absolutely correct. It's still my testimony today.

Q You have just provided the jury a specific description of this is a checklist of items that you wrote down

♀ #149

because you were going to become a director of BDV Investments?

A Excuse me. Can I ask that that be read back because I don't think I used the term checklist. You like using this term checklist.

I have said it then, and I will say it again. That is a piece of paper I wrote. I may have written that note because, as a director of BDV, I wrote down things that I know that I have a fiduciary duty to a corporation for. I will write notes on several pieces paper. I don't know if anybody else asked me to write some notes, but the simple fact of the matter is, I wrote that in my handwriting, and Ed Tarapaski took that piece paper out of my home without my permission.

Q Did you give him a box of documents related to his loan transaction?

A No. Ed Tarapaski showed up at my home demanding all the papers that I had to do in this case with BDV. I showed Ed that there was a box. I asked him why he wanted the box. He said I am going to go after these people. I said what people. I said, Ed, this is my box of documents. He said, well, I need it. He grabbed the box from me and walked out of my house. That's how he has all these documents.

Q They were produced back to you in the course of this litigation, weren't they, ma'am?

A When I saw all of these documents, until today, this is the first time I get to tell you that Ed Tarapaski took the

♀ #150

box. Ed Tarapaski just previously stated, in this courtroom, that he took the box. That was his words.

Q Ma'am, these documents were produced back to you so that you could use them to prepare the defense of this litigation; isn't that true?

A Absolutely correct.

Q Now, ma'am, let me talk about Cane and Associates. You talked before that you helped Ed Tarapaski get connected with Gary Blume, also helped him get connect with Cane and Associates;

is that correct?
A That would be correct.
Q What was the purpose of that?
A On March 1st, when Ed Tarapaski and John Beardmore and Gary Blume and I sat in the office while Gary Blume acted as a scribe, there were several documents that was brought to the room.
Mr. Blume refused to do anything about due diligence about the documents because he felt he did not have the ability to ascertain whether the documents were real or whether he can find out them to be accurate. So he stated at that meeting that he would only act as scribe and write up the document as to the way that they wanted to have it done.
Mr. Blume left the room and several times wrote up documents. He wrote up the first promissory note on March 1st.
Q Ma'am, excuse me. My question is, why did you
#151
introduce him to Cane and Associates?
A Because after the March 1st meeting, they decided that they wanted to start transferring money. Ed Tarapaski wanted a trust account and he wanted it in my name. The reason he wanted it in my name --
Q Ma'am, you have answered my question.
A Thank you.
Q You had that set up as an escrow account to hold the funds that were going to be loaned to BDV until certain conditions were met; isn't that true?
A No.
Q Well, the very purpose of an escrow account, ma'am, is for a neutral party to hold funds until they can be released on conditions; isn't that correct?
A No, that is not correct, sir. There is lots of reasons you use an escrow account. That is your interpretation.
Q Very well. Now, you're aware at that time that BDV recited that there was an immediate need for about 250,000 dollars for a Minnesota office condominium; is that correct?
A The amount was $275,000.
Q You became aware of that; is that correct?
A I was told that they needed $275,000.
Q You were asked the following question and gave the following answer at your deposition, Page 51 starting at Line 25.
Ma'am, the testimony you gave before was that there
#152
was an urgency in getting 250,000 dollars? Answer: Right. Question: But there was going to be some other work done afterward to finalize the deal with regard to the other transaction; is that correct? Answer: Yeah.
That was your testimony; isn't that correct?
A Absolutely correct.
Q So you understood there was going to be a note signed, but there was still work to be done to finalize the deal?
A I'm sorry, I just agreed with you, what that said. It said the other transaction. The other transaction was $500,000 to go to Lake Bank.
Q Is it your suggestion, ma'am -- you testified to a 250,000 dollar figure, was it 275?
A You said 250,000, I didn't dicker and add -- corrected you that it was 275. But it was around that figure, sir.
Q We'll get back to the specifics, ma'am. But I do want to talk now about your service on the BDV board.
A Okay.
Q These have been displayed to the jury already.

Exhibit 15, meeting of the board of directors BDV Investments, dated March 6, 2003.

I quote, "We have called an emergency meeting of the board of directors of BDV Investments, Inc., waiving notice as stated in the bylaws of the corporation. One: Action, BDV will

vote add Miss Jan Wallace as a director to the board of directors. The board of directors have voted and agreed to adding Miss Jan Wallace to the board and have signed below as agreement to this. Then Mr. Beardmore, Cortegiano, and Wark signed it.

Was that document signed on March 6, 2003?

A Yes.

Q Were you present as that vote was taken?

A We were all in Gary Blume's office, March 6th. That was one of the conditions Ed Tarapaski insisted I become a board member.

Q Ma'am, it is your suggestion this meeting of the board of directors took place in Gary Blume's office?

A Sir, you do not have to have a board meeting physically. You can have a board meeting, especially an emergency meeting, based on the bylaws of the corporation, and you can have it by telefax, phone conversation, and you can fax signatures later.

Q Was there a meeting of the BDV Investments board of directors at the Villages restaurant on Scottsdale Road in Scottsdale, Arizona, on March 6, 2003?

A Funny you should ask, because if there was a board meeting at the Village Tavern and I was there, I was also in Gary Blume's office on March 6 with John Beardmore. March 6 seems to be a date that comes up all the time, sir, so I must have been

multiple places.

Q Ma'am, this was telefaxed, perhaps you were, this was telefaxed on March 6, 2003, 2:36 p.m. phone number 480-994-0288. You recognize that phone number, don't you?

A Not really, not right now.

Q That's the phone number of the fax machine at La Vanishe?

A That's fine. Do you think I know all my fax numbers?

Q Your hair removal salon?

A Yes, that's correct.

Q So you were at least at the hair removal salon, as well as at the office that day?

A That's not correct, sir. Anybody could send that fax. I don't have to be there to send a fax.

Q I will now go to --

THE COURT: Counsel, we're going to take our afternoon recess at this juncture. 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 shows the presence of counsel, the parties, and the members of the jury. You may proceed whenever you're ready.

BY MR. MURPHY:

Q Ma'am, before the break we were talking about the board of directors meeting. Is it your testimony that you can state with certainty that there was a meeting in Gary Blume's office, of the BDV board of directors, on March 6, 2003, that you

attended?
A Again, there was a board of directors meeting written on paper. Physically, the only people that were in Gary Blume's office on March 6, according to your own client's testimony, was myself and John Beardmore.
That's where we were March 6th. I was not at the Village Tavern that's also dated March 6.
Q Now, you were there and Mr. Beardmore was there. You're stating Mr. Cortegiano and Mr. Wark were not?
A Correct.
Q Did they participate telephonically?
A They participated by fax.
Q By fax, and how did they do that?
A Mr. Cortegiano, from Gary's office, a fax was supposed to be sent around. John Beardmore handled it. The fax was supposed to be sent around while we were in Blume's office, to make me a board member, because Ed Tarapaski insisted that I become a member of the board of BDV.
Q On March 6, 2003, did you approve the action taken in the minutes which are Exhibit 17?
♀ #156
A Can I see the date, please?
Q Sure.
A Thank you.
Q March 6, 2003?
A Uh-huh.
Q Through this process?
A Yes.
Q And so it says, at the second page, the undersigned, being all of the directors of BDV Investments, consent to all actions taken hereby.
You consented by your signature on that date?
A Yes.
Q Now, ma'am, let's talk about your deposition testimony. I'll quote from Page 61 -- I'll remove the pages, perhaps we'll get better copy for the jury.
We asked the following questions and did you give the following answers at your deposition in this case.
Starting at Page 61, Line 2: Did you become a member of the BDV Investments board of directors on March 6, 2003? Answer: That's what I'm trying to tell you, I don't think I accepted on that day. They asked me to take some notes of the meeting, asking me if Mr. Tarapaski -- Mr. Tarapaski wanted me to join the board of directors of BDV because he didn't know them. He trusted me. At the time our relationship was a good one and I told him I would do it. I also told them that as a director I
♀ #157
would be conflicted if he wanted to have information. They asked me to take these notes and invited me on March 6. I didn't take it the same day. Do you have an acceptance letter? Question: When did you accept it? Answer: Sometime after. Question: Can you be more specific than that? Answer: No. Question: But you did step forward to become a board -- a member of the board at the request of Ed Tarapaski? Answer: He asked me to do that. Ending my quote.
Those were the questions asked and the answers you gave under oath; correct?
A Yes.
Q One of the -- part of that answer was he trusted me. Ed Tarapaski told you that, didn't he, that he was imposing trust in you with regard to this assignment?
A Ed Tarapaski told me a lot of things. He was in my home, sir. I don't let people I don't trust in my home.

Q He said he trusted you too, didn't he?
A Okay.
Q The very reason you joined the board is that he requested you to do so?
A That's correct.
Q The reason they accepted you was that he had made that request prior to the time he was going to finance the loan?
A I think you should ask them.
Q Very well. Ma'am, I want to talk quickly about
♀ #158
viewing of the gold. When was it discussed that you would participate in the viewing of the gold at the warehouse in New Mexico for the first time, that you recall?
A The first time that I recall, I was sitting in my office over at La Vanishe. I got a phone call. It was sometime between the time that Durango and John Duke was trying to do the financing in January of 2003, before Mr. Tarapaski.
One of the questions that were asked by Mr. John Monroe in New York, who is Mr. Duke's partner, was that they wanted to make sure that somebody would view the gold. Kelly Black couldn't go and I said I would go.
After I joined the board, that was the first time I discussed about viewing the gold. After I joined the board, and the document that you keep putting up on the screen, at the bottom it says as a director of BDV, because I held a fiduciary duty, promising dore, that I wanted to see the gold.
Q Your deposition testimony, ma'am, Page 69, was as follows, beginning at Line 7:
Question: Was it your intention to view the collateral at the warehouse? Answer: It was suggested that I go and view the collateral. Ending my quote.
Who suggested you do so?
A Billy Cortegiano, John Monroe, and Mr. John Duke, and Kelly Black.
Q Let me be more specific, ma'am --
♀ #159
A Okay.
Q When you submitted this document to Bill Cortegiano with a fax date at the top, from your company La Vanishe, of March 7, 2003?
A Yes.
Q Who suggested that you go view the gold?
A I was suggested by the same people I just told you, and then when I became a director on March 6, I was then sending a document to Billy Cortegiano asking that I want to see the gold. That's exactly why I sent the document.
Q Did Ed Tarapaski ever ask you to view the gold?
A Ed Tarapaski asked everybody to go and view the gold.
Q Did he ask you to view the gold?
A I don't remember if he specifically asked me, but he certainly asked everyone that I could think of.
Q Ma'am, I want to do one follow-up question before we get around to some issues. The document that is Exhibit 15, the minutes where you were elected to the board, who prepared that document? Who typed it up?
A You had shown an exhibit earlier, there was a rough note in my penmanship. I was the one that was asked by Billy Cortegiano how to write a board minute, so I wrote the board minute the way that they asked me to write it.
I then took the rough note and I shot it over to
♀ #160
Billy Cortegiano, from my office. I asked Grace Simm to send it

over. It was written up and faxed over after Billy thought the rough notes looked okay.
Q Who typed this document?
A I don't know. You can ask Grace Simm or someone in my office at the time at La Vanishe.
Q So you believe it was typed in your office La Vanishe?
A It was sent from my office. I'm pretty sure somebody there might have typed it.
Q Similarly, the minutes of BDV Investments, where the loans were approved on March 6, was that typed in your office?
A That document, I am not sure, because that document looks like it was sent around several places. I don't know where that one originated. As a matter of fact, if it has the precious metal dore, I would not be surprised if Clark Griffith, the attorney for BDV, had written the original document.
Q Ma'am, you just made reference to some rough notes you took. Are those notes Exhibit 16?
A Yes.
Q You say those were used as the template for your office to type up Exhibit 15?
A No, I'm sorry. Put that back?
Q Sure.
A Could I see the other one? I'm sorry, those don't
♀ #161
look like the same ones to me.
Q Same what, ma'am?
A Well, again, when you put this on the screen for me, you've given me half pages.
Q I'll start at the top.
A Thank you.
Q BDV meeting, board of directors meeting, meeting called 4 p.m. March 6, 2003.
A Yes.
Q That's your handwriting?
A Yes.
Q I believe you said this was used as a template for the minutes that are Exhibit 15, that were faxed to Grace Simm --
A Could you please put Exhibit 15.
Q Sure, right.
A Well, on the one you just showed me in my handwriting. It has a second action. This doesn't have a second action.
Q That's my point. The minutes that have the two actions are Exhibit 17; is that correct?
A That's correct.
Q So, do you believe now that Exhibit 17, those minutes, were typed up by Grace Simms in your office?
A Sir, even on the other handwritten document, could you show me again the whole document because they still don't
♀ #162
look the same to me.
Q The zoom capability prevents me from showing the whole document.
A The second action, could me show where the gold dore is referenced on that document?
Q I don't know which document you're referring to, ma'am. I'll provide it to you. You can point it out to me.
A The document you have on the screen is my handwritten notes.
Q Right.
A Correct. You keep asking me if these are the handwritten notes of the second action, except there's a big body

of work here that shows the gold dore, that's not on this document.
Q Do you believe it more likely that Clark Griffith, the attorney for BDV back in Minnesota, prepared Exhibit 17, the minutes?
A Now that you've shown me all these documents, I will no longer speculate on who wrote anything. I will only testify that that is my handwriting concerning some minutes. That's it. Because none of these documents look like they flow.
Q Were those minutes prepared in advance of the March 6 meeting, ma'am? If I could borrow them back.
A Again, I will not testify as to anything else because I now don't know for sure what or how it was enacted after I made rough notes.

#163

Q Now, let me talk, ma'am, about conditions to release of funds. Is it true, ma'am, that Ed Tarapaski wanted his funds held until certain conditions had been met?
A No.
Q And did he want documents produced before the funds were released?
A Everything was done on March 6. He was present, sir.
Q So your testimony is, ma'am, that there were no conditions to release of the funds once that March 6 meeting took place?
A Mr. Tarapaski met March 1st, opened the trust account, March 3rd. By March 6th we all sat in the office with his attorney and counsel and all the documents were prepared and he agreed to everything.
Q Now, his attorney and counsel, are you talking about Gary Blume?
A As far as I'm concerned, when he was sitting there, Gary Blume sat there as his scribe and drafted up those documents.
Q You paid Mr. Blume, didn't you?
A The reason I paid Mr. Blume is for the same reason that I paid all of Mr. Tarapaski's bills. He came with no money to this country. He had no credit card. He only did cash transactions. He never had a bank account in this country.

#164

Q Ma'am, your testimony is that Gary Blume was acting as Thomas and Wong's lawyer, is that your perspective?
A Gary Blume acted a scribe for Thomas and Wong and their conditions of a contract.
Q But I want to make sure that the jury understands your position as of March 6, 2003, when you had this board of directors meeting. The funds were free to be released; is that correct? There were no further conditions necessary?
A That would be correct.
Q Let me go to your deposition in this case, ma'am. I'll start with Page 78. Actually, I'll start with Page 77, Line 17.
Had there been an agreement, that you're familiar with, that this collateral would be provided to Thomas and Wong General Contractor? If you recall my prior testimony, the date that we were in Gary Blume's office discussing the first transfer of money that was supposed to be secured against the office building, I stated that there was lots of other security documents that were supposed to come across. These are all parts of those other things that were supposed to come across, and Ed Tarapaski did not want his money to go until he saw the rest of those documents.

That was your testimony; correct, ma'am?
A Correct.
#165
Q And it is your testimony, ma'am, that all of those conditions had been satisfied by March 6, 2003, all of those documents that he wanted?
A On March 6, 2003, Ed Tarapaski was told by John Beardmore, while we were in Gary's office, that the very next day that the collateral that he had asked Tom Kell at a Lake Bank to give the Foundry shares, the boat, the mortgage on the house, the Mercedes Benz, it would all be coming, and Ed accepted that.
Q That was on March 6, Mr. Beardmore said that?
A Yes.
Q Let me establish your testimony, that as of March 6, 2003, all of the documents that Ed Tarapaski had wanted assembled, all of the conditions to funding the loan, all had been satisfied?
A What all documents do you believe, because I only know of a few.
Q Well, what were you referring to in your deposition testimony, at Page 77, 78, where you said these are all parts of those other things that were supposed to come across and Mr. Tarapaski did not want his money to go until he saw the rest of those documents.
What were you testifying to?
A Absolutely, you're showing most of them. No. 1, there was a promissory note of 1.5 million had been to be finished and drafted with the terms that Ed Tarapaski outlined,
#166
including all the terms of his interest and his penalties.
On top of that, there was a second promissory note that you've also shown an exhibit. That second promissory note is also dated March 6. That promissory note was created because the $275,000, which on Ed's first day of testimony, at that meeting on March 6, John Beardmore asked him, can we send the $275,000, we need to do it today.
He looked at Gary Blume, and Gary Blume said to him, if you sign this promissory note, I think that's okay. That was his statement on first day of testimony. That was the second document that Ed Tarapaski needed to see.
The third document was that I was elected to the board of directors. That's why it was faxed around, and he got that.
The other document was he got a confirmation from John Beardmore that Tom Kell, the president of Lake Bank, would send over the additional collateral that Mr. Tarapaski felt so comfortable about, that he was more comfortable than the gold dore. All those documents appeared on March 6, which is why there are constant amounts of documents dated March 6.
Q So let me make sure I understand your testimony. You said Step 1, promissory note for 1.5 million had been finished in draft?
A No, not in draft, had to be finished.
Q Finished?
#167
A Thank you.
Q Then a second note was created, and that I believe is a reference to Exhibit 18, is that the note you're referring to?
A Yes, sir.
Q And Gary Blume said once that note was signed, then it was okay to release the funds for the condominium?
A That is the testimony of your own client on the

first day.
Q Ma'am, my question to you was did Gary Blume say, when this note is signed, it's okay to release the money from the Thomas and Wong trust account? Did Gary Blume say that?
A Excuse me, I don't recall what Gary Blume said. I stated what your client stated that day in the office.
Q Did Gary Blume state if you sign this promissory note, referring to Exhibit 18, it's acceptable to release the funds from Thomas and Wong's account at Cane Associates?
A I heard that yesterday from Mr. Tarapaski.
Q Ma'am, did you hear Gary Blume say that?
A I told you, I don't recall hearing that, but I recall your client yesterday said that that was what Mr. Blume told him.
Q Is it your testimony that this document, Exhibit 18, was present in Gary Blume's office on Thursday, March 6, 2003?
A Yes.
♀ #168
Q Who drafted that document?
A Mr. Gary Blume.
Q And that is your testimony because you saw him do it, ma'am?
A Mr. Gary Blume -- do you know why that document exists, sir?
Q Ma'am, I want you to answer my question first.
A Gary Blume had documents, March 6th, all sitting on the table. This was one of them. If his wife, daughter, secretary, drafted or did the document, I don't know. But Gary Blume was the scribe for documents.
Q And it is your testimony, ma'am, that Gary Blume created Exhibit 18?
A As far as I know.
Q Well, I need to know, ma'am, do you know that or not?
A When I walked into the office on March 6th, this was one of the documents. Did I spend the time to ask if he wrote it himself? No, I did not.
Q But you can say that -- you can't say that Gary Blume said sign that and it's okay. You don't actually recall personally?
A I don't recall personally. Your client said that.
Q And then another conversation that was had on March 6th was Tom Kell has given his assurance that the collateral will
♀ #169
come from Lake Bank that Ed wanted, so that's taken care and off the checklist; is that correct?
A Excuse me, and you keep going to this checklist that you wanted to keep referencing. John Beardmore, while he was there on March 6th, while all these documents were coming in on March 6th, all of us were going back and forth to faxes. Gary was scribing, Gary was leaving the office. We were all in different places. John Beardmore told Ed Tarapaski that tomorrow, sometime tomorrow, Tom Kell will make sure that he gets the letter from Lake Bank, signed by Tom Kell, to show the additional collateral. That's what John Beardmore told Ed Tarapaski in the office.
Q Now, ma'am, you know that that document did not come the next day?
A I don't know what came the next day.
Q Ma'am, let me do this. I'll put in front of you Exhibit 27, a memo from Lake Bank that we've seen before regarding the collateral transfer.
A Yes.

Q Dated March 12, 2003, a Wednesday of the next week.
A Yes.
Q Did you receive that on March 12, 2003?
A Excuse me, could I see the letter?
Q Oh, sure.
A Can anybody make out that header? I can't.

#170

Q I don't know about the header, ma'am. Did you receive that on March 12, 2003?
A I don't know that I received that March 12th. I wish I could see the header.
Q Do you have a reason to believe that that date is wrong, of March 12?
A Well, the only reason, once again, that I'm looking at this thing, first of all, just looking at the document, see the type in of the Lake Bank NA 613 First Avenue, Two Harbors? This document is not on the letterhead of the Lake Bank. And it was supposed to be on the letterhead of the Lake Bank. That's what John Beardmore told Ed Tarapaski on March 6th.
Q Did you ever see a document on March 7, 2003, on the letterhead of the Lake Bank that covered -- that decided that Ed would get the collateral?
A No, I never saw it.
Q Is it your testimony this is a false document, ma'am?
A No, that's not my testimony at all. I just told you that that day on March 6th, the next day John said, on the bank's letterhead. So now you've asked me, this document, March 12, did I get it? I'm looking at it and going, this doesn't jibe with the idea that it should be on bank letterhead. If I got it, I don't know that I got it March 12th. That's what I said.
Q Now, let me check something quickly, ma'am. So you

#171

don't know if you ever got a copy of this document?
A I'm sorry, now you're asking me a new question because you asked me March 12th. I don't know. I don't recall. Maybe I did, maybe I didn't.
Q Fair enough.
A Thank you.
Q So you don't know when, if ever, Ed Tarapaski got the promised statement from the Lake Bank that he would receive the extra collateral?
A I told you everything I can tell you about that letter.
Q And I want to make sure. Let's go back to the list of conditions that were necessary for that money to be released, which you say were satisfied on March 6, 2003. One of them was that the 1.5 million dollar promissory note be finished?
A Uh-huh.
Q Was it finished on March 6, 2003?
A Yes.
Q And you saw it then?
A Yes.
Q Why wasn't it signed until March 8, 2003?
A Because Billy Cortegiano couldn't come into the office at Gary's office.
Q Now, Mr. Blume, and your testimony, was that you were never in Mr. Blume's office on March -- Saturday, March 8,

#172

2003?
A Correct.
Q Do you recall where you were that day prior to the time that you went to meet them at the bank that didn't work?

A Actually, in looking at my notebooks, which I keep, it has a date in there of a place, I believe in Arizona, where I was on Saturday, and left to meet them at the bank.
Q Let's do this, ma'am --
A Sure.
Q Exhibit 19, you looked at this before, March 6, 2003.
A Yes.
Q No doubt you signed that document and sent it to Cane O'Neill Taylor?
A Absolutely.
Q That was done on March 6, 2003?
A That's correct.
Q And you are stating this was done with the knowledge and authorization of Ed Tarapaski?
A Yes.
Q And why was it necessary for you to send this authorization?
A Because Cane O'Neill Taylor didn't know who Ed Tarapaski was. And because they knew me, the only reason that they agreed to set up a trust account for Mr. Tarapaski, that

♀ #173

they never saw and met, was that they would be able to do it because of my relationship. When Ed Tarapaski wanted the money to go through, he wanted my name on all the documents. Period.
Q Now, we've looked at Exhibit 20, and I'll put it up on the screen. Again, Susan Johnson, she's someone you know in Michael Cane's office; correct?
A Yes. She's no longer there, I'm sorry.
Q And I quote. I took one for the team. Jan was a little upset about the wire not going tonight. I told her I absolutely could not reach you because you were in a meeting and the wire transfer section of the blank closed at four.
Were you upset with her that the wire did not go out that day?
A When John Beardmore asked if the money could go out that day, and the promissory note signed by Sokim Lach came back to Gary's office, Gary had said, Ed testified, that as long as that was signed that it was okay. Ed Tarapaski told me to go ahead and send the wire. John had to send the wire that day or they were going to lose the condo office building.
Q Did they in fact lose the condo office building?
A No.
Q You did that because you got the money out on what date? It had to go out on March 6 or they would lose it?
A On March 6th, John Beardmore told everyone that they would lose it if the money didn't go out. Ed gave authorization

♀ #174

for the money to go out. I sent the memo.
Q But it didn't go out on March 6th, the money didn't go out until March 7th; correct?
A I suppose so.
Q Did they lose the office building?
A I don't think so.
Q Ma'am, let's go to Exhibit 28. On March 12, Ed Tarapaski signed a document that says Thomas and Wong General Contractor, hereby authorizes Miss Jan Wallace to release funds from your trust account on our behalf.
A Yes.
Q He signed that document some six days after you had already released funds from the trust account on Thomas and Wong's behalf?
A That's correct.

Q What led to this circumstance where almost a week later you documented the authority that you had?
A Very good question. If you remember the previous document you just put up from Susan Johnson, when it said I took one for the team. It is standard practice at Cane O'Neill Taylor, the law firm, when opening a trust account, that just because Ed wanted it in my name, the funds belonged to Mr. Tarapaski for Thomas and Wong. They would not, just by word, accept me.
So they asked Ed Tarapaski to write a specific
#175
document so they had it in file. That's when Ed wrote it. And it was requested by the law firm.
Q And it was also on March 12 that you sent a request for disbursement of $500,000 to -- up to Cane and Associates; is that correct?
A That is correct, sir.
Q Now, so your story, ma'am, is the following. I want to repeat this just so we can get the stories of the parties contrasted.
No. 1, a meeting of board of directors was held through telephonic and telefax communication on March 6, 2003. There was no meeting where four people were present at the, oh, the Villages Restaurant. That's correct so far?
A Correct.
Q No. 2, on that date, Ed Tarapaski said all of the conditions to funding of the loan had been satisfied and you are authorized to transmit funds from the Cane and Associates account?
A That is your words, sir. What I said was the conditions I understood to be met that day of March 6th, was the list I just gave you. Ed Tarapaski told me to wire $275,000 to the trust account.
Q It's also your testimony, that the March 6th promissory note for $275,000 was present in Mr. Blume's office that day, March 6, 2003; correct so far?
#176
A Yes.
Q And that the 1.5 million dollar note that was signed on March 8, 2003, had been finished on that date?
A Yes.
Q And because all of those conditions had been satisfied, it was appropriate to release the funds?
A You are asking me what Mr. Tarapaski approved. I am only telling you I walked into that office on March 6th. Those documents were there. Your client, Mr. Tarapaski, asked Gary Blume if the funds can be released, and Gary Blume said once this is signed, once that fax came back with Sokim Lach's signature on it, Ed Tarapaski told me to wire the $275,000 or notify Susan Johnson at Cane Clark.
Q Once that fax came back with Sokim Lach's signature on it, Ed Tarapaski said you could wire the funds; is that correct?
A Told me that, yes.
Q And ma'am, let's look then at Exhibit 18.
A Sure.
Q Sokim Lach lived back in Minnesota, is that your understanding?
A Yes.
Q This was telefaxed back not on March 6, 2003, but on March 7, 2003; isn't that correct?
A Excuse me, sir. If you take a look at the document,
#177

it went through the Literacy Company. Do you see that?
Q I see that.
A That's just a copy that was sent to Billy Cortegiano. Unless you have the original document, you can't ask me what date it was at; is that correct?
Q Ma'am, I'm not here to answer questions. We'll proceed in compliance with the rules of the court.
Now, let me shift ahead in time.
You have now got the $800,000 in, and by, oh, March 12, most of it has been disbursed. What remains is about, oh, 25,000 dollars; is that correct?
A That would be correct.
Q After that point, ma'am, there was another 700,000 dollars that supposed to be funded by Thomas and Wong; is that your understanding?
A The day I left, on March 6th, Ed Tarapaski had only agreed to fund 800,000. Your client said that continuous times in his testimony. That's what I understood also.
Q Ma'am, here's a handwritten note of yours. It refers to a disbursement of another 300,000 dollars; is that correct?
A That's correct.
Q You sent that straight to Charlene Wong, didn't you?
A Excuse me. Ed Tarapaski, again, if I could refer to my books and notes, Ed Tarapaski went away to Germany with John

#178

Beardmore. While he was on that trip, he arranged for the money to come across. He asked me, because Charlene Wong is in Vancouver, Canada, and because of the time difference between Ghana and Germany, he sent it off to me and asked me to send it to her. I was not his agent nor did it affect the trust account.
Q It includes a statement: It is really imperative that the funds be posted on Monday, March 31, 2003?
A That's exactly what Ed Tarapaski told me to put on the document.
Q So you say it was imperative to Ed Tarapaski that this occur on March 31st?
A Ed Tarapaski told me to send that document to Charlene Wong and to let her know that it was imperative that it be done on the thirty-first.
Q When did you remember that, ma'am?
A The day that I got the document and the note from Ed Tarapaski.
Q Let's go to your deposition testimony.
A Sure.
Q At Page 92.
A Uh-huh.
Q Answer: It is really imperative that the funds be posted on Monday March 31, 2003. Please call if you need to speak to me. Thank you for your help, Jan Wallace. Question: Do you have a recollection as to why it was imperative that those

#179

funds be posted by Monday? Answer: No. Question: March 31st, 2003? Answer: No. Question: Who told you that it was imperative? Answer: The document speaks for itself. This is Ed Tarapaski's person. I'm sure that Mr. Tarapaski and Charlene have more information about their own conversations.
That was your testimony, ma'am?
A Yes.
Q You didn't know who said it was imperative?
A Excuse me.
Q That was your testimony, wasn't it, ma'am?
A The only way I could get that document, sir, is if

Ed Tarapaski sent it to me.
Q That is because -- but let me clarify, ma'am. You agree that you had no authority to make a decision about transferring funds from the Cane and Associates account to anywhere. That authority rested with Thomas and Wong?
A Excuse me, sir. The document that he gave to Cane O'Neill Taylor says that he gave me that direction. So I think that's confusing.
Q Hold it, ma'am. Is it your testimony that you had the discretion to determine when funds would be transferred from that account?
A No.
Q You --
A That's not what I'm saying.
#180
Q You had to be instructed by Ed Tarapaski or another representative of Thomas and Wong before you could transfer funds from that account; correct?
A I was never told, nor does there exist a document that I am supposed to get approval from Ed Tarapaski. However, every time before money was sent, Ed Tarapaski had given me his fax and his phone numbers in Vietnam, in Cambodia, in Korea, and in my notebooks, every day that wire was supposed to be sent, I took it upon myself to make sure that Mr. Tarapaski was informed and got his approval.
Q You keep referring to notebooks and journals. You were requested to produce documents of relevance to this case, weren't you?
A Yes.
Q You produced certain calendars, didn't you?
A Yes.
Q Are you referring to documents that have been produced to us in the course of this litigation?
A Yes.
Q I will request counsel, at a later date, to address that issue to confirm that.
Ma'am, let's go to the L. Trust disbursement, 20,000 dollars. It went out on March 21, 2003. There is no doubt that you sent a memo to Cane O'Neill Taylor on that date authorizing a transfer of 20,000 dollars to L. Trust; correct?
#181
A Correct.
Q And you also sent an e-mail to Susan Johnson up at the offices of Cane and Associates firm telling her that you wanted that money transferred?
A Correct.
Q Why was that money being sent to John Beardmore's girlfriend's company?
A First of all, I did not know that was John Beardmore's girlfriend. So you're making an assumption. John Beardmore was married to a woman named Katherine. That's the only woman I met. I only found out it was a girlfriend years later.
So, No. 1, I didn't send money to John Beardmore's girlfriend. I sent money because John Beardmore had a conversation with Ed Tarapaski, and in my journal, once again which was presented to you, it showed that there was a conversation between Mr. Beardmore and Ed Tarapaski, and they spoke about the 20,000. It was apparently, if I recall, supposed to pay banking fees and some outstanding penalties or title charges on the condominium. That's what I was told.
Q Who told you that?
A John Beardmore.

Q Let's go to your deposition at Page 86, ma'am.
Line 20. Question: Why were you sending 20,000 dollars to L. Trust in Exhibit 31 or authorizing the release of

$20,000? Answer: I have no idea.
That was your testimony under oath?
A That was my direct testimony, sir. It's still my direct testimony. You asked me what I thought. And I thought, after the fact, when I found out who Sokim Lach was, that I got told that it was for fees for title charges. It is still my testimony today, direct.
Q Ma'am, let's go to the gold melt issue. You heard Ed Tarapaski's testimony that after there was a default, he contacted you and was informed that a gold melt was occurring, that Bill Cortegiano was taking the gold to, I think, Johnson Mathey in Salt Lake City.
A Yes.
Q You did tell me that, didn't you?
A John Beardmore and Billy Cortegiano told me they had arranged with an individual in Salt Lake City, a gentleman by the name of Bob White, that they were going to be able to melt gold because Wark and Nooe gave them the clearance to melt the gold.
They told me to call Ed and let him know that they were going to go and melt the gold. I called Ed because Ed only gave his phone numbers to a few people. I called Ed, like they directed me to, and I told him that apparently Billy Cortegiano was on his way to Salt Lake City to melt gold.
Q So you did tell him that?
A That's what I was told and that's what I was told to

tell him, and yes, I did.
Q That in fact turned out to be false information. There was no gold melted in Salt Lake City, was there?
A There was no gold melted in Salt Lake City. Billy Cortegiano and John Beardmore never got the gold from Nooe or Wark.
Q You did go over to the warehouse in New Mexico in July of 2003 and investigated it; isn't that right?
A In July of 2003?
Q Yes.
A Do you know the specific date, sir?
Q Well, I believe you got an order on July 10, 2003, to enter the warehouse. Does that refresh your recollection?
A Actually, I think it was later. July 10th doesn't make me recall.
Q You do recall going to the warehouse, don't you?
A I did finally recall going to the warehouse with the sheriff.
Q You had been told that this was a highly secured facility that required production of IDs and security checks; isn't that true?
A Yes, sir.
Q And you got there and it was no such thing, was it?
A Excuse me, sir. First of all, if you had showed up in Lordsberg, there was a large trailer at the front of this big,

large warehouse that had railroad tracks behind it. In front of it was a large iron cast. I couldn't get into it because there was a fence. The front trailer house had someone in it that we were told was keeping an eye on that warehouse. I am a woman, at 112 pounds. Do you really believe that I'm going go and investigate a building I have to climb a fence over?
Q Let's see what your testimony was.

A Sure.

Q Page 113, Line 11. Question: Is this before the order of the court, which is July 9 or 10, 2003? Answer: Yeah, I think that's when we figured out we had to get an order from the court because we were jumping a fence and going around and everything was boarded up, locked up. It's the weirdest looking thing I ever saw.

I'll end my quote there.

A Sure.

Q That was what it was; correct?

A Yes. And in that testimony, Billy Cortegiano was with me. I wasn't jumping over fences.

Q My point, ma'am, was this was not a facility that looked like it was intended to secure 50 million dollars of gold, was it?

A Sir, I saw a very large building locked up with multiple chains, with iron carts. If you could tell me what you think it should look like. I've never seen a storage facility

♀ #185

holding 50 million dollars of dore before. If I thought it was a weird thing, it was a weird thing for me to see. That's my opinion.

Q Did it look to you, ma'am, like a facility that was secure enough to hold a 50 million dollar gold deposit?

A I wouldn't know what a facility should look like to hold 50 million dollars of dore.

THE COURT: You have two minutes, counsel.

MR. MURPHY: I will take two minutes, Judge.

Q You did get $50,000, you got $50,000 from a Lake Bank account in the summer of 2003; correct?

A Correct.

Q And you acknowledged that the source of that money was the funds that Thomas and Wong had put in the accounts of Lake Bank; correct?

A No. I don't acknowledge that I know much for sure. What I do know is that I had buyers for M.W. Asia. John had breached the agreement. I called John Beardmore, and I said John, do you still want to go forward with the public entity? John Beardmore said yes.

At the time, if you read the contract, it meant he had to make a second installment, which would bring him up to 100,000. He asked can I just do 50. I said just do the 50, don't worry about it.

Q Ma'am, you were told by Tom Kell that that money

♀ #186

came from a financing, the $50,000 that you got, came from a financing; correct?

A I was told by Tom Kell what?

Q That that money came from a financing. Wasn't that your testimony?

A Do you have that testimony?

Q Sure.

A Thank you, I'd like to recall.

Q Let me start at Page 19.

A Sure.

Q Line 11. Question: Do you know if the money that was provided to the company, to BDV Investments, by Thomas and Wong General Contractor, was the source of the funds that was used to pay your $50,000? Answer: I have no exact knowledge of that. Question: Do you have any knowledge of that, exact or otherwise? Answer: I do now, because it was told to me that that, that somehow the monies had come after a financing. Question: Who told you that? Answer: I think it was Tom Kell,

the manager of Lake Bank.
That was your testimony, wasn't it, ma'am?
A That was my testimony because somebody told me that after the fact.
Q Well, it was money from BDV; correct?
A I have no idea what it was from.
Q That was who owed you the money; correct?
♀ #187
A BDV signed the contract, Lake Bank sent the funds. John Beardmore is a 60 percent owner of Lake Bank. Whatever transpired with John Beardmore to the Lake Bank, I have no knowledge of.
Q You said in your answer, do you have any knowledge of that exact or otherwise? Answer: I do now because it was told to me that somehow the monies had come after a financing.
When you said that, you were referring to the Thomas and Wong financing, weren't you, ma'am?
A No, sir. That is what you are saying. I said a financing because Tom Kell said a financing. I'm sure, as a proper bank manager, he would not disclose personal bank business to me.
THE COURT: Your time's expired. You may cross examine.
MR. MURPHY: Thank you, sir. Pardon me, your Honor.
MS. AMBROSIO: Your Honor, I reserve my cross-examination. I'll just do it in direct.
THE COURT: All right, that's fine.
Well, actually, let me, even though the witness will be back on the stand, let me see the questions that the jurors have at this point.
(An off-the-record discussion was held out of the hearing of the jury.)
THE COURT: The record will show the Court has received a question from the jury and conferred with counsel.
♀ #188
Ma'am, let me ask you, if you were permitted by Mr. Tarapaski to disburse funds on March the 6th, 2003, why was the letter of consent not requested until March 12, 2003?
THE WITNESS: I believe I answered that, but I will go over it again.
On March 6th, and March 12th, Ed Tarapaski was still living in my guest house. He was there, knowing everything that was taking place in this transaction.
On the day of March 6th, when the promissory note came back with Sokim Lach signing the promissory note, John Beardmore asked Ed Tarapaski if it was okay to get the $275,000,000.
I was in the office at the same time with John Beardmore and Ed Tarapaski.
Ed Tarapaski, according to his own testimony, asked Gary if it was okay. And Gary Blume told Ed Tarapaski as long as the documents were signed, it seems okay to him.
Ed Tarapaski told me to go ahead and send the memo to Cane Clark. They, because it was necessary, apparently, because John Beardmore said it was necessary for it to be there on the 6th, it was sent out on the 6th.
Sue Cane, the reason she -- I'm sorry -- Sue Johnson at Cane O'Neill Taylor, the reason she wrote, "I took one for the team," is they didn't have a document from Ed Tarapaski. And on the 12th, they made sure that they got one for their files.
♀ #189
But Ed Tarapaski had given the agreement on March 6th.
THE COURT: I think the question relates to why the law

firm wouldn't have waited until March 12th to request a letter of authorization when the transaction took place on March the 6th.

THE WITNESS: Because -- you would have to ask the law firm why they didn't do it.

I only know that Ed Tarapaski asked me to send the money. Sue Johnson sent it. Why they didn't have their documents in place has nothing to do with me.

THE COURT: Any follow up?

MR. MURPHY: Nothing, your Honor.

THE COURT: Counsel?

MS. AMBROSIO: No, your Honor.

THE COURT: I don't see any questions at this juncture.

All right. Thank you, ma'am, you can step down.

All right. Call your next witness.

MR. MURPHY: Your Honor, we don't have any more live witnesses today, and I will take the Court's pleasure, we can get in reading testimony in of Mr. Beardmore or we can recess and start with Mr. Blume tomorrow.

THE COURT: No, we're not going to recess, it's only 4:12.

Let's get this testimony done.

MR. MURPHY: With the Court's permission, I will read

♀ #190

both the question and answer.

THE COURT: All right, that's fine.

MR. MURPHY: Your Honor, I would request that the reporter not be required to take down anything except the page cites that we're reading in.

THE COURT: That's fine, as long as you identify the page and line numbers.

MR. MURPHY: I will indeed, your Honor.

THE COURT: Is the deposition marked? Is it on file, is the original on file?

Mr. Beardmore. The original, apparently, is not on file. If you're reading it into the record, it needs to be on file.

MR. MURPHY: It's being provided to the staff right now, your Honor.

THE COURT: All right. Thank you.

MR. MURPHY: I will begin at Page 7, Line 5, and will end at Page 50, Line 24.

(A deposition has been read.)

THE COURT: Excuse me, before you go any further, are there objections to any of these deposition designations?

MR. MURPHY: None were recorded in the joint pretrial.

MS. AMBROSIO: No, your Honor.

THE COURT: All right, very well. Let's proceed.

MR. MURPHY: Page 7 Line 5.

♀ #191

(A deposition excerpt has been read.)

Your Honor, with that I'll terminate the questioning at Page 9, Line 16 and proceed forward to Page 11, line 10

(A deposition excerpt has been read.)

That ends at Page 11, Line 21.

I will pick up at Page 12, line 23.

(A deposition excerpt has been read.)

I'll end at Page 13, Line 15.

Begin at Page 16, Line 6.

(A deposition excerpt has been read.)

I'll end Page 16, Line 18.

I will pick up at Page 17, Line 14.

(A deposition excerpt has been read.)

I'll end my quote at Page 18, Line 14.

Page 20, line 8.

(A deposition excerpt has been read.)

That ends at Page 23, Line 7.

Actually, I will continue at Page 23, Line 8.

(A deposition excerpt has been read.)

That ends at Page 24, Line 15.

Pick up at Page 26, Line 4.

(A deposition excerpt has been read.)

End my quote at Page 27, Line 4.

Page 28, Line 6.

(A deposition excerpt has been read.)

#192

That ends at Page 30, Line 15.

Page 31, Line 19.

(A deposition excerpt has been read.)

End my quote at Page 33, Line 3.

Page 35, Line 5, start.

(A deposition excerpt has been read.)

End my quote at Page 38, Line 24.

THE COURT: Counsel, at this point we're going to take our evening recess.

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.

(The proceedings were concluded?)

###1

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

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

February 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

♀

###2

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.
###3
♀
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.
###4
♀
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.
###8
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.
###9
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

##10

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?

##11

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

##12

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?

##13

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

##14

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.

##15

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

##16

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.

##17

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

##18

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

##19

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
##20
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
##21
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

##22

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?

##23

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

##24

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.
♀ ##25
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.
♀ ##26
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?
##27
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?
##28
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.
##29
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.

##30

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.

##31

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.
##32
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
##33
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 --
##34
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
##35
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
##36
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

##37

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.

##38

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.

##39

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.

##40

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

##41

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
##42
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,
##43
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?

##44

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

##45

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

##46

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

##47

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.

##48

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?

##49

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

##50

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.)

##51

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.
♀ ##52
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.
♀ ##53
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.

##54

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.

##55

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?

##56

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?

##57

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?

##58

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

##59

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

##60

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.

##61

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.

##62

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

##63

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.
♀ ##64
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
♀ ##65
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?

##66

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?

##67

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.

##68

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.

##69

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.

##70

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

##71

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 --

##72

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

##73

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

##74

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.

##75

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:
♀ ##76
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
♀ ##77
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.

♀ ##78

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.

♀ ##79

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

♀ ##80

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
##81
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
##82
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.
♀ ##83
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?
♀ ##84
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
##85
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?
##86
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,
##87
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.
##88
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
##89
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.

##90

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?

##91

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?

##92

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.
♀ ##93
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?
♀ ##94
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.
♀ ##95
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
♀ ##96
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.
♀ ##97
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
##98
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
##99
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.
♀ #100
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.
♀ #101
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
#102
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.
#103
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
#104
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

#105

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

#106

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.
♀ #107
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.
♀ #108
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
♀ #109
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.

#110

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

#111

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

#112

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.

#113

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?

#114

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?
♀
#115
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.
♀
#116
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
#117
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
#118
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?

#122

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.

#123

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.

♀ #124

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.)

♀ #125

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.

♀ #126

(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.

#127

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

#128

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

#129

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

#130

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 with it. 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

♀ #131

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

♀ #132

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,

♀ #133

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

#134

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.

#135

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,
#139
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
#140
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

#144

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

#145

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

♀ #146

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.

♀ #147

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?

#148

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.

#149

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

#150

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.

#151

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.

#152

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.)

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

THOMAS & WONG GENERAL CONTRACTOR, INC., Plaintiffs,

vs. CV No. 2005-051325

BLUME LAW FIRM, et al., Defendants.

February 7, 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

♀2

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 General Contractor versus Jan Wallace.
This is the time set for the continued hearing on the defendant's Rule 50 motion, as well as the time to settle final jury instructions.
Please announce your appearances this morning.
MR. MURPHY: Brian Murphy for the plaintiff.
MS. AMBROSIO: Clair Ambrosio for the defendant.
THE COURT: Anything to add, Mr. Murphy, with regard to this motion?

MR. MURPHY: Yes, your Honor.
THE COURT: Keep it brief, I've read the statute.
MR. MURPHY: A.R.S. Section 10-1501(7)
THE COURT: Creation of debt.
MR. MURPHY: Creation of debt.
THE COURT: Counsel, Subsection 7 of the statute expressly exempts the creation of debt and counsel to transact business under the statute.
Why doesn't this fall within the creation of debt exception?
MS. AMBROSIO: Your Honor, there is more than just a bridge financing going on here in this matter.
There were additional transactions that were going to be taking place in this case, in addition to just the bridge financing.
THE COURT: Which were?
MS. AMBROSIO: There was -- he was, he was going to be doing other work with BDV, which was an Arizona -- going to be located here in Arizona.
THE COURT: What evidence is in the record with regard to any additional work that was going on?
MS. AMBROSIO: There was work in Ghana, the construction company work.
THE COURT: Anything else?
MS. AMBROSIO: Not that comes to mind right how.

THE COURT: Counsel?
MR. MURPHY: The statute is clear. It goes on to state:
Collecting -- pardon me -- creating or acquiring indebtedness, mortgages, and other security interests in real or personal property.
On top of that, it also exempts, under Subsection 11, transacting business in interstate commerce. The security was in New Mexico and Minnesota.
MS. AMBROSIO: Your Honor, could I be heard?
We're here in this lawsuit because he claims that Thomas and Wong had an agency agreement with my client who was a resident here in the State of Arizona.
That certainly is not a debt relationship. And by his own testimony, it certainly wasn't done within 30 days. That is his claim.
MR. MURPHY: Your Honor, the indebtedness at issue is what lead to this relationship. That was the transaction of business.
And all of her services were in conjunction with that.
THE COURT: All right. The Court has considered the relevant law arguments of counsel.
And it is ordered denying the Motion for Judgment as a Matter of Law with regard to Section A.R.S. 10-1501.
Anything further with regarding the Motion for

♀5

Judgment as a Matter of Law?

MS. AMBROSIO: No, your Honor.

THE COURT: All right, jury instructions. Have you had an opportunity to review them?

Incidentally, I revised Jury Instruction No. 14. Here are copies of it.

The revision is to add an additional element, Element No. 1: Plaintiff must prove, one, defendant owed a fiduciary duty to plaintiff which is a prerequisite to establishing that plaintiff breached any fiduciary duty.

MR. MURPHY: I have no objection to that change, Judge.

THE COURT: Here's copies of the Revised Instruction 13.

MS. AMBROSIO: I have no objection, your Honor.

THE COURT: All right. What about the rest of the instructions?

MS. AMBROSIO: Your Honor, I would ask that Jury Instructions 7 and 8 be removed. They deal with --

THE COURT: Hang on here. Seven and eight, the expert the instruction, and what else?

MS. AMBROSIO: And again, another expert, medical -- in the medical negligence case.

THE COURT: Right. That was inadvertently included. Okay.

Any objection?

MR. MURPHY: None.

♀6

THE COURT: All right. Remove seven and eight.

Anything else?

MR. MURPHY: Your Honor, I accept the instructions with no record of any objection.

THE COURT: What about the defendant, any other objections or --

MS. AMBROSIO: No, your Honor.

THE COURT: -- observations or whatever?

MS. AMBROSIO: No, your Honor.

THE COURT: All right. Very well, seven and eight will be removed.

15 has been revised without objection.

And with those revisions, the jury instructions are confirmed and settled.

Any other preliminary matters that need to be addressed before I call the next matter?

MR. MURPHY: Nothing from plaintiff.

MS. AMBROSIO: Nothing from defendant, your Honor.

THE COURT: Well, thank you.

I forgot to ask, we had prepared verdict forms as well. I don't know -- I know you've got copies of them.

Any objections to the forms of verdict?

MR. MURPHY: None by plaintiff, your Honor.

MS. AMBROSIO: None by defendant, your Honor.

THE COURT: Okay. Thank you.

♀7

(Recess)

(The record notes the presence of the jury.)

THE COURT: CV 2005-051425, Thomas and Wong General Contractor, Incorporated, versus Jan Wallace. This is the time set for continuation of trial.

The record will show the presence of the parties, counsel, members of the jury.

Good morning again. Are we ready to proceed?

MS. AMBROSIO: Yes, your Honor.

THE COURT: All right.

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

DIRECT EXAMINATION

BY MS. AMBROSIO:

Q Jan, as you recall yesterday, we were looking at this document. I just want to quickly ask a couple of questions about this document. I know you had read the statement at the bottom.

Why did you want to view the gold?

A It was listed as an asset of the corporation.

Q Did you do that as a director of the corporation?

A Yes. That's why it says BDV at the bottom.

♀8

Q The very last page of this document --

A Yes.

Q -- is your Social Security number?

A Yes.

Q Why do you have a Social Security number?

A I live, I work here, and I pay taxes, and I have to have that.

Q Do you employ, do you employ Americans in your businesses?

A I've employed probably over 200 Americans.

Q Thank you.

This is Exhibit 10. I know you've seen this before. Can you tell us what does this handwritten document represent?

A If you take a look at it, it is my handwriting. It represents two bodies of work.

The top one has been cut off because, obviously, there was a prior sheet that starts with No. 3. It's a list of things that I wanted to check and ask BDV for once I became a director of the corporation.

Then if you look at the bottom, there's a second section with the header that says financing terms and conditions. Those are things that I started to write up, that referred to the promissory note.

Q I want to draw your attention to Item No. 6. What does that say?

♀9

A Articles of Incorporation -- which one? Safekeeping receipt transferred to the name of law firm or nominee.

Q What does that mean?

A The safekeeping receipt, one of the things that was talked about was there was an existing one, and I'm trying to remember if it was in Den, Enterprises, D E N, another acronym, or whether it was in Dolce Vita.

One of the things that was suggested, that we get a safekeeping receipt either in the name of a law firm or a nominee, because if it did end up going to Thomas and Wong, that may be a nominee.

Q Thank you.

A You're welcome.

Q Did Ed help prepare this list?

A No.

Q There has been a lot of testimony that from February 24 to March 6 all the due diligence had been done.

Is that a realistic time line?

A I'm sorry, could you say the dates again?

Q From March 24th, 2003 until March 6, 2003, is that realistic to have gotten due diligence done?

A March 24th?
Q That's the date that Ed and Mr. Beardmore --
A No, I'm sorry, I think that's not correct, because March 24th, the deal was long done.
Q I'm sorry, February 24, I'm sorry, excuse me.
A That's all right. Thursday morning.
February 24th to which date?
Q March 6.
A February 24th to March 6. No. The due diligence, I don't think that many people, given the breadth of the documentation that was listed, the Dumaine contract alone was so thick and it had multiple UCC filings, for you to look up every single number, even as an attorney, it would probably take you a good two to three weeks to verify.
Q Do you mean the DeConcini letter or the Dumaine contract?
A The DeConcini letter and the Dumaine contract, actually, it was also long.
Q So the items on this checklist, three through eight, what would be your estimate in the amount of time it would take to conduct a proper due diligence on those items?
A When we do the reverse merger or an incorporation of a new company with one of the entities, we put aside a 60-day due diligence period, standard.
Q And bridge financing, does that usually take longer?
A Even if bridge financing is in place, if documentation has to be done, usually it takes 60 days.
Q What is the estimated cost of such a due diligence, in your experience?
A I've paid $25,000 up to $60,000 with Arthur Andersen.
Q So you would hire other outside lawyers, consultants, accountants?
A Sure. If you're taking a look at precious metal dore, you hire a metallurgist, you hire numbers of people.
Q I want to show you what has been marked as Exhibit 21, of course, the 1.5 million dollar note?
A Sure.
Q Have you ever seen this note complete with all the attachments?
A No.
Q Do you know if the exhibits were ever prepared for this agreement -- for this note, excuse me, for this note?
A Well, this note, as I look at it, and everyone has looked at it for I don't know how many days, the bottom paragraph identifies Exhibit A, Exhibit B, Exhibit C, numbers of exhibits. This document has only been shown in parts.
So, a full and correct document, I've never seen.
Q You've never seen?
A No.
Q I want to draw your attention to the second paragraph. Let's see if I can bring it up.
Notwithstanding the above, on or before March -- I'm sorry -- on or before May 20th, 2003, BDV shall cause to be delivered to the lender documentation satisfactory to the lender evidencing that BDV will be able to make the payment of the full amount of the promissory note on the due date.
Can you shed some light on what the purpose of this paragraph was?
A Sure. The maturity of the loan was exactly 60 days

from first disbursal of funds, which is pretty standard.
So on May 6th, they were supposed to -- BDV was supposed to pay back the loan.
Mr. Tarapaski had pointed out that he wasn't going to wait until May 6th to see if anything was not going to happen or happen.
So, he wanted a provision in there that they give him some sort of notification, before May 6, that we were well on the way of securing the dore as collateral against the loan. And he wanted some indication of that before he had to wait until May 6th.
Q Do you know if he ever got that verification?
A I believe Clark Griffith wrote something to give to Mr. Tarapaski and Thomas and Wong.
Q This is Exhibit 26. Let me see if I can get it all on here.
Does this look like that verification?
A You made it too small. I'm sorry, my eyes are going.

♀3

That's what it says. It's not signed by him though. That's his, that's his secretary, I think.
It may very well be one of them. I think that there were probably a few either conversations or written documentation on assurance.
Q Is that only one that you recall seeing from Clark Griffith?
A I can't recall. There might have been another one, but I can't recall.
Q So BDV was attempting to comply with the terms of the note?
A Yes.
Q Would this be one of those other documents that you were referring to?
A Is that April 16th?
Q Yes, April 16th, 2003.
A Again, it may very well be, it certainly is a document that shows some sort of assurance.
Q Were you involved in either the Clark Griffith letter or this e-mail?
A No.
Q Did you receive --
A I'm sorry, may I get my glasses, just in case?
THE COURT: Counsel, perhaps you can --
MS. AMBROSIO: Yeah, let me get them.

♀4

THE WITNESS: Is it in my bag or on the floor?
BY MS. AMBROSIO:
Q Did you receive $4500 from the sale of personal property from the Beardmore Arizona house?
A The buyer was Mr. Gravinder, and yes, he gave me $4500 in cash.
Q What was that for?
A Mr. Tarapaski owed me back money on a number of bills that I had paid for him because he had no bank account here.
Q The money came from where?
A Mr. Gravinder was the buyer of the new Solano home, and there was some furnishings, not very good, but he ended up buying them and it was from the proceeds of selling off the furniture.
Q Mr. Tarapaski was aware that you were out of pocket for $4500?

A Absolutely.
Q So he consented to you keeping the 4500?
A Actually, we had a big argument about it, but I don't think it's relevant.
Q Do you know -- I want to switch gears now and talk about the wire transfers.
Do you know how Thomas and Wong wanted or were willing to authorize withdrawals from the trust account?

♀5

A I'm sorry, could you --
Q Okay.
A -- could you read that back or say it again?
Q I can say it again.
Do you know how Thomas and Wong was going to authorize withdrawals to be made from the Cane Clark -- I'm sorry -- Cane O'Neill trust account?
A Well, the only thing that ended up happening was a verbal agreement. Normally, I think I said this yesterday, so I'm sorry if I repeat, normally, if you are going to transact money for anybody, there would be some sort of document that says, okay, this is how you're going to transact it.
You're going to call me, you're going to fax me, you will give so much money, you will do this; there is terms. You just don't hand money over to somebody you don't know. So, you usually draw up some kind of term or an agreement.
I never got one with Mr. Tarapaski. I believe one of the reasons that we never got one is because Mr. Tarapaski, the whole time of the first $800,000, lived in my house. He lived in my home for almost a month. I saw him every day.
Q You didn't receive any instructions from Thomas and Wong or Charlene Wong?
A Never any written instructions. Mr. Tarapaski never made it clear exactly how he wanted anything to do and happen through the trust account.

♀6

Q I want to take you through the transactions again, very briefly.
This is the March 6th letter of -- March 6th memo of 2003 authorizing the 275.
Who drafted this memo?
A Cane O'Neill Taylor.
Q Is that their practice?
A Yes.
Q This is the Sue Johnson letter?
A Yes.
Q I'm sorry, Sue Johnson e-mail, also dated March 6, 2003, Exhibit 20.
Again, briefly, she says she takes one for the team, she took one for the team?
A I'm sorry, can I see the top of the page?
Q Oh, I'm sorry.
A Okay. It's an e-mail. Okay.
Q I'm sorry yes it is an e-mail?
A It's an internal e-mail in the law firm?
Q Yeah. "I took one for the team," can you briefly explain that?
A Sure. The only reason I'm saying it's an internal e-mail, it doesn't look like any of the other memos.
This was a document that was actually to go between Michael Cane, the owner of the firm, and Susan Johnson. So it's

♀7

an internal document.
When you open a trust account for a client, not

always, but most attorneys would like to make sure -- the money didn't belong to me. It belonged to Thomas and Wong. But Mr. Tarapaski wanted my name on the trust account.

When the day of March 6th, when it was decided that they had to get the money over for the condominium, I called over to Susan Johnson.

Susan Johnson knew that it was a hurried situation, it had to get in. That was the instructions.

What she didn't have in file or could not find in file was a letter from Thomas and Wong that said that Jan Wallace had the ability to transact for the company.

That's what this document is.

Q Thank you. I just want to show you again, real briefly, that -- I'm sorry. No. I'm sorry, that's the correct document. It's the wire transfer showing the 275?

A Yes.

Q Going to Bradford Lockhart Trust, trust account?

A Yes.

Q Thank you. And this is a March 12th letter from Thomas and Wong to Michael Cane --

A Yes.

Q -- authorizing you to release the funds from the trust account?

8

A That -- it's dated March 12th because after the first wire went out, Michael Cane insisted, after that internal memo, that the letter comes over from Mr. Tarapaski and Thomas and Wong.

Q So you let Cane Clark know there was going to be a $50,000?

A 500,000.

Q I'm sorry, $500,000 transfer.

A Yes.

Q They prepared this memo for you?

A Yes.

Q And you signed it?

A Yes.

Q It's dated March 12, 2003?

A Correct.

Q Here's a wire transfer showing 500,000 going to the Lake Bank NA, I guess, for Beardmore; is that correct?

A Yes.

Q Jan, I want to ask you, did you speak with Ed Tarapaski before you made that transfer on March 12th?

I'm sorry, excuse me, I'm jumping the gun. I'm sorry. We had already discussed that.

On March 20th, 2003, did you speak with Ed Tarapaski and John Beardmore regarding another transfer?

A Yes, I did.

9

Q Is that -- was that -- would that have been recorded in your date book?

A Yes, it would be.

MS. AMBROSIO: Your Honor, this document has not been -- it's been entered, but there's an objection.

THE COURT: It's been marked for identification?

MS. AMBROSIO: Yes, it has. Thank you. It's been marked for identification.

Can I show it to the witness for her recollection?

THE COURT: You want to refresh her recollection?

MS. AMBROSIO: Yes.

THE COURT: Go ahead.

MS. AMBROSIO: Thank you.

THE COURT: Ma'am, don't read the contents of the document out loud, just look at the document.
THE WITNESS: Okay. Thank you, sir. Okay.
BY MS. AMBROSIO:
Q So does that refresh your recollection that you spoke with Ed and John Beardmore on March 20th?
A Yes.
Q Do you recall what you spoke to them about?
A Mr. Beardmore had called and said that they needed $20,000 wired out to pay -- I think it was title fees or miscellaneous fees that had to do with the condo and some of the other things that they had wired the money.
Mr. Tarapaski, at this point, was out of the country. I also called Mr. Tarapaski and spoke to him and let him know.
Q Did you get authorization from him?
A Yes.
Q Is this the memo that you then asked to be prepared for the $20,000 transfer?
A Yes.
Q There's a line at the bottom that has been crossed out and initialed. Did you, did you add that line?
A No.
Q Did you cross that line out?
A I crossed it out because when I asked -- I only asked for the 20,000. When I got it, it had: I further authorize Cane O'Neill Taylor to use the remaining 4960, I believe, as payment toward legal fees incurred.
Cane O'Neill Taylor had not been paid at all by Thomas and Wong for setting up the accounts or any of the work that they were doing on this transfer, because it was the third one and there was only that amount left. They put that in.
Because I didn't get that clearance from Mr. Tarapaski, I struck it out and I initialed it. And that was -- the only money that was sent was the 20,000.
Q That's because you did not have authority to authorize the payment to Cane?
A Absolutely, correct.
Q Thank you.
Here's a wire confirmation dated March 24, 2003, showing the $20,000 going to Sokim Lach; is that correct?
A Correct.
Q Jan, I want you to quickly take a look at this document.
It's a summary of the -- it's a summary of the wires received and the wires sent out of the Cane O'Neill trust account.
A Yes.
Q Based on the document -- I know I didn't show you the wires received, but I know you've already testified on those -- but we have talked about the wires that were sent.
A Yes.
Q Is this an accurate summary?
A Yes. There was only ever four transactions.
Q Thank you. Was there ever a wire transfer from Cane Clark to you?
A Never.
Q Did Ed ever ask you for an accounting of the Cane Clark transactions, something similar maybe to something like this?
A Mr. Tarapaski and Thomas and Wong never asked for

accounting, a list, or a financial documentation that showed use of proceeds, where the money went, what it was used for. They didn't ask for a dissertation on fees, the break down; nothing.

Q Thank you.

Do you eventually get authorization to have Thomas and Wong pay the $4,960 still in the account?

A Yes. When I would ask Mr. Tarapaski about the movement of money, either he was in my presence, either in my home or in town, or I would have a notation and always kept it in my journal.

The day before and the day after, I would fax him and I would telephone him with the numbers being wherever he is overseas.

So, this document was the last amount of money, which, as I told you before, I had struck because I had no authority.

Cane Clark was getting quite upset and they wanted to be paid. Mr. Tarapaski really didn't want to pay them.

On two occasions Mr. Tarapaski collapsed at my home. Paramedics were called. He went to Scottsdale Osborn. We were in the hospital until four. During observation period, I told him that we have to clean-up the bill with Cane O'Neill Taylor.

And he kind of brushed it off. I said we have to pay it.

And then he came in for a meeting in August to meet with Dumaine, where they met within Gary's office. And the same day of this transfer, Mr. Tarapaski was with me, with Dumaine and John Oly. And I told them that you have to pay the bill to Cane O'Neill Taylor. And he finally said just pay it.

Q And those dates would have been noted in your calendar?

A Yes.

Q Just one brief question, did you draft this document, the bill of exchange?

A No. It looks like a legal document. And probably if you go to the CCs, if it's a legal document, it would have a notation of who -- at least the initials of who drafted it.

Q But you didn't draft it?

A No.

Q Here's Exhibit 38. It's a copy -- it's a cover sheet from John Beardmore -- from John Oly to John Beardmore, from Dumaine, enclosing several documents including a financial and consulting agreement.

A Yes.

I'm sorry, can I see the date again?

Q Sure. It's dated March 24th, 2003.

Did you provide this document to Ed Tarapaski?

A No. I believe John Beardmore provided it to Ed Tarapaski.

Q Thank you.

I want to talk briefly about the melting of the gold. Can you tell me about the melting of the gold?

A Yes. As I explained yesterday, BDV and Mr. Tarapaski were very aligned as to the dore. If it got melted, he got paid, we got money.

After the default took place, we all went hard to work of trying to get the collateral so that we can melt it.

I was contacted by Billy Cortegiano, and he told me that a gentleman by the name of Bob White at Mathey Johnson was willing to talk to us about melting dore.

Q I want to stop you there. So Johnson Mathey was one of the companies that was interested in melting the gold?

A Yes.

Q Was there any other companies that were interested in melting the gold?

A Yes. We did a back up company, I think they were call Metalore. I think the gentleman was Mr. Baker. Again, it's in my journal, it's there.

Q So you do recall speaking to two different companies in an attempt --

A Billy Cortegiano did that because Billy knew about that better than I did, but then I would follow up.

Q And the board attempted to have the gold melted?

A Absolutely.

Q Did someone interfere with that attempt?

A Yes. Mr. Wark, the third director on the company,

♀5

Mr. Wark and Mr. Nooe had control of the bullion. And I was told by Mr. Beardmore that they were going to go ahead and let it happen.

Two days later, when we were supposed to be on the road to Johnson Mathey to melt the dore -- Billy Cortegiano was supposed to go with the truck. I got a call from Beardmore saying Wark is not going to do that. Wark has a new plan.

Of course, everybody was upset. And then we heard what the new plan was going to be, is that Mr. Wark had secured a 12 million dollar loan at A and M Ambro in Amsterdam, an overseas bank, and that they were going to use dore as collateral.

I said fine, but Mr. Tarapaski, are we going to make all these notifications? John said he would handle it. Fine. So now, we have a deal to get collateral from an international bank. Mr. Wark headed that up.

Q Does the money come to the United States?

A Yes. A and M Ambro sent 12 million dollars overseas to Bank of America in Florida.

Q What happens to that 12 million dollars?

A This is post 9-11 and there's a thing called the Patriot Act. And now, under the Patriot Act, I think the amount is 5 million, any large sums of money that comes over, it is an automatic that the government is a -- banking institutions, after the Patriot Act, that the FBI gets an alert.

The FBI went in and saw 12 million dollars coming in

♀6

from overseas in rapid pace. They held the funds up for three weeks of investigation. A and M Ambro, pulled the money back.

Q Thank you.

Who is Richard Kirby?

A Richard Kirby, I never met him before the default. Actually, even after. I met him a year later.

Richard Kirby, apparently -- I described to you in the warehouse that they had those big train containers that had stuff inside of it. Richard Kirby claimed that in that warehouse, those belonged to him.

Richard Kirby and Mr. Nooe, who Wark and Nooe own Dolce Vita that owned the dore, Mr. Nooe said those are mine.

So when Mr. Tarapaski tried to get judgments to get in the warehouse and get the gold, Mr. Kirby called and said that's not your stuff, that's my stuff.

Ed Tarapaski met with Mr. Kirby and decided that since he was in a legal debate, and actually he had court cases pending in New Mexico against Mr. Nooe, that he made an offer to Ed Tarapaski and Thomas and Wong to buy their judgments. And he was willing to pay $4,290,000. That's why that bill of exchange was created.

So Mr. Tarapaski comes and he says that Mr. Kirby is willing to buy his judgments for this money. He asked Cane Clark O'Neill to draft the bill of exchange.

When the bill of exchange was drafted and that deal

♀7

was supposed to happen, as you see, it never happened, Kirby pulled apart.

The $1500 or all that talk about the $10,000, the fight, and Mr. Kirby wanted money, that money was so that they can go and test one of the containers to see what was the concentrate because it was a mix of gold, silver, and copper.

Q But you weren't really involved in that, were you?

A I had nothing to do with that.

Q Did you trust Ed Tarapaski when you first met him?

A In the beginning, like I said, I don't think I would have people in my home. There's only ever been three women in the house, that's me and my two daughters.

I've been a single mom since I'm 22, so to have a strange gentleman in the house, yes, you would have to trust someone.

Q Did he give you reason not to trust him?

A Yes.

Q What was that reason?

A Multiple. He was in my home for a very long period of time, coming and going. At the end of the day, I ended up being used. My address was used for multiple bills. One from the Mayo Clinic, while he was over here in Arizona. He didn't have one procedure, he had a total of three procedures.

He met my doctor friends, and got them to do surgeries for him. Mayo called me, he gave my billing address of

♀8

an outstanding bill and they told me that if I didn't pay it my credit would be affected.

On to Dr. McLeash (phonetic), Edward Tarapaski, the night that I took him to Scottsdale Osborn when he collapsed, Scottsdale Osborn to this day contacts me because he gave Thomas and Wong Brunei as his address, and my address where they picked him up. And there's an outstanding bill still to this day, thousands of dollars.

Mr. Tarapaski used my home, my car, my food, my computers, my faxes, everything, and never paid a single penny.

My sister had rheumatoid arthritis. She comes down in the winter. The car that he used to go back and forth to Lordsburg, New Mexico, on a regular base, was a car my sister used. It was a Honda. It was easy for her to get in and out of. He took it. I had to rent a car so that my sister had a car to drive around in Arizona.

It got very, very wearing.

Q Did you eventually throw Mr. Tarapaski out of your home?

A Yes. The last straw was I have two young children. One of them is actually Korean. She is an adopted daughter.

Mr. Tarapaski brought to my guest house two young ladies from Korea. And I went over to the guest house and I asked --

MR. MURPHY: -- your Honor.

♀9

A -- I asked him to leave.

MR. MURPHY: Your Honor, I object as irrelevant.

THE COURT: Overruled.

BY MS. AMBROSIO:

Q He brought two young Korean women. You asked him to

leave?
A I told him it was inappropriate, given the ages of my children, and that I want him to leave now.
Mr. Tarapaski told me that if, if you tell me to get out, I will own your house.
Q Thank you. How much money has Ed cost you, personally, in this transaction?
A I would bet you it's probably close to 60 or $70,000.
Q Did you ever believe that you were Thomas and Wong's agent?
A Never.
Q Did you hold yourself out as Thomas and Wong's agent?
A Never.
Q Did you fully disclose to Ed knowledge you had in all the matters that have been discussed?
A Absolutely.
Q Did you have an ownership interest in BDV or any of the collateral pledged by BDV?
A None.
Q Why do you believe you're being sued?
MR. MURPHY: Your Honor, objection on foundation and relevance.
THE COURT: Well, I'll sustain as to foundation.
BY MS. AMBROSIO:
Q Thank you, your Honor.
What did Mr. Tarapaski tell you when he barred you -- when you barred him from your property?
A He told me that if I threw him out, he would own my house.
Q Do you think that is the reason you're being sued today?
A Absolutely.
MS. AMBROSIO: Thank you, your Honor. I have no further questions.
THE COURT: All right. Thank you. Cross examine. Ma'am.
THE WITNESS: Oh, I'm sorry. I'm so sorry.

CROSS-EXAMINATION

BY MR. MURPHY:
Q How many times have you been sued, ma'am?
A Personally?
Q Yes.
A Three; all dismissed.
Q And how many times have you been sued as an officer of a corporation?
A Many times; six, seven.
Q How many times have you testified in court?
A At least every time that I've been sued.
Q How many depositions have you given?
A At least as many times as I've been sued.
Q You made reference in your examination to Wallace Black, LLC?
A Yes.
Q What is that company?
A Wallace Black, LLC, is a consulting company.
Q Of which you are an owner?
A Yes.
Q You had a contract with BDV Investments to raise

funds, didn't you?
A No, it did not.
Q Did Kelly Black work to raise funds for BDV Investments?
A No, sir. I think you're confused, because Casey Strunk was paid $10,000. Casey Strunk worked with Kelly Black, and she was going to get two percent.
Out of the two percent, Kelly, because she had a consulting agreement with me, as a finance person, was going to
♀2
put one percent and one percent of the two percent in Wallace Black.
Q Which was a company you had an ownership interest in?
A Absolutely correct.
Q So you would have gotten part of the financing fee, had financing been raised; correct, ma'am?
A If Casey Strunk raised it, yes, sir, one percent.
Q Ma'am, you talked, oh, yesterday -- let me get the transcript of your testimony -- I'm going to start some testimony that you gave yesterday, at Page 25 of the transcript that was prepared overnight.
Question: When you say the client in this particular transaction, who was your client?
Answer: My client was BDV. That's why the contract was with BDV.
That was your testimony under oath in front of the jury yesterday; correct?
A Yes.
Q You testified you had no role in this transaction. In fact, you had a client in this transaction, didn't you?
A Excuse me? I'm very confused. The document that you just showed me, would you mind putting it back on?
Q Sure.
A Is this a copy of my testimony?
♀3
Q It's actually a cut and paste excerpt. I can give you the transcript if you would like to look at it.
A It's just I've never seen it.
THE COURT: Counsel, remove that document now.
MR. MURPHY: I'll put the transcript up, your Honor.
MS. AMBROSIO: Object, your Honor.
THE COURT: Sustained. That's an annotated transcript. That's not a transcript.
MR. MURPHY: I apologize to the Court. I will proceed with other questions.
Q Ma'am, was BDV your client in this transaction?
A BDV was my client, not in the transaction with Thomas and Wong, but was my client on the sale of the public entity.
Q So it was -- BDV was your client?
A BDV was my client on the sale of the transaction of the public entity, yes.
Q Ma'am, you were asked some questions about Exhibit 21, the promissory note?
A Yes.
Q You became a director of BDV; is that correct?
A That is correct.
Q And you had responsibilities as a director?
A Yes.
Q To protect the investors; is that correct?
♀4
A Part of my role as a director of BDV was to protect

any and all assets, that includes financing, no matter who brought it in.
Q And you knew this promissory note said that there would be documents provided, including a safekeeping receipt to Thomas and Wong and a certificate of insurance; correct?
A Excuse me, I'm sorry, this promissory note here?
Q Yes.
A March 6th is the same day that I became a board of directors. But the day that this document was drafted, I had nothing to do with it. I didn't have duties at that time.
Q You did as of March 6th when you became a director, didn't you?
A It was after this document, sir.
Q But ma'am, once you became a director you had responsibilities to make sure that the investors were protected; correct?
A I have -- I'm sorry, I'm confused the way that you're asking the question.
You're showing me the promissory note for which purpose?
Q Ma'am, what did you do after you became a director --
A Thank you.
Q -- to ensure that the certificate of insurance
♀5
referenced in this document and the safekeeping receipt referenced in this document were received for the benefit of Thomas and Wong? What did you do?
A Excuse me, sir. As far as I know, and I think Mr. Tarapaski testified, a safekeeping receipt was put in his name eventually.
Q Have you ever seen that document?
A No, I've never seen it.
Q Have you ever seen a certificate of insurance in favor of Thomas and Wong?
A No, I don't recall. I did see a certificate of insurance, yes.
Q Ma'am, you gave some testimony about Exhibit 20, the "take one for the team" memo?
A Yes.
Q You explained in some detail --
A I'm sorry, could you please pull it down? I really prefer to see document in its entirety.
Q Sure.
A Thank you.
Q There is the top of the text.
A Thank you.
Q You explained in some detail the generalness of that, what Miss Johnson meant.
A Yes.
♀6
Q Ma'am, let me go to your deposition.
Page 81, starting at Line 16: You don't know what she says is thanks for saving my hide, refers to?
Answer: I think I have said this already.
A I'm sorry, again, can I just -- thank you, very much --
Q I think I've said this already. I have no idea, in the multiple documents that Susan Johnson, of Cane Clark, while I'm still president of a public company, and the fax numbers don't correlate, I have no idea what this document refers to.
Your testimony under oath at your deposition; correct, ma'am?

A That's correct.
Q You talked at some length about the reason for the March 20 transfer, the March 21 transfer of $20,000 to L. Trust.
And you said that you had a conversation on the telephone with Mr. Beardmore and Mr. Tarapaski where that was approved?
A Yes.
Q Is that your testimony now?
A Yes.
Q Go to Page 86 of your deposition, ma'am, starting at Line 19.
Question: Why were you sending $20,000 to L. Trust, in Exhibit 31, or authorizing the release of $20,000?
Answer: I have no idea.
A That's what I did then, sir. I didn't refer to my books.
Q Ma'am, that was your testimony --
A That's absolutely correct.
Q In your -- when your deposition was taken --
A That's absolutely correct, sir.
THE COURT: Okay. One at a time.
BY MR. MURPHY:
Q You said, when I make transfers, I would send confirmatory faxes about my authorization.
That was your testimony?
A Yes.
Q Would you show me the confirmatory faxes that you referred to?
A Can I please refer to the journal because it's there?
Q No, ma'am. Confirmatory telefaxes. Where are copies of confirmatory telefaxes, which you say have been marked as exhibits to provide to this jury?
A I would be happy, as long as Mr. Tarapaski would return the box of all the documents I had, when he took from my house, which he admitted.
Q Are you suggesting that he took your computer and your hard drives with your e-mails, ma'am?
A Excuse me, sir. This is five years old, this case. I have had faxes and computers updated every two years, both in my home and my offices.
No. I don't have the original machines, but Mr. Tarapaski has my box of documents.
Q And you testified yesterday, ma'am, that in the course of production of documents in this case, we produced back to you the contents of the materials that were given -- that were taken by Mr. Tarapaski?
A Yes.
Q Have you marked copies of these e-mail confirmations which you say existed?
A Sir, Mr. Tarapaski told me, and you've told me, that that box has been given. But I will tell you that all the contents of that box is not there because all the receipts of all the expenses that Mr. Tarapaski incurred was in that box.
So, Mr. Tarapaski did not produce every single thing that was in that box that he took from my home.
Q Now, you say that in August of 2003 you authorized a payment to Cane and Associates for their work in the original escrow transaction; is that correct?
A I'm sorry, could you say the date again.
Q Yes, ma'am. In August of 2003 --

A 2003, yes.
Q -- you authorized application of $4,960 from the Cane and Associates trust account to pay their legal bills?
A Yes.
Q You say that was for the work they did in the original escrow account back in March; correct?
A Yes.
Q Is this your testimony at your deposition, Page 128, I'll start actually at Page 127.
Question. Line 20: But did you ever authorize -- is that money still sitting in the trust account?
Answer: I have no idea. I think that at one point, I think it was when, you know, the transaction, that's it, the transaction with Richard Kirby and Ed Tarapaski, the other one you showed me.
Uh-huh.
I don't know what exhibit it was. It went back to Cane Clark and Kileen Clark did not want to do anything in that transaction because they had an outstanding bill because Ed had not authorized it.
I think around that time that money got cleared up, the failure to pay, and Kileen said they would go ahead and do this Richard Kirby transaction.
That was your testimony; right, ma'am?
A Yes, and it says "I think".
Q So your testimony was wrong; is that correct?
A My testimony was confused. It said I think. Because the Kirby transaction took place August of the next year.
So, in August, they were paid for their bill, and in August, the Kirby transaction and the bill of exchange that Cane Clark documented was the same time period. That's why I said "I think".
Q Let's make sure we have those dates down. I believe, if you look at Exhibit 54, that was February of 2004?
A I'm sorry, I don't know why I'm not reading this right.
Where is your date?
Q At the end of the document, I believe.
A I'm sorry, sir, could you point it out to me so I don't make everyone wait?
Q It would be easier if I can find Exhibit 55.
A Sure. I see in a fax header it says 2-12-2004.
Q Right.
A Yes.
Q Are there signature dates on that, ma'am?
A That's what I was originally looking for. There's an initialing. I don't see any, unless I'm not seeing it.
Q Let me show you the last page.
A Okay.
Q Exhibit 55, I'll put it on up on the screen. It's a typewritten date, February 4, 2004; correct?
A Yes, thank you.
Q Ma'am, we've looked at the promissory note, which is Exhibit 18, on various occasions.
A I'm sorry, would you like this back?
Q Yes.
Did you draft that document?
A No.
Q Was it typed in your office?
A No.

Q Did you have any idea who prepared it?
A As I told you yesterday, I believe that that was all done the same day, March 6, when we were in Mr. Blume's office.
Q You believe Mr. Blume did it, excuse me.
A I don't recall exactly who did it. It looks like something a lawyer would write, but that would be a presumption on my part.
But I know that that document was there on March 6th in the offices.
MR. MURPHY: Nothing further.
THE COURT: Thank you. Redirect.
MS. AMBROSIO: Yes, your Honor, very briefly.

REDIRECT EXAMINATION

BY MS. AMBROSIO:
Q Jan, you were asked about the pages in your deposition testimony. I'd like to go back to those.
♀2
A Sure.
Q This is Page 86 of your deposition. I'm showing you 86 because then I'm going to move it up so you can see.
A Thank you.
Q The bottom of it. Okay.
At Line 20 it says: Why were you authorized to send $20,000 to L. Trust in Exhibit 31 or authorized the release of $20,000?
Answer: I have no idea.
Before you -- next question: Before you authorized release of that money to L. Trust, did you discuss with Ed Tarapaski, did you discuss that with Ed Tarapaski?
Answer: I just stated every time money had to move from that account, from that account, I discussed it with Ed Tarapaski -- I discussed with Ed Tarapaski what it was about.
Is that true? Is that your testimony?
A Yes.
Q Is that your testimony today?
A Yes.
Q And at your deposition?
A Yes.
Q So you didn't know what the $20,000 was for, but you got authorization before you moved it?
A Yes.
Q Did Ed Tarapaski ask you to find out what the use of
♀3
proceeds were going -- what these transfers were going to be needed for?
A I can't recall because there was always other things that we also talked about.
But I do recall that Beardmore told me that it was for the subsequent charges. And I'm sure I would tell Ed or there would be some discussion about it.
Q Did Ed ever ask you to get written, a written confirmation of what the transfers were going to be used for?
A Never.
Q Thank you.
I want to show you Page 127. I'm going to, again, show you, it's Page 127 of your deposition. I'm going to go to Line 6.
Ma'am, I'll show you Exhibit 31. We looked at this before, March 21, 2003, memo, from you to Cane O'Neill Taylor firm authorizing release of funds and -- and before I asked you about -- strike the statement. Striking the statement.
I further authorized Cane O'Neill Taylor to use the

remaining $4,960 as payment towards legal fees incurred. And you struck that out. What happened?

I'm not sure -- answer: I'm not sure, but they had incurred costs sending these wires and producing papers and they wanted to have their bill paid. And they put -- asked me to put this in.

♀4

When I spoke to Ed, Ed was only going to authorize the 20. So if Ed said it wasn't going, I struck it out.

Is that your testimony today?

A Yes.

Q Is that your testimony, and that's your deposition testimony as well?

A Yes.

Q Were your confirmations with Ed Tarapaski by phone or by fax?

A In my journal, there would be telephone numbers. They're all, of course, international, starting with 011, and there would be a fax number attached to the telephone number, if it was that he wanted something faxed.

Sometimes they would just be the telephone number and we would talk; sometimes there would be a fax number that if he would also give me, if he wanted correspondence faxed to him.

Q Did you have to have all your computers wiped after Mr. Tarapaski left your property?

A Yes.

Q Why, briefly?

A There was -- Mr. Tarapaski used my youngest daughter's computer, Chloe, who is mentioned as a witness. My daughter has gone to religious temple school since she was three years old.

Mr. Tarapaski pulled up sites from Korea and other

♀5

places overseas, and the sites he pulled up I thought was inappropriate. And what it caused was a whole bunch of pop ups.

Bart Starr, my computer guy, wiped out my computer three times to eliminate what I thought was inappropriate pop ups for my daughter.

I finally threw the computer out and bought a new one.

Q You and Chloe shared the computer?

A Chloe had her own and I had a laptop.

MS. AMBROSIO: Thank you. No further questions.

THE COURT: I think we do have some questions. Robin, would you retrieve those, please.

Counsel approach, please.

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

THE COURT: The record will show the Court has received a number of questions from the jury and has conferred with counsel regarding those questions.

Ma'am, who created the document for the promissory note in the amount of $275,000, because Gary Blume states he didn't prepare it and Ed states he was asked to sign on this preparation at a later time. So if Gary Blume didn't create the note, who did?

THE WITNESS: As stated before, I also believe that Mr. Blume said that during that day he was getting up and going

♀6

to his office.

And as I stated in my deposition, when I appeared on March 6th the document was there.

Mr. Blume also said that he was a scribner, which means he has form documents. So, he doesn't recall. I know it was there that day. And I really can't tell you who drafted it.

THE COURT: You seem a little disturbed and inconvenienced that Ed was in your guest home and ultimately in your main home. Was that not your choice and why did you not ask him to leave?

THE WITNESS: You're right. When it first started and Mr. Tarapaski was there for the first trip, everything was fine, everybody was copacetic, everybody was happy.

Ed -- I've always opened my guest house to people. A week later Emily moved in from out of town. She had no place. I let her use my guest house. I've always done it.

When we started out, like I said, there was trust. There was no arguments. We had nothing to fight over.

Once the default happened, everything changed, and at that point Mr. Tarapaski sort of insisted on him coming. As a matter of fact, when he would come into town, he would appear at my guest house.

Many times he would take my car and disappear for one or two weeks and go to New Mexico and spend all his time in New Mexico trying to secure judgment, tracking down the gold,

looking for new -- looking for work.

So many times he came in, walked in the guest house. One time Ed Tarapaski broke into my main house and that's when I banned him from my main house and I let him stay in the guest house to drop off bags. That's what happened.

THE COURT: Do you typically allow strangers to live in your home with you and your children?

THE WITNESS: As I just stated, there -- Ed was kind of the only man that's been in our main house. But the only reason that Ed ended up in my main house -- in the guest house, if you see my property, it's actually quite a bit away from the main house and it's a separate home.

But if you recall in the testimony, Ed Tarapaski had come home from the hospital on February 25th, and he had to have one night of a bandage change.

Instead of me going over to the guest house, I told him he can come in the main house. I did the bandage change, he went back to the guest house, but he had to leave my guest house because friends of mine were coming in on March 7th, which is recorded in my journal, Mr. Grant and his wife Alyson. So he couldn't stay in the guest house after the 7th. So he came back into the main house. But it's not typical that he's in my main house.

THE COURT: Did you not feel it would be conflict to do business with Ed and have him in your home?

THE WITNESS: At the time of doing business, again, my business with Mr. Tarapaski was I was an outside individual. I wasn't raising the funds. Mr. Tarapaski was inside my home. We talked, again, with BDV. Our causes were aligned. There were no fights at that time. Everything changed after the default happened.

THE COURT: Why didn't BDV go pick up the gold dore when BDV became in default on the loan?

THE WITNESS: Very good. Mr. Nooe and Mr. Wark, the apparent six barrels that you hear about, we were told that they were in the warehouse in New Mexico, in the secured warehouse.

But we couldn't go and get it. And the reason we couldn't go and get it, Adair Merril owned the warehouse. Because Adair Merril owned the warehouse, BDV had to do a number of applications to courts, both in Arizona and in New Mexico, before we can even get to the door.

And because of all of that, we couldn't just walk in. Adair Merril blocked because he was the owner of the warehouse and he wouldn't let us in.

By the time we got in, as I explained yesterday, all we saw was six rings on the floor. That's how long it took us.

THE COURT: Why did Ed have to go pick up your dore?

THE WITNESS: I'm sorry, I don't understand. But are you asking why did Ed go and pick it up after the default?

THE COURT: You can't ask the jury questions.

♀9

THE WITNESS: I'm sorry.

THE COURT: Go ahead and answer the question as you phrased it.

THE WITNESS: Okay. Mr. Tarapaski had gotten his judgments. And in one of the judgments he had a right to the six barrels.

BDV never fought that judgment. As a matter of fact in front of the Judge Quintero in New Mexico, he was very surprised that BDV was turning over its collateral so easy. But again, if Ed got the barrels, we got money and he got paid.

So BDV agreed to the judgment in New Mexico, to let him go get the dore. He ultimately was the holder of the dore. That's why he tried to go and get it.

THE COURT: The 1.5 million dollar promissory note is notarized by all parties involved. Why is the promissory note for the $275,000 not notarized and not all parties involved in the transaction were involved on this note?

THE WITNESS: Yes. To go back -- I'm sorry, I know it looks a little confusing, but one of the things today that was in my testimony was if you took a look at the 1.5 million dollar promissory note, it states, in the last paragraph, that there are a number of exhibits.

So that document is actually very confusing in of itself because it's not a complete document. You're looking at parts of documents.

♀0

The $275,000 note was because when the 1.5 document mentioned the address, the second promissory note was signed by the people who received the money.

And the reason that that was done as an additional document was because even though the promissory note mentioned the address, the money went to someone.

And if you had to go and get your judgment, you had to go hire an attorney in Minnesota and they would have to serve people, Sokim Lach. And then you had to go through all the regular judicial arguments in the State of Minnesota.

So when we got Sokim Lach and John Beardmore, because it was BDV owned the property and Sokim Lach is who got the money because she was the apparent owner of the trust, when they got that, they signed over to agree that at the 60th day they would turn over that property.

So, it meant that you didn't have to go in there and do all of this extra leg work in Minnesota. They agreed to the same terms of the 1.5 million dollar promissory note. It was an additional security document.

THE COURT: Since you testified that you were in -- it was your practice to draw documents. Did you create the promissory note for $275,000 and this is why Gary Blume, Ed, and everyone else didn't know about the note?

THE WITNESS: No. The documents that I referred to, that I prepare, is in the realm of the public business, that's 10-Ks,

♀1

8-Ks, 13-Cs, 13-Ds, all of those forms, is what I refer to when I say I created the documentation in the public entities.

I did not create any documents in this transaction for Thomas and Wong and BDV.

THE COURT: Can you briefly explain to the jury what those SEC documents are?

THE WITNESS: Certainly. You have a number of disclosure issues that you constantly have to put out. The SEC says -- the rule is tell one, tell all. So everything that happens inside of a company, you have to disclose.

Under the SEC, they have the acronyms 13-D, 8-K, all these things. These are all numbered forms that we have to fill out in the company.

So, for instance, a new director joins the board. We have to fill out a form called the 8-K. The 8-K is filled out, goes to the SEC attorneys. They make sure it's done right. Then it comes back in and then it's published on EDGAR through the SEC.

A 13-D is a filing, I think, for a shareholder. If say, for instance, I wanted to reverse all the stock of the company, if there's a million shares out and we want to make it five million shares, then I file a 13-D or a 13-C. That's what those mean.

So, I make sure that those are done properly. I send it over to the SEC attorney. We work it back and forth and

♀2

then it's published.

THE COURT: Ma'am, you previously testified that you knew Ed had no money available to him. There was no documentation to Ed, or otherwise, showing that Ed owed you money.

Why did you feel compelled to keep the $4500, and if you had agreed, why was there a dispute about the $4500?

THE WITNESS: When you saw the escrow, I think yesterday, when Char Seuffert was on there, if you had noticed in the document there was a thousand dollars mentioned that Jan Wallace had spent. It was my gardener that went over to the house and I paid that bill.

So, it was even in the instructions there.

The box that Ed Tarapaski took from my home had all of the receipts of monies that I spent. The only thing that he didn't get was my journals.

And inside of all my journals that I keep with me is every last name and number and amount of all of the bills that I paid.

For instance, Mr. Blume's bills, that you saw yesterday, there are three notations of $400 each and another one for $2,000, which I paid for Mr. Blume to represent Mr. Tarapaski.

That alone was 32 -- let's see, four times three is 12, plus two, that's $3200, plus a thousand dollars, just on the gardener. That came out to almost 4500.

♀3

However, I paid the bond for when the judgments came down. You had to put up a bond. I paid the bond for that.

Mr. Tarapaski admitted yesterday he has no bank account here. All of these transactions had to be recorded with checks. He had no bank account. So, he told me that if I wrote the checks, that he would make sure I was reimbursed.

When the $4500 came in, Ed Tarapaski got upset. I said, Ed, you owe me so much money, I'm not doing this anymore. That's what the dispute was about.

However, Ed Tarapaski said that what I should have done was put it in escrow instructions. I said most of this money had nothing to do with the escrow, just the thousand dollars. He said you could have put it in anyhow.

I said I'm not doing this anymore. Ed Tarapaski said he needed $4500 because he had another procedure with Dr. McLeash and he wanted to pay him in cash. That's what the dispute was about.

THE COURT: If a typical normal due diligence period is 60 days, and this deal and/or due diligence was from February 24 to March the 6th; i.e., 10 days, did you caution Ed and/or Thomas and Wong about 10 days not being sufficient time for due diligence?

THE WITNESS: Mr. Tarapaski was not only told that by me, he was told by Mr. Blume. Because one of the documents that Kelly Black and I, when we were doing the first transaction, I

♀4

mentioned John Morrow and Duke, who was the first group of people that wanted to come and do funding, when we had to look up the insurance document, it took us three days.

I told Ed Tarapaski that it took us three days just to get an answer back on the insurance document.

Gary Blume testified that when he showed the Dumaine document, a document Mr. Tarapaski, in his testimony, said he never even read, if you look at the UCCs in that document, that, alone, anybody would look at it and know that you can't verify it in seven days.

This surprise is, is that Mr. Tarapaski put $800,000 in a bank account in less than 10 days.

THE COURT: Several people have testified that you had a conflict of interest being on the board of directors of BDV and being that you were acting on behalf of Thomas and Wong.

Why do you believe you were not an agent?

THE WITNESS: First of all, that's why we're here today is to decide whether or not I believed that I ever had any agreement as an agent.

The two depositions I believe Mr. Beardmore and Mr. Cortegiano, in their documentation, they said they believed it was -- that was their understanding. Mr. Tarapaski has no document with me. So everything is oral.

I never believed I was an agent. However, if it was that I was in conflict, here's the way it works. Mr. Tarapaski

♀5

said he wanted me on the board of directors. That statement has been made several times and I've even made it.

Mr. Beardmore, Mr. Cortegiano, and Mr. Wark said, in their documentation, that they knew -- that their understanding was that I was an agent. But Mr. Cortegiano and Mr. Beardmore said we needed the money, so we didn't care if she was on the board.

Well, if you waive conflict, I have no duty. They wanted the money. Even if they perceived and didn't know for sure, they waived conflict and so did Mr. Tarapaski.

THE COURT: Why were you the math person in all areas -- or main person. Is it main person or math person?

Why were you the main person in all areas?

THE WITNESS: I'm sorry, in all areas? I'm not sure about...

THE COURT: Well, if you are unable to answer the question, you can simply say you're unable to answer the question.

THE WITNESS: My confusion is main. But if why am involved with so much of this? Ed Tarapaski was in my home and he discussed lots of this.

John Beardmore and Ed Tarapaski met.

A lot of what is now in front of you, I recorded in journals. So unlike Mr. Tarapaski, Mr. Cortegiano, and Mr. Beardmore, anybody else that's called, it's been five years since

♀6

this all happened.

I keep my journals for 10 years, so I had an ability to go back and check my journals at all times to remind me. That's why I was part of all of this.

THE COURT: If you have a billing address, it's to send a billing statement. Why would your credit be ruined, presumably in connection with the hospital bills?

THE WITNESS: At the Mayo? When Dr. McLeash, who was a plastic surgeon at Mayo, Dr. McLeash, there was an outstanding invoice. Ed Tarapaski gave my home.

When they called, they said Ed Tarapaski said that he lives at your house. I said he's a guest. He doesn't live here. They said, we don't know that. He could be a spouse or a husband. Would you like your credit ruined?

I said I have nothing to do with him. He's not a spouse. Then why did he give your billing address?

All I'm trying to say to you is that's what Mayo told me. And Ed was handing out my address like he lived at my home.

THE COURT: At the time you got this call, did he still reside at your property?

THE WITNESS: No.

THE COURT: Did you just -- did you tell them that he no longer resided there?

THE WITNESS: Yes.

♀7

THE COURT: Let's see, why wasn't the hard drive saved since pertinent documents were created on it?

THE WITNESS: The hard drive is -- are you discussing my daughter's computer?

THE COURT: Well, again, you can't ask the jury questions.

THE WITNESS: I'm sorry.

THE COURT: The daughter's computer or another computer that may have had any of those documents on it, why wasn't the hard drive saved on any of the computers that may have had pertinent documents?

THE WITNESS: The computer Mr. Tarapaski used was my daughter Chloe's computer, she was 11 years of age at the time. Her documentation is not pertinent.

The cites that Mr. Tarapaski used is not something that anyone would have saved. That's -- the whole computer was gone.

THE COURT: If Ed was getting hostile and violent and threatening, why did you, why did you -- I'm going to rephrase that.

Did you or did you not file a police report?

THE WITNESS: Am I allowed to say?

THE COURT: I'm asking the question, did you file a police report for the threats that you say he made towards you and your children?

♀8

THE WITNESS: I have a restraining order out against Ed Tarapaski, and it's just been renewed again in the courts at Paradise Valley.

THE COURT: Was there a report filed for the box of documents taken against your will from your home?

THE WITNESS: No. But I did let Gary Blume know that Ed had come and picked up a box and took it from me and it had my

documentation in it.
THE COURT: Any other questions from the jury?
I don't see any. Let's see -- oh, counsel, you called this witness, you can go first. Any follow-up questions?
MS. AMBROSIO: No, your Honor.
THE COURT: Mr. Murphy, any follow-up questions?
MR. MURPHY: Yes, your Honor.
THE COURT: Remember, limit these questions to the subject matter raised by the jury.
BY MR. MURPHY:
Q Absolutely. You were asked about a restraining order. When did Ed Tarapaski last stay in your home?
A I can't recall the exact date, but he did visit my house, at my front door, 2006, maybe early 2007.
Q Ma'am, the date -- you were sued by Mr. Tarapaski in about June of 2005?
A Okay.
Q The date of the restraining order that you got was

♀9

February 1, 2007; is that correct?
A Yes.
Q Ma'am, that was an ex parte order; that is, Ed did not appear for a hearing. It was issued by the judge on your application; correct?
A Yes, that is correct.
Q Ma'am, the basis for that was that Mr. Tarapaski had threatened you since 2003; is that correct so far?
A Yes.
Q Had accused you of wrong doing?
A Yes.
Q Had filed multiple lawsuits?
A Yes.
Q Had threatened lawyers that had represented you?
A Yes.
Q You didn't mention anything about worries to your physical safety or that of your child in the application, did you, ma'am?
A I think you just read that there were threats.
Q Ma'am, with regard to the -- you gave an answer about an insurance document that took you three days to track down, in response to the due diligence question?
A Yes.
Q What insurance document was that?
A The document that shows the insurance on the dore.

♀0

Q So you did, as a member of the board of directors, attempt to track down a certificate of insurance in favor of Thomas and Wong?
A Sir, the insurance that I was speaking about with Kelly Black, when we tried to look at it, was when we were doing the Duke Morrow deal.
John Beardmore produced an insurance document. Kelly Black tried to track down to make sure that the insurance was a true document.
Q You were asked a question about the $4500 you kept from the sale of the furniture?
A Yes.
Q Were some of the expenses you were claiming reimbursement for related to the New Mexico trip that you made?
A No.
Q That is in July of 2003, to get an order to enter the warehouse?
A July of '02, my birthday, I remember it, we were in

New Mexico.

But the $4500 as I explained, $3200 of it was Gary's bill and a thousand dollars was shown on the screen in escrow, when my gardener went to clean up the property of Solano house to get it sold.

Q Did any of that relate to Cane and Associates?

A None.

Q Did you ever have a bill from them?

A Did I ever have a bill from Cane and Associates?

Q Yes.

A I don't know. Cane and Associates are my SEC attorneys. I get multiple bills from them.

Q I'll focus. Did you ever have a bill related to services provided to Ed Tarapaski.

A I'm not sure.

MR. MURPHY: Nothing further.

THE WITNESS: Thank you.

THE COURT: Any other questions? I don't see any indication.

All right. Thank you, ma'am. You can step down.

MS. AMBROSIO: Your Honor, the defendant rests their case.

THE COURT: Very well. Any rebuttal testimony?

MR. MURPHY: Yes, your Honor -- call.

THE COURT: Oh, I see from the time that kind of got away from us. Let's take a brief recess, a brief morning recess. Instead of 15 minutes, stand in recess for 10 minutes and then we'll pick up again with the examination.

(Recess.)

(The record notes the absence of the jury panel.)

THE COURT: The record will show the presence of the parties and counsel.

My understanding is there is something you want to take up.

MR. MURPHY: Yes, your Honor. There has been statements, testimony this morning from Ms. Wallace, that Ed did not have a credit card, stiffed her on a Mayo bill.

I would like to mark for identification, be allowed to put into evidence, the receipt of payment showing his credit card bill.

Showing that to opposing counsel, they may object to that, but I think that they have opened the door for this with the testimony that was given.

THE COURT: Well, let me see it.

MR. TARAPASKI: I paid all my bills, your Honor.

THE COURT: Mr. Tarapaski, you're out of order.

Well, okay. I have a credit card for, I guess, a -- what is it here, it looks like a payment of 4375 to Mayo in November of 2003. I don't know what it's for.

MR. MURPHY: To rebut the allegation --

THE COURT: No, no I understand what you're offering it for.

MR. MURPHY: I'm sorry.

THE COURT: I don't know whether or not it relates to the same issue that they called about.

MR. MURPHY: I'll put his testimony on to that effect. But they've also said he never had a credit card at all, which is --

THE COURT: I don't know. I don't remember that he didn't have credit cards. He really didn't have any bank accounts.

MR. MURPHY: No, she also said credit cards. He came with cash and no credit cards.

THE COURT: Well, I remember there was also testimony he only wanted to transact business in cash, but not that there weren't -- that he had no credit cards. You may be right, I just don't recall it.

Counsel.

MS. AMBROSIO: Your Honor, there were multiple surgeries. I don't know what this bill -- which surgery, which bill.

My client did get the calls and at the time the bills were not paid at the time she received the calls.

THE COURT: Well, you know, look, it seems to me whether this thing is marked or not, as far as rebuttal testimony is concerned, it's fair game to ask him whether or not he paid any, he paid the -- a Mayo bill or Mayo bills with regard to this -- with this credit card.

Certainly also fair game on cross examination to ask him how many surgeries he's had done and what this bill relates to, et cetera, et cetera.

MS. AMBROSIO: Well, your Honor, it's a receipt. There isn't a credit card number.

♀4

THE COURT: It says VISA and gives the credit card number and the signature and such. I don't know.

MS. AMBROSIO: Your Honor, I still strongly object. I mean, this has been discussed several times. He shows up with this today.

THE COURT: Yeah, well, it is, the receipt itself is perhaps a little late in the day, but again, it seems to me that the testimony is appropriate -- or at least not excludable.

MR. MURPHY: Your Honor, I think it's important to corroborate the testimony with documentary evidence.

And I will tell you, this is not an issue in the case or in the pretrial. This was something injected in the course of the proceedings.

THE COURT: Whether it was or wasn't, I don't recall any objection to it. So what's the difference?

MR. MURPHY: Your Honor, that being the case, we must be able to put in rebuttal, and I believe the --

THE COURT: I didn't tell you you couldn't. I said you can ask him whatever you wanted to ask him.

The only question is whether or not the receipt comes in. I guess that's where it is.

MR. MURPHY: Yes, your Honor. And I would state there is no prejudice to opposing counsel or the opponent with regard to this.

THE COURT: Well, how many receipts -- there is a

♀5

prejudice unless your client is going to testify -- let me rephrase it -- it's plainly prejudice if there is more than one receipt floating around or more than one bill or more than one surgery done.

MR. MURPHY: Well, there were more than one surgery.

THE COURT: Well, all right. How do we know, without the testimony of Mayo, that this is the only bill that was submitted?

MR. MURPHY: Your Honor, I --

THE COURT: That's my concern about saying that this -- any way, go ahead. To suggest there is no prejudice, seems to me to over look a lot of foundational references here before you ever get to that point.

MR. MURPHY: Here is another Scottsdale Healthcare treatment, showing credit card issues. She said she took him to

Scottsdale Osborn, and I think --

THE COURT: I think the Scottsdale -- what does that have to do with anything?

The testimony was she had telephone calls from Mayo, a telephone call from Mayo with regard to some unpaid bills. I don't know that Scottsdale has much to do with anything.

The question is how many times has he been to Mayo, how many bills has he gotten, and whether or not -- for all I know this is after that telephone call. I don't know when the telephone call came.

MR. MURPHY: I don't know either, your Honor. I wasn't

♀6

party to it. But we are --

THE COURT: So, I said, you know, you can ask him on cross -- or excuse me -- put him on the stand and ask him about it. The door seems to me to have been opened to that.

As I say, cross examination can be -- can cover whatever you want to cover with regard to cross on this.

My only concern is the document itself, having been just produced on the last day of trial.

MR. MURPHY: In response to testimony on the last day of trial.

THE COURT: Well, that may be, but there wasn't any objection to it, et cetera. You know, there was an issue here with regard to none -- with, by way of example, nonpayment of not paying back the $4500, or whatever, for this personal property.

I would think that there would have been disclosure of any and all evidence of payments that Mr. Tarapaski made while he was here, so that there could be some claim that, you know, all or any of that money was to satisfy some indebtedness for the transactions.

MR. MURPHY: The testimony wasn't that the $4500, that she claimed was related to medical bills, she paid. It was gardening fees and the like.

THE COURT: Is your client going to testify that this bill is for one surgery and that's the only surgery he ever had at Mayo?

♀7

MR. MURPHY: No, he's not.

MR. TARAPASKI: It is the only --

MR. MURPHY: That was the only surgery at Mayo, I take it back. That's the only surgery at Mayo.

THE COURT: Is this the only bill he ever got from Mayo? Did he ever have any work done there?

MR. MURPHY: I'm told no, your Honor.

MS. AMBROSIO: How do we really know that?

THE COURT: We don't without Mayo's records.

You opened the door.

MS. AMBROSIO: Your Honor, I understand I opened the door, but while my client was on the stand, Mr. Murphy had a chance to cross examine her.

He knew about that document while she was sitting in that chair. He could have laid the foundation. He could have asked her when did she get the call, how many calls did she get, how many surgeries did she believe he had.

THE COURT: Well, I'll tell you what, I am going to do this, I'm going to let -- if you want to put on this evidence, I'm going to let the defense reopen their case to examine further with regard to this entire subject matter.

MR. MURPHY: That's fine. That's a fair, that's fair, that way both sides are not prejudiced.

MS. AMBROSIO: Your Honor, I really think that is a --

THE COURT: Look, counsel, you opened the door with regard to this, this subject in connection with your client's testimony.

The only real issue here is whether or not the document comes in. But it seems to me that the examination on rebuttal is perfectly appropriate in light of the other testimony.

Nonetheless, I am going to let you reopen your case in order to -- because new documents, if they're going to be used in rebuttal, seems to me the defense has to have an opportunity to deal with this.

I'm going to let you reopen the case and ask your client whatever you want to about all the work that Mr. Tarapaski had done, whether it be at Mayo or whatever the case may be, when the telephone calls were made, whether or not this post dates or predates the telephone call, et cetera. So that's what we're going to do.

MS. AMBROSIO: Thank you, your Honor.

THE COURT: All right. We better take that receipt.

MR. MURPHY: May I mark that for identification?

MS. AMBROSIO: Your Honor, that's the only document that will be entered?

THE COURT: The only one he asked me -- no. Scottsdale documents are not coming in. This telephone call had only to do with Mayo. Not reopening this case in the last day of trial.

Bring in the jury, would you, please?

MR. MURPHY: A procedural question, your Honor. Will they reopen their case now or will Mr. Tarapaski take the stand?

THE COURT: Well, I'm not going to have them reopen until there is something to reopen about. So let's hear what the testimony is, then they can reopen their case.

MS. AMBROSIO: Thank you, your Honor.

THE COURT: Keep in mind, when I say reopen, it's only with regard to this particular issue.

MS. AMBROSIO: Yes, your Honor, we understand. Thank you.

THE COURT: How long is it anticipated the testimony will take?

MR. MURPHY: I estimate about 10 minutes, your Honor.

(The record notes the presence of the jury.)

THE COURT: Be seated, please.

The record well show the presence of the parties, counsel, and the members of the jury.

All right, counsel rests.

Mr. Murphy any rebuttal?

MR. MURPHY: Plaintiff calls Mr. Tarapaski.

THE COURT: Would you please 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 MR. MURPHY:

Q Sir, there have been accusations made that you did not have a credit card, that you did not pay your bill at Mayo Clinic that Ms. Wallace was dunned for.

May I show you what has been marked for

identification as Exhibit 102?
Would you tell the jury what that is.
A Yes. She said I didn't have cash in the credit card --
Q No, sir. Would you tell the jury what that document is?
A This is a receipt from Mayo Clinic, where I paid the bill with my credit card.
Q Is that the carbon copy that was given to you by Mayo Clinic?
A Yes. This is the original.
Q Is that the only treatment that you received -- is that payment for the only treatment that you received at Mayo Clinic?
A Yes. I had one treatment at Mayo. This is a bill that this is paid.
MR. MURPHY: I offer into evidence Exhibit 102, your Honor.
THE COURT: Objection?
MS. AMBROSIO: Yes, your Honor, we object.
THE COURT: Grounds?
MS. AMBROSIO: Oh, none, your Honor. No, I'm sorry, yes, your Honor. We object because of the lateness of the document.
THE COURT: Nondisclosure?
MS. AMBROSIO: Nondisclosure, thank you.
THE COURT: Well, the objection is overruled. Proceed. The document's admitted.
BY MR. MURPHY:
Q Sir, the date of this is November 14, 2003?
A Yes.
Q Dr. McLeash was the surgeon involved?
A Yes.
Q Does that show your credit card number on the receipt itself?
A Yes.
Q The total payment paid was $4,375?
A Yes.
Q And sir, to your knowledge, did you pay the entire bill that was claimed by Mayo Clinic?
A Yes, I did.
Q Did you ever receive a request from anyone else to pay more?
A No.
Q Let me go to the issues with regard to the daughter's computer.
Sir, you were in the house and from time to time used Chloe's computer; is that correct?
A Yes.
Q Did you ever use it for an improper purpose?
A No. That smear campaign is really difficult to listen to. That is a lie, that's an absolute lie.
MS. AMBROSIO: Objection, your Honor.
THE COURT: Grounds?
MS. AMBROSIO: Miscategorizes the testimony, your Honor.
THE COURT: Overruled. You can deal with it on cross.
BY MR. MURPHY:
Q There was testimony that you brought two women from Korea into her home. Did you have a Korean girlfriend?
A Yes. My girlfriend is 38 years old. That's not a young girl. And she was helping me because of my health was shot by this time.

And I asked Jan before she came if it was okay if she came for a few days because she was in San Diego.

Q There was testimony that Miss Wallace was threatened by you and that she was alone in the house with two daughters.

♀3

Did two daughters live there?

A No, no. She lives in that house with one daughter, and one of her ex three husbands -- and brow beats that poor man so bad it drives me to tears.

Q What is the name of the other male that lives in the house?

A Jeff Cutler.

Q Was he there throughout the period of time that you used the guest house?

A Yes, most of the time. There was a couple of times when he flew back to Canada to be with his -- he lives with his mom and dad there sometimes.

Q Sir, let me show you what was marked -- what has been admitted into evidence as Exhibit 84.

A Yes.

Q Are you familiar with that document?

A Yes.

Q What does that relate to?

A That is a document that Jan Wallace created with Bill Cortegiano when she went to Lordsburg and --

THE COURT: Just a minute. It's not in evidence.

MR. MURPHY: I apologize, your Honor. Based on the foundation laid, I believe this was shown to the jury in the case. I thought it was in evidence. But I would offer it in evidence now.

♀4

MS. AMBROSIO: We have no objection.

THE COURT: All right, the exhibit's admitted.

MR. MURPHY: My apologies to the Court.

Q Sir, please continue with your answer.

What is that document?

A Yes. He said it was a document that was sent to me. Well, that's -- by Bill Cortegiano.

This is a document that, that Jan Wallace created in Lordsburg before they went into the warehouse in case they found the dore there.

BDV was -- Jan told me that BDV was concerned that if I got possession of all of the gold, that I may not give them back what belonged to them and I may take more than my share.

So she negotiated this with them, so that I would only get what I am entitled to. That's what she told me. I wasn't even there. I was in Canada. She went into the warehouse without me.

Q There was testimony that some $1500 was paid by her for testing of the gold. Who paid the bill for the testing, sir?

MS. AMBROSIO: Objection, your Honor; that mischaracterizes testimony.

THE COURT: Read the question back.

(Record read.)

THE COURT: I'll overrule the objection. You can follow up on cross.

♀5

BY MR. MURPHY:

Q Who paid that bill, sir?

A I'm sorry, what?

Q Who paid the bill for testing of the gold after there was a default?

A I paid the bill on the testing of the gold and that was paid long before.

She said this $1500 was used to pay for testing. The testing was already complete. That $1500 was to give to Richard Kirby because she was doing that bill of exchange. The testing was completed one month before that.

Q The restraining order that was testified to, sir.

A Yes.

Q That was dated February 1, 2007. When were you last at Jan Wallace's house?

A The last time I was there was in the spring of 2005. The lawsuit was created in June of 2005.

And Leo Buse told me I was not to have any contact with her whatsoever, and I did not.

Q Sir, where was that restraining order served on you?

A That was served on me in your office, six months ago, in June of 2007, is the first time I ever heard of it.

Q Why were you in our office that day?

A To give a deposition.

Q That's when they had the police come to serve the

♀6

restraining order on you?

A Yes. I had no idea about this before that.

I was a complete gentleman in her house and I used to take her and her daughter out for dinner quite a bit.

Q Sir, with regard to the restraining order, did you ever harass or threaten Jan Wallace?

A No, no, I absolutely did not do that. That is not true at all, no, sir.

MR. MURPHY: Nothing further.

THE COURT: Cross.

CROSS-EXAMINATION

BY MS. AMBROSIO:

Q Mr. Tarapaski, did you have any other surgeries at Mayo Clinic?

A No.

Q Did you have any other follow-ups or surgeries done by Dr. McLeash?

A Yes.

Q Is it possible that they were billed through Mayo Clinic?

A No.

Q You're certain of that?

A Yes. Dr. McLeash is in private practice.

Q That was my question.

♀7

Sir, there was testimony about Jan Wallace paying $1500 to Richard Kirby. However, you testified earlier, several days ago, I believe, that Richard Kirby required $1500 to do the bill of exchange with you and that you refused to pay that?

A Correction, there was no -- never any discussion that Jan Wallace paid $1500 to Richard Kirby. That is not true.

Q But you paid $1500 to Richard Kirby?

A Yes.

Q And it was for the testing of the containers?

A No, it was not. The testing was completed long before that bill of exchange came about, about one month before, and I have proof of that.

Q Sir, you keep saying you have proof of documents. You know that this case, by your own admission, was filed back in 2005. How come we're hearing about documents just today?

A Those documents were with the attorney and -- oh, you want to talk about proof of documents, I'll tell you

something --
Q Sir, sir, that was my question.
A Okay, sorry.
Q You said that you took Jan Wallace to dinner, her and her daughter to dinner, many times?
A Sure, I did.
Q You have proof of those credit card receipts?
A No, not with me. And a lot of times I did pay with cash, yes.
Q But you have proof of this document?
A Yes, because Leo Buse wanted proof that I was at -- something to do with the surgery anyway. So, I, I brought that document. I have been carrying it around for about two years in my little bag there.
Q Mr. Tarapaski, do you know who Billie Fuentes is?
A I know of her, yes.
Q Did you break into her real estate office?
A What?
Q Did you break into her real estate office?
A What?
Q Did you break into her real estate office?
A No. And as far as I know, she's not in real estate. She's the girlfriend of Don Nooe and lives in El Paso, Texas.
Q Did she ever live in Arizona?
A I don't know. Ask her. Not to my knowledge, no.
Q Did you ever show up at Miss Wallace's house with documents that you claimed that you had taken from Billie Fuentes and was burning them in her backyard?
A No.
MS. AMBROSIO: Your Honor, I have no further questions.
THE COURT: Redirect.
MR. MURPHY: Nothing, your Honor.
THE COURT: Questions from the jury? Looks like we have at least one over there. Robin, if you can retrieve those.
Counsel approach.
(An off-the-record discussion was held out of the hearing of the jury.)
THE COURT: The record will show the Court has received a question from the members of the jury and conferred with counsel.
The Court is going to defer providing a response to this question until after the noon recess.
All right, let's see, I think we're done with Mr. Tarapaski right now, are we not?
MR. MURPHY: Yes, your Honor.
THE COURT: Okay. No other questions from the jury?
Sir, you can step down.
All right. As we had previously discussed, the Court will permit the defense to reopen their case.
MS. AMBROSIO: Thank you, your Honor. I recall Jan Wallace to the stand.

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

DIRECT EXAMINATION
BY MS. AMBROSIO:
Q Jan, I know you've seen this, that you've --
THE COURT: Ma'am, can you -- it may not be possible --
MS. AMBROSIO: Make it darker.

THE COURT: I don't know if there's any way to make that any clearer.

MS. AMBROSIO: Here we go. Is that better?

THE COURT: Can the jury see that? All right.

BY MS. AMBROSIO:

Q Jan, we've just been provided with a copy of this receipt.

You testified that you had received a call from Mayo Clinic about an unpaid bill. Do you know about when you received that call?

A It was after Edward Tarapaski was gone. I don't recall the exact date. However, if I look at this receipt, it has two entries, surgery and pre-op something something there.

The bill that they sent for me, and the reason that I eventually got Mayo off my back, the way that Edward Tarapaski met Dr. McLeash was at my home. Dr. Peter Richmond and Dr. Joanne Richmond are my friends. Dr. Peter Richmond works at the Mayo Clinic. Dr. Joanne Richmond as the anesthesiologist for Dr. McLeash.

The bill that came to my home was prescription meds that was given after the surgery, and the bill came after. So this is a bill that he may have paid, but it's not all the bills he paid.

And it was Dr. Joanne Richmond that got Mayo off my back.

MS. AMBROSIO: I have nothing further, your Honor. Thank you.

THE COURT: Ma'am, just a minute.

THE WITNESS: I'm sorry, I'm sorry.

THE COURT: Cross.

CROSS-EXAMINATION

BY MR. MURPHY:

Q What was the amount of the bill about which they called?

A I think it was, I don't know, 300 and 90, something like that.

Q I believe your credit would be able to survive a $300 charge, wouldn't it, ma'am?

MS. AMBROSIO: Objection, your Honor.

THE WITNESS: Sir, I shouldn't have to take somebody else's bill.

THE COURT: Hold on.

MS. AMBROSIO: Objection, your Honor; it's irrelevant, that statement -- question.

THE COURT: If that's an objection, overruled.

BY MR. MURPHY:

Q Your credit could survive a charge of $300, couldn't it, ma'am?

A Sir, the Mayo Clinic called me, and when they didn't like the idea that a bill was going to be paid, the woman said would you like your credit affected.

Whether or not that you think that affects my credit has nothing to do with anything. And Mr. Tarapaski shouldn't leave me his bills behind for his plastic surgery.

MR. MURPHY: Nothing further.

THE COURT: Ma'am, hang on.

THE WITNESS: I'm sorry.

THE COURT: Redirect.

MS. AMBROSIO: No, your Honor.

THE COURT: Any questions from the jury? Yeah, we have at least one.

(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.

With regard to this telephone call that you testified you received from Mayo, pertaining to an outstanding bill for Mr. Tarapaski, had you received that bill in the mail or did you just get a telephone call about an outstanding bill?

THE WITNESS: I received the bill in the mail.

THE COURT: Was it -- to whom was it addressed?

THE WITNESS: Edward Tarapaski.

♀3

THE COURT: Why were you opening mail addressed to another person?

THE WITNESS: When I got the slip of mail, I get all my envelopes together, I have a letter opener. I started from the back, I flip all the mail, and I slice it through. That's all I did.

THE COURT: All right. Any other questions? Follow-up from counsel?

MS. AMBROSIO: No, your Honor.

MR. MURPHY: Nothing, your Honor.

THE COURT: All right. Thank you, ma'am, you may step down.

All right. There is no other evidence to be presented. The record is closed.

We're, at this juncture, counsel will have an opportunity to present their closing argument to you.

I will instruct you on the law you're to apply in arriving at your decision. The case will then be submitted to you for your decision.

I would anticipate the case will be to you by approximately mid afternoon. So, that's where we're at.

I'll let you take your noon recess at this juncture. We'll pick up again at 1:30. I'll remain on the bench for a few minutes.

Please remember the admonition. Don't permit anyone

♀4

to discuss the case with you, please keep an open mind.

(The record notes the absence of the jury.)

THE COURT: Mr. Tarapaski, will you come forward and take the stand again? I have a few questions I wanted to ask you with regard to Exhibit No. 10, which is a document concerning which the jury had a question.

And I also wanted to ask you about another exhibit, the one just admitted, I think it was No. 84. Did I understand you, the receipt from Mayo, Exhibit 84 -- okay, 102, whatever the number is, did I understand you to testify that Mr. Buse had asked you for proof of payment of these hospital bills?

THE WITNESS: No. That's one of the documents I told him about. And he said if I had any originals to keep them in regards --

THE COURT: Wait a minute. Did you gave him copies of this?

THE WITNESS: No. I was out of the country, and I was going to give it to him when I came in and I've been carrying it around in my --

THE COURT: Wait a minute. Counsel asked for documents, which would include this document; correct?

THE WITNESS: Yes.

THE COURT: And you said you were going to provide counsel with the document, but you didn't do it?

THE WITNESS: I don't understand.

♀5

THE COURT: The question is pretty clear. You said you were carrying the document around with you for several years. I take it you did not give it to counsel, even though it was requested; is that right?

Mr. Tarapaski, is there something you don't understand about this question?

THE WITNESS: Yes, sir.

THE COURT: What is it you don't understand?

THE WITNESS: I don't know what you're asking me about documents, sir.

THE COURT: Exhibit 102 was a receipt from Mayo about which you just testified. You also testified that you had been carrying this document around for several years; is that right?

THE WITNESS: Oh, yes, yes.

THE COURT: All right. And this document was being carried around for several years, apparently, because Mr. Buse had asked you for this document or documents pertaining to the payment of expenses?

THE WITNESS: No. It was just a general stuff that he said that if I had any cards, from La Vanishe or Kelly Black or anything else that I had during that time period, that he, he would like them.

And by that time, I had already switched to this other law firm, and I had them in my bag, and so I didn't ever give them to him.

♀6

THE COURT: What other documents haven't you given them?

THE WITNESS: This is the -- this one and the card.

THE COURT: This is the only document you never gave to counsel.

THE WITNESS: No, no. The Kelly Black card, I still have it in my bag as well. And this one.

By that time I had switched to this law firm and the original stayed with me. The other ones I faxed to his office.

THE COURT: Exhibit No. 10, is a photocopy, apparently, of this, what has been variously described in this case as a checklist or otherwise. Exhibit No. 10, is a -- appears to be a partial document.

Counsel, will you give your client Exhibit No. 10?

From my discussions with counsel, it's my understanding that this document was provided to the defense by you or by your attorneys; is that correct?

THE WITNESS: I think so, yes.

THE COURT: Where did the document come from?

THE WITNESS: There was a box in the guest house, and in it was stuff that if I had accumulated I would put in that box because I didn't want to take it in my suitcase and travel around with it. So I just left it in the guest house.

When I was asked to leave the guest house, she told me to take everything with me, and I did.

THE COURT: Okay. You took a box, you say this document

♀7

came from the box?

THE WITNESS: Yes.

THE COURT: It appears to begin with Item No. 3.; is that correct?

THE WITNESS: Yes.

THE COURT: Does it appear to you to be an incomplete document?

THE WITNESS: Yes.

THE COURT: Is it missing a first page, do you know?

THE WITNESS: I don't know how many pages are missing, your Honor. I know there is more than one, but I don't know how many. There was no total.

THE COURT: Have you ever seen what purports to be the rest of that document?

THE WITNESS: I was present when it was being compiled. Jan and I compiled this checklist.

THE COURT: All right. So you have seen the rest of the document itself.

THE WITNESS: I have, yes.

THE COURT: Where is the original from which the photocopy, Exhibit No. 10, was made?

THE WITNESS: I don't know, your Honor. Jan was --

THE COURT: What was in the box that you took?

THE WITNESS: Mostly it was stuff that Gary Blume had filed, a copy of the complaint. They were very thick stuff that

♀8

he had, like absentee -- you know, complaints or writ of executions and stuff that he had filed.

THE COURT: And this document?

THE WITNESS: Uh-huh. This document, also that other document I have on my desk from the surgery, at my original surgery, I had that in there as well.

And also this Mayo document was in there. It was just stuff that I threw in the box because I --

THE COURT: You had the, what, the Scottsdale --

THE WITNESS: Yes.

THE COURT: -- Health System documents, the one Mayo receipt, and this piece of paper, in addition to a bunch of documents that were filed in court?

THE WITNESS: Yes. And there was other stuff that wasn't relevant to this case.

THE COURT: Were all of those documents turned over to counsel, the entire box?

THE WITNESS: The entire box, yes. That original bill there, sir, when I had my original surgery in February 25th, I just threw that in the box itself.

THE COURT: Where is the document that is -- where is the document from which this copy of Exhibit No. 10 was made?

THE WITNESS: I don't know, your Honor. That box was in the house sometimes and then Jan moved it out to the guest house and that's where it ended up and -- when I took it.

♀9

MR. MURPHY: Your Honor, may I make a suggestion if it would be helpful to the Court?

The document's bate stamped and my office can find it, if it would help the Court, whether it's a copy or original. We can have that delivered out on an expedited basis.

THE COURT: Your testimony is you don't know if there was a first page -- or your testimony is there were multiple pages?

THE WITNESS: There was more than one page, your Honor.

THE COURT: Well, in addition to what appears to be a missing first page, are you saying there was a missing, what, second and third and possibly more pages?

THE WITNESS: I don't know how many pages there was, sir. I just know there was more than one.

THE COURT: Any questions, Mr. Murphy?

MR. MURPHY: No, your Honor.

THE COURT: Counsel?

MS. AMBROSIO: No, your Honor.

THE COURT: Let me ask you something else with regard to what would probably be page one, one of the missing pages. When was the last time you saw that document?

THE WITNESS: I think in Gary Blume's office.
THE COURT: So in 2003?
THE WITNESS: Yes, when they were doing the promissory note.
THE COURT: So if I understand it correctly, you would have to testify as to the contents of the missing document based on what you saw five years ago; is that right?
THE WITNESS: Yes, sir. And also I had put it in that Homeland Security report from memory.
THE COURT: The first page?
THE WITNESS: What I could remember that was on the checklist.
THE COURT: Well, do you know if what was in there was from the -- you say what you can remember. I take it that whatever was in that Homeland Security report wasn't necessarily complete.
THE WITNESS: No, sir. I wrote that in my report, that there were other things that maybe Jan could remember.
THE COURT: All right. Thank you. You may step down.
THE WITNESS: Should I leave the document here?
THE COURT: Actually, would you mind just taking it over here to my clerk.
Miss Wallace, would you take the stand, please?
THE WITNESS: Yes, sir.
(The record shows Witness Jan Wallace has resumed the stand.)
THE COURT: Mr. Murphy, I'm going to take you up on that offer. I want to see the document from which this document was copied.
MR. MURPHY: If I could get that back so I can copy the bates number.
THE COURT: And also am I correct, Mr. Murphy, based on Mr. Tarapaski's testimony, that you've had this document, Exhibit No. 102, for some period of time?
MR. MURPHY: I saw it for the first time today, your Honor. And I need to tell you, if it's -- I did not appreciate whether medical bills had been paid was an issue in the case and I never conceived it as a relevant document.
THE COURT: Apparently Mr. Buse did.
MR. MURPHY: I can't speak for him. I never put two and two together and think that was something in dispute in this case. I can't speak to what Mr. Buse was asking for, your Honor.
THE COURT: Miss Wallace, let me ask you with regard to Exhibit No. 10, it's that --
MR. MURPHY: Oh, I can.
THE COURT: All right, thank you.
Partial listing. I won't call it a checklist, I guess there is some reference to how it's characterized.
In any event, do you have any idea where the original of that document is?
THE WITNESS: I'm looking at the page.
THE COURT: Yeah, there is only one page. Exhibit 10 is only one page.
THE WITNESS: Yes.
THE COURT: It appears to be a partial document.
THE WITNESS: Yes.
THE COURT: Do you have any idea where the rest of the document is?
THE WITNESS: What I'm trying to say, in looking at the page, and I kept lots of journals, and I have a journal at home

that has -- looks a little bit like this configuration. It may have come from a journal. But those journals, I don't know where they are right now.

But they were my documents and they were in my box, the box he took. That's why he didn't get all the documents. Just like he didn't get my other journals. I never moved the box, what he stated.

THE COURT: Wait a minute, you're saying he took the journals?

THE WITNESS: Mr. Tarapaski, in my testimony, the first day of testimony, Mr. Tarapaski said that this is part of three pages. Okay.

When I came up here -- he said this is his checklist, the famous checklist.

THE COURT: I understand that.

THE WITNESS: When Mr. Tarapaski came to my home, he said, where is the box of stuff, because he knew that I used to keep everything in one box. It was a bankers' box.

I have journals, like you see, that I walk around with. I have big ones and small ones on my shelf in my office,

♀3

all the journals line up by date.

Mr. Tarapaski said, did you give me everything? I said I'm not giving you anything, that's my box, my stuff.

He grabbed the box. We were pulling on the box, papers went out. He scrumped up stuff, took all the stuff.

And I went and I stood in front of the shelf where the journals were, and then he took off with the box.

I never put it in the guest house and I never gave it to him.

THE COURT: Well, when was the last time you saw the original Exhibit 10? It's not a complete document. Mr. Tarapaski has testified it was multiple pages.

Do you agree or disagree it's multiple pages?

THE WITNESS: I believe there's a page in front of it. I have no idea if there's a page after it. I don't recall.

THE COURT: Well, was the document created, if you recall, on a tablet such as the yellow one that I'm holding up?

THE WITNESS: Right. If you look at this, you see the how the margin at the top is really low?

THE COURT: Right.

THE WITNESS: That's why I'm saying, I used to have big journals, and this looks like, a little like the format. But I also don't know if the margin just got cut off by the photocopier.

I'm just guessing, but these are my notes I make to

♀4

myself. So, it may be a page from an old journal or it may be a yellow pad and it had a front page.

THE COURT: Well, is it your testimony you don't know where the original of this document is?

THE WITNESS: I have no idea where it may be. It may be in that box, but I don't have the box any more.

THE COURT: All right. When was, before this trial, when was the last time you saw the entirety of that document?

THE WITNESS: It's some time in 2003.

THE COURT: So five years ago or so?

THE WITNESS: Yes.

THE COURT: Any questions, Mr. Murphy?

MR. MURPHY: None, your Honor.

THE COURT: Counsel?

MS. AMBROSIO: None, your Honor.

THE COURT: All right. Thank you, ma'am, you can step down.

Well, the jury has asked, to the best of your knowledge, of both Ed and Jan, can they each describe the contents of Page 1 of the handwritten checklist since it is missing.

Based on the testimony of both of the witnesses, it sounds to me as though nobody's seen the original of this document for at least five years.

And it would be almost nothing but utter speculation

♀5

to permit anybody to testify as to the actual contents of the document, putting aside the fact that the best evidence rule may well preclude testimony with regard to the contents of the document without entering it into evidence.

So, I don't know that we can respond to this question from the jury, for starters.

MR. MURPHY: If it's material to the Court, I had a paralegal in our office go through the entire, you know, stack of materials we got from Buse Gilbert, twice looking for the first page of the document by bates number, by handwriting.

We extracted every bit of handwriting that looked like Jan Wallace's, and it's not in the file.

MS. AMBROSIO: I'm sorry, your Honor, when Buse Gilbert was still counsel of record, we were in their offices and we reviewed the photocopies. There were some originals.

I don't recall ever seeing, I don't recall ever seeing any original handwritten materials. There were, like, some original bank statements and letters that were unopened, and things of that nature. And your Honor, that was going back at least to 2004.

THE COURT: Well, you know, I wasn't there. I don't know what occurred with regard to the removal of this box.

Your client's testimony is that apparently the contents of the box, or at least part of the contents of the box, were strewn around.

♀6

It's quite possible that the pages of this document were separated when they were scooped up. At least, at least if that's what transpired. And it may appeared in that box as just discreet pieces of paper, rather than as a document. As I say, none of us were there. Counsel and the court weren't there.

In any case, I think what I'm going to do is just tell the jury that the rest of the document can't be located, that none of the witnesses are able to provide reliable testimony with regard to the contents of Page 1 because no one has seen it since at least 2003, and therefore we are unable to provide the jury with an answer to this question.

Any objection?

MR. MURPHY: None, your Honor.

MS. AMBROSIO: None, your Honor.

THE COURT: Anything further with regard to Exhibit 102?

MR. MURPHY: Not from plaintiff, your Honor.

MS. AMBROSIO: No, your Honor.

THE COURT: All right. Well, that being said, I would like to see that document, if you can get it here.

MR. MURPHY: Are you referring to the Scottsdale Healthcare?

THE COURT: No, no.

MR. MURPHY: Yes, I will call -- I will have my secretary -- big trick is whether I can get someone to pull it out of the file, but we'll get it done, if it can be done.

♀7

THE COURT: All right. Okay. Well, as I told the jury, when we get back, following our noon recess, you'll have an opportunity to present your closing arguments to the jury. The Court will then instruct the jury on the law.

You have the revised final instructions based on the our discussion this morning. I don't know if you had a chance to look at them to see if there's anything anybody missed and wants to make a record on or not.

If so, let me know after the noon recess before we get started.

All right. Anything further?

MR. MURPHY: Nothing, your Honor.

MS. AMBROSIO: No, your Honor.

THE COURT: Okay stand in recess

(Recess.)

(The record notes the absence of the jury panel.)

THE COURT: The record will show the presence of counsel and the parties.

Prior to recessing for lunch, I indicated that I was simply going to tell the jury that in sum and substance we didn't have an answer to their question.

Upon further reflection, after giving -- doing some additional research over the noon hour, as I explained to counsel in chambers, I've come to the conclusion that the question posed by the jurors, or a juror, regarding the contents of Page 1 of

the handwritten checklist, that's Exhibit 10, should be asked of each of the parties.

The Court conducted a question of Miss Wallace and Mr. Tarapaski earlier to determine whether or not there was evidence that would be any basis to preclude either or both of them from testifying due to the possible circumstances surrounding the unavailability of the original document.

I have concluded that there is not sufficient evidence to preclude either one of the parties from testifying as to the contents.

And while I indicated previously that it appeared to me that neither one of them had seen this document for probably five years, nonetheless that factor, together with any other factors surrounding the circumstances of when either of one of them last saw the document goes to the weight of any testimony they can provide in that regard.

Accordingly, we will bring the jury back in. I'm going to ask this question of both parties here.

Of course, I'll permit counsel to follow up with any question they wish to have.

Any comments from counsel?

MR. MURPHY: Plaintiff is in agreement with the Court's plan of action.

MS. AMBROSIO: Defendant as well.

THE COURT: Very well then, Laura, would you be good

enough to 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, and the members of the jury.

Ladies and gentlemen, prior to taking the noon recess, I'd indicated the court has received a question from one of the jurors and that we would endeavor to provide you with an answer to that question.

The question was asked, as to the best of the knowledge of both Ed and Jan, can they describe the contents of Page 1 of the handwritten, quote, checklist, unquote, since it is missing.

The document being referred to is Exhibit 10 in evidence.

Sir, would you mind taking the stand again for a moment?

THE WITNESS: I don't mind, sir.

THE COURT: Do we have Exhibit 10 handy?

All right, sir, you can see Exhibit 10, can you not?

THE WITNESS: Yes, sir.

THE COURT: To the best of your knowledge, is it accurate to say that there is one or more pages of this document missing?

THE WITNESS: Yes, sir.

THE COURT: To your knowledge, is there a Page 1 missing? In other words, is there a page preceding this page that's in evidence?

THE WITNESS: I believe so.

THE COURT: When was the last time you saw this document?

THE WITNESS: It would be in Gary Blume's office in 2003.

THE COURT: Would that have been March of 2003?

THE WITNESS: Yes.

THE COURT: Do you recall the contents of the -- of Page 1, what I'll call Page 1, that is the preceding page?

THE WITNESS: No, sir. I can't say I remember what was on the first page, no, sir.

THE COURT: All right. Mr. Murphy, any follow-up?

MR. MURPHY: Nothing, your Honor.

THE COURT: Counsel?

MS. AMBROSIO: Nothing, your Honor.

THE COURT: Sir, you can step down.

Miss Wallace, if you can take the stand, please.

Miss Wallace, let me also ask you, do you happen to recall whether or not one or more pages of Exhibit 10 are missing?

THE WITNESS: I can't recall.

THE COURT: Do you know -- do you recall whether or not there was a preceding page to Exhibit 10?

THE WITNESS: I can't recall. I would only assume because it starts at three, there was probably something before it.

THE COURT: When was the last time you saw the document?

THE WITNESS: I would have to agree, it's probably going back five years at least.

THE COURT: All right. I take it from your testimony you don't have any recollection then of what the contents of the first page would have been?

THE WITNESS: I would only be guessing and I don't want to do that.

THE COURT: All right. Thank you, ma'am.

Any questions from the jury?

Excuse me, counsel, any follow-up questions?

MR. MURPHY: Nothing, your Honor.

MS. AMBROSIO: Nothing, your Honor.

THE COURT: Sorry, ma'am, thank you. You may step.

All right. Well, as I indicated prior to our recessing for lunch, counsel will now have an opportunity to present their closing arguments to you.

Please keep in mind what counsel say in closing arguments is not evidence. It's being offered to help you understand the law and the evidence.

So, you may proceed whenever you're ready.

MR. MURPHY: Thank you, your Honor.

Will you walk into my parlor, said the spider to the fly? 'Tis the prettiest little parlor that you ever did spy.

♀2

Those are the opening lines to a poem by Mary Howitt, you may recall. I studied it in grade school.

About the spider who, through sweet talk, lures a fly into the den and to its destruction.

I think that's a fitting analogy to the evidence in this case, the spider and the fly.

The fly was Ed Tarapaski. The parlor, was a house on Cheney Drive owned by Jan Wallace. I think the rest of the cast of characters that were produced in the testimony.

There has been a lot of talk, and I'm going address this right up front, to get it out there, about Ed mooching off her and living in the house and using her car.

He was invited to stay there and he accepted the invitation. That's the simple fact. And I submit to you that whether he was in the house or not is a non-issue in this case, except that it shows an affinity.

You invite someone into your house and then begin pitching a business deal together and you have a captive customer for the period of time that he is there. And he was there until just after the deal closed, in his mind, when he allowed the authorization of funds to be on March 12, 2003.

I think that is the importance of him being in the house. And whether there were protective orders and credit cards and what have you, that is a complete side show that has nothing to do with who should win or lose this case. And that's all I'm

♀3

going to say about it during my opening statement -- or closing argument, I should say.

Here's our claim: Jan Wallace told Ed Tarapaski, I'm going to help you through this transaction because I've got the expertise to do it. When all the while she was playing for the other team.

She had already signed up a contract with BDV Investments both to sell a public shell company that she had, as well as to get a percentage of the cut if financing was raised through Wallace Black, LLC, a company in which she was a participant.

She had a personal investment in making sure that this deal closed for a variety of reasons, and that profit motive drove her to involve Ed Tarapaski.

She denies this, as you have heard. And the key issue then is credibility.

And your Honor, a question, the Court has not yet read the instructions, may I show them to the jury in closing?

THE COURT: Yes.

MR. MURPHY: The key issue is credibility. And here is the instruction that the Court will give you on that very subject.

Instruction No. 6. In deciding the facts of this case, you should consider what testimony to accept and what to reject. You may accept everything a witness says or part of it

♀4

or none of it.

In evaluating testimony, you should use the tests for truthfulness that people use in determining matters of importance in everyday life.

Including such factors as the witness' ability to see or hear or know the things the witness testified to; the quality of witness' memory; the witness' manner while testifying; whether the witness had any motive, bias, or prejudice; whether the witness was contradicted by anything the witness said or wrote before trial or by other evidence; and the reasonableness of the witness' testimony when considered in light of the other evidence. Consider all of the evidence in light of reason, common sense, and experience.

And that last phrase is, I think, the key to your role here. Reason, common sense, and experience. That's why we brought you here to evaluate the facts of the case, to sit as the trier of fact.

I'm going to focus on a few issues which I think are crucial to credibility, before I talk about the evidence in this case.

One of the factors is the manner while testifying. And I may have a curious perspective of this. You saw Ed Tarapaski in the stand. And I will tell you, I was worried about him the first day. He's never testified before. He wasn't looking pretty. He was tense and he was awkward.

♀5

And we got the evidence from him and, but it was a struggle. I think as the case progressed he got a little more experienced, he loosened up.

But I say that for this reason: Was this a witness who could calculatingly manipulate the testimony that he gave? Was he someone who could cooly calculatingly determine that.

Here's what I want to say, and how is that going to affect the outcome of the case, or is he someone who was sitting up there like a deer in the headlights, testifying to what he knew.

And then ask yourself, was there anyone who was on the stand longer than Ed Tarapaski in this case? And how many times was he impeached by the testimony that he gave in this trial or by the testimony that he gave in his deposition?

How many times did someone pull out the deposition and state, you're saying something different now than you did before.

Consistency goes to credibility. I think you will agree he told a consistent story from beginning to end. That goes to credibility.

Ask yourself the same question with regard to Miss Wallace. How many times was she impeached? How many times did she change her story?

How many times do you believe that she was saying something different on the stand on day one, that she said on the

♀6

on stand day two. That's for you to consider as part of her credibility.

The next issue that I want to talk about, in talking about credibility, is whether the parties were contradicted by other evidence.

And why that's so important is this: If someone is really impeached on an important point, it calls the credibility of their testimony in dispute, not just on that point, but throughout the trial.

And here we have something remarkable. And I'm going to spend time on this, on an issue of credibility.

I'm going to put the transcript of the trial proceedings of February 5, 2008, on the stand, and show you some testimony that she gave at Pages 38 and 39. "She," being Miss Wallace, excuse me.

Starting at Line 5, Question: Well, what were you referring to in your deposition testimony at Page 77, 78 where you said these are all parts of those other things that were supposed to come across and Mr. Tarapaski did not want his money to go until he saw the rest of those documents.

What were you testifying to?

Answer: Absolutely. You're showing most of them. No. 1, there was a promissory note of 1.5 million, had been to be finished and drafted with the terms that Ed Tarapaski outlined, including all the terms of his interest and penalties.

On top of that, there was a second promissory note that you've also shown as an exhibit. That second promissory note is also dated March 6th.

That promissory note was created because the $275,000, which on Ed's first day of testimony, at that meeting on March 6th, John Beardmore asked him, can we send the $275,000? We need to do it today.

He looked at Gary Blume, and Gary Blume said to him, if you sign this promissory note, I think that's okay. That was his statement on the first day of testimony. That was the second document that Ed Tarapaski needed to see.

The third document, was that I was elected to the board of directors. That's why it was faxed around and he got that.

The other document was he got a confirmation from John Beardmore that Tom Kell, the president of Lake Bank, would send over the additional collateral that Mr. Tarapaski felt so comfortable about, that he was more comfortable than the gold dore.

All those documents appeared on March 6th, which is why there are constant amounts of documents dated March 6th.

Ending my quote.

She said Ed said once we have the draft -- the promissory note for a million five drafted and the second promissory note of $275,000 signed, Gary Blume said, looking at the second promissory note, if that's signed you can go ahead and ship $275,000 back to Minnesota. And then we also needed Tom Kell's confirmation.

That was her testimony.

How do we impeach that? Through a circumstance that is remarkable in a courtroom setting. We impeach that with the testimony of her own lawyer, a lawyer who was counsel of record in this case, Gary Blume, who testified from the stand.

And here are the notes that I made as I talked to him about these issues. I quoted in his deposition testimony.

Sir, you learned of the existence of this second promissory note, the one she says was signed on March 6th, only after you'd started litigation against BDV in summer of 2003; isn't that true?

Yes, he says.

He said he did not know how the loan proceedings were to be applied; i.e., the $275,000 was supposed to go back to Minnesota.

He said he was acting only as a scribner. He said he did not know of the existence of the Cane and Associates trust account, was not aware that Jan Wallace was joining the BDV board, does not recall a BDV board meeting in his office on March 6th, 2003, which Miss Wallace had testified to.

And the clincher, he never gave advice about releasing funds from the trust account.

That squarely contradicts, point by point, the testimony of his own client, members of the jury.

And I'm going to read you in the crucial testimony from Mr. Blume in that regard, from his testimony on February 6, 2008, at Page 17, Line 21.

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

Answer: No. I didn't advise anybody of anything on releasing money on any of the transactions. End quote.

Contradiction goes to credibility. And when you are contradicted by your own attorney, that calls credibility very squarely into question, I submit to you.

Now, another issue to consider, according to instructions on credibility, is reasonableness: What seems more reasonable to you, using your reason common sense and experience.

Jan Wallace says I had no role in this transaction, I just introduced the parties.

When you take these exhibits back to the jury room, look at the document trail, see her fingerprints on virtually every document in the case addressed to Jan Wallace, addressed from Jan Wallace, faxed to, sent to; not a participant?

The document trail proves that she was involved in this intimately. And there is, I submit to you, no other inference or conclusion that you can reach.

And she said, well, believe me, I documented all of this very carefully in my journals, every little point was documented in my journals. I don't think -- you heard that several times.

When you take these documents back to the jury room, members of the jury, what will you find of her journals? Look for them, look for this proof that she says is so crucial, and question why aren't they admitted in evidence? That is a question that you will have to ask among yourselves.

Now, one credibility issue that I will end with is this: The CEO. Miss Wallace testified with some detail about a great experience as a CEO, and that she had worked on publicly-traded companies and had strict duties of disclosure.

Members of the jury, if you read the newspaper, if you watch the news, you will know that the label "CEO" does not provide any immunity from conduct that is not straightforward. You've heard of Enron, you may have heard of Tyco and Adelphi --

THE COURT: Counsel, let's stick to the record.

MR. MURPHY: Your Honor.

Now, Instruction No. 8, our burden of proof. Burden of proof means burden of persuasion. On any claim, the party who has the burden of proof must persuade you by the evidence that the claim is more probably true than not. This means that the evidence that favors that party outweighs the opposing evidence.

In determining whether a party has met this burden, consider all the evidence that bears on that claim regardless of which party produced it. And I'll end my quote.

There has been a lot of testimony both ways. And you may find both parties credible to one degree or another. There may be a lot of doubt in your mind. But doubt is not determinative in a civil case.

The question at the end of the day is who do you think more probably than not is telling the truth, whatever doubts or reservations you may have. And that is the burden that we must meet. We must convince you that it was more probable that Ed's version of the testimony is true than Miss Wallace's version of the testimony.

Here's what we must prove, and that will come from Instruction No. 9 that the Court will provide to you.

Plaintiff claims that defendant is liable for breach of fiduciary duty. Before you can find defendant liable to plaintiff on the breach of fiduciary duty claim, you must find the defendant was an agent of plaintiff.

Agency is a relationship that arises when one person, the principal, manifests an assent to another person, the agent. That the agent shall act on the principal's behalf, subject to the principal's control, and the agent manifests assent or otherwise consents so to act, when one person assents that another person shall act on the principal's behalf.

Agency relationships are very commonplace, members of the jury. Brokerage, you have a real estate broker; attorneys are agents for their clients. But agency relationships are as broad as the spectrum of human relations.

All that you must determine is that someone agreed to act on another person's behalf and accepted the responsibility to do so. And you will note that there's nothing in that instruction about compensation, about that you must be paid.

Many agents are not paid. Many people accept responsibilities for others without stating that there is going to be money coming to them.

But keep this in mind as that issue is determined, Miss Wallace testified, and the evidence shows, that she had a profit motive in closing this transaction.

She was already owed $50,000 under Exhibit 3, the contract that she signed with BDV. That was due January 31 of 2003 and hadn't been paid.

She would collect another $200,000 if they bought M.W. Asia and merged, as she was planning to do. Then she would receive stock in the merged entity, which she acknowledged would hopefully appreciate in value.

She had very much a personal financial stake in the outcome of this, whether she was paid in dollar terms under a contract to serve as an agent for Ed. There was a motive to involve her in this transaction.

Now, Ed says she said the following: Ed, you're going into this deal, trust me, this is what I do for a living. I paper and document transactions for a living. You get the money together and you leave the rest to me.

He says she said that the first time in her home as they were drawing up Exhibit 10, the list of those conditions, as Ed has talked, the checklist as I referred to it, in her home.

He said, a second time, they discussed -- that was in late February of 2003. The second time they discussed that was on the evening of May 12, as Ed teetered on whether he was going to go forward with the transaction or not.

The money had been deposited, the promissory note had been signed, but he had not given permission to release the funds, as he said.

And they argued, and she said, do you know what a safekeeping receipt is? They can't move the gold unless you say. So, let me do my job and I'll take care of the deal. You got to say yes.

And that was a loose paraphrase. She did not say that from the stand. But I believe you can fairly infer from the testimony that she was encouraging him to close the transaction on the evening of May 12th.

Then he said the third time was about May 17th, as he was preparing to leave the country and they were going over the deal of what remains to be done, because in his mind there were still conditions to be satisfied before all the funds could go out. Leave that paperwork to me, trust me, Ed.

We say that was a verbal manifestation of an agency relationship. She agreed to act on his behalf.

But we're not just relying on verbal testimony, members of the jury, let's take a look at Exhibits 28 and 45.

Exhibit 28, March 12, 2003, the very day Ed says I finally consented to allow the release of funds after Jan Wallace and I had a meeting in our home, after we had conversations with Tom Kell, the president of Lake Bank, about additional collateral that day.

Then I said, okay, I consent to release of funds, and he signed a letter that said as following: Thomas and Wong General Contractor hereby authorizes Miss Jan Wallace to release funds from your trust account on our behalf.

What does that establish? An agency relationship. She agreed to act on his behalf in releasing the funds from the trust account.

Look at the definition the Court's provided you, look at the testimony here in writing.

Exhibit 45. By now the loan has gone into default. May 13, 2003, an e-mail, sent by Ed Tarapaski, Thomas and Wong General Contractor hereby authorizes Gary Blume and Jan Wallace to act on their behalf regarding the promissory note with BDV Investments, Inc. and/or any other names representing BVD

♀5

Investments, Inc. in whatever steps are necessary to enforce the terms and conditions of the promissory note dated March 6, 2003.

This expanded the agency. Before, she was responsible for -- we'll talk the specific provisions -- monitoring the conditions that were occurring and keeping him informed.

Now there was an expansion of the agency to include collecting on a note that, at this point, had gone into default. That's a written document regarding agency.

What was the agency? Here is what Mr. Tarapaski testified to. He said there were a series of conditions that were supposed to be completed before the loan was fully funded. Jan Wallace said, you're leaving the country. I will accept responsibility for making sure that those are complied with.

And he put those in writing in February of 2005, this from memory, as he's testified to, to Homeland Security. Arrange a viewing of the gold, verify the collateral with Lake Bank, get a safekeeping receipt in the name of Thomas and Wong, get a copy of the insurance in favor of Thomas and Wong, get the opinion letter from the BDV lawyer, Clark Griffith, speak with Dumaine, get a copy of corporate resolutions, have herself appointed as a board member. No money would be disbursed until all of these conditions were met.

That's what he told Homeland Security before this lawsuit was started, and it had nothing to do with this lawsuit.

♀6

He was trying to get an investigation going regarding the people he thought had taken the gold, that was supposed to secure it.

And here is a document in Jan Wallace's handwriting, you've seen it many times, but it's an important document because it's a document in Jan Wallace's own handwriting that reviews many of these same conditions.

Again, you asked questions about it. It's an incomplete document, but it's a corroborative document that verifies that Jan Wallace was aware of these conditions. You heard her state these were conditions related to my assignment as a board director.

Members of the jury, every one of these conditions relates to the loan transaction with Thomas and Wong.

Look at the text of the document as you consider the truthfulness and the credibility of her testimony.

Next. So, next she was going to keep Ed informed. She was going to fill him in. And that goes to her appointment to the board of directors.

There has been a lot of testimony -- there is no doubt about it, she became a member of the board of directors. She did so at the request of Ed Tarapaski.

And you have heard the testimony of Mr. Cortegiano and Mr. Beardmore -- although his was read in, but it's still sworn testimony, to the following effect: She was joining the board as a representative Thomas and Wong. That's what everyone

♀7

understood.

Conflict of interest. There was no conflict of interest in her joining the board because everyone consented to it. The board members knew she was going to represent Thomas and Wong. Ed did. That was the idea.

We put into the evidence the Dumaine documents that were e-mailed to him -- pardon me -- telefaxed when he was in Korea, where she gave him information about the on-going Dumaine process.

She was supposed to keep him informed, and of course, truthfully so, as we'll get around to what a fiduciary must do regarding truthfulness as we get further into the instructions.

We know she was authorized to disburse funds and that was part of her agency. And I showed you Exhibit 28, the document where Ed gave her that written authority.

Question: If she was authorized to disburse funds before that, why would a woman, with this many years of experience with SEC and as a CEO, why would she disburse funds without such a written document? Why wouldn't she require that authorization be put in writing before she disbursed funds and avoid all of the controversy that you are now asked to resolve?

The testimony that Ed Tarapaski gave is that she did not have such an authority in writing because he would not have given it to her before then because he had not consented to

♀8

release the funds until May 12, and that funds that were disbursed on May 6th, under her authorization, were done without his knowledge and authorization.

Now, let me get to why we say the duties were breached. You've heard the phrase "fiduciary," and I'll use another Latin-based phrase, semper fidelis. You may have seen it many a time, red bumper sticker with yellow letters, semper fidelis, the motto of the Marines, always faithful. Fidelis and fiduciary come from the same Latin base, fido, faithful. And that is a what a fiduciary must be above all else, faithful.

But the specific duties of a fiduciary are included in the Court's Instruction No. 10. An agent owes a special duty to the principal which is called a fiduciary duty. This duty requires the agent to represent the principle with loyalty and the utmost good faith in the conduct of the agency and to make full disclosure to the principal of all material facts relevant to the agency.

I submit to you, the key phrases there are loyalty, good faith, and full disclosure.

That is what Jan Wallace, we say the evidence shows, owed to Thomas and Wong. And that we say is what the evidence shows was breached by Miss Wallace, and here's how.

First, as I've noted before, $275,000 of his funds were sent out on March 6th before there was even a signed promissory note in his favor.

♀9

And we've seen Exhibit 18, this $275,000 promissory note, which I referred to in my opening statement as the mystery note.

And I submit to you, it remains a mystery to this date. Who drafted it? Not Gary Blume. You heard him testify on the stand, he didn't do it. The man who Ed Tarapaski turned to and thought he had retained to document the transaction, did not create that document.

Jan Wallace has acknowledged she doesn't know who created it.

There was some suggestions made in the testimony that a form might have been given to Ed Tarapaski for him to draft it.

You've seen him testify, members of the jury. You've heard him. Do you think that Ed Tarapaski could have created that document, which Ms. Wallace herself today acknowledged was very legalesy, had a lot of legal imprints on it.

I believe any suggestion that Ed Tarapaski was involved in drafting that document, which Mr. Blume acknowledged was speculation, was rebutted by common sense, reason, and experience.

Why have we emphasized that that release of funds was so important? Not just that it's a breach of duty. It's a breach of all three of the duties that a fiduciary owes, if you

♀0

find that that, in fact, occurred.

The breach of loyalty, the breach of good faith, and a breach of the duty to make full disclosure. All three responsibilities breached, if you find that that was released without his authorization.

But next, it's crucial for this reason, once that money was gone, this deal had to close. Why did it have to close? Because if not, the fact that money had been sent off to Minnesota without his permission would surface. Once that money went out, the promissory note of March 8th had to get signed.

And that is why as Ed teetered on the brink, on May 12th, I don't know; what if they take the gold away; I'm not so sure about this; maybe we shouldn't release the funds, Jan Wallace said, hello? I can liquidate the stock. Do you know what a safekeeping receipt is?

And she persuaded him to go forward with the transaction and sign the authorization and allow the release of funds, and in that process, again, breached her fiduciary duty by not making a full disclosure: Ed, $275,000 of the money went back to Minnesota a week ago.

Why? You heard the testimony from Jan Wallace, there was a condominium they wanted to buy there, and members of the jury, you heard Mr. Beardmore's testimony that it was for Sokim Lach, his girlfriend, L. Trust. And that it was a office and residential condominium. That was his testimony.

♀1

I think the evidence that he -- we read in fairly establishes that it may have been where she was living. Regardless of that, there was a deadline to buy it on March 6. Ed Tarapaski hadn't even finished up negotiating the deal yet.

Jan Wallace had duties to him as an agent and had a client in BDV. She referred to BDV herself as the client. We say, she favored the interests of one client over another and shipped that money back to Minnesota so that BDV could get that asset tied down, thinking we'll get this deal closed and then there won't be any problem.

Conflict of interest. As I said, BDV was my client, was her testimony. We've looked at Exhibit 3, the contract that she had, undisputed, and that was in December of 2002, some four months before she met Ed Tarapaski. She had an established relationship with BDV before she met this man at all.

And that goes into the balance of loyalties. How quickly do you develop a loyalty to someone? How quickly do you bond, such that you will feel that faithfulness. This instant relationship, this come into my home, I submit to you, was part and parcel of an effort to get an investor through the door. And in informal terms, to stroke him. You hear that, from time to time, in the vernacular.

And in this process, Ed was set up with her team. Every one working on this transaction had some connection to Jan Wallace: Gary Blume, her long time lawyer and litigator and

♀2

counsel in this case; Michael Cane in Las Vegas, her SEC attorney; Beardmore, with whom she had signed a contract. Everyone involved was affiliated with Jan Wallace.

There wasn't one spider, members of the jury, there were a bunch of them, and Ed was the fly to all of them.

And why does that -- I submit to you that there was no way, under these circumstances, that Ed Tarapaski could have fairly protected himself if someone, in whom you place trust, has already made a decision to align himself with the other team and to not make disclosure to you. That trust account was a pit stop on the way to a, hopefully, a bigger pot of money, I submit.

And Ed was lured into a false sense of security.

On several occasions you heard why would an attorney come in on a Saturday? No doubt that Gary Blume did. Because the money was already gone and there was a crisis and we better get Ed Tarapaski on board.

What other breaches do we complain of? $20,000 to L. Trust. You heard the deposition testimony of Miss Wallace. Why was that money sent back to L. Trust? Sure, I did it. L. Trust, Sokim Lach. I sent $20,000 back. Why? I don't know. That's what she said in her deposition.

But she had, I submit to you, a very different story from the stand. Oh, that was to do expenses that had been incurred or paid interest that had accumulated. And I talked with Ed Tarapaski and Mr. Beardmore on the phone and they

♀3

approved it, and my journal proves that.

And again, you will not see that journal, which she says provides that proof, in the jury room as an exhibit admitted at trial.

We also say that there may be an argument, well, the first 800,000 went into a trust account. But why should Miss Wallace be responsible for the $700,000 that Thomas and Wong shipped directly to Lake Bank?

Because, members of the jury, of nondisclosure. We showed you the telefax where she said, Charlene, it's imperative that this money -- at that time $300,000 -- be transmitted back to Lake Bank by March 31.

Had the full story been told at that time, as a fiduciary had to do, that money wouldn't have been sent.

Why? Because the conditions to release of the funds resided in the promissory note itself were never ever satisfied.

There was no certificate of insurance for Thomas and Wong. You will take back to the jury room a certificate of insurance, which we admitted for comparison purposes. That's what it looks like. But it's not in favor of Thomas and Wong.

There was no safekeeping receipt in favor of Thomas and Wong. None is in evidence. Exhibit 2 is a safekeeping receipt, so you'll see what one looks like, but it's not in favor of Thomas and Wong.

Those were essential conditions. And Ed Tarapaski telephoned, said I telephoned her from Korea and said have the conditions been met? And she said, yes, they have. Has the gold been viewed? Oh, there was a viewing, there was a viewing.

It's a duty of full disclosure. What was missing from that disclosure? I did not attend, as I had planned to. There was a viewing, but it was by Mr. Beardmore and Mr. Oly and I wasn't there. She would have then known, as Mr. Beardmore testified, that all they saw was sealed containers and no one ever saw any gold.

Quick issue on Cane and Associates' $4,960 disbursement. Where is the bill? Where is the bill? Don't lawyers send out bills for services?

You have admitted into evidence Gary Blume's bills showing here's what I did and how much time it took and my hourly rate and what I charged.

There is no such document with regard to Cane and Associates. And today, Miss Wallace said from the stand, I don't have bills from Cane, but she sent $4,960 to them.

And finally, the gold melt. Ed's statement to Homeland Security includes the following statement, this is Exhibit 69: Jan Wallace phoned -- excuse me -- time passed, and I was told the money was being held up in a Florida bank because a total melt was $12 million and there was all kinds of paperwork to be completed.

I asked Jan why the money was in Florida. She said that's how the deal was structured with the refinery, which she was in direct contact with the bank. It would be released soon.

I told her we shouldn't be concerned with whole 12 million and just get our share, which was only 1,875,000 U.S. dollars. That would be much easier and faster. She again stated that the bank manager said it would not be much longer.

More time went by. I was continually being assured, by BDV as well. Finally, Jan told me the money had been pulled back. To where, I asked? She said she wasn't sure. Now, I was really alarmed and made arrangements to fly to Phoenix.

There is no doubt, members of the jury, that that information was given to Ed Tarapaski. At least in this respect, Miss Wallace acknowledges that she told him Billy Cortegiano is taking the gold to Denver for a melt. She disputes that she told Ed the rest of this. This is February of 2005.

A prior consistent statement by Ed Tarapaski of what he testified to from the stand before there was any dispute between Jan Wallace.

And this time, as he testified to -- flip back a few pages in Exhibit 69 -- he still believed that Jan Wallace -- Jan thought of most of this, and I think she did a good job of protecting our interest. I really believe she put our well-being ahead of any possible financial gain on her part.

At the time he made that statement about what he was told, he was not accusing her of anything, and it's a prior consistent statement.

Causation. We must demonstrate to you that Ms. Wallace's conduct caused injury. And you will be told the following, Instruction No. 11: To establish a claim for breach of fiduciary duty, plaintiff must prove, one, defendant owed a fiduciary duty to plaintiff; two, plaintiff (sic) breached this duty; three, defendant's breach was a cause of plaintiffs's damages; and four, plaintiff's damages.

Let me focus on Item 3, "a cause." Instruction 12 gives you more specifics. Before you can find defendant liable on the breach of fiduciary duty, you must find that defendant's breach of fiduciary duty was a cause of plaintiff's damages.

A breach of fiduciary duty is a cause of damages if it helps produce the damages and if the damages would not have occurred without the breach.

It is not the cause or the only cause in that instruction, it is "a cause" that helps produce the damages.

We don't have to prove that Jan Wallace was the sole reason that Thomas and Wong lost money. We have to prove, as the instruction recites, that she helped produce the damages.

And here is what we say: Every penny of the loss is allocable to her conduct. Because if she had done what she was supposed to do, make full disclosure to Ed Tarapaski: Ed, on March 6th, I shipped money back to Minnesota to buy a condo and I didn't have your authority, but there was time pressure on me and

the condo was going to be lost, so I did that, Ed would have said this deal is off.

You heard him testify to that, this deal is off, and all the rest of the money would have been stopped.

Because there was no disclosure, Ed never had that opportunity to protect himself and the assets of Thomas and Wong from the remaining losses.

We claim the losses are as follows: $1,500,000, less $432,000, the amount which Ed got from the sale of the Solano residence, less $20,000 for fork lifts and other equipment that Thomas and Wong got when that was sold off. That's a total of $1,048,000. Plus, $4,500, not a grand sum, $4,500 for furniture that was sold by Miss Wallace at the Solano house, where she just kept the money. She didn't have an agreement, by her testimony, to keep the money, she just kept the money.

You've heard justification and her claims of expenses. You will see no documentary evidence of that. I submit that should be paid back too.

I will have one more opportunity to speak with you briefly. I thank you for your attention.

THE COURT: Counsel, you may proceed whenever you're ready.

MS. AMBROSIO: Thank you.

Good afternoon, ladies and gentlemen. I first want to take time, on behalf of my client and myself, to thank you for

your time and your service on this matter.

Your role in this proceeding is of the utmost importance, and I appreciate you being here and listening to the evidence. I really appreciate you letting me present my case.

In opening, I asked you to keep an open mind and understand that there are two sides to every story. Evidence is like a jigsaw puzzle, some pieces fit together perfectly and some pieces need to be moved around so that they fit and some pieces just don't fit at all.

The pieces that need to be moved around are analogous to looking at testimony from several witnesses in conjunction with the exhibits.

This case is very simple. This case is about a greedy man who made a bridge loan with his employer's money without conducting proper due diligence investigation or documenting the terms and collateral. Ed Tarapaski, as a result of his own failures to act properly, is now seeking to put blame on everyone but himself.

He failed to secure any of the collateral. And when the loan was defaulted upon, Thomas and Wong lost its money. He's pursuing this lawsuit against my defendant, against the defendant Jan Wallace, simply because she was paid $50,000.

As I understand the plaintiff's argument, is that if, on March 6th, Ed Tarapaski would have known that $275,000 was being sent to John Beardmore's girlfriend's condo in Minnesota --

♀9

and it's been, you've heard plenty of testimony where this 275 went -- it was a condominium that was owned in Minnesota. Ladies and gentlemen, I will tell you, Mr. Tarapaski knew.

Mr. Tarapaski, in his deposition, clearly knew this fact. And I want to show you Page 43 of his deposition testimony, line -- towards the bottom.

Question 21: How much was that release?

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

Was that in March of 2003, that release?

I believe, I believe it was, yes.

Mr. Tarapaski, in his deposition, says he knew there was to be a release of $275,000.

In his trial testimony, Mr. Tarapaski said that he prepared the March 12th Cane Clark letter, Exhibit 30. And I'll read to you his testimony, and I'll show it to you in a moment.

Now, sir, I'll show you a document which is admitted into evidence as Exhibit 30 -- pardon me, Exhibit 29, March 12th, 2003, Cane O'Neill Taylor, from Jan Wallace.

Please use this letter as your authorization to wire $50,000 from the Cane O'Neill trust account to the following documents at Lake Bank.

Uh-huh.

Were you aware this transfer was being made?

Yes.

♀0

Had you approved it at this point?

Yes.

Mr. Tarapaski would like you to believe that on March 12th is the first time I gave authorization for a payment for a transfer from the Cane O'Neill trust account to be made. It is not true.

He knew about the 275 and he approved it and his deposition testimony shows that. And he has -- and now realizing that what he had said in his deposition, he's now attempting to confuse the jury to talk about all these things that don't apply.

The bottom line is, Mr. Tarapaski was going to make this loan no matter what, and Miss Wallace had nothing to do with the 700 -- $700,000 that was sent. Mr. Tarapaski sent that on his own.

The statement that if he had known that the 275 would have been -- if the 275 transfer -- if he had known about the $275,000 transfer, he would not have gone forward with this bridge financing is a fabrication. He knew, and he continued with this any way.

And when he lost the money, which he said many, many times in deposition testimony here today before you, he said many, many times that he was personally liable because he is an agent to Thomas and Wong, and he does owe them the duties that we've been talking about today, that he's now asking Miss Wallace to also take responsibility for.

An agent owes a special duty to a principal, which is called the fiduciary duty.

Well, he owed that duty to Thomas and Wong. And he breached it by not doing -- by not, by not acting with loyalty and the utmost good faith and making full disclosure.

He went into this loan with his eyes closed. He was only interested in the 25 percent interest that he was going to make on this loan and the possibility of doing other deals with BDV, John Beardmore, and whoever else John Beardmore could bring to the table.

And once he realized he was going to be liable for this loan, he started looking around for other people to blame.

Was Lee Wark and Don Nooe people to blame? Absolutely. They're bad guys. They said they owned gold. Maybe they do, maybe they don't. No one could ever find it. Richard Kirby and the other cast of characters, they're just that, a cast of characters.

At the end of the day, Mr. Tarapaski sat in a room with John Beardmore, spoke to Clark Griffith, spoke to Mr. Cortegiano, spoke to Oudo Shieken, and made the decision to make this transaction happen.

He knew about the 275, and then -- and from that, this whole house of cards falls apart. That is his -- that is what -- that is his main allegation against my client, is that she did not tell him about the 275, and all the other things followed from it.

Miss Wallace has testified, time and time again, the reason there isn't a written document about the 275 is because the man was staying in her home. He was there.

She said, he knew there was an urgency to have this made because he spoke to John Beardmore. He told John Beardmore -- John Beardmore told him there was an urgency to get this loan done because there was a building in Minnesota that needed to be paid on. He knew, he absolutely knew.

He entered into this bridge loan not knowing anybody, not taking the time to learn anything. He got -- in hindsight, should Miss Wallace have invited him into her home? No. But at the time he had had surgery, he didn't have anywhere to go. He was presented to her by mutual acquaintances. She allowed him to stay.

She didn't think this was going to turn into a long-term thing and she certainly didn't ever believe that she was going to be involved in a lawsuit where he would claim that she had been his agent. That's just ludicrous. Not possible.

He got involved. She wasn't looking, she wasn't trolling around Scottsdale going, oh, let's bring somebody home and see if we can make them an investor. Please, that's just ludicrous.

He met with the principals. He knew what was going on. The $700,000, he sent that on his own. He needs to take responsibility, needs to take responsibility for the 800,000 and he needs to take responsibility for the 700,000.

This was a 1.5 million dollar loan. If this was this important to your company and you thought that this was important, because he testified his company is not in the business of making loans. They're in a business of buying -- of renting heavy equipment. So this was outside of what they normally do.

Don't you think you would have stayed to get this done correctly? He didn't do that. He didn't do any of that.

He left it all on someone -- he claims he left it all on someone else's shoulders.

Miss Wallace didn't believe that she was being asked to do anything other than they opened the trust account, and he said I'm going to let you know when to make these transfers. And that's what she did.

Did she do it with full disclosure and the utmost good faith and loyalty? Absolutely.

And she -- and BDV and Ed Tarapaski, on behalf of Thomas and Wong, waived any conflict she had while being on the board. She said to them, I don't need to be on this board. She had this deal with John Beardmore back in December of 2002. Why didn't they put her on the board then?

They only put her on the board when Ed Tarapaski insisted. And everybody, Cortegiano, Beardmore, they all said,

♀4

you know what, if this is what we need to do to get the money in, yes.

These are a greedy bunch of people, absolutely, there is just no doubt. And my client didn't do anything improper. Absolutely nothing.

She never held herself out as an agent. She never agreed to do the due diligence. She never promised -- she never drafted any of the promissory notes. She never drafted any of the documents securing the collateral. And she never had control of the money.

She testified this morning to the types of documents she drafted in the past. Granted, the 275, the 275,000 promissory note, it's troubling, but it's not that Mr. Tarapaski was unaware that $275,000 was going to a condominium in Minnesota.

Miss Wallace has explained several times why she believed the second note was drafted. Bottom line is, there's a second note, there's a second note signed by Beardmore and Sokim Lach. It's there.

Why nothing further was done with it is beyond me. And again, why Mr. Tarapaski wasn't here taking care of his company's business is also beyond me.

I asked Mr. Tarapaski in his deposition -- in his direct -- in his cross-examination, I asked him, directly, why didn't you just open a line of credit? Why didn't you just get

♀5

an irreversible letter of credit? He's in with HSBC. It's a well-known international bank. When you drive home tonight, you'll see at least two or three branches before you go home.

There was no need to open a trust account and put money into it, if he didn't think he had a deal done. He knew he had a deal. He knew he had a deal at the end of February, when he went the last time with Beardmore and Cortegiano. He knew he had a deal.

Now then somebody said to him, well, maybe you should get this deal documented. All of the sudden, he thought, well, wait a second, you're right, how am I going get this done? I should get the deal documented.

And he went to Jan. Jan brought him to Mr. Blume. Gary made it very clear he wasn't going to represent anybody that day. He was going to prepare some documents. They came in, they wanted to prepare documents. They were looking for somebody to come in cheaply and prepare documents.

This is a 1.5 million dollar loan, do the risk analysis, some money should have been spent doing proper due diligence on this deal.

And if the gold was such an important aspect of this deal, then why didn't Mr. Tarapaski stay in town long enough to see this gold.

He had plenty of time to go to Germany and Ghana with John Beardmore on a deal that was maybe going to happen, maybe not going to happen. But this deal was happening. The promissory note had been signed. Why didn't he stay?

There is no evidence here that shows that Jan Wallace was an agent. Even if you do think that by handling the wire transfer possibly made her an agent, she disclosed everything to him. She is not the cause of his damages. He's the cause of his damages. Lee Wark is the cause of his damages, and absolutely John Beardmore.

John Beardmore and his girlfriend walked away with $295,000 in this case, and he was in Germany with them. What's going on there? Why hasn't he gone after Sokim Lach? She's the one who's benefited most out of this deal, than anybody else, and she's walked away.

And John Beardmore and William Cortegiano, let's talk about credibility. Let's just talk about credibility. There's two credible guys; right? Beardmore and Cortegiano.

Cortegiano said on the stand, yeah, I signed the guarantee. They called me, I came over, I signed the guarantee. Do you think you could perform the guarantee? Do you think if the loan defaulted you could pay the man back? No. So why did you sign it? Because they asked me to. Did you tell anybody? No.

And now he's got a 1.5 million dollar judgment out against him by Thomas and Wong. Of course, he's here testifying.

And John Beardmore? John Beardmore, in his deposition testimony, said all of the collateral they wanted me to pledge, that the Lake Bank was holding, I said go ahead and pledge it. It was worthless. He pledged worthless collateral.

He also gave a guarantee, which he knew he was never going to be able to pay on because he knew he had a loan on his home, and that whatever they sold the home for was the best they were going to get. And he and Sokim Lach are living in Minnesota probably in the condominium. Who knows.

The simple truth is that Ed Tarapaski always knew that the 275,000 was needed first to pay for the condo in Minnesota. And the condo is referenced in the 1.5 million dollar promissory note.

Let's talk about the 1.5 million dollar promissory note. That's not even a complete document and that's a document that Mr. Tarapaski produced.

So now, he's relying on an incomplete promissory note. Is this any way to conduct business, especially in an arena that you don't necessarily act in? Unbelievable.

No matter, all the different testimonies, the documentation clears up that Jan Wallace never received $50,000 directly from the Cane O'Neill trust account.

She received that 50,000 based upon an existing prior contract, which Mr. Tarapaski was aware of, and that $50,000 disbursement from Lake Bank was made pursuant to John Beardmore's approval.

Not so with L. Trust. John Beardmore called up and talked to Ed and said send another 20,000. Who knows what the 20,000 was sent for. However, Exhibit 29, which the plaintiffs are so fond of, says -- why do I keep pulling -- excuse me, I keep pulling the same document.

Thomas and Wong General Contractors hereby authorizes Miss Jan Wallace to release funds from your trust account on our behalf.

So? John Beardmore called up and said we need 20,000. Jan called Ed, said Ed, they need 20,000. Ed said you got the letter, release. The funds were released. Even if she did not call him, but she did, she had the authorization here.

Mr. Tarapaski knew exactly how much money he sent to Cane O'Neill and he knew that transfers were being made out and what they were being made for.

He had a promissory note. Why he didn't ask for a use of proceeds and why he didn't ask for a written confirmation from BDV as to when they would want disbursement and what they would want disbursements for is beyond me.

Miss Wallace was not -- it was not within her purview, based on this letter, to do these things.

There was no agency agreement here and there was no breach of fiduciary duty. She disclosed everything she knew and she acted with the utmost integrity, loyalty, and good faith. And good faith. That could be shown.

Let's talk about some of the other things that have been talked about here today. The real reason that Thomas and Wong has suffered damages is that Mr. Tarapaski assumed all the risks.

Mr. Tarapaski stated he used Thomas and Wong Contractor funds to make this bridge loan. And since he was their agent and had the authority to bind them, he breached his fiduciary duty to Thomas and Wong Contractor. His own testimony outlines all of the breaches.

He learned of the transaction while staying at Jan's home. Began meeting with the principals of BDV Investments while still on painkillers after surgery. He made the decision to continue with the bridge loan while still on painkillers. He's given certain documents and refuses to read them, including the DeConcini opinion letter.

This is a 1.5 million dollar loan. He relies -- he says in the testimony, one of the documents I relied on was the DeConcini opinion letter. Did you read it? No.

Try that one with your bosses next time you go to work.

He learns -- he hires counsel and doesn't provide counsel with proper documents, only demands the documents be drawn up, leaving the bill to be paid by Jan Wallace.

He didn't engage in the proper due diligence as borrower for the ability to repay or provide proper collateral to secure Thomas and Wong's position.

He met with John Beardmore on February 24th. He opens the escrow account on March 3rd. He transfers money on March 5th and March 7th in 2003, instead of providing the letter of credit. This is $800,000 from a small company. They lose their ability to make interest on that money and maybe to use it for other deals in that time period in which he says he's closing the deal at either at least.

He had prepared documentation on the bridge loan on March 6th, 2003, and he approved the transfer of the 275. Let's go back to that. He approves the transfer of the 275. That's the testimony he gave in his deposition. And he sat on that stand and he said, no, that's not what I said -- I'm sorry, no, I did not know about that.

So, which is it? Is it today, after he's gone after everybody he can go after to try and get this 1.5 million back, and now he's here because, you know, Miss Wallace has got a house and she got 50,000, and shoot, she's somebody I haven't already sued. Let me sue her.

Tried to sue Lake Bank. I don't know, I'm not going to speculate as to where they stand in this matter. He tried to sue them. It got bounced out on a technicality.

It's very simple, this case is very simple. And I do appreciate you guys taking the time to sit and listen to this evidence. But this case is very, very simple.

Was there an agency? No. Any time there was an agency discussed by Mr. -- this alleged agency agreement was discussed by Mr. Tarapaski and Miss Wallace, there was no one else present.

She didn't hold herself out as an agent. She didn't say, I'm acting as an agent. She didn't -- she testified that she doesn't act as an agent. She doesn't enter into agency agreements, and she didn't act as an agent.

More importantly, was there a breach of the fiduciary duty?

Again, based on disclosure, there could be no breach. She disclosed everything.

And furthermore, Ed Tarapaski met with BDV, with Lee Wark, with Don Nooe, and made his own determination to enter into this agreement, even though he had been cautioned, been cautioned by Gary Blume, he'd been cautioned by Jan Wallace. You should look into more of this, you should look into more of this.

Miss Wallace had that contract with BVD Investments from December of 2003. This deal didn't happen until March of -- I'm sorry -- 2002. This deal didn't happen until March of 2003. And Miss Wallace said at the time there were several other potential bidders for the shell corporation.

She didn't need to sell for the shell -- public shell. She didn't need to sell this to Beardmore. If they were able to get their financing done, great, but it wasn't -- that wasn't her motive. There was no motive here.

Bottom line is that this -- the bottom line here is greed. Ed Tarapaski heard about a loan backed by gold dore which is worth more than the loan amount, which is worth more than the loan amount, at 25 percent interest return and an opportunity to land a construction contract. That's what this is about. This is a loan backed by gold.

You heard Gary Blume say, well, there is one of them that comes across his desk at least once a year in Arizona. I mean, he says, almost always there is no gold. There was no reason to do this loan. He had no, he had no need -- or to do it on a quick pace he did. Now he wants my client to pay for his mistake.

Mr. Tarapaski, Mr. Tarapaski sat in that chair, ladies and gentlemen -- let's talk about credibility -- he sat in that chair and never once took responsibility for anything that's gone on in connection with this loan. He's blamed it on Miss Wallace, Mr. Blume, Mr. Beardmore, Mr. Cortegiano, Mr. Wark, it could go on and on.

He's not taken responsibility for this loan, and now he's looking to place the blame on someone, at the time, he only knew two weeks, places all the blame on Ms. Wallace.

He also said that the only reason he got involved in this loan was because he felt he had a moral obligation. She was in distress. He wanted to know if there was anything he could do to help her.

You've seen Miss Wallace testify for a couple of days. As a matter of fact, plaintiff's counsel commented -- I'm going to say it, plaintiff's counsel made it sound as if my client is a shark, she's a, you know, a sophisticated woman. She does this a lot.

You really think she was in distress? Do you really think Mr. Tarapaski needed to make a moral -- had a moral obligation to her? Is this the basis for doing a business deal?

And at the end of the day, that's what this is. This is a business deal. This is a business transaction that went bad. Unfortunately, it went bad for Thomas and Wong, they lose 1.5 million. But it's not because my client had a duty or breached that duty or failed to make full disclosure.

It's because Mr. Tarapaski had a duty, and he failed to disclose and he failed to do the items necessary, and therefore he breached his duty to Thomas and Wong. It wasn't Miss Wallace, it was him.

Like I stated earlier, not all the pieces fit together in this litigation, and I can appreciate that. I understand that.

There is no written agency agreement. No one was present when Jan and Ed had these alleged agency agreements.

Ed is extremely angry that Jan received $50,000 pursuant to an agreement, which he knew about, but he doesn't

♀4

seem to be too upset about the $295,000 to Sokim Lach and John Beardmore.

Then he provides documentation of payment for a hospital bill, but doesn't have any documentation on a 1.5 million dollar loan. A hospital bill was $4500. The loan is 1.5 million. It's just seems very lax, it is very lax.

Ed Tarapaski sat there and testified that he was relying on people he just met after surgery, for which he was on painkillers for. He throws $800,000 into a trust account. The deal isn't done yet. He doesn't interact directly with the trustee at the trust account, doesn't request a use of proceeds or written request of funds and their purpose each time a transfer was made.

Why didn't he get an accounting? He never once asked for an accounting. Did you see an accounting? Was there an accounting provided? I didn't. Why doesn't he do that?

Why? Because he knows, he knows exactly where all the money has gone.

He actually wants the money that goes to pay Cane O'Neill's bill. Did he think Cane O'Neill were going to open a trust account, handle all these wires, handle all this documentation, and not get paid?

He doesn't get the information that he needs and he's ultimately liable for this loan.

In conclusion, ladies and gentlemen of the jury,

♀5

based on the evidence that's been presented to you, Jan Wallace was not an agent. She had no fiduciary duty to Thomas and Wong.

And even if the duty could be found, she did not breach this duty. 275, 500,000, 20,000, and, what was it, 4900 that was sent to Cane O'Neill, Ed Tarapaski had knowledge of at all times. He had knowledge when they were made, before they were made, and after they had been made.

Is it unfortunate that the collateral that secured this loan was worthless or nonexistent? Yes. Was that Jan Wallace's fault? No, it was not Jan Wallace's fault. It was Ed Tarapaski's fault.

She owed no fiduciary duty to Thomas and Wong. Even if you find a duty, she didn't breach it. There has been full disclosure at all times.

The cause of plaintiff's damages, if any, is BDV defaulting on the note. The defendant knew all the risks and failed to protect, failed to conduct a proper due diligence.

The bulk of the 800,000 was received by Lake Bank, L. Trust, and Sokim Lach. We don't know who received the $700,000 because Wallace wasn't involved in that. There was no information.

She sent a fax, that's all she did, a handwritten fax even. If she had really been an agent, she might have taken the time to type it up. Never dealt with Charlene Wong, never spoke to Thomas and Wong.

♀6

Jan Wallace did not owe a duty, did not breach it. The breach was -- the breach is not the cause of Thomas and Wong's damages. Full disclosure has been made. Thomas and Wong Contractors assumed the risks and failed to mitigate its damages. Jan Wallace is therefore not liable for plaintiff's damages.

And I ask that you find for Jan Wallace and against the defendant -- and against the plaintiffs, Thomas and Wong General Contractors. Again, thank you.

THE COURT: Thank you, counsel.

At this point we're going to take our afternoon recess. We'll stand in recess for 10 minutes, at which time we'll conclude with plaintiff's rebuttal and the Court will then give you your final jury instructions.

(Recess)

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

You may proceed whenever you're ready.

MR. MURPHY: I'm going to read a very important instruction based on the closing argument you just heard from the defense.

Instruction No. 4. In the opening statements and closing arguments the lawyers have talked to you about the law and the evidence. What the lawyers said is not evidence, but it may help you to understand the law and the evidence.

I just heard a lot of ridiculous and ludicrous and

♀7

incredible. I heard a lot of opinions from counsel about the testimony. But I didn't see a lot up on the screen, nor did I see, members of the jury, a comment about evidence that I had reviewed.

Specifically, I walked up to this podium and I said Jan Wallace told you, under oath, testimony, that is directly contrary to the testimony of her own lawyer. That goes to a crucial issue in the case.

Did you hear one word about that in the closing argument? Why don't you say something about that? Because there's nothing that can be said.

You then fall back on arguments of counsel, rather than the evidence. We are relying on the evidence, I submit, and here is what I'm talking about.

I hear contradictory accusations about Ed Tarapaski. Well, he didn't look into the use of proceeds, so he was negligent. Well, Ed -- and they base this -- even as I say that, they go to Page 43 of his deposition, which they have gone to repeatedly in the case, and quote in one phrase:

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

I went through him on that. What promissory note were you talking about? Well, Exhibit 21, the $1.5 million promissory note. The only note I knew had ever been signed.

♀8

And he said I knew there was going to be $275,000 release for the condominium after I approved the deal. That's not our complaint.

Our complaint is, one, it was sent to a corporation that was not a party to this loan transaction, L. Trust, about which he knew nothing. And No. 2, that he didn't know the money had been sent before he even closed the deal. That is our complaint.

He knew the 275 -- that there was 275 targeted for a condominium. He knew that $570,000 is supposed to pay Lake Bank. He knew the use of proceeds. What he didn't know was that the money was already gone.

And as I said in my opening statement, I submit to you that this second promissory note, the mystery note of $275,000, is a cover that was created to justify the fact that money had gone out about which Ed Tarapaski and Thomas and Wong knew not one thing.

I've heard a description of how we could sorely abuse Miss Wallace when she showed the note of human kindness to Ed Tarapaski. Now, part of your job as jurors is to evaluate the people who take that witness stand. And Ed has said, I relied on her and she said she'd take charge of this situation.

You saw her there, members of the jury. Was that a take charge person? Was that a CEO personality? Was that someone who grabs the reigns and holds them?

♀9

You saw Ed Tarapaski. Is he that kind of guy? When he says, she told me leave this to me, it's what I do, this is my specialty, trust me, she would have been as forceful with him as she was with me on cross-examination from that witness stand, I submit, because that's her personality.

I hear all sorts of accusations about how Ed Tarapaski should have done more due diligence, and it appears to be the following: BDV or BDV Investments were obvious frauds. He should have known, but he didn't look into it. Obvious frauds. Why didn't he know?

Members of the jury, Jan Wallace had a contract with those obvious frauds, Exhibit 3, which involved her doing due diligence, Items No. 1, 2, 3, 4, it continues through rest of the document. She had a due diligence checklist, Exhibit 90, dated December 23, 2002, five months before Ed Tarapaski got involved, to do due diligence on her client, BDV Investment.

Incredibly, after -- I will proceed verbally because time is short -- after Ed Tarapaski had lost his money in August of 2003, she writes another letter to Cortegiano and Beardmore stating let's do our due diligence on the M V Asia deal.

So what they're saying is this: Ed Tarapaski should have known they were obvious frauds. Although the woman who had signed them up as her clients and who had been investigating them since December of 2002, from the exhibits, did not do so.

And even after they didn't pay him back, she

♀0

continued to do business with them. What does that say about due diligence, members of the jury?

It says Ed Tarapaski relied on Jan Wallace. And what they are fundamentally saying is this, I submit to you: Ed Tarapaski relied on Jan Wallace. He should have known better. That's what they're saying to you at the bottom line. He should have known better than to trust Jan Wallace.

If this was such a crazy deal, if this was so obviously off the charts, why did she pitch it to him? The more you believe that this was obviously a bad deal, the more that indicts Jan Wallace for recommending it to Ed Tarapaski in the first place.

And what a crazy way he went about it. I'm considering a transaction that I don't know much about it because Jan Wallace, a person to whom I'm feeling some gratitude, recommends it, and she's sharp cookie, and she is saying this is a good deal.

So what do I do? I'll get an escrow set up to release the money, I'll hire a lawyer to document the transaction, and I will get a really sharp advisor in Jan Wallace to tell me what to do.

Is that a crazy way to do a business deal. Ed thought he had all the ends tied up, collateral, security, legal advice, escrow. The problem was, everything that was being told to him was false.

And the team that was supposed to be blowing the whistle for him, was working for Jan Wallace and not for him. Her old friend up in Vegas, Michael Cane, her old lawyer down in Phoenix, Gary Blume; the team was working for her and not for him, but he didn't know that.

Their mitigation of damages issue is an interesting one. We put on testimony that Ed has sued everybody under the sun on this transaction and has taken judgment after judgment after judgment, but has not been collected on, that any had been collected.

The mitigation of damages argument seems to be, well, why haven't you sued Sokim Lach because you could have gotten another useless, uncollectible judgment against her too.

I haven't heard anything more about that, about what more he should have done to try and collect this deal. He chased after the gold himself. He hired a lawyer to file suit. He took default judgments. He has scrambled very hard to try and collect this money, and got some of it back. But it's evidently not enough to satisfy the defendants.

Now, I am confused by one argument made by the defense. I thought I heard an issue with regard to the fact that the authorization that Ed Tarapaski signed in favor of Jan Wallace didn't include any, oh, limitation. He should have put that he had to check with her, or something to that effect.

Here's the instruction the Judge will provide to you. Instruction 9 says that an agent shall act on the principal's behalf, subject to the principal's control. Subject to the principal's control.

A bank teller, members of the jury, is a agent for the bank and he has money for the bank, but that doesn't mean he can do whatever he wants with the money. He is subject to his employer's control.

Jan Wallace had possession of his funds. That doesn't mean she could do whatever she wants with the money. It is subject to the principal's control.

And that is our complaint, that she let go of money that was subject to his control without knowledge and consent on his part.

There was mention of the DeConcini opinion letter. You'll take it back with you in the jury room. Oh, Ed should have read this Exhibit No. 7.

You read it, see how much better educated about this deal you feel after you rake through this document. I will tell you that legalese is not something that you can blame Ed Tarapaski for not under understanding. But I will leave you to examine the document yourself and draw your own conclusions.

There is also a complaint about there was no written agency agreement. Look at No. 9, Instruction No. 9. The Judge will not instruct you that a written agreement is required to form an agency relationship. And it happens all the time. Every

♀3

employee is an agent.

Every one working at McDonald's is an agent for McDonald's. Very few of them will have a written contract, we're hiring you, it's 7.50 an hour. You start Tuesday and you work 9 to 5. An agency relationship does not require a written document to form.

You can find that -- we've shown you written documents establishing the agency relationship as I went through in my opening, but it's not a requisite step.

I'm going to conclude by stating the following: Ed Tarapaski is -- I can't express opinions -- so I'm going to back up. You've seen Ed Tarapaski. He's a capable businessman and he has a good business, but he's not a player like Jan Wallace, and he's vulnerable as a result. And he was lured into a transaction based on her representations that she would take care of business.

Will you walk into my parlor, said the spider to the fly.

THE COURT: The bailiff will please provide the members of the jury with copies of the Court's final jury instructions.

Ladies and gentlemen, I will now tell you the rules that you must follow to decide this case.

I will instruct you on the law. It is your duty to follow the law whether you agree with it or not.

It's also your duty to determine the facts. You

♀4

must determine the facts only from the evidence produced in court.

You should not speculate or guess about any fact. You must not be influenced by sympathy or prejudice. You must not be concerned with any opinion you may feel I have about the facts. You are the sole judges of the facts.

You must take account of all of my instructions on the law. You're not on to pick out one instruction or part of one and disregard the others.

However, after you have determined the facts, you may find that some instructions do not apply. You must then consider the instructions that do apply together with the facts as you have determined them. Decide the case by applying the law in these instructions to the facts.

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

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

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

♀5

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

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

The admission of evidence in court is governed by rules of law. I have applied those rules during the trial and resolved any issues concerning the admission of evidence.

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

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

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

If evidence was admitted for a limited purpose, you must consider that evidence only for that purpose.

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

In the opening statements and the closing arguments, the lawyers have talked to you about the law and the evidence. What the lawyers said is not evidence, but it may help you to

understand the law and the evidence.

The parties are permitted to stipulate or agree that certain facts exist. You must regard any stipulated or agreed-upon fact as having been proved.

In deciding the facts of this case, you should consider what testimony to accept and what to reject. You may accept everything a witness says or part of it or none of it.

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

Consider all of the evidence in light of reason, common sense, and experience.

The corporation is a party to this lawsuit. Corporations and individuals are entitled to the same fair and impartial consideration and to justice reached by the same legal standards.

When I use the word "person" in these instructions or when I use any personal pronoun referring to a party, those

instructions apply to Thomas and Wong General Contractors.

Burden of proof means burden of persuasion.

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

In determining whether a party has met this burden, consider all of the evidence that bears on the claim, regardless of which party produced it.

The plaintiff claims the defendant is liable for breach of fiduciary duty.

Before you can find defendant liable to plaintiff on the breach of fiduciary duty claim, you must find the defendant was an agent of plaintiff.

Agency is a relationship that arises when one person, the principal, manifests an assent to another person, the agent, that the agent shall act on the principal's behalf subject to the principal's control, and the agent manifests assent or otherwise consents so to act.

An agent owes a special duty to the principal which is called a fiduciary duty.

This duty requires the agent to represent the principal with loyalty and utmost good faith in the conduct of the agency and to make full disclosure of all material facts relevant to the agency.

♀8

To establish a claim for breach of fiduciary duty, the plaintiff must prove, one, defendant owed a fiduciary duty to plaintiff; two, defendant breached this duty; three, defendant's breach was a cause of plaintiff's damages; and four, plaintiff's damages.

Before you can find the defendant liable on the breach of fiduciary duty claim, you must find defendant's breach of fiduciary duty is a cause of plaintiff's damages.

A breach fiduciary duty is a cause of damages if it helps to produce the damages and if the damages would not have occurred without the breach.

If you find defendant is liable to plaintiff on the breach of fiduciary duty claim, you must then decide the full amount of money that will reasonably and fairly compensate the plaintiff for any of the following elements of damage proved by the evidence to have resulted from the defendant's breach of this duty:

One, loss of money or other property; and two, the profit or proceeds that plaintiff would have received had defendant performed her duties.

Defendant claims that plaintiff did not make reasonable effort to prevent or reduce damages.

Plaintiff may not recover for any damages that could have been prevented or reduced through reasonable efforts.

Defendant must prove, one, plaintiff did not make a

♀9

reasonable effort to prevent or reduce damages; two, if plaintiff had acted reasonably, plaintiff could have prevented or reduced those damages; and three, the amount of plaintiff's damages that could have been prevented or reduced through reasonable efforts.

Defendant claims that plaintiff was at fault by assuming the risk of injury.

A person assumes the risk of injury when he has knowledge of a particular risk, appreciates its magnitude, and voluntarily subjects himself to the risk under circumstances which show his willingness to accept that particular risk.

As to this claim, the defendant must prove, one, the plaintiff assumed a particular risk of injury; and two, that particular risk was a cause of plaintiff's injury.

You must decide whether the defendant has proved that plaintiff was at fault by assuming the risk of injury and under all the circumstances of this case whether any such fault should reduce plaintiff's damages.

These decisions are left to your sole discretion.

If you decide that plaintiff's fault should reduce his damages, you must then determine the relative degrees of fault of all those whom you find to have been at fault.

The relative degrees of fault are to be entered on the verdict form as percentages of the total fault for plaintiff's injury.

The fault of one person may be greater or lesser

♀0

than that of another, but the relative degrees of fault must add up to 100 percent.

This will be clear from the verdict form.

If you apply the defense of assumption of the risk, the Court will later reduce plaintiff's full damages by the percentage of fault that you have assigned to plaintiff.

This case is now submitted to you for decision. When you go to the jury room, you will choose a foreperson. He or she will preside over your deliberations.

At least seven of you must agree on a verdict. If all nine agree on a verdict, only the foreperson need sign it on the line marked foreperson.

If seven or eight agree on a verdict, all those who agree, and only those who agree, must sign the verdict on the numbered lines provided, leaving the line marked foreperson blank. Please print your name under your signature.

You will be given two forms of verdict, they read as follows, there is no significance to the order in which they are read.

The first verdict reads as follows: We the jury, duly impaneled and sworn in the above-entitled action, upon our oaths do find in favor of plaintiffs Thomas and Wong General Contractors, Inc., and find the full amount of damages to be blank dollars.

We find the relative degrees of fault to be Thomas and Wong, General Contractor, Incorporated, blank percent, Jan Wallace blank percent; total, 100 percent.

If not at fault, put a zero on the percentage line for that party.

The second form of verdict reads: We the jury, duly impaneled and sworn in the above-entitled action, upon our oaths do find in favor of defendant, Jan Wallace.

Counsel, are there any additions or corrections to the Court's instruction and forms of verdict as read to the jury?

MR. MURPHY: Not by the plaintiff, your Honor.

MS. AMBROSIO: None, your Honor.

THE COURT: Very well then, the clerk will please swear in the bailiff.

(The bailiffs were duly sworn upon their oaths.)

THE COURT: All right, very well. The bailiffs will please provided the jury with all the verdict forms.

Ladies and gentlemen, in just a moment you're going to go to the jury room to deliberate. I'm going to ask you to take your notebooks with you.

It is now roughly a quarter to four. If you don't have a verdict near, at or near 5:00 p.m., you may recess at that time and return tomorrow morning.

I don't want you to feel that you need to rush to reach a verdict by 5:00 today.

If you do determine that you are going to return tomorrow morning, please be back by, at least not later than 9:00. Although if you decide that you want to come back before 9:00 you're free to do so.

I suggest you not come back earlier than eight because I don't think the building opens before 8:00 in the morning.

Now, assuming that you do adjourn for the evening, when you do return in the morning, please don't begin deliberating until all of you are present in the jury room and you have advised my bailiff that you're all present and you're going to begin your deliberations.

All right, ladies and gentlemen, with that, you may go to the jury room to deliberate. As I said, would you please take your note books with you.

(The record notes the absence of the jury.)

THE COURT: Be seated, please.

Counsel, I don't know what your plans are while the jury is deliberating. I don't know if you expect to remain here in the building or if you plan to leave the building.

In the event you do leave the courthouse, would you please not venture more than about 20 minutes from here so that if the jury has a question or when the jury returns a verdict, you can return to the courthouse in relatively short order. We don't want to keep the jury waiting.

In that regard, would you please provide my clerk

♀3

with a cellphone number or some other means by which we can contact you in the event, as I say, the jury has a question or when the jury does return a verdict.

Anything further that counsel wish to take up at this time?

MR. MURPHY: Yes, your Honor, I'd like to thank the Court for its courtesy in what was kind of a testing trial at times.

I'd like also point out that the staff has been very helpful. Lisa stayed up until about 4:00 a.m. yesterday doing transcripts. And that's beyond the call of duty.

MS. AMBROSIO: I'd like to second that, your Honor.

THE COURT: Well, all right. Thank you. Anything further?

MR. MURPHY: Nothing, your Honor.

MS. AMBROSIO: Nothing, your Honor.

THE COURT: All right stand in recess.

(Recess.)

♀