

1 CAUTIONS IN USING A REALTIME PARTIALLY EDITED TRANSCRIPT

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3 IN A REALTIME PARTIALLY EDITED TRANSCRIPT, YOU MAY  
4 SEE THE REPORTER'S RAW SHORTHAND NOTES. CONSEQUENTLY, YOU  
5 MAY SEE ERRORS IN CAPITALIZATION AND PUNCTUATION,  
6 MISSPELLINGS, SMALL WORDS MISSING (SUCH AS "THE," "IT,"  
7 "A"), TRANSPOSED WORDS, DOUBLE WORDS, CONTEXTUAL HEARING  
8 MISTAKES, HEARING MISTAKES OF SOUND-ALIKE WORDS, POSSIBLE  
9 INCORRECT SPEAKER IDENTIFICATION, AND AT TIMES STENO  
10 OUTLINES THAT HAVE NOT BEEN TRANSLATED.

11 BE ASSURED THAT IN THE FINAL EDITED VERSION OF THE  
12 TRANSCRIPT, ALL ERRORS ARE CORRECTED. AN UNEDITED OR  
13 PARTIALLY EDITED TRANSCRIPT REPRESENTS A FIRST DRAFT AND  
14 SHOULD BE USED ACCORDINGLY.

15 THEREFORE, IT IS NOT RECOMMENDED YOU RELY ON THE  
16 UNEDITED VERSION AS YOU WOULD A FINAL EVIDENTIARY CERTIFIED  
17 TRANSCRIPT. ALTHOUGH AN UNEDITED OR PARTIALLY EDITED  
18 TRANSCRIPT WILL BE VERY READABLE AND MOSTLY ACCURATE, IT  
19 SHOULD BE USED WITH GREAT CARE.

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GABRIELINO TONGVA TRIBE VS. STEIN

TRIAL TESTIMONY OF J. STEIN, TRIAL DAY 41

10:13 AM.

THE COURT: Gabrielino versus Stein, BC361307.  
Okay scheduling issue.

MR. STEIN: Yes, Your Honor, just on Friday, I  
have eye motion that is likely to be a long oral argument  
and this is the trial preference based on imminent death  
and it's going to be an emotional time for the judge.

THE COURT: For the judge?

MR. STEIN: Well no no, it's not the judge's  
imminent death.

THE COURT: I thought you said it would be Anna  
emotional time for the judge.

MR. STEIN: I think it's a tough decision for any  
judge.

THE COURT: Oh okay.

MR. STEIN: And so at 10:30 -- would 10:30, 10 45  
at the latest Friday if we could start.

THE COURT: Is it downtown.

MR. STEIN: West district.

THE COURT: Ooh, I don't know that might take you  
a while to get here, maybe we should say 10 45, will the  
judge give you priority.

MR. STEIN: I will certainly be asking for it.

THE COURT: Okay.

MR. STEIN: On the other hand though given the

1 nature of the information being discussed she may wish to  
2 empty the courtroom so I don't know her approach.

3 THE COURT: Well all right. Mr. Stein has  
4 mentioned this case in the past and -- well okay, I think  
5 we should start late on Friday and do what we need to do  
6 and it will take some time though to get from West L.A. to  
7 downtown.

8 MR. STEIN: And just so the court knows we've been  
9 able to schedule depositions in the afternoon so you  
10 haven't seen all the deposition work that we've been doing.

11 THE COURT: All right. Okay so I guess it's  
12 agreed Friday 10 45, call us if there's delays or whatever  
13 okay Mr. Stein just give us a call, call our department and  
14 let Neli know what's going on if there's a problem.

15 MR. STEIN: Thank you.

16 THE COURT: Okay anything else or we'll just  
17 continue? No, okay Mr. Stein do you want to come forward.  
18 Pull the microphone toward you it's off to the side there.  
19 There you go and Mr. Stein -- is it working?

20 A. No no actually I'm not sure I need it.

21 THE COURT: Shall we turn it on or.

22 THE CLERK: Mr. Stein can you tap on it.

23 THE CLERK: Switch it in.

24 THE COURT: Turn it on?

25 A. Ooh maybe that should be turned down a little bit.  
26 Identify hate to below you out if I get excited.

27 THE COURT: Let's turn it down a little bit. Okay  
28 Mr. Stein you're under oath?

1           A.    Yes Your Honor.

2           THE COURT: Thank you. All right Ms. Ibarra you  
3 may continue.

4           MS. IBARRA: Yes. Mr. Stein I'm actually going to  
5 introduce a new exhibit that we haven't seen before, it's a  
6 declaration that you submitted in this case.

7           THE COURT: In this case? .

8           MS. IBARRA: Yes in this case this same case?

9           A.    And this is on redirect.

10          MS. IBARRA: Yes.

11          MR. FORDYCE: Can I just have a second.

12          THE COURT: I guess it's a new exhibit, what  
13 number are we giving it, .

14          MS. IBARRA: Did we leave off on 550.

15          MS. GOAD: No 252.

16          THE COURT: 252.

17          MR. FORDYCE: Your Honor is this appropriate  
18 object redirect, isn't this beyond the scope of my cross.

19          MS. IBARRA: This just goes to whether he was the  
20 tribe CEO and this makes some statements as to whether he  
21 was the tribes CEO.

22          MR. FORDYCE: What was the exhibit number again.

23          THE CLERK: I have next in Line 25 one.

24          MR. FORDYCE: Oh we did 250 A 250 B , well I'm  
25 going to object to this exhibit anyway just to preserve the  
26 record.

27          THE COURT: Wait a minute we've got a whole bunch  
28 of people trying to talk.

1 MR. FORDYCE: Okay.

2 THE COURT: It's a declaration of Mr. Stein in  
3 support of -- what was it filed, in support of what? It  
4 doesn't even say.

5 MS. IBARRA: It doesn't even say, it's dated  
6 January 28, 2008.

7 THE COURT: Well where would I find it, if it's in  
8 the court record, I need to know where I can find t  
9 otherwise --.

10 MS. IBARRA: It's the Stein declaration January  
11 28th, 2008, this would be at the time to enforce the  
12 settlement agreement.

13 THE COURT: Okay.

14 MR. FORDYCE: Well it lacks foundation because it  
15 doesn't state what it's for and --.

16 MS. IBARRA: But it's part of the court records  
17 it's signed under penalty of perjury and it's introduced  
18 primarily to impeach Mr. Stein.

19 THE COURT: That's fine, I'm going to take  
20 judicial notice of it, if you want to use it to impeach I  
21 need to know where I can find it in the court record, our  
22 saying it's in the court record, in support of what.

23 MS. IBARRA: I believe it's in support for the  
24 motion for good faith settlement with the Candalaria  
25 faction.

26 THE COURT: Can you look for that.

27 MS. IBARRA: And there was a series of motions  
28 that started -- first were tiled in January and they were

1 continued and there's a variety of briefs and declaration  
2 that's were submitted in support, eventually it was decided  
3 in April of 2008.

4 THE COURT: Okay.

5 MS. IBARRA: So I believe this is where this is  
6 from, even though it doesn't say that.

7 THE COURT: Okay so.

8 THE CLERK: I'm sorry judge what am I looking for.

9 THE COURT: Motion to enforce settlement.

10 MS. IBARRA: Yes filed in January of 2008.

11 THE COURT: By.

12 MS. IBARRA: By -- it would be by SMDC.

13 THE CLERK: Okay.

14 THE COURT: So while you're looking for that so we  
15 can -- and your objection is.

16 MR. FORDYCE: Well it's beyond the scope of my  
17 cross, I would think and also it does lacks foundation  
18 until we actually have some foundation. I don't know if  
19 this is filed.

20 THE COURT: Well I'm going to overrule that but.

21 MR. FORDYCE: Okay.

22 THE COURT: You may inquire. And then there was a  
23 question about what number exhibit we're on.

24 MS. GOAD: I do believe we used 251.

25 MS. IBARRA: So this is 252.

26 MS. GOAD: 252.

27 THE COURT: So 252, that's fine, 252. Okay may  
28 inquire.

1 Q. BY MS. IBARRA: Mr. Stein?

2 A. Uh-huh.

3 Q. Can you look at paragraph -- well, first of all do  
4 you recognize this declaration?

5 A. No, I don't but I recognize my signature and I  
6 recognize many of the facts stated in it.

7 Q. Is it generally correct, the facts stated in  
8 there?

9 A. That's hard to answer, generally correct, there  
10 are a lot of facts in Five paragraphs.

11 Q. Right but is --?

12 A. But I can go through them if you'd like to lead me  
13 into that.

14 Q. Sure. Why not start with Paragraph 1, it's a very  
15 short declaration?

16 A. Okay. Well this says that I'm a lawyer, I  
17 practice law offices of Jonathan Stein and entirely  
18 separate and apart from my legal practice.

19 THE COURT: No that's not what it says, do you  
20 want him to read it directly.

21 MS. IBARRA: Sure why don't we read it directly.

22 THE COURT: Why don't you ask the questions, if  
23 you have a question and you read it. Counsel, you read it.

24 MS. IBARRA: Okay. So it says that I am attorney  
25 at law, licensed to practice before all courts in the State  
26 of California correct Mr. Stein.

27 A. Yes.

28 Q. I have a business litigation practice under the

1 law offices of Jonathan Stein?

2 A. In 2008 that was correct too.

3 Q. Entirely separate and apart from my legal practice  
4 I am a majority owner and president of plaintiff Saint  
5 Monday development company LLC, a California limited  
6 liability company in good standing. That's correct?

7 A. In 2008 that was, yes.

8 Q. As president of SMDC I have personal knowledge of  
9 the facts set forth in this declaration and if called as a  
10 witness for this purpose, I could and would competently  
11 testify under oath to them?

12 A. Yes.

13 Q. And that's what you're doing today right?

14 A. Yes.

15 Q. I used the terms herein that are designed in the  
16 memorandum of Points and Authorities submitted here with,  
17 and you don't recall specifically which Points and  
18 Authorities?

19 A. No.

20 Q. So Paragraph 2, I have reviewed subpoenaed bank  
21 records for the two GT Tribe accounts at Union Bank, do you  
22 recall doing that?

23 A. Yes.

24 Q. These bank records demonstrate the signatories on  
25 the these accounts were changed to allow cross-defendant  
26 Elizabeth Aronson to be the sole signatory is that  
27 correct?

28 A. Yes.

1 Q. Between November 1 and eight, 20, 2006  
2 substantially all of the \$898,000 was drained from these  
3 accounts?

4 A. Yes and no, there should be a reference to the  
5 Wells Fargo account unless by -- by November all the  
6 amounts from the Wells Fargo had been transferred to Union  
7 Bank.

8 Q. But you don't recall?

9 A. I don't recall exactly what transpired but for  
10 this to be correct, then the amounts of the Wells Fargo  
11 account after they took my signature off it were  
12 transferred by Elizabeth Aronson to the Union Bank accounts  
13 and then from the Union Bank accounts, the 898,000 was  
14 drained to third person uses.

15 Q. Okay. Moving on on the declaration, by the end of  
16 April -- this is still Paragraph 2. By the end of April,  
17 2007 the rest of the funds were expended is that correct?

18 A. Right. In other words the like 90 percent plus of  
19 the funds of the 898,000 were drained in a single week and  
20 then over the next six months the last five or 10 percent  
21 was drained.

22 Q. Okay thanks?

23 A. According to the records that I reviewed after the  
24 subpoena.

25 Q. Okay. So moving on I've seen Ms. Aronson's  
26 signature on all checks reviewed and based upon her  
27 deposition testimony she signed all checks into the funds  
28 went out is that also correct?

1           A.    My understanding is she was the signatory on the  
2 accounts and signed all the checks.

3           THE COURT:   This says I have seen Ms. Aronson's  
4 signature on all checks.

5           A.    Then they would have been in the subpoenaed  
6 records for that to be correct.

7           THE COURT:   So you did see her signature on all  
8 the checks based on your review of them when you got them  
9 from the subpoenaed records?

10          A.    Let me just double check.  I reviewed subpoenaed  
11 bank records for GT Tribe against Union Bank, right.  Then  
12 the court would be correct.

13          MS. IBARRA:   And then moving on, attached as  
14 Exhibit 17 is a true and correct copy of the financial  
15 spreadsheet that I compiled -- or supplied?

16          A.    I think that's a misspelling.

17          Q.    Okay.  Based upon the subpoenaed bank records.  So  
18 there's an exhibit attached that we don't have?

19          A.    Right.  And I've seen -- I remember the  
20 spreadsheet and it was based on the review of the  
21 subpoenaed bank records so I agree that Paragraph 2 was  
22 accurate in 2008 and I believe it's accurate today.

23          Q.    Paragraph three is what I'm getting at.  Paragraph  
24 3 reads, as president and CEO for the past 7 years, I have  
25 served under the the additional title of CEO of GT Tribe as  
26 well as prior offices of GT Tribe with only one brief  
27 interruption in fall of 2006?

28          A.    There's another sentence in there.

1 Q. Oh I know but we're going sentence by sentence?

2 A. Well, first of all, it's as president of SMDC I  
3 think is what it's supposed to say I think it is should  
4 sloppy written by me because as president of SMDC in 2008,  
5 a reference to the past 7 years would be back to 2001, so  
6 it says I have served under the additional title as CEO of  
7 GT Tribe that would be incorrect I was never CEO of GT  
8 Tribe and it wouldn't be for the past 7 years either, so I  
9 was tribal -- tribal developer was SMDC and I was head of  
10 SMDC and then I took the nominal title for the less than a  
11 year of tribal development -- instead of tribal developer,  
12 I was tribal development officer, that was done without any  
13 council action, that was just a nominal use of the title.  
14 And then for -- from May until September 29th, I was CEO of  
15 GT -- Gabrielino tribal gaming authority and that was ended  
16 by September 9th, so that would be from May 22 to September  
17 9. And what this seems to indicate is again my  
18 understanding in 2008 as it was in 2006 was that the tribe,  
19 the real party in interest was in fact the Candalaria group  
20 and that's been shown to be wrong by the jury situation, so  
21 I was wrong, judge Sabian Sinanian was wrong, judge  
22 Beiderman was wrong and the jury has determined that I was  
23 not with GT Tribe. And then the last sentence says I've  
24 never served as officer of GT nation. That's what this  
25 whole thing was about.

26 Q. I'm going to move to strike as nonresponsive my  
27 question was.

28 THE COURT: Motion is granted the answer is

1 stricken. Just listen to the question and answer the  
2 question asked.

3 A. Very good.

4 MS. IBARRA: My question was about whether this is  
5 correct in that it references under penalty of perjury that  
6 you were CEO of GT Tribe?

7 A. It is not correct.

8 Q. Okay. Move on to the next sentence, I've never  
9 served as an officer of GT nation?

10 A. Right. What the concern of this declaration seems  
11 to be is who was the real party in interest, that was the  
12 ongoing -- that was the key to the motion for good faith  
13 settlement is it was a settlement with the Candalaria group  
14 and does that settle the whole lawsuit.

15 Q. Right. So back to my question, so this -- at that  
16 time you believe this to be correct?

17 A. No, no. I don't know if -- I think I did a sloppy  
18 job here.

19 THE COURT: Well what was that supposed to say, if  
20 that's not -- the sentence is I have never served as an  
21 officer of GT nation?

22 A. Right.

23 THE COURT: What was it supposed to say? You're  
24 saying that was incorrect so what was it supposed to say.

25 A. That I was associated with GT Tribe for seven  
26 years and not never associated with GT nation.

27 THE COURT: I was associated with GT Tribe for  
28 seven years?

1 A. And never --.

2 THE COURT: And never associate?

3 A. With GT nation, now please understand and this is  
4 the part that gets confusing is that the jury has decided  
5 that what I am calling GT tribe here and what I am calling  
6 GT nation is wrong. So what the jury decided is that GT  
7 nation is the same as GT Tribe and so the distinction  
8 referred to in Paragraph 3 is meaningless.

9 Q. So what about the reference to being an officer?

10 A. I was just wrong. I gave you what was right and  
11 this was wrong.

12 Q. So you've even -- even with respect to your  
13 affiliate with GT Tribe are you contending now that you  
14 were never an officer of GT Tribe?

15 A. No.

16 MR. FORDYCE: I think that's also been asked and  
17 answered maybe 15 times.

18 THE COURT: Overruled.

19 MS. IBARRA: I'm impeaching him with his  
20 declaration.

21 THE COURT: What was the answer?

22 A. No.

23 Q. BY MS. IBARRA: So this is just incorrect?

24 A. This is incorrect, I've corrected it, I can do  
25 that again if you wish.

26 Q. No. And just for the record you do recognize your  
27 signature and you think the date on it is substantially  
28 correct?

1           A.    I have no idea whether the date is substantially  
2 correct or well but you signed it under penalty of perjury  
3 so is it your practice to not verify the date of a  
4 declaration that you sign?

5           A.    No.  It would be my practice to do things right  
6 but I just -- if you're asking me if I remember today did I  
7 sign this on January 28, 2008 I have no idea.

8           Q.    All right.  So can I point you to your  
9 Plaintiffs -- your deposition so in your book, '73 three.

10           THE COURT:  And before we go there, it looks like  
11 Neli, my clerk has looked up where this declaration can be  
12 found and it is in support of CCP Section 6 '64 .6 motion  
13 to approve settlement filed by Mr. Stein January 30th,  
14 2008.

15           THE CLERK:  Right, 435 pages.

16           THE COURT:  A 435 page document.

17           MS. IBARRA:  Yeah that's probably why I didn't  
18 bring the whole thing.

19           THE COURT:  Why you didn't bring the whole  
20 document.

21           MS. IBARRA:  Right.

22           THE COURT:  But Neli found it so just so it's  
23 clear, it is in the court record, actually under this case  
24 name and title.  Well thank you Neli.

25           MS. IBARRA:  Thank you Neli.

26           THE CLERK:  You're welcome.

27           MR. FORDYCE:  Which exhibit are we on.

28           MS. IBARRA:  So the next exhibit is going to be

1 Defendants' 733 so it's back to the white notebooks?

2 A. So -- so --.

3 Q. We're done were this one?

4 A. So I got one paragraph wrong in 435 pages well --.

5 THE COURT: Wait a minute you two don't argue with  
6 each other, Mr. Stein. There was Tho we pending and Ms.  
7 Ibarra you don't need to respond top a comment. All right  
8 so what is the next exhibit you're looking at.

9 MS. IBARRA: '73 three in the white notebook.

10 THE COURT: In defense notebooks.

11 MS. IBARRA: Defense, yes.

12 MR. FORDYCE: Yes Your Honor it's the last  
13 notebook. And Mr. Stein do you have it up there? Let me  
14 know if you need it.

15 THE COURT: Is this a new one.

16 MS. IBARRA: It hasn't been marked before.

17 THE CLERK: '73 three.

18 THE COURT: It would be SB 175.

19 MS. IBARRA: Well it's identified in the exhibit  
20 list, '73 three is identified as SB 175?

21 A. Is this more new material.

22 MR. FORDYCE: I'm not sure, Neli do you have  
23 this.

24 THE CLERK: I have July 12th it's identified July  
25 12th.

26 MR. FORDYCE: If you have it, I'm almost certain I  
27 will have it as well.

28 MS. IBARRA: July 12.

1 THE CLERK: Uh-huh.

2 MR. FORDYCE: I'll find it but if Neli has it I'm  
3 almost absolutely certain it's correct.

4 THE COURT: It's not new.

5 THE CLERK: It's ID'd.

6 MS. IBARRA: Oh it's ID'd.

7 Q. BY MS. IBARRA: Mr. Stein can you look at this and  
8 see if you can recall what this is?

9 A. Well, it has in it Senate bill 175 which we've got  
10 around and around and around what a forgery it was and this  
11 showed the legislative counsel published 175 at the end.

12 Q. Yeah it's not the same?

13 A. Unbelievable.

14 Q. Draft as yours right.

15 THE COURT: Draft as yours as in?

16 A. This may be.

17 THE COURT: Hold on as reflected where.

18 MS. IBARRA: As reflected in the Libra agreement  
19 the document identified 175 in the Libra agreement?

20 A. So this is before the gut and amend.

21 MR. FORDYCE: And this misstates the testimony to  
22 be explicit about --.

23 THE COURT: Overruled. So this is not the same  
24 bill that was -- or the text is not the same as what was in  
25 the Libra agreement.

26 A. Yes this is --.

27 THE COURT: Okay what is the explanation Mr.  
28 Stein?

1           A.    This is -- if you look at the date from 2005, this  
2 is before the gut and amend, this is before the gut and  
3 amend by Senator Vincent which he did and then withdrew --  
4 he did it and then --.

5           THE COURT:  It never got across the desk, it  
6 never --?

7           A.    It never got across the desk, right but this is  
8 from 2005, May 2005 one year earlier.

9           THE COURT:  Tho it's February 2005 is is the date.

10          MS. IBARRA:  It's the date introduced I think.  If  
11 you look on top it says it's been amended?

12          A.    Uh-huh.

13          Q.    Right?

14          A.    Yes so it's.

15          Q.    Four times?

16          A.    It's a year earlier than the SB 175 that we showed  
17 Libra.

18          Q.    And also later, if you ever look at the amended,  
19 no earlier, it's one year earlier, it says amended -- it  
20 says amended and sent in -- oh I see going up?

21          Q.    Yeah.

22          A.    That's the assembly, the last -- the last action  
23 of the Senator was made 2005.

24          Q.    May 27?

25          A.    Yeah in the Senate bill and then the assembly is a  
26 totally different kettle of fish because the assembly never  
27 passed it.

28          Q.    Okay so do you --?

1           A.    That's why -- because the assembly never passed it  
2 that's why it was available for a gut and amend in the  
3 Senator.

4           Q.    Well why don't we look at the document that it's  
5 attached to, it's attached to a document that says it's an  
6 overview of SB 175 and it's Gabrielino-Tongva Tribal  
7 council letterhead is that correct?

8           A.    I don't know it doesn't have any signature on  
9 it.

10          Q.    Okay. .

11                THE COURT: You recognize the letterhead though  
12 right?

13          A.    I recognize the letterhead absolutely.

14          Q.    BY MS. IBARRA: And you don't have a recollection  
15 of this document?

16          A.    No.

17          Q.    Of whether you prepared it?

18          A.    No.

19          Q.    Can you look at the first page of the actual  
20 document, not the table of contents it says introduction?

21          A.    Uh-huh.

22          Q.    Can you read the first paragraph?

23          A.    This overview addressed one SB 175 a bill to  
24 create state Indian reservation at Hollywood Park and to  
25 allow the Gabrielino-Tongva Tribe to conduct gaming  
26 thereon, two, the state recognized tribe's right to conduct  
27 gaming under Cal Constitution Article 4, section 19 F, the  
28 April 2004 presentation to attorney general Bill Lockyer

1 and senior lawyers of the Department of Justice as well as  
2 the May 2004 presentation to the legislative counsel Diane  
3 Boyer Vine and three, the tribe's ancestral ties to Los  
4 Angeles county and its current membership of 1600.

5 Q. So you attached this to your exhibit -- well you  
6 introduced it in your exhibit books and you identified it  
7 in your exhibit list. Do you recall why you were trying to  
8 introduce this document?

9 A. I haven't introduced this document at all.

10 Q. Well you attached it and put it in your exhibit  
11 book in this action?

12 A. That's not introducing a document.

13 Q. So was this in your custody, is that how it got  
14 into the exhibit books?

15 A. I don't even know how -- I don't recall how it got  
16 into the exhibit books.

17 Q. Did you oversee the assembling of the exhibit  
18 books for the trial?

19 A. Some of it, Niall did a lot of it.

20 Q. Where would you have gotten the documents to put  
21 in the exhibit books?

22 A. I would have gotten them from court records of an  
23 11 year long trial, I would have gotten them from records  
24 produced by GT Tribe, I would have gotten them from third  
25 party vendors such as Rae Lamothe and Cruz Reynoso, and  
26 other third party professionals, I should have said third  
27 party professionals and I would have gotten them from my  
28 own computer which would have had some of the documents on

1 them.

2 Q. And as you sit here today you don't me were you  
3 were -- why you thought this was relevant.

4 MR. FORDYCE: Misstates his testimony.

5 MS. IBARRA: To the action.

6 THE COURT: Sustained. Ms. Ibarra simply because  
7 someone puts it in their exhibit book doesn't necessarily  
8 think they mean it's relevant they might be holding for  
9 impeachment or some other thing so I don't think you can  
10 make the assumption you're making.

11 MS. IBARRA: Okay.

12 Q. BY MS. IBARRA: Can you go to the bottom of the  
13 first page?

14 A. Uh-hu.

15 Q. And read the paragraph that begins with Alexa  
16 Koenig.

17 A. Alexa Koenig is an instructress at University of  
18 San Francisco law school. She graduated suma cum laude  
19 from University of California Los Angeles and Magna Cum  
20 Laude from the university of San Francisco law school where  
21 she was a Dean's merit scholar and managing editor of UCSF  
22 law review.

23 Q. So let's go back to the first page and go to the  
24 third paragraph. Actually let's go to the second paragraph  
25 and then the third paragraph?

26 A. Where do you want me.

27 Q. I'm sorry the second paragraph in the first page  
28 after introduction.

1 THE COURT: The page you're on. No, you're right.

2 MS. IBARRA: The Bates number is 1568, do you  
3 recognize the Bates number by the way?

4 A. No.

5 Q. Do you know who made productions with just numbers  
6 with no Defendants or Plaintiffs?

7 A. I don't know I've seen the same similar numbers  
8 elsewhere.

9 Q. Orange.

10 A. They usually have a zero in front of them.

11 Q. Can you go to the second paragraph after the  
12 introduction?

13 A. The second paragraph of the introduction or after  
14 the introduction.

15 Q. I'm sorry in the introduction?

16 A. Sure.

17 Q. Can you read it?

18 A. In the 2004 presentations, both the Attorney  
19 General and legislative counsel orally agreed that the  
20 legislature has authority to interpret the ambiguous second  
21 sentence of Cal Constitution, Article 4, Section 19 F in a  
22 manner that allows the state recognized Gabrielino tribe to  
23 conduct gaming on a state Indian reservation. SB 175 is  
24 intended to be the legislative enactment discussed in 2004  
25 presentations.

26 Q. Do you think this is substantially correct from  
27 your recollection of the meeting because you were at that  
28 meeting right?

1           A.    Yes I think it's an over statement though in that  
2 Bill Lockyer as I remember him was non exit Al buzz  
3 believed the legislature has the authority to interpret the  
4 second ambiguous sentence so as I recall both he and the  
5 legislative counsel both said yes, legislature has  
6 authority to interpret a sentence in the constitution in a  
7 manner that would allow gaming. And then the question is  
8 to whether it could be done on a state Indian reservation  
9 would also be a matter of interpretation, but to put it all  
10 together in one sentence, I'm not sure if Bill Lockyer were  
11 he here today whether he said that he'd gone that far. So  
12 he drew a difference between the power of interpret, the  
13 procedure that would be followed, and whether or not the  
14 final result would be lawful.

15           Q.    Okay. Can you move on to the next paragraph?

16           A.    And by the way, the legislative counsel was pretty  
17 much that same approach, that yes, we've got all that  
18 power, yes we can go through that exact same procedure, but  
19 then at the end of the day, you probably still have a  
20 lawsuit that went right up to the California Supreme Court.

21           Q.    All right. Moving on to the next paragraph can  
22 you read that please?

23           A.    The original presentation was prepared by Jonathan  
24 Stein and Alexa Koenig. Jonathan Stein is a well-respected  
25 trial lawyer in Santa Monica. His record in litigation the  
26 past 13 years is 47 wins and five losses. Jonathan  
27 graduated Phillips Academy in 1975, the same prep school  
28 attended by President George Bush; Harvard College Magna

1 Cum Laude in 1979 and University of Pennsylvania law school  
2 in 1983 where he was a member of the law review. Before  
3 beginning his own practice in 1992, Jonathan was associated  
4 with the New York office of Morgan Wilson Bachius, the  
5 third largest law firm in the USA; the Los Angeles office  
6 of Hughes Hubbard & Reid, ARCO was the main client; and the  
7 Los Angeles office of Brobeck Flegler & Harrison.

8 Q. Now, I know you don't remember if you drafted  
9 this, but do you think this is substantially accurate?

10 A. Oh yes absolutely. And I recognize the way it's  
11 written as well.

12 Q. Okay. So it's substantially accurate including  
13 the first -- the first line, first sentence in the  
14 paragraph?

15 A. The original presentation on the -- there were two  
16 presentations here, it says original presentation was  
17 prepared by Jonathan Stein and Alexa Koenig. That would  
18 probably be correct, and that would mean the letter -- the  
19 meeting letter.

20 Q. Okay. Does --?

21 A. Not necessarily the 120 page brief because that's  
22 not what's being referred to here.

23 Q. Okay. Why isn't there a reference to Mr. DeKorte?

24 A. He was a summer associate who prepared a 120-page  
25 brief. That's not what's being discussed here. What's  
26 being discussed is what we actually presented orally to  
27 Attorney General Bill Lockyer and then later a  
28 substantially similar presentation to the legislative

1 counsel Diane Boyer Vine. And it was that presentation,  
2 which was shorter piece, maybe Five pages, that they  
3 reacted to and said yeah that's basically right. And it  
4 should actually -- I should have actually included Cruz  
5 Reynoso but he's mentioned in the back, in the next lower  
6 paragraphs instead.

7 Q. So you want to go to that page that's Bates 1569?

8 A. Uh-huh.

9 Q. And the middle of the page there's a paragraph, a  
10 short paragraph?

11 A. Uh-huh.

12 Q. That referred to him, do you want to have read  
13 that?

14 A. Formally Supreme Court justice Cruz Reynoso has  
15 been retained by the tribe to conduct an independent legal  
16 analysis of SB 175 and the tribes gaming many rights under  
17 Cal article four Section 19 F Cal constitution.

18 THE COURT: Constitution that's what that's  
19 referring to.

20 A. Yes.

21 THE COURT: Okay.

22 MS. IBARRA: And you have -- so I'm done with this  
23 document, and just to be clear you don't recall either way  
24 whether you drafted it or not?

25 A. No, I don't.

26 Q. So it's not a no --?

27 A. But once again it's because there were so many  
28 documents being drafted throughout this time I don't -- and

1 the sources were different, sometimes it was me, sometimes  
2 it's Rae Lamothe, sometimes it was Alexa Koenig and we were  
3 all contributing to it so I don't have a specific  
4 recollection of this document. As I said I do recognize  
5 phraseology in here especially the resume paragraph that's  
6 there.

7 Q. So and then I asked you yesterday if Mrs. Koenig  
8 had been compensated by the tribe, do you recall what you  
9 said?

10 A. No, she wasn't, she never was.

11 Q. Can we look at the Talley report which I believe  
12 is seven 37?

13 THE CLERK: The Talley report is 57 seven.

14 THE CLERK: 57 seven.

15 MS. IBARRA: Oh yeah 57 seven?

16 A. The first volume or the second.

17 MR. FORDYCE: Second I think.

18 Q. And you contend that this is -- you believe this  
19 is substantially accurate, right?

20 A. For what it does, yeah.

21 Q. So I want to point your attention to -- or draw  
22 your attention to the -- to one of the attachments and the  
23 first one I want to draw your attention to is the uncleared  
24 checks which is the first one after -- after the memo?

25 A. What page.

26 Q. This is -- we're still talking about shall okay so  
27 the Bates number is 0593?

28 A. Okay. Uh-huh.

1 Q. Do you see Ms. Koenig's name reflected there?

2 A. Sure.

3 Q. So does that refresh your recollection that she  
4 was paid?

5 A. She was reimbursed for extensive research and  
6 copying charges on -- on the two law review articles and I  
7 a- view on helping with the developing theories.

8 Q. Okay.

9 A. But I -- she was not compensated for her time,  
10 3,900 \$36 seven four cents, the first I thought of it in 11  
11 years but that would be reimbursement for the extensive  
12 copying charges and also perhaps for some travel expenses,  
13 I believe she met the tribal council at one point. So I  
14 believe we brought her down to L.A.

15 Q. So the last document we looked at references that  
16 she was present at one of the meetings with the -- with --?

17 A. Yeah and this list of stuff, these are some of the  
18 bills that Elizabeth Aronson and the tribal council refused  
19 to pay, these were all vendors that I believe many of these  
20 vendors were not paid, that's why they were uncleared  
21 checks.

22 Q. Okay. So another attachment in here is the vendor  
23 balance detail, right?

24 A. Uh-huh.

25 Q. And that has more information regarding who was  
26 paid.

27 THE COURT: What page are you on.

28 MS. IBARRA: This is the same document and I'll

1 find Ms. Koenig's name. The vendor balance detail starts  
2 at zero 59 eight and then.

3 A. Well I have it at zero 59 seven is the summary.

4 Q. The vendor balance detail?

5 A. The summary of it.

6 Q. Yeah. I'm looking -- there's another document in  
7 here that is called the vendor balance detail?

8 A. It's the same document, the summary goes with the  
9 detailed.

10 Q. Sure. So zero 60 two?

11 A. And this document is not what you're  
12 characterizing. This is how much is owed and then how much  
13 was -- and also how much was paid along the way so it's a  
14 Tee account, if you will.

15 Q. So we'll go through it then for Ms. Koenig so at  
16 0602?

17 A. Uh-huh.

18 Q. Do you see that she's listed there?

19 A. Uh-huh yeah.

20 THE COURT: Where, 0602.

21 Q. -02.

22 THE COURT: -02, I'm sorry.

23 Q. BY MS. IBARRA: So approximately halfway down the  
24 page there's K Alexa Koenig listed correct?

25 A. Sure.

26 Q. And do you see that she -- it reflects that she  
27 put in an invoice for legal research?

28 A. Right and she was paid for that?

1           A.    And my best recollection is those were the  
2 expenses associated with the research because she  
3 researched the Gabrielinos, she researched all the state  
4 recognized tribes and some of the records she had to  
5 inspect personally so she had to get in her car or go on a  
6 plane. So my understanding is that this is not fees from  
7 her but I could be wrong, is my understanding is simply her  
8 expenses.

9           Q.    So I asked you if the -- if the law review article  
10 that we looked at yesterday, if that was done for the  
11 benefit of the tribe and do you recall what you said?

12          A.    Do I recall what I said? No, I don't.

13          Q.    Well okay I'll ask you again, the law review  
14 articles that you re prepared with Ms. Koenig or that you  
15 authored, co-authored were they done for the benefit of the  
16 tribe?

17          A.    No they were done for the benefit of all the of  
18 the Native Americans in all the state recognized tribes  
19 around the country and if had an ancillary benefit for the  
20 tribe in that it provided an academic basis for what we  
21 were asking the legislature to do so it was done for the  
22 benefit of the tribe but it was not done solely for the  
23 benefit, it was done for pro bono work for all state  
24 recognized tribes stuck in this little 10th amendment nook  
25 that nobody understood.

26                THE COURT: What do you mean by pro bono, though?  
27 Who was doing it pro bono?

28          A.    Alexa Koenig and myself. Well, it was a law

1 review article. I don't know if pro bono is the right  
2 phrase, so forgive me if I wandered into a technical area,  
3 I didn't mean to.

4 THE COURT: You considered it pro bono even though  
5 it was paid?

6 A. Alexa Koenig work -- my best recollection is she  
7 was not paid legal fees for her time, she was paid  
8 expenses. So, for example, I once paid a bill for \$5,000  
9 to get a partial reconstruction from the Washington, D.C.  
10 office of the archives of a single document to get these  
11 Old documents, treaty -- copies of treaties, copies of  
12 original enactments from 1853, very expensive to get these  
13 copies, 60 cents a page times 100 pages would be \$60 times  
14 1,000 pages, \$600. You need 10 documents at \$6,000. So  
15 the fact that she was able to do a nation wide amount and  
16 then only charge \$5,000, \$6,000.

17 THE COURT: So that's -- how much is this total  
18 here?

19 A. She charged \$6,000, \$6700.

20 THE COURT: That was the total?

21 A. Yeah.

22 THE COURT: But it says invoices for legal  
23 research but are you saying that was -- that wasn't an  
24 accurate description or --?

25 A. No. If you put in -- if you put in a request for  
26 reimbursement, that's an invoice.

27 THE COURT: Well yes but I'm talking about the  
28 legal research part not the invoice part?

1           A.    If it's reimbursement for the copying costs to get  
2 documents in association with legal research then if you're  
3 using shorthand to get it all to fit in this little space a  
4 June invoice for legal research would be accurate, I guess  
5 you probably would have done it differently Your Honor but  
6 I think -- it strikes me with your reimbursement of  
7 expenses for copying costs to get copies from the treaties  
8 of the 1800s and the like, that seems accurate to me. I'm  
9 not saying it should be accurate to anybody else.

10           Q.    BY MS. IBARRA: Mr. Stein and was Mr. -- was  
11 former Supreme Court justice Cruz Reynoso also reimbursed  
12 for his expenses or for his time?

13           A.    I don't recall what the situation was with Cruz  
14 Reynoso, I do recall a conversation with him but we had  
15 very many where he said he didn't -- he was an older  
16 gentleman, very much an older gentleman, I don't know if he  
17 said he didn't want my money or he said that University of  
18 California Davis law school would take care of the costs, I  
19 don't -- I don't recall.

20           Q.    Okay but --?

21           A.    Is he on here though.

22           Q.    Yeah eyes on here as well.

23           THE COURT: There's other entries in here that  
24 describe reimbursement so I'm just?

25           A.    Your Honor I could be wrong, once again this was  
26 11 year ago.

27           THE COURT: Who did this, this is Talley right,  
28 and who was inputting the position?

1           A.     Elizabeth Aronson.

2           THE COURT:   Input the information into the  
3 computer account or --?

4           A.     She -- she input-d a lot of it, I inputted some of  
5 it, Barbara Garcia inputted some of it, later Steven  
6 Johnson later date than this inputted some of it and Carol  
7 Markin inputted some of it so none of it was done because  
8 we didn't have any money to pay for a person who's only job  
9 would be to take care of the books.

10          Q.     BY MS. IBARRA:   Is this -- was this generated by  
11 Quickbooks that we've heard reference to?

12          A.     A vendor balance detail in this format is often  
13 generated by Quickbooks and I don't know exactly what Lorna  
14 did but from her description of it, she probably used the  
15 Quickbooks reports and just made sure everything was  
16 accurate as far as matching up and duplicate entries and  
17 that sort of thing.

18          Q.     Okay so --?

19          A.     And again her only job was to create a snapshot of  
20 October 3 for posterity and it's the best one we've got.

21          Q.     Okay.   So moving on to seven 37 that's the Reynoso  
22 letter that we've heard reference to, and I think this has  
23 been identified before?

24          A.     Is it the third volume.

25          MR. FORDYCE:   Correct.

26          Q.     So in connection with this letter I'd like to  
27 introduce a knew document which is 25 3/25 four.

28          MR. FORDYCE:   I'm not sure.

1 MS. GOAD: 253.

2 MS. IBARRA: 253. This appears to be a draft of  
3 this but I'll let --

4 THE COURT: Hold on this is a new exhibit. 253.

5 MS. IBARRA: Yes.

6 THE COURT: We're going to have to repeat this to  
7 Neli because Neli took a detour to the bathroom so?

8 A. And this is actually two different documents.

9 THE COURT: Oh 253 let me grab that. Oh they're  
10 new, they're not in the books.

11 A. Yeah.

12 MS. IBARRA: Yeah I want to look at these two  
13 together.

14 THE COURT: So we're looking at seven 37 and 253.

15 MS. IBARRA: Yes.

16 MR. FORDYCE: Your Honor this is outside the scope  
17 of redirect, one it's a new document and two.

18 THE COURT: Well it might be a new document but  
19 it's for impeachment then you can bring in something new.  
20 Is that what this --.

21 MS. IBARRA: Yeah.

22 THE COURT: What is this for.

23 MS. IBARRA: It's for impeachment on whether Mr.  
24 Reynoso drafted his own letter in support.

25 THE COURT: All right.

26 MR. FORDYCE: How is that impeaching.

27 MS. IBARRA: That was Mr. Stein's testimony was  
28 that he was hired and that he did his own research and

1 work.

2 MR. FORDYCE: Objection lacks foundation.

3 MS. IBARRA: Also his legal -- that Justice  
4 Reynoso's legal shear he's.

5 MR. FORDYCE: Well objection lacks foundation it's  
6 beyond the scope of redirect and I just want to preserve my  
7 objections for the record Your Honor.

8 THE COURT: All right overruled let's see what we  
9 can do with this.

10 MS. IBARRA: Mr. Stein do you recognize this?

11 A. I've got three documents which one is this.

12 Q. Oh 253, Neli 253 is the new exhibit.

13 THE COURT: It also looks like a draft Reynoso  
14 letter. Do you recognize it is the question?

15 A. No, I don't.

16 Q. So you've never seen it before?

17 A. I don't recall seeing it before, no. It looks  
18 like an early draft of the final letter though, I mean just  
19 to compare the two, that's what I was trying to do, it  
20 looks like the kind of early draft that leads to a letter  
21 from a former Supreme Court justice to the legislative  
22 counsel serving at the time.

23 Q. Is it possible that this is another document that  
24 you drafted and you don't recall.

25 MR. FORDYCE: Calls for speculation lacks  
26 foundation.

27 THE COURT: No overruled?

28 A. It is possible that it is one of the several

1 drafts that were exchanged between Justice Reynoso and  
2 myself before the final was ready for the legislative  
3 counsel.

4 Q. It's possible. Okay. And --

5 A. So this would be one of 10 drafts, 12 drafts,  
6 eight drafts.

7 Q. It looks very similar to the final right?

8 A. It's probably one of the ones close to the final  
9 then.

10 Q. Do you see how at the top it says Reynoso  
11 letterhead?

12 A. Yes.

13 Q. And do you see in the signature it says very truly  
14 yours professor Cruz Reynoso and then it says attached C.V.  
15 please?

16 A. Right.

17 Q. Do you think it's possible that that was your  
18 notations or indications to Justice Reynoso.

19 MR. FORDYCE: Objection to the form of the  
20 question and calls for speculation.

21 THE COURT: Overruled.

22 MR. FORDYCE: Is it possible, okay.

23 THE COURT: Overruled?

24 A. It is possible but I would say it's more likely  
25 his instruction to his secretary.

26 Q. BY MS. IBARRA: Do you notice -- okay so it's  
27 possible. Do you notice how the re: --?

28 A. In other words I didn't have crews rains C S,

1 attach C.V. please I would assume is his instruction his  
2 secretary that when she types this up put it on the lead  
3 and attach a C.V. and if you have notice the final is on  
4 his letterhead at the school of law and then I don't  
5 know -- and his C.V. is attached.

6 Q. Yes. Do you notice how the re: line is also bold  
7 in italics?

8 A. Well it is in the final document too.

9 Q. Right. That's also how you do a lot of your re:  
10 Lines right, bold and italics.

11 MR. FORDYCE: Objection relevance.

12 THE COURT: Overruled?

13 A. I often use a font similar to this, I assume  
14 there's less than 40 million people that use word that use  
15 the same font.

16 Q. Okay that's all I --?

17 A. And that's I said there were drafts back and forth  
18 with him, I don't know who chose the fonts to have produce  
19 on the letter to the -- to the legislative counsel.

20 Q. So?

21 A. Or the spacing or the format ignore the margins, I  
22 don't know who chose that, I know over the course of 8 or  
23 10 drafts I assume we each did part it.

24 Q. So it's partially your work product?

25 A. As I said before we had 8 or 10 or 12 drafts that  
26 went back and forth before a letter for the former Supreme  
27 Court justice of the State of California was ready for the  
28 presently serving legislative counsel of the State of

1 California.

2 Q. Thank you. Moving on to the Libra agreement, we  
3 don't need to look at it I just need to ask you some of  
4 questions?

5 A. You don't want to look at Armand Arabian's.

6 Q. If you want to, I don't have it -- it's the next  
7 one.

8 THE COURT: It has a similar font, I don't know if  
9 the rest of it is similar.

10 Q. .

11 MS. IBARRA: Also the language is the same right?

12 A. No, no Armand Arabian took a very different  
13 approach, very different approach, I don't remember what  
14 the differences are now if but if you give me a while I  
15 can read it and tell you.

16 Q. Okay. The font is very similar and actually the  
17 re: Line is exactly the same, isn't it? Oh no, it's not.  
18 So can you read the re: Lines for each of them for seven  
19 37 and -- oh it's the same right put together?

20 A. I would hope so since they were present today the  
21 same lady and about -- since they were present today the  
22 same lady by two different Supreme Court justices I think  
23 it's a lot less confusing if the re: lines would be the  
24 same, I notice that Mr. Arabian didn't put a date on his  
25 and his letter doesn't have a resume either and it's a much  
26 shorter letter than crews Reynoso's.

27 Q. There is actually a resume in the document that I  
28 have where it's --?

1 A. For Armand Arabian.

2 Q. Yeah?

3 A. There it is, yep. Yep wheeze got his resume too.

4 Q. Okay. So moving right along to the Libra  
5 agreement, just generally I'm just going to ask you some  
6 general questions. You said that the tribal council never  
7 met the Libra investors?

8 A. Not to my recollection, no.

9 Q. Until they executed the Libra agreement?

10 A. Well the whole tribe -- no the execution of the  
11 Libra agreement occurred in our offices and then we had to  
12 match those signatures the signatures of a dozen funds and  
13 that was Sammy lies job in the Libra offices as I best  
14 recall.

15 Q. So they actually didn't meet during the execution  
16 of the agreement?

17 A. To not my recollection, they have well -- if  
18 you've got something to show me, you can show me I'm  
19 wrong.

20 Q. No I just want to understand what happened and  
21 that's what you recall?

22 A. Uh-huh.

23 THE COURT: Okay so just so I'm clear, the trial  
24 brief did or did not meet the Libra investors at the  
25 signing of the Libra agreement?

26 A. They did not at the signing and I don't recall  
27 that they met them earlier and one reason was Libra was the  
28 investment banker but the investors were in New York and

1 Boston and Bermuda and those guys -- this was a tiny tiny  
2 investment for them.

3 THE COURT: Okay I just want to be sure I  
4 understand that they did not meet the investors at the  
5 signing?

6 A. That's right.

7 Q. BY MS. IBARRA: So just to be clear, I understand  
8 that they didn't meet the investors but you refer to -- is  
9 it Sammy Lai and was it Jess Ravitch were they the  
10 investment bankers?

11 A. They were the investment bankers they also took a  
12 small piece of the investment but they were of paid by a  
13 fee for the investment banker services.

14 Q. So they were investment bankers and investors?

15 A. Yes.

16 Q. But if we refer to investment bankers, that would  
17 be Jess Ravitch and Sammy Lai?

18 A. If we refer to investment bankers, that would be  
19 Jess Ravitch and Sammy Lai.

20 Q. So did they ever -- did the tribal council ever  
21 meet them?

22 A. I am not so sure about that.

23 Q. So the execution of the Libra agreement didn't  
24 take place in one office?

25 A. No. It -- because there were so many signature  
26 pages, as I best recollection, Sammy Lai laid out in a very  
27 large conference room in Libra's offices in Brentwood all  
28 the documents and we had to assemble people like Shirley

1 Machado who didn't even own a car and lived in San  
2 Bernardino and Edgar Perez lived in San Gabriel, he had a  
3 bad drinking problem so we had to find him when we were  
4 sober.

5 MS. IBARRA: Move to strike that and lacks  
6 foundation.

7 THE COURT: All right motion is granted answers  
8 stricken re-ask your question. Did the tribal council meet  
9 Ravitch and Lai?

10 A. No not to my recollection, they may have but I  
11 don't recall them meeting them and certainly not in  
12 connection with the signatures.

13 Q. So to your best knowledge when did they first  
14 meet?

15 A. I don't know.

16 Q. Do you know if they ever spoke on the phone before  
17 the Libra agreement was ever executed.

18 MR. FORDYCE: Calls for speculation?

19 A. I don't know.

20 THE COURT: Overruled.

21 Q. BY MS. IBARRA: Because you said had you brought  
22 them in right, so you have didn't -- you brought in the  
23 investors and the investment bankers, you brought in Libra?

24 A. Libra was -- I have convinced to be an investment  
25 banker, Libra then got an investment banking contract with  
26 the tribe, it was supposed to be with SMDC with the tribe,  
27 it ended up only being with the tribe.

28 THE COURT: So you brought them in, yes.

1 A. Yes.

2 THE COURT: You brought them in.

3 Q. BY MS. IBARRA: Did you ever make an introduction  
4 to the tribal council?

5 A. I don't recall.

6 Q. So not by -- okay. So is it fair to say that the  
7 tribal council didn't do any of the negotiation with  
8 respect to the Libra agreement?

9 A. No.

10 Q. So that was just you?

11 A. No it would not be fair to say that, I am  
12 disagreeing with your statement.

13 Q. Oh. Can you clarify?

14 A. The tribal council insisted on certain points,  
15 that was then conveyed back to Libra, Libra then conveyed  
16 that to the investors and then conveyed the investor  
17 sentiments on those points back to SMDC and --.

18 THE COURT: When you have say convey, who conveyed  
19 what to whom?

20 A. Sure. For example, the judgment that the tribe  
21 wanted paid, the tribe said.

22 THE COURT: To whom?

23 A. To.

24 THE COURT: To who?

25 A. Rae Lamothe their general counsel and SMDC their  
26 contractor we want to make sure that that judgment gets  
27 paid out of the first dollars of the investment money,  
28 period the end. . SMDC or Marilyn Barrett then brought

1 that to Sammy Lai who was the non low or the MoFo lawyer  
2 and that was then brought from them, the MoFo lawyer or  
3 Sammy Lai, that was then bright to etiology LLC either Jess  
4 Ravitch to the investors depending on whether it was a big  
5 issue or small issue. And we went back and forth like that  
6 for maybe three months.

7 THE COURT: And then after it was brought to those  
8 people, then how did the answer get back?

9 A. The answer came back to either via Jess Ravitch or  
10 via Sammy Lai or via the MoFo lawyer and it came back  
11 either to Marilyn Barrett or to myself or after Marilyn  
12 Barrett was gone to Elizabeth Aronson and then that answer  
13 was brought to the tribal council who would gather in a  
14 group.

15 THE COURT: Who would by it to the tribal council  
16 though?

17 A. Marilyn Barrett or.

18 THE COURT: Okay Marilyn Barrett?

19 A. Or Elizabeth Aronson or myself would bring it back  
20 to them to say they've agreed to the judgment and then the  
21 tribal council had to be gathered from San gain, San  
22 Bernardino, Riverside County, West L.A. and it had to be  
23 done at night when they were not working.

24 Q. BY MS. IBARRA: Other than the Morales judgment is  
25 there any other point that you recall that they insisted  
26 upon? And by they I mine the tribal council?

27 A. That they -- they were aware of all the deal  
28 points, they were aware -- we had meeting after meeting

1 they were aware of all of them.

2 THE COURT: She didn't ask you that, she asked you  
3 was there any other provision that they brought to your  
4 attention or they insisted o your attention or anybody's  
5 attention?

6 A. That they brought to my attention.

7 THE COURT: Or anybody's attention that you're  
8 aware of?

9 A. Okay. They wanted to make sure that they got more  
10 than 1.25 million.

11 THE COURT: Let's start there, who brought that to  
12 who's attention?

13 A. I suggested to them.

14 THE COURT: Okay?

15 A. They should respond and ask for more than 1.25  
16 million.

17 THE COURT: So they came to you and asked about  
18 that and you said you should ask for more?

19 A. No I think I -- I think I originated that  
20 question, it wasn't a scientific process, it was just a  
21 team that was trying to do the best for the team.

22 THE COURT: Well she didn't ask you about that,  
23 she asked you about the specific provision if you recall  
24 anything specific that the tribe brought to your attention  
25 or anybody else's attention to Libra?

26 A. Yeah.

27 THE COURT: Any other provision ordeal point  
28 that --?

1           A.     That was -- that was one of them. I said you  
2     should ask for 1.25 million, they said yeah we should ask  
3     for more than 1.25 million how much should we ask for and  
4     back and forth back and forth, and then that went back via  
5     me or via Marilyn to Libra and I'm sure Rae Lamothe and  
6     Elizabeth Aronson wouldn't have been involved in that  
7     essential point. That then went back to Sammy Lai or Jess  
8     Ravitch or the MoFo attorney, that kind of point probably  
9     went right to all of them but would have been decided by  
10    Jess Ravitch after consulting with everybody else because  
11    that was the size of the basic wager, they were wagering a  
12    certain amount of money on SB 175 whether it got passed  
13    into law in a year.

14           Q.     So the 1.25 million number was something that the  
15    tribe insisted on after you suggested the 1.25 was a good  
16    number?

17           A.     The 2.1 --.

18           THE COURT:  29.1 was --?

19           A.     To ask more than 1.25 was the issue.

20           THE COURT:  And the number was ultimately 2.1 --?

21           A.     They ultimately came out of that process came to  
22    be 2.15.

23           THE COURT:  How did they come up with 2.15?

24           A.     I'm a very aggressive, tough negotiator and I kept  
25    coming back and saying if you want these guys to sign it  
26    you've got to put more money up, you need a big enough  
27    budget to actually having a shot of getting this passed  
28    into law.

1 THE COURT: So you suggested to the tribe that  
2 they ask for 2.1 total.

3 A. (Nods head.).

4 THE COURT: Is that --?

5 A. 2.15 total.

6 THE COURT: Okay 2.15?

7 A. And a lot of the negotiation revolved around the  
8 budget, so for example the tribal council wanted much more  
9 money for themselves, they basically wanted 2.15 million  
10 dollars for themselves and to heck with the casino project,  
11 just give us 2.15 million we deserve it.

12 THE COURT: They didn't want a casino project?

13 A. They wanted a casino project, but if there's 2.15  
14 available, they wanted all of it and they were --

15 THE COURT: And none of it for the casino.

16 A. Yes. That's right. That's right. That's exactly  
17 right, Your Honor.

18 THE COURT: So why did the deal go forward then?

19 A. Because I convinced hem to moderate their demand  
20 down to Exhibit E.

21 MS. IBARRA: Exhibit E being the budget.

22 THE COURT: Exhibit E?

23 A. Exhibit E being the budget.

24 THE COURT: Judge would you go forward if you knew  
25 that the tribe didn't want -- I mean the whole point of the  
26 contract was a casino project?

27 A. Right.

28 THE COURT: So why would you go forward knowing

1 that they didn't want to have use it for a casino project?

2 A. That's the point I played back to him, the court  
3 makes a very good point, that's a point I made back to them  
4 and I could not Vincent-d them to lower their demands.

5 THE COURT: To what?

6 A. Lower -- to what is in Exhibit E, if I had Exhibit  
7 E in front of me.

8 THE COURT: What is exhibit E?

9 A. It's the budget for 2.15 million.

10 THE COURT: Right?

11 A. And in that budget it shows how much the tribal  
12 council guests out of the 2.15 million.

13 MR. FORDYCE: Part of the Libra investment  
14 agreement Your Honor we looked at it on Mr. Stein's 776  
15 cross.

16 THE COURT: So at some point they said I want all  
17 the money but I don't want it for the casino project and  
18 you said no you have to allocate some of the money to the  
19 casino project?

20 A. Yeah and by the way --.

21 THE COURT: So that's why you went forward?

22 A. Yeah.

23 THE COURT: Because they did agree despite  
24 originally wanting it all for themselves?

25 A. With the idea that with them paid we would then  
26 get new money somehow, some magical thing would happen, we  
27 would get in mop money and that money could go to the  
28 casino project bull first they wanted every penny that was

1 available for themselves 123450 Mr. Stein --.

2 THE COURT: Well did the 1.25 million that was not  
3 for themselves, that wasn't allocated for them, that was  
4 also allocated for the casino project?

5 A. As part of the casino --.

6 THE COURT: As part of the budget?

7 A. And they got paid \$3,000 a month for a certain  
8 amount of months out of that money but their first pick was  
9 2.15 million not the 1.25 of them saying we want it all  
10 thoracic husband because we want all of our balances owed  
11 down to zero and they accrued 3,000 a month down for that  
12 period and they also wanted not \$3,000 a month, can we make  
13 it 6,000 a month now -- and then retroactive and can we get  
14 that reimbursement for Sam for 50,000 and then after we did  
15 all this work Sam came back and Sam came back and said no I  
16 need another 20,000.

17 Q. Mr. Stein didn't Libra tell you to tell the tribe  
18 that they weren't paying for any retroactive fees that had  
19 been accruing by the tribal council, wasn't it Libra  
20 that --?

21 A. No.

22 Q. So Libra was willing to pay for whatever  
23 retroactive fees had been accruing?

24 A. Libra was willing to pay for the items in Exhibit  
25 E, the budget.

26 Q. And so the question is who -- who told the tribal  
27 council and actually Mr. Stein also, SMDC, that they  
28 weren't going to pay for any fees that had been accruing,

1 that they were to forbear any fees that had been accruing?

2 A. Nobody.

3 MR. FORDYCE: Lacks foundation.

4 MR. FORDYCE: Nobody.

5 THE COURT: Overruled?

6 A. You're making that up.

7 Q. BY MS. IBARRA: Who came up with the budget was it  
8 Libra was it?

9 A. The budget was a product of three solid months of  
10 negotiations. It had Sammy Lai in there, it had Jess  
11 Ravitch in there, it had me in there, it had the council's  
12 demands in there, it had Marilyn Barrett's suggestions in  
13 there, it had Rae Lamothe's --

14 THE COURT: Well, how did council.

15 A. Stuff in there, it has light.

16 THE COURT: Counsel, .

17 A. It had a dozen investors in there.

18 THE COURT: Counsel. The answer is stricken. How  
19 did the council make their demands to Libra? How did they  
20 make that known?

21 A. They --

22 THE COURT: Did they call up the Libra people?

23 A. No.

24 THE COURT: Did they call up Jonathan Stein, did  
25 they call up Rae Lamothe, I mean how did they make those  
26 demands because you said they had demands such as we want  
27 all the money for ourselves and so?

28 A. So --.

1 THE COURT: How would they communicate that to  
2 whom?

3 A. First of all Your Honor.

4 THE COURT: It's confusing?

5 A. Yeah I can give you have 19 other examples I said  
6 20, I'll give you 19 others as well so I want --

7 THE COURT: I don't want any of that. Let's just  
8 talk about the process, how would they communicate their  
9 demands in the Libra agreement because you said they had  
10 demands, right?

11 A. It's exactly as I explained it before.

12 THE COURT: Well let's go through it again?

13 A. Absolutely.

14 THE COURT: Because it's not career to me?

15 A. Sure.

16 THE COURT: When the council had the demand, any  
17 counsel member, to whom would they communicate that  
18 demands.

19 THE COURT: Okay. That's a different question.  
20 The individual counsel member and I knew this was going on,  
21 they would have all these phone calls amongst themselves  
22 without me, they would then gather in a meeting with me and  
23 say well I want this, I want that. Hey you asked me to  
24 support you on that, I don't want you to support you on  
25 that, you know all the point -- your phone call was, you  
26 know -- I said yes but I'm not going to say yes now. All  
27 the back and forth would happen in the meeting after this  
28 round of phone calls where they deranged each others

1 position, which I thought was really healthy.

2 THE COURT: So they had a meeting, phone calls  
3 together, and then they had a meeting with you?

4 A. Right.

5 THE COURT: So they came to an agreement as to  
6 what the demand would be?

7 A. Right?

8 THE COURT: Then they had a meeting with you.

9 A. Often with a budget sitting in front of them.  
10 Their big concerns were the budget not the language of the  
11 agreement.

12 THE COURT: All right. So they meet with you and  
13 what do they say to you?

14 A. We want this in the budget.

15 THE COURT: Okay?

16 A. And I said there's no room and -- or we can do  
17 that but we will -- let's do it. If we ever get any more  
18 money we will hopefully get that done when there's more  
19 money.

20 MS. IBARRA: Your Honor I'm going to object as to  
21 lacks foundation as to what happened in meeting where Mr.  
22 Stein was not there?

23 A. I'm trying to -- she's objecting to -- are you  
24 objecting to the Court's question.

25 MS. IBARRA: No I'm objecting to the testimony.

26 MR. FORDYCE: I was going to let counsel finish  
27 and say is counsel objecting top Your Honor's questions to  
28 which Mr. Stein's is answering to his own personal

1 knowledge to which is patently improper.

2 MS. IBARRA: No I'm object to go testimony as to  
3 what kind of coordination happened in these meeting where  
4 Mr. Stein was saying had he wasn't there.

5 THE COURT: Okay. And I understand he wasn't  
6 there, so I will take that into consideration. If he's  
7 therein he is just speculating. So go ahead, this is his  
8 version of what he thinks happened. So they had a meeting  
9 with you?

10 A. Yes.

11 THE COURT: And they communicated to you a demand?

12 A. Yes and we want --.

13 THE COURT: We want something in the budget and  
14 then after that, what do you do with the demand if anything  
15 or do they take -- do they discuss it with you and they  
16 take it to Libra directly? How does that work?

17 A. Okay. Let me give you one more fact, if I can.

18 THE COURT: Yes.

19 A. And then return to your question. My objective is  
20 to cooperate. They might make a demand a dozen times in a  
21 dozen -- we had easily over a dozen meetings and usually  
22 about budget items although I talked about specific draft  
23 items like about the fact that he they had no obligation to  
24 give us anything more than 2.15 million.

25 THE COURT: So you have multiple meetings because  
26 they bring multiple demands to you ?

27 A. Right. I then take the demand and I would present  
28 that to Sammy -- Sammy Lai or Jess Ravitch or I would

1 discuss it with Marilyn if it was legal-type stuff, you  
2 know, hey, they want to create this obligation, blah, blah,  
3 blah.

4 THE COURT: And you discussed it with Marilyn  
5 because?

6 A. If it was a specific legal point, I was trying to  
7 use her for the normal negotiating of terms, that was  
8 SMDC's job.

9 THE COURT: Well at this point Marilyn Barrett is  
10 representing SMDC or is she representing the tribe?

11 A. Both, as the conflict waiver indicated.

12 Q. BY MS. IBARRA: Did you pay Ms. Barrett, did SMDC  
13 ever pay Ms. Barrett?

14 A. SMDC provided payment to Ms. Barrett up front yeah  
15 her initial retainer was I think 5,000, 10,000, 15,000 was  
16 from SMDC.

17 Q. So SMDC paid her directly for?

18 A. That's my best recollection, I would have to take  
19 a -- I would be more comfortable if I could take a look at  
20 the budget or other items but -- as I remember she required  
21 a retainer. And that was paid by SMDC.

22 Q. My question was whether SMDC paid her for -- you  
23 allege that she represented SMDC, did SMDC pay her for that  
24 representation?

25 A. SMDC paid her for that representation.

26 Q. So why would that be indicated in the budget?

27 A. She was paid an overall amount out of the budget  
28 and I would like to receive the budget, I have would like

1 to see her retainer agreement with signatures and I would  
2 like to see the Talley accounting, those three documents  
3 would give me a better way to answer the question but  
4 without those documents my best recollection is SMDC paid a  
5 retainer up front.

6 Q. I guess my question?

7 A. And the rest she was supposed to get from the deal  
8 when it closed.

9 Q. My -- let me restate any question. Why would  
10 payment of SMDC assembly Lee incurred counsel be reflected  
11 in the Libra agreement which was supposed to be for the  
12 benefit of the tribe?

13 A. I have no idea. I just told you the three  
14 documents that I would look at to try to find a clue as to  
15 whether my recollection 11 years later is inaccurate, I'm  
16 sorry if I was over inclusive.

17 Q. Wouldn't those be separate documents from anything  
18 having to do with the tribe?

19 A. I have no idea. I don't have a clue, I'm sorry I  
20 brought it up.

21 Q. No I brought it up because I just want to  
22 establish whether or not if she was actually retained if  
23 she was ever actually paid?

24 A. My best recollection is that SMDC paid a retainer  
25 payment to Marilyn Barrett's original law firm and that she  
26 was supposed to get the rest of the money if the deal  
27 closed and if the deal didn't close, it is my recollection  
28 that SMDC would be on the hook and that's why she wanted

1 the agreement with SMDC, she thought I could pay her bills  
2 if the deal didn't close much better than if the tribe who  
3 had no money.

4 Q. So there was a dispute about the fees that were  
5 owed to Ms. Barrett's firm about the Libra agreement right,  
6 between the tribe and Libra and Ms. Barrett?

7 A. Ms. Barrett on the Eiffe of closing the  
8 transaction.

9 THE COURT: That's a yes or not. Was there a  
10 dispute?

11 A. Yes, there was.

12 Q. BY MS. IBARRA: And was there also a dispute  
13 between SMDC and Ms. Barrett about the work that she  
14 allegedly did for the SMDC with respect to the SMDC  
15 agreement?

16 A. Yes so what did you -- how did you resolve that  
17 dispute?

18 A. For --.

19 THE COURT: Which dispute are you referring to.

20 MR. FORDYCE: Which dispute.

21 MS. IBARRA: The dispute with SMDC because we've  
22 only seen -- we've seen a lot of documentation as to the  
23 dispute between Ms. Barrett's firm, the Libra agreement,  
24 Libra and GT Tribe but we haven't seen anything with  
25 respect to any dispute between SMDC and Ms. Barrett about  
26 fees incurred in connection with the Libra agreement. So  
27 let's focus on that part, on the second part?

28 A. I don't agree with any of your characterizations,

1 I don't -- is there a question here.

2 Q. Okay can you -- yes.

3 A. Because I don't want to be seen with agreeing with  
4 those characterizations.

5 Q. I was clarifying that my question was whether  
6 there was a dispute between SMDC and Ms. Barrett's firm  
7 about fees incurred by Ms. Barrett's firm in connection  
8 with representing SMDC in the Libra agreement separate and  
9 apart from her representation of GT Tribe?

10 A. There was no separate and apart a representation  
11 of GT Tribe, she was representing SMDC and GT Tribe in  
12 connection with getting an agreement with Libra and its  
13 investors.

14 Q. So she didn't incur any fees for representing SMDC  
15 separate and apart from representing GT Tribe?

16 A. There was no separate and apart, so the answer to  
17 that would be no, there were no fees for doing something  
18 that didn't exist.

19 Q. So was GT Tribe then responsible for the fees that  
20 she incurred for the both -- in both representing GT Tribe  
21 and SMDC in connection with the Libra agreement?

22 A. As I best recollect it, the idea of representing  
23 SMDC was exactly so that SMDC would be responsible for some  
24 amount of fees if the deal didn't go through.

25 Q. And where was --.

26 THE COURT: I have guess the question is was SMDC  
27 ever responsible for any of her fees?

28 A. Yes.

1 THE COURT: And how? How much did they pay?

2 A. SMDC paid an up front retainer which was -- I  
3 don't recall the exact amount but --.

4 THE COURT: Do you have any evidence of that in  
5 the record?

6 A. I don't know. I suggested three places to look  
7 but I --.

8 THE COURT: Well it's up to counsel I guess, one  
9 or both shall either of you have counsel to point it out if  
10 it's in the record but anyway, so you don't have any  
11 evidence that SMDC actually paid Barrett directly for  
12 anything?

13 A. I would look in the -- I would look in the Talley  
14 report, it would be one of the SMDC reimbursements.

15 THE COURT: So you have the Talley report.

16 MS. IBARRA: Yeah.

17 THE COURT: Why don't you point it out?

18 A. And I was referring to it before.

19 THE COURT: 57 seven.

20 MS. IBARRA: Yeah we just looked at it. It's  
21 right here.

22 THE COURT: I'm sorry but everything is not quite  
23 making sense so I'm trying to figure out how this worked?

24 A. It's the second volume.

25 MR. FORDYCE: Yes.

26 THE COURT: Because the claim is that Barrett  
27 represented both SMDC and the tribe.

28 MS. IBARRA: Yeah.

1           THE COURT: So the question is so who paid her  
2 fees, where's the retainer agreement showing that, where  
3 are the fees and how they were -- how she was paid and  
4 where is that reflected in a document, those are the issues  
5 and I have -- I really haven't seen anything to I'm trying  
6 to kind of point you in that direction and maybe we can  
7 kind of cut through a lot of round and round and round and  
8 trying to Chase our tails here?

9           A. Your Honor may I mention one thing.

10          THE COURT: Yes?

11          A. I think it's fundamentally important here, there  
12 is no claim by SMDC, there is a claim by them that Marilyn  
13 Barrett d that SMDC -- their only claim that SMDC did  
14 something wrong or Stein did something wrong when he fired  
15 Marilyn Barrett that's what the claim is. We're responding  
16 to this claim so all of these un answerable questions and  
17 all of these sloppy legal work surrounding it has nothing  
18 to do with SMDC, Mr. Fordyce or myself, we're responding to  
19 this craziness that's being addressed and forgive me for  
20 using that language bunch it's to the point of craziness  
21 it's -- we don't care about any of this it's her that cares  
22 and you're look to go me as if I'm doing something wrong.

23          THE COURT: No no I'm not looking at you as if  
24 you're doing something wrong?

25          A. Thank you Your Honor.

26          THE COURT: I'm just asking tore -- your best was  
27 that Barrett represented both SMDC and the tribe.

28          A. Yes.

1 THE COURT: So what I'm trying to figure out is  
2 where is the retainer agreement that reflects that and  
3 there was the only thing I've seen so far is this unsigned  
4 conflict waiver, I'll have to be refreshed as to Barrett's  
5 testimony I don't recall it all.

6 MS. IBARRA: She wasn't asked about that.

7 THE COURT: So you're bringing her back.

8 MS. IBARRA: That's why we're bringing her back?

9 A. And if I could mention you are Your Honor the  
10 reason we don't have that is we don't care about this  
11 issue, it's her issue we didn't prepare this because our  
12 trial is about to get millions of dollars of fees for SMDC,  
13 she's raising this -- this you know hail Mary defense of a  
14 magic bullet saying hey somehow he was an attorney so he's  
15 not owed as much as that or any of it and one example of it  
16 is Merrill -- he fired Marilyn Barrett, well Marilyn  
17 Barrett worked for the SMDC.

18 THE COURT: And I'm trying to.

19 MS. IBARRA: Her Honor this is --.

20 THE COURT: That's why I'm trying to get to where  
21 is the retainer agreement with Marilyn Barrett and SMDC and  
22 the tribe and where are the billings and where are the --.

23 MS. IBARRA: Your Honor this is argument so can I  
24 respond to this as to why this is important.

25 THE COURT: Yes.

26 MS. IBARRA: This is part of a 10 year Old  
27 litigation, one of the claims of malpractice that it's been  
28 there since day one, first complaint when it was filed

1 against Stein and SMDC on 2006 was that he committed  
2 malpractice, he was the tribes lawyer and one of the  
3 indications that he was the tribes lawyer was he fired  
4 Ms. Marilyn Barrett without our knowledge, that not only  
5 did he supervise and control the legal work and control the  
6 professionals and controlled their legal judgment but also  
7 that he fired them and prime example is Marilyn Barrett,  
8 it's not new. This isn't if you know if anything it should  
9 have -- if this was a defense that they had was that they  
10 fired Ms. Barrett because you know in her capacity of her  
11 work with SMDC and not in her capacity of you know working  
12 for the tribe this should have come out a long time ago  
13 not 10 years later and the documents to show that should  
14 have been preserved, that's our argument.

15 MR. FORDYCE: Your Honor the record is clear as  
16 far as what the testimony is and we understand Your Honor's  
17 position that there's a difficulty, exhibit 1508 is an un  
18 signed retainer agreement, but there's no tho debate.

19 THE COURT: There's no what.

20 MR. FORDYCE: There's no debate that's that's  
21 Marilyn Barrett's letterhead somebody took the time to  
22 draft that and Mr. Stein has testified that to the best of  
23 his recollection there was a signed document. To suggest  
24 this is whole cloth is you know whole cloth.

25 THE COURT: Well that's what Barrett is come back  
26 let's put it this way, if Plaintiffs counsel doesn't bring  
27 her back I'll bring her back, we just need to get to the  
28 bottom of it, to find out if she was jointly representing,

1 whether there was a retainer agreement, whether there was a  
2 conflict waiver, who got billed for the legal work, who got  
3 paid for the legal work, et cetera, and then who fired her  
4 and when they fired her and on behalf of whom was she  
5 fired? And was she only fired on behalf of one person did  
6 she continue representing the other and what under what  
7 terms, et cetera, et cetera? There's just all kind of  
8 questions and so.

9 MS. IBARRA: And if she was --.

10 THE COURT: There's no answers, then there are no  
11 answers, but I think Barrett will probably clear it up.

12 MS. IBARRA: And if she was the tribes attorney at  
13 the closing, why wasn't she at the closing, that's the most  
14 important thing that happens in a sophisticated transaction  
15 like this.

16 THE COURT: Well, that would be one.

17 A. Closings have nothing to do with the transaction.  
18 Closings are the least important. I have never seen an  
19 important lawyer at closings and I've done closings on two  
20 and a half billion dollars worth of the transactions. I've  
21 never seen an important lawyer at the closing ever.

22 MS. IBARRA: Okay so there's no lawyer  
23 representing the tribe if you weren't representing the  
24 tribe at the closing.

25 THE COURT: Okay well Mr. Stein you're --?

26 A. I was not at the close, I was not at the close  
27 because closings don't matter.

28 THE COURT: All right?

1           A.     What matters is whether the money gets transferred  
2 and whether the documents get signed and Sammy Lai was in  
3 charge of money transfers and he's not a lawyer and he's in  
4 charge of the signs, getting everything signed when he's  
5 not a lawyer. The lawyers jobs were done before the  
6 closing it was Sammy Lai who is basically a financial  
7 analyst.

8           THE COURT: Well we'll see what's important and  
9 what's not, we can ask Ms. Barrett if it's important to  
10 have lawyers at signs maybe it's not but we should probably  
11 get a third party who's done many, many of these as well  
12 so. All right.

13           MS. IBARRA: So just so close this off.

14           THE COURT: I think we need to give this the  
15 contract of I break her head is down and she's wilt-g so  
16 let's give her 10 minutes, thank you. You may step down  
17 Mr. Stein we'll call you back?

18           A.     Thank you Your Honor.

19           (Break taken.) 11:37 AM to 11:45 AM.

20           THE COURT: Gabrielino versus Stein BC361307.  
21 Okay.

22           Q.     BY MS. IBARRA: I think we left off with where it  
23 was Mr. Stein we reviewing Defendants 57 seven which is the  
24 Talley report?

25           A.     Uh-huh.

26           Q.     And looking for any indication as to payment for  
27 Ms. Barrett or Ms. Barrett's law firm?

28           A.     No, I wasn't doing that but I can do that now.

1 Q. Okay I thought that was the question that was  
2 pending?

3 A. No no I was looking at other things but I can do  
4 that now.

5 THE COURT: Well is there a stipulation that it's  
6 not in there.

7 MS. IBARRA: There is actually in here a reference  
8 to payment for -- for actually there's reference in the  
9 Libra agreement actually, right in the budget.

10 MR. FORDYCE: It's certainly in the Libra  
11 agreement.

12 MS. IBARRA: It's in the Libra agreement and it's  
13 not in the Talley report.

14 THE COURT: Is there a stipulation that it's not  
15 in the Talley report, defense?

16 A. No.

17 MR. FORDYCE: I'd like to examine that a little  
18 more please.

19 A. No no.

20 \*\*THE COURT: All right then you can review that  
21 over lunch and tomorrow we'll resume with that question.  
22 If you can put that down Neli so we don't forget. So if  
23 you look over the Talley report if you can stipulate if  
24 it's in there?

25 A. No no, it's not -- Your Honor, I just don't want  
26 to stipulate to something that might not be correct, that's  
27 all and remember Ms. Barrett it could be under Marilyn  
28 Barrett, it could be under her law firm Van Etten and

1 Suzumoto.

2 MR. FORDYCE: That's my concern?

3 A. Or it could be under her next firm McGuire Woods.

4 THE COURT: Well then had you look through it and  
5 you tell me whether it's in there okay.

6 MR. FORDYCE: Yes Your Honor.

7 THE COURT: And the Talley report is how long?

8 A. It's not long I can --.

9 THE COURT: To let's not do it now, and tomorrow  
10 you can answer the question. Let's move on to a different  
11 issue we'll keep that for after review.

12 Q. BY MS. IBARRA: So we'll just finish the Libra  
13 agreement which is did the tribal council ever review the  
14 tribal council before execution?

15 A. Yes they reviewed about a dozen -- a dozen times  
16 and we discussed in detail the provisions of the Libra  
17 Libra agreement.

18 Q. Did they also review?

19 A. And that's the -- and the exact dates and times  
20 were listed in the tribal approval resolution, I tried to  
21 keep track of that and then Rae put it into the  
22 resolution.

23 Q. And will you stipulate that the Libra agreement  
24 never referred to SB 175 as being in draft form?

25 A. I don't know what you're talking about and I  
26 wouldn't stipulate to anything.

27 \*\*THE COURT: Then review it over the break, we'll  
28 ask that question. Neli, will you make a note?

1           A.    Am I being asked as a witness or as a lawyer to  
2 stipulate? I just don't get what she's asking.

3           MR. FORDYCE: That would be me you'd ask to  
4 stipulat?

5           A.    I don't get what she's asking. If she can  
6 rephrase the question, I can try again.

7           THE COURT: Well, let's just move on. We'll ask  
8 the question later.

9           A.    Okay.

10          Q.    We've had some substantial testimony that the  
11 draft was attach to the Libra agreement was a draft, right  
12 your draft?

13          A.    Yes with the questioned marks, right, the question  
14 marks and the blank, right.

15          Q.    And to your recollection, does the Libra agreement  
16 ever indicate that it's a draft?

17          A.    I would assume that it would because it actually  
18 indicates as SB 175 or substantially similar legislation is  
19 the actual phraseology SB 175 or substantially similar  
20 legislation.

21          Q.    Let's move on to a different subject. To the best  
22 of your recollection what is -- what kind of conduct on  
23 behalf of SMDC would constitution breach of the SMDC  
24 agreement?

25          A.    Willful conduct, I'd like to see the exact  
26 phraseology, there's a provision on that, limitation of  
27 liability in all capital letters, if I can turn to that.

28          Q.    Sure it's 569. And in the meantime I'll ask you

1 was it mutual for both parties, both contracting parties to  
2 the SMDC agreement?

3 A. I don't --.

4 MR. FORDYCE: If you can look at the document and  
5 not have a memory test, please it's in the document.

6 MS. IBARRA: Well we spent like Five days on it,  
7 is why, I'd rather not.

8 MR. FORDYCE: Well I'd rather not have him guess  
9 what the document says?

10 A. I don't know why we're going back to it after Five  
11 days but I'm happy to do so.

12 MR. FORDYCE: And for the record it's expressly  
13 stated in Libra agreement under conditions precedent to  
14 funding.

15 THE COURT: What page are you not.

16 MR. FORDYCE: That's Bates '86 zero of 644.

17 THE COURT: '86 zero.

18 MR. FORDYCE: Yeah zero 60, my problem, zero '86  
19 zero the Libra, condition precedent funding means each of  
20 the following conditions occurrences or events, SB 175 or  
21 substantial similar legislation has been passed into law.  
22 That is a condition press department that presupposes that  
23 it has hadn't happened yet. It's unambiguous in the draft.

24 Q. BY MS. IBARRA: Do you know where it is Mr. Stein?

25 A. It is exhibit 569 Bates stamp make 49 three  
26 Section 19 limitation of liability in all capitals.

27 Q. Okay. Can you read it?

28 A. Notwithstanding anything else in this agreement or

1 otherwise, neither Tongva nor developer will be liable with  
2 respect to any subject matter of this agreement under any  
3 contract, negligence, strict liability or other legal or  
4 equitable theory for any incidental, special, exemplary or  
5 consequential damages. Developer shall only be liable for  
6 willful misconduct or gross negligence in connection with  
7 any services rendered under this agreement.

8 THE COURT: With you read that part, now it's only  
9 developer?

10 A. Yeah to is starts out that both sides would not be  
11 liable for anything under the agreement under any contract,  
12 negligence, strict liability or other theory so under  
13 whatever theory you have, they're no liability for the  
14 incidental, special ex edge police car eye or consequential  
15 damages, and that means damages outside the contract.

16 THE COURT: And then it says developer shall only  
17 be liable for, so it kind of modifies that?

18 A. No no it just.

19 THE COURT: So it's a throw away, it's not really  
20 anything?

21 A. No.

22 THE COURT: Being relied on here?

23 A. No.

24 THE COURT: Oh. I'm not understanding?

25 A. I was about to say there are two different things  
26 being said in this provision. The first thing is both  
27 parties --.

28 THE COURT: Can you give me a copy of it Neli.

1 THE CLERK: I'm sorry what number.

2 THE COURT: 569 is the Libra agreement -- I mean  
3 the SMDC agreement?

4 A. It's actually worth the time because once you have  
5 read two you'll see there are two different points to be  
6 made.

7 MS. IBARRA: Yeah and they're a little bit  
8 confusing so it's a little worth going through?

9 A. Not at all confuse to go me, it's clear as a bell,  
10 you've just got to read it and if you don't read it it's  
11 hard.

12 THE COURT: What ma'am are you on?

13 A. 49 three onto page 49 nine.

14 MS. IBARRA: So it's 16. Agreement and it's 0493.

15 THE COURT: Limitation of liability.

16 Notwithstanding anything else in this agreement or  
17 otherwise, neither the Tongva nor developer will be liable  
18 with respect to any subject matter of this agreement, under  
19 any contract, negligence, strict liability or other legal  
20 or equitable theory or any incidental, special, exemplary  
21 or consequential damages. Developer shall only be liable  
22 for willful misconduct or gross negligence in connection  
23 with any services rendered under this agreement?

24 A. Right so one says there's a limitation of  
25 liability for both parties and then this next says there's  
26 an extra limitation of liability on the developer.

27 THE COURT: So there's no mutuality in that one?

28 A. In the second one there's no mutuality.

1 THE COURT: That's the difference, okay?

2 A. But then again this lawsuit is not asking for  
3 those types of damages, just asking for breach of contract,  
4 accounts stated, quantum meruit, just simple contract  
5 remedies.

6 THE COURT: So our saying that that second  
7 sentence isn't relevant then or.

8 A. It's relevant to me, my goodness, this is what  
9 keeps -- this provision keeps them from pursuing the exact  
10 center of their liability.

11 THE COURT: Mr. Stein please don't point remember?

12 A. You're right.

13 THE COURT: You've been pointing to Plaintiffs  
14 counsel remember my admonition.

15 MR. FORDYCE: And yes Your Honor Mr. Stein said it  
16 before I could get it out, but there's an absolutely  
17 critical part of the defense, absolutely critical, the  
18 express language that limits the liability of developer to  
19 willful misconduct and gross negligence.

20 MS. IBARRA: Well let's take it in steps. Can we  
21 look at the first paragraph, so that one you do -- and the  
22 same provision that we're talking about which is Number 19  
23 on Page 16, limitations of liability. So the first  
24 paragraph -- the first sentence of that paragraph also  
25 limits it to no contract claims and damages, right?

26 A. No. It limits it to no incidental damages, no  
27 special damages, no exemplary damages and no consequential  
28 damages.

1 Q. Can you read that sentence?

2 A. We've read it many times, I'm not going to read it  
3 unless the court instructs me.

4 MR. FORDYCE: And the court just did a lovely job  
5 reading it?

6 A. Once again there are different types of damages in  
7 California.

8 THE COURT: Yeah I don't think that's the  
9 question. So you don't need to read it again what is your  
10 question about this -- about this provision.

11 MS. IBARRA: Okay that just that it's ambiguous.  
12 Do you agree that it's ambiguous?

13 A. Not at all. It's clear as a bell. I've said that  
14 twice, it's clear as a bell.

15 Q. It does say nor developer -- so neither Tongva nor  
16 developer will be liable with respect to any subject matter  
17 of this agreement under any contract, comma, negligence,  
18 comma, et cetera?

19 A. Strict liability or other legal or equitable  
20 theory, so those are all different theories for any --  
21 whatever theory you pick they would not be liable for  
22 insurance dental damages, they would not be liable under  
23 any theory for special damages, they would not be liable  
24 under any theory for exemplary damages.

25 Q. Okay.

26 A. Or for any theory for consequential damages and  
27 the heart of this case is to try to get punitive damages,  
28 exemplary damages under a theory that Mr. Stein waters an

1 attorney even though this agreement says 10 different ways  
2 that Mr. Stein is not acting as an attorney and it is  
3 theory a simply of contract, negligence, strict liability  
4 or theory theory or equitable theory such as Mr. Stein is  
5 your attorney, you're trying to get all the damages that  
6 you can't get under this agreement. It's clearly a bad  
7 faith litigation tactic when the subject matter every  
8 single thing that has been said on every single day.

9 MR. FORDYCE: Mr. Stein?

10 A. In this courtroom had do with the casino project.

11 MR. FORDYCE: Mr. Stein, let's limit ourselves to  
12 Ms. Ibarra's questions.

13 MS. IBARRA: Yes thank you.

14 Q. BY MS. IBARRA: So do you agree that the second  
15 line here, the second sentence here is not mutual?

16 A. The second sentence applies only to SMDC and  
17 through the third party beneficiary clause also applies to  
18 Mr. Stein.

19 Q. Do you recall -- because you were involved with  
20 the negotiations of this agreement, right?

21 A. Yes. I negotiated this agreement and its  
22 modifications with Rae Lamothe, I negotiated this agreement  
23 and its modifications with Ed Hamburger and I discussed  
24 this agreement while not -- negotiating it with Steve Otto  
25 and negotiated this agreement with the people on resolution  
26 10 that had no lawyer but they had their opportunity to get  
27 a lawyer, they were just too cheap to spend the money.

28 THE COURT: Mr. Stein, can you please temper your

1 tone?

2 A. Yeah.

3 THE COURT: Thank you.

4 Q. BY MS. IBARRA: Do you recall any special  
5 discussion about this clause during those meetings?

6 A. Yes. There were six different approvals of this  
7 clause and there was extensive discussion with Rae Lamothe,  
8 there was discussion with Ed Hamburger, there was  
9 discussion with the various tribal council people under  
10 resolution 10, under resolution 17, under resolution 20,  
11 under resolution 37 and again under resolution 46.

12 Q. Do any of those resolutions specifically reference  
13 this clause?

14 A. They all do because they say that it's the  
15 agreement and all its terms and conditions, that's a  
16 specific reference to Section 19 as well as section 18 17  
17 and 16.

18 Q. That's not my question. Should some of those  
19 resolutions specifically modify and reference certain  
20 sections of the agreement. Do any of those resolutions  
21 specifically mention it and not just generally as part of  
22 the agreement?

23 A. There is no modification of this language in any  
24 of the six approvals, there is adoption and ratification of  
25 this language without change.

26 Q. So this is a clause that assisted in the original  
27 agreement that was entered into in March 1st, 2001?

28 A. Yes. And entered into Five time after that, this

1 clause was adopted each of those times.

2 Q. And --.

3 THE COURT: What she's saying is it just wasn't  
4 specifically mentioned in the subsequent resolutions?

5 A. Right.

6 THE COURT: I think is what she's trying to get  
7 at.

8 MS. IBARRA: Yes.

9 A. Yes.

10 THE COURT: But that it as a whole, the SMDC  
11 agreement was adopted and when there was specific  
12 discussion about the provision or modification that would  
13 be reflected in the resolution right?

14 A. That's exactly right, yeah.

15 THE COURT: Okay?

16 A. And it was their job to get a good job or to do it  
17 without a lawyer, it was their job to get it right, they  
18 were not stupid people, they had money, they could have  
19 spent their money, they could have gotten more lawyers than  
20 they got, they had lawyers coming out of their ears  
21 throughout this whole thing, you've seen some of them in  
22 the testimony. It's their job, they're not stupid people,  
23 they're not somehow mentally defective because they're  
24 Native Americans. These are intelligent college educated  
25 people with advanced degrees.

26 MS. IBARRA: I'm going to move to strike. This is  
27 not responsive.

28 THE COURT: It is, but let it stand, it is what it

1 is. That's his opinion.

2 Q. BY MS. IBARRA: Mr. Stein, can you give me any  
3 specific example of what kind of willful misconduct or  
4 gross negligence would have constituted a breach of the  
5 agreement on the part of SMDC under this clause.

6 MR. FORDYCE: Calls for expert opinion. We've had  
7 experts testifying and we're going to have another one.

8 THE COURT: I'm not sure -- you're just asking for  
9 an example of what one would be? Your question is a little  
10 it vague.

11 MR. FORDYCE: Incomplete hypothetical, vague and  
12 ambiguous.

13 MS. IBARRA: Yeah.

14 A. I'll give you one.

15 THE COURT: Wait. Mr. Stein, you know what? .  
16 The objection might be sustained, don't answer. If you  
17 have don't need to answer, don't answer. Ms. Ibarra are  
18 you asking him for just generic example of what could post  
19 lee be.

20 Q. BY MS. IBARRA: I know what willful misconduct is  
21 generally in the world buff in the context of breaching an  
22 agreement what is it --?

23 A. I can give you an example, yeah I can answer that  
24 question.

25 Q. Okay.

26 THE COURT: All right?

27 A. May I.

28 THE COURT: Go ahead?

1 A. Willful misconduct to me.

2 Q. Yes?

3 A. As a party that negotiated this and had to live by  
4 its rules.

5 Q. Uh-huh.

6 A. Willful misconduct would be if I allowed the  
7 tribal, assistant tribal general counsel Elizabeth Aronson  
8 to write a check that was of \$18,000 belonging to GT Tribe  
9 that stole the money from GT Tribe and put it in the pocket  
10 of Sam Dunlap.

11 MS. IBARRA: Okay got it?

12 A. And --.

13 Q. I got your testimony?

14 A. Not only that forgive me.

15 MR. FORDYCE: Well?

16 A. And not only doing that.

17 THE COURT: Let him finish?

18 A. And not only doing that, but at the same time that  
19 same check would kill the golden goose and run the  
20 investors off which is exactly what it did do.

21 Q. BY MS. IBARRA: So my next question, what about if  
22 you wrote a check to yourself that wasn't specified in the  
23 budget, SMDC wrote a check to itself or the principle for  
24 SMDC wrote a check to itself, would that be willful  
25 misconduct?

26 A. No.

27 Q. If two wasn't specified in the Libra agreement?

28 A. No. First of all, SMDC didn't get half the money

1 that was specified in the Libra agreement that it should  
2 have, and second of all, SMDC wrote checks that were  
3 countersigned by Elizabeth Aronson and I don't know what  
4 else you might be referring to, why don't you have tell us  
5 what you're referring to.

6 Q. Oh Exhibit 1 of Plaintiffs -- Plaintiff's Exhibit  
7 1?

8 A. I'd love to see it.

9 MR. FORDYCE: Your Honor might now be a good time.

10 THE COURT: Maybe?

11 A. Let's take ape look.

12 THE COURT: Let's break and then maybe we can  
13 start with this tomorrow.

14 MR. FORDYCE: Thank you Your Honor.

15 THE COURT: Okay tomorrow same time I suppose.

16 And Mr. Stein?

17 A. Uh-huh.

18 THE COURT: Make sure you review those documents,  
19 the Talley report so you can answer the questions tomorrow  
20 okay?

21 A. Okay so Niall did you get what the questions were.

22 THE COURT: You can ask Neli, there were two  
23 questions?

24 A. Let me spend a few minutes on it.

25 MR. FORDYCE: Talley report there's to see if  
26 there's a mention of Barrett.

27 THE CLERK: And the Libra agreement.

28 MR. FORDYCE: And the Libra the same thing you

1 see, they're specifying Barrett.

2 THE CLERK: Yes.

3 MR. FORDYCE: Okay thanks. 12:05 PM.

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