

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

ROUGH TRIAL TESTIMONY OF J. STEIN AND W. MILLS

09:58 AM.

THE COURT: Gabrielino versus Stein, BC361307.  
Good morning counsel.

MS. IBARRA: Good morning.

MR. STEIN: Good morning Your Honor.

MR. FORDYCE: Good morning.

THE COURT: Make your appearances.

MS. IBARRA: Delia Ibarra on behalf of plaintiff  
Gabrielino-Tongva Tribe.

MR. FORDYCE: Niall Fordyce on behalf of Mr. Stein  
and law offices of Jonathan Stein.

MR. STEIN: Jonathan Stein on behalf of SMDC and  
the Crane Group.

THE COURT: Okay thank you. We have a few  
minutes, you wanted to bring something up.

MR. FORDYCE: Scheduling, scheduling issues Your  
Honor. We have questions about order of our experts, also  
case in chief for SMDC and its relation to when Plaintiffs  
case is actually going to conclude. Another couple of  
witnesses the plaintiff wants to call that are not going to  
be available until next week.

THE COURT: We'll just take them out of order.

MR. FORDYCE: Okay. Well the order of experts, I  
think Plaintiffs expecting our expert to go first and we're  
not sure if that makes sense, either under 2034 or with

1 reference to again plaintiff actually finishing their case  
2 before we put on either a rebuttal --.

3 THE COURT: Okay. Well I thought we were --  
4 Margolis was testifying in your case, right, he's going to  
5 finish.

6 MS. IBARRA: Margolis needs to finish but he's not  
7 available this week so I have three witnesses left, they're  
8 all relatively short except for maybe Liz Aronson, they're  
9 all available next week.

10 THE COURT: So who are you examining this week.

11 MS. IBARRA: So today we're finishing up with Mr.  
12 Stein.

13 THE COURT: So that's about 20 minutes and then  
14 who do you have after that.

15 MS. IBARRA: So I don't have anybody else today,  
16 Defendants said that they wanted to finish with rebuttal of  
17 Mr. Stein.

18 MR. FORDYCE: Yeah just a little bit.

19 THE COURT: You mean redirect of Mr. Stein. Okay  
20 so that's 30 minutes, who's after that, you have either  
21 Mills, Barrett or Aronson or Margolis.

22 MS. IBARRA: So none of them are available, Mr.  
23 Mills', I'm not calling Mr. Mills, he's not my witness.

24 THE COURT: I don't know why I have him on there.

25 MS. IBARRA: Because there was discussion about  
26 whether he would be available today. But he's not my  
27 witness, I'm not relying on his testimony, I'm relying on  
28 Mr. Margolis.

1 THE COURT: So why don't you have these other  
2 witnesses lined up today.

3 MS. IBARRA: So they're not available today, Ms.  
4 Barrett is on medical leave like she's actually medically  
5 unavailable and Mr. Margolis was not available he HazMat  
6 hers before The State Bar.

7 THE COURT: Well then why shouldn't I deem had you  
8 rested? We talked about this right, we were going to have  
9 get these witnesses together.

10 MS. IBARRA: We did but we also talked about  
11 having -- we've taken this out of order and Defendants have  
12 done a lot of --.

13 THE COURT: Their case I understand that which is  
14 why their case is going to move real quick because a lot of  
15 their case has already been presented throughout your case  
16 so next week, we have an entire week, so just tell me that  
17 your remaining witnesses, this is Tuesday, so tell me that  
18 these three witnesses aren't going to be available until  
19 next week isn't diagnose to work.

20 MS. IBARRA: I've let them know and I've asked --.

21 THE COURT: It doesn't matter.

22 MS. IBARRA: Okay.

23 THE COURT: It doesn't matter if you let them know  
24 we talked about this before we went on our three-day  
25 weekend that you had these witnesses you were going to  
26 call, you can call them in rebuttal, so if you finish with  
27 Mr. Stein 20 minutes, redirect 30 minutes and then we're  
28 moving to the defense case, who do you have.

1 MR. STEIN: We have Barbara Garcia, Steven  
2 Johnson, myself and who.

3 THE COURT: So who are you calling right after --  
4 because we've 15 minutes here, who are you calling today.

5 MR. STEIN: Well it would have to be myself.

6 THE COURT: Okay so --

7 MR. STEIN: In other words we didn't expect this  
8 to be the result but we'll be happy to cooperate with the  
9 court.

10 THE COURT: So two hours for your total testimony.

11 MR. STEIN: I think that -- it will be longer than  
12 that.

13 THE COURT: No it won't be, it will be two hours  
14 you fit in your questions that way, you may come up.

15 MR. FORDYCE: Your Honor.

16 THE COURT: Mr. Stein come up we've got 20 minutes  
17 left on that.

18 MR. FORDYCE: And Your Honor is that two hours  
19 total for Mr. Stein in other words we're finishing him  
20 today.

21 THE COURT: No because it won't be two hours.

22 MR. FORDYCE: Okay thank you Your Honor.

23 THE COURT: It won't be enough enough.

24 MR. FORDYCE: That was my question.

25 THE COURT: Come on up. It's two hours in  
26 addition to whatever her --.

27 MR. FORDYCE: Thank you Your Honor.

28 MS. IBARRA: And just to be clear, what are we --

1 so should I ask Mr. Margolis to cancel his commitments with  
2 the state bash.

3 THE COURT: I don't know what you're going to do,  
4 all I know is we're going to keep going, we can talk about  
5 it later.

6 MS. IBARRA: Okay.

7 THE COURT: Okay you have 20 minutes to finish  
8 your cross-examination. Neli keep the time please?

9 A. Am I still under oath Your Honor.

10 THE COURT: You are still under oath?

11 A. Thank you Your Honor.

12 Q. BY MS. IBARRA: Mr. Stein I asked you briefly  
13 about the Plaintiff's Exhibit 1, we don't need to look at  
14 it it's the check, the \$60,000 check?

15 A. May I look at it.

16 Q. Sure it's Plaintiff's 1.

17 THE COURT: That's all right keep asking your  
18 questions while he's looking for it.

19 MS. IBARRA: My question was I asked you if you  
20 had negotiated the check and I meant to ask you more  
21 directly if you had cashed the check?

22 A. Yes.

23 Q. Okay. That's all I have for that. What is the  
24 status of the Candalaria faction, if you know.

25 MR. FORDYCE: Vague and ambiguous.

26 THE COURT: I'm not sure conscious.

27 MR. FORDYCE: I don't understand that question.

28 THE COURT: Sustained.

1 Q. BY MS. IBARRA: Is the Candalaria faction still  
2 active?

3 A. Yes.

4 Q. Are you still affiliated with the Candalaria  
5 faction?

6 A. SMDC has an outstanding contract but is not active  
7 with them.

8 Q. What does it mean that it's not active with them?

9 A. There is no effort being made on their behalf.

10 Q. So does that mean that you're not working with  
11 them right now.

12 MR. FORDYCE: Asked and answered.

13 THE COURT: Overruled.

14 A. I'm not sure how to answer that.

15 Q. BY MS. IBARRA: Why aren't you sure how to answer  
16 that?

17 A. For the reasons I've testified to, SMDC has say  
18 contract with the Candalaria faction and -- on the one  
19 hand, on the other hand SMDC is not making any current  
20 efforts on their behalf.

21 Q. Do they have any meetings?

22 A. Yes they do.

23 Q. Do you attend those meetings?

24 A. I attended the last meeting they had which was the  
25 fall 2016 meeting.

26 Q. Okay. And where was that meeting?

27 A. That was in Elysian Park.

28 Q. Elysian Park in fall 2016. Did you inform them

1 about the jury verdict regarding the real party in interest  
2 in this case.

3 MR. FORDYCE: Relevance Your Honor.

4 THE COURT: Sustained.

5 Q. BY MS. IBARRA: Are they still using the name  
6 Gabrielino-Tongva Tribe?

7 A. Yes.

8 Q. Do they have any intentions to change that name.

9 MR. FORDYCE: Calls for speculation.

10 Q. BY MS. IBARRA: Do you know.

11 THE COURT: Overruled?

12 A. I don't know. I've never heard of any.

13 Q. BY MS. IBARRA: Did you make a presentation at  
14 that meeting?

15 A. Yes, I did. I was asked to.

16 Q. Okay. And what did your presentation entail?

17 A. I don't recall.

18 Q. In November of 2006 were you still engaged in any  
19 efforts on their behalf in the Candalaria faction's behalf?

20 A. At that time, yes.

21 Q. So your efforts have ceased since then?

22 A. Yes.

23 Q. Can you give me an approximation when your efforts  
24 ceased?

25 A. Between November and January.

26 Q. And does that mean you're not -- you're no longer  
27 trying to get a casino for them?

28 A. That's correct.



1 Q. But you say that your agreement is still in  
2 force?

3 A. Yes. The way the -- there are two agreements  
4 actually and they the way the SMDC agreement works is you  
5 accrue an amount of money and if it ends the money is still  
6 outstanding and then there is an estoppel agreement and  
7 that acknowledges a debt of 2.7 million dollars but no  
8 payments have been made up.

9 Q. So if you're -- if you're no longer engaged in any  
10 efforts on their behalf are you still accruing the \$25,000  
11 in payment a month?

12 A. No. Their current agreement does not provide for  
13 that.

14 Q. Do you know if Ms. Candalaria's is still making  
15 government filings on behalf of the Gabrielino-Tongva  
16 Tribe, for an entity under that name?

17 A. I believe so.

18 Q. Is anybody assisting her with that?

19 A. I don't know.

20 Q. Is there a tribal administrative office associated  
21 with that faction, the candidate faction?

22 A. Yes.

23 Q. Who is the tribal administrative -- well what does  
24 it comprise of, just the tribal administrative?

25 A. Just Linda Candalaria.

26 Q. So she's the tribal administrator?

27 A. She's functions as the tribal administrator for  
28 that faction.

1 Q. For how long has she functioned as that?

2 A. I don't know.

3 Q. So how long was Barbara Garcia a tribal  
4 administrator? Let me ask you another question, what was  
5 the last date that Ms. Barbara Garcia acted as tribal  
6 administrator for the Candalaria faction?

7 A. I don't recall.

8 Q. Did anybody else take her place after she left?

9 A. Joya Buenaventura.

10 Q. And does Ms. Buenaventura also function at your  
11 legal assistant?

12 A. No.

13 Q. Was she employed by the tribe or was she employed  
14 by law offices of Jonathan Stein?

15 A. She was an independent contractor.

16 Q. For whom?

17 A. She was an independent contractor for GT Tribe and  
18 she was an independent contractor for law offices of  
19 Jonathan Stein.

20 Q. So when --?

21 A. And this was for a short period.

22 Q. Okay. And do you recall approximately when she  
23 left that position.

24 MR. FORDYCE: Relevance Your Honor.

25 THE COURT: Sustained. I'm not sure why are we  
26 going into this inquiry? It sounds like discovery to me.  
27 You may have a reason, if you can tell me what it is, you  
28 know let me know but it sounds like we're --.

1 MS. IBARRA: I'm trying to figure out how long Mr.  
2 Stein was involved as tribal administrator for the  
3 Candalaria faction either directly or through one of his  
4 employees or through somebody he directly supervised.

5 THE COURT: Okay you can ask him that maybe.

6 Q. BY MS. IBARRA: Mr. Stein did you directly  
7 supervise any tribal administrator?

8 A. (Nods head.).

9 Q. How long ago? How long ago -- how long did you  
10 supervise the tribal administrators on behalf of Candalaria  
11 faction?

12 A. I don't recall.

13 Q. Do you supervise Ms. Candalaria?

14 A. No.

15 Q. And you've never supervised her --

16 A. She's the -- she's the tribal secretary and a  
17 tribal council member so no, I don't supervise her.

18 Q. Moving on to a different topic, did you -- are you  
19 still suing under the FPPC contract that you referred to?

20 A. No.

21 Q. And you know what I mean by the FPPC contract?

22 A. Yes.

23 Q. Is that a separate claim in your complete?

24 A. I believe about eight years ago we waived it.

25 Q. You waived it but you didn't dismiss it?

26 A. No we -- we waived it and we may have dismissed  
27 it, I don't recall.

28 Q. I haven't seen a dismissal but that's fine?

1 A. As I sit here today I don't know.

2 Q. Okay that's fine, you said you waived it. After  
3 the SMDC agreement was adopted by the tribal council or the  
4 resolution affirming it was adopted by the tribal council  
5 did you ever give any tribal council member a copy of the  
6 SMDC agreement SMDC agreement to take home with them?

7 A. I didn't hear the first part of the question.

8 Q. After the SMDC agreement was executed and adopted  
9 and ratified by the tribal council --?

10 A. That happened six times, I'm sorry.

11 Q. Okay. So after each of those times or at any  
12 times after March 1, 2001, did you give any tribal council  
13 people a copy of the SMDC agreement to take home with  
14 them?

15 A. Yes they already had one before the -- before they  
16 adopted it, they had copies.

17 THE COURT: Which adoption you said there were six  
18 times?

19 A. Each time, is my best recollection, each time they  
20 had the original agreement is and the modifications is my  
21 best recollection.

22 Q. BY MS. IBARRA: So each time that had came up for  
23 modification for discussion you gave them a copy to take  
24 home with them?

25 A. Either I gave them or Rae Lamothe gave them  
26 because Rae Lamothe was their attorney. So SMDC had no  
27 direct contact.

28 Q. Do you have any proof of that, do you have any

1 signatures, you know acknowledging receipt?

2 A. We never sought that in any of the six approvals  
3 we never sought that, we had tribal council resolutions  
4 that stated as much.

5 THE COURT: Is that stated what?

6 A. That stated that they had reviewed the agreements.

7 THE COURT: No but she's asking whether they got  
8 copies?

9 A. It did not state that they received copies in  
10 advance or when they received it, it simply stated that  
11 they had reviewed them.

12 Q. BY MS. IBARRA: So you're just relying on your  
13 recollection?

14 A. Yes.

15 Q. And how would you know that Ms. Lamothe gave them  
16 a copy?

17 A. Because I -- when they adopted the resolution I  
18 would ask them.

19 Q. Moving on to a different topic about the Libra  
20 agreement, did you have discussions with Libra about  
21 funding the amounts on the ground under the SMDC agreement  
22 before the Libra agreement started, so the \$25,000 a month  
23 that had been accruing?

24 A. Which of those three questions do you want me to  
25 answer?

26 Q. Did you have discussions with Libra about getting  
27 paid from the Libra investor agreement for the \$25,000 that  
28 had been accruing?

1           A.    Yes.  Libra understood that there were 25,000 a  
2 month going forward and that 25,000 a month had accruing  
3 for 60 months just as they understood other amounts had  
4 accrued as well such as the 3,000 a month for each of the  
5 tribal council people.

6           Q.    Did they tell you that they weren't willing to pay  
7 for the amounts that had accrued?

8           A.    No.

9           Q.    But they didn't make any provisions for payment of  
10 that in the budget that they put together, right?

11          A.    Wrong.

12          Q.    Why is that wrong?

13          A.    Because the budget amounts were a negotiated  
14 amount to do with whatever we thought within the line item.  
15 So for example the SMDC amount of 50,000 a month could be  
16 treated as new fees, Old fees, FPPC contract payments,  
17 whatever, so long as out of the 2.1 million, SMDC would get  
18 500,000 for fees and then reimbursable amounts were treated  
19 differently.

20          Q.    So the Libra investor agreement has 500,000 for  
21 SMDC?

22          A.    I would like to go look --.

23          Q.    Yes please?

24          A.    The number for the agreement.

25                THE COURT:  This would be the budget, right.

26                MS. IBARRA:  The budget in the Libra investor --.

27                MR. FORDYCE:  644.

28                MS. IBARRA:  Yes it's 644.

1 A. So I'm ready at Page 9 27.

2 Q. So can you identify where SMDC's en tight today  
3 Five -- did you say 500,000?

4 A. Yes it says -- it says -- it's on the left-hand  
5 side near the top on Page 9 27, it's Exhibit E to the Libra  
6 agreement, it says S M.D. fees 10 months times \$50,000 is  
7 500,000 out of the 2,000,000 19 \$7,000 budget.

8 Q. And the SMDC agreement was for \$25,000 a month?

9 A. No the SMDC agreement was for.

10 Q. 50?

11 A. All the amounts accrued which was at that time  
12 about you have know over 1.4 million plus new amounts at  
13 25,000 a month.

14 Q. Right so --?

15 A. So the SMDC agreement would provide for about 1.5  
16 million of which this 500,000 is only about one-third.

17 Q. No. But it says 10 months at \$50,000 a month?

18 A. That's how Libra chose to express it. In other  
19 words --.

20 THE COURT: You didn't correct them and say no  
21 it's 25,000 a month?

22 A. No no they knew exactly what it was, they knew  
23 that there was 25,000 a month new, there was about 1.4  
24 million Old that had accrued at 25,000 and there was an  
25 FPPC contract for 10,000 a month, and these are all  
26 separate from reimbursables, and out of that they said well  
27 we're okay with you taking 50,000 every month for 10 months  
28 which would go from May through February so this budget was

1 basically through February and that was what it ended up  
2 being.

3 Q. So -- but the checks that were being made out to  
4 you were for 25,000 a month?

5 A. No they were right here (indicating), there was  
6 one check -- and I'm pointing to what I wrote down there,  
7 10 months at 50,000 is 500,000 and the check was for  
8 25,000, there was another check for 15,000 and then there  
9 was another check for 10,000 which was the FPPC contract  
10 check and those checks together every month came up to  
11 50,000.

12 Q. So 25,000 and 15,000 is for what?

13 A. 15,000 went against accrued amounts and that was  
14 just my choice on how to do that together with the tribal  
15 council.

16 Q. Is there anything in the document of the Libra  
17 agreement that says that?

18 A. No what the Libra agreement says is just limit it  
19 to \$500,000 for 10 months at \$50,000.

20 Q. Did they say anything about paying back the  
21 accrued amounts for the tribal council people?

22 A. Tribal council people, Sam Dunlap got \$50,000 and  
23 then of the tribal council people.

24 THE COURT: No that's nonresponsive?

25 A. Oh I'm sorry.

26 THE COURT: Your question is?

27 A. I'm sorry.

28 THE COURT: Maybe you didn't understand the



1 question, I'm not sure I understood the question so --.

2 Q. BY MS. IBARRA: Did Libra make any statements  
3 about whether or not they would pay for any accrued amounts  
4 for the tribal council people?

5 A. I don't recall.

6 Q. So prior investors had said they didn't want to --  
7 they wanted the tribal council people and SMDC to forbear  
8 any prior accrued amounts?

9 A. No. They simply said use our money in accordance  
10 with this budget and then there were covenants in the  
11 agreement that required that the money be used in  
12 accordance with the budget and there were promises made in  
13 the agreement.

14 Q. I'm sorry that wasn't my question H my question  
15 was about resolution 30 -- is it -- the prior resolution of  
16 an investor in 2003 that you couldn't identify, that prior  
17 investor had asked you to forbear any prior accrued  
18 amounts?

19 A. Yes, there was a prior investor which was not  
20 Libra and they wanted to do the deal differently than Libra  
21 wanted to do.

22 Q. So Libra had no problems with prior accrued  
23 amounts?

24 A. Libra just wanted us to stick to this budget and  
25 the budget was a negotiated document and it included prior  
26 amounts such as -- I don't know -- is this nonresponsive I  
27 don't want to --.

28 THE COURT: It is somewhat nonresponsive. So

1     Libra said that they didn't want to pay for accrued amounts  
2     for the tribal council members, for example the 3,000 a  
3     month, they didn't want to pay for that?

4             A.     No that's not what they said at all. They said  
5     that it was enough to pay the \$52,000 judgment which is  
6     right here in Exhibit E and to pay another \$50,000 to Sam  
7     Dunlap and to pay six different tribal council people 3,000  
8     a month for 10 months going forward.

9             THE COURT:     But that's going forward?

10            A.     Right.

11            THE COURT:     I think she's asking about in the  
12     past, the accrued amounts in the past for that 3,000 a  
13     month, was there -- there was no either discussion or  
14     provision in the budget for that right?

15            A.     There's no provision in the budget but as I recall  
16     the point is, their point is if you take 52,000 for the  
17     judgment and 50,000 for Mr. Dunlap for reimbursement, that  
18     was enough.

19            THE COURT:     So you're saying that's what they  
20     considered pasta crude amounts.

21            A.     No they thought that that was -- that was enough,  
22     that was generous enough.

23            THE COURT:     So they didn't want to do any pasta  
24     crude amounts because we're paying these other things, is  
25     that what they said?

26            A.     They didn't make provision for further amounts  
27     other than 3,000 a month going forward for 10 months.

28            THE COURT:     Forward?

1           A.    Right.

2           THE COURT:  But they felt they didn't want to pay  
3 pasta crude amounts because they had paid these two,  
4 \$50,000 items; is that right.

5           A.    Yes.

6           Q.    BY MS. IBARRA:  Was this subject subject to  
7 renegotiation?

8           THE CLERK:  20 minutes are up.

9           THE COURT:  20 minutes are up, so ask your last  
10 question.

11          MS. IBARRA:  So that was my last question, was  
12 this ever subject to renegotiation?

13          A.    The budget once the agreement was signed was not  
14 subject to renegotiation, there were specific covenants to  
15 follow in this budget unless there was a written amendment  
16 to the agreement itself.

17          Q.    But they were open to any written amendments to  
18 that?

19          A.    No.

20          THE COURT:  They meaning Libra.

21          MS. IBARRA:  Yes.

22          THE COURT:  All right.  All right thank you and I  
23 guess this would be your redirect.

24          MR. FORDYCE:  Yes.

25          THE COURT:  30 minutes, Neli.

26          THE CLERK:  30?

27          THE COURT:  Yeah.

28          MR. FORDYCE:  I may not take that.

1 THE COURT: Well she's going to be trenching for  
2 another two hours in his case so I guess you can -- if you  
3 had any questions you can certainly put it in that time.

4 MR. FORDYCE: Sure thank you Your Honor.

5 Q. I just want to take Mr. Stein through a couple  
6 things that counsel raised in testimony recently. Mr.  
7 Stein do you recall testimony concerning a membership  
8 letter that you wrote sometime after November 3rd, it was  
9 signature 520, if you can put that in front of you, we'll  
10 take a moment for everyone to get that Plaintiffs first --  
11 I'm sorry Defendants first notebook.

12 THE COURT: Is this after he was terminated.

13 MR. FORDYCE: Correct Your Honor.

14 THE COURT: Okay?

15 A. Uh-huh.

16 Q. Do you remember this letter?

17 A. Yes.

18 Q. Do you remember being questioned on it?

19 A. Yes.

20 Q. And counsel posed a hypothetical that said assume  
21 that the tribal council did nothing wrong, were your action  
22 still proper or something to that effect, do you recall  
23 that hypothetical?

24 A. Yes.

25 Q. Did that hypothetical make sense to you?

26 A. No not at the time.

27 Q. Okay. What was actually taking place in the  
28 situation surrounding Exhibit 520?

1           A.    I had resigned on September 9th, I had been --  
2 SMDC had been terminated on October 3 and there were  
3 discussions about lawsuits going on and I retained Seyfarth  
4 Shaw in that regard.  The --.

5           THE COURT:  What discussions with regarding  
6 lawsuits?

7           A.    With Elizabeth Aronson and the tribal council, the  
8 idea was well upon termination SMDC must be paid about 1.6  
9 million dollars are you going to pay it and if you're not  
10 going to pay it, do you want zero a private mediation do  
11 you want -- because I'm not going to walk away from 1.6  
12 million dollars without seeking payment and my  
13 understanding back was that there were no plans in place to  
14 pay it and they had already paid to pay the \$500,000 that  
15 was in the budget, they had failed to make the August  
16 \$50,000 payment or the September \$50,000 payment.

17          Q.    BY MR. FORDYCE:  That the 500,000 that we just saw  
18 in the Libra budget to what you're referring to?

19          A.    That's correct, that's correct.

20          Q.    Let me ask you this:  Did you know then what you  
21 know now concerning?

22          A.    No.

23          Q.    What was going on?

24          A.    No.

25          Q.    What was your view then and by then I mean at the  
26 time of Exhibit 520?

27          A.    My view then was that SMDC was a contractor, was  
28 liable for willful misconduct or gross negligence and my

1 view was that the tribal council and Liz Aronson, the  
2 assistant tribal general counsel were engaged in willful  
3 misconduct and I wanted to distance SMDC from that.

4 Q. And is Exhibit 5 201 of the examples of what you  
5 did to distance yourself from their conduct that you just  
6 explained?

7 A. Yeah this is discussed with Ken Sulzer at Seyfarth  
8 Shaw and the idea was to simply disclose that what should  
9 have been disclosed at the fall member meeting that was  
10 never held and -- number one. So we disclosed that there  
11 had not H\* been \$21,000,000 financing raised and that a --  
12 I don't know if it mentions that a lesser amount was given.  
13 We also caught them up on the fact that there was no  
14 financial audit, we began -- the tribal council -- the  
15 tribal accountant agreed that there should be some sort of  
16 snapshot taken and went into action on that.

17 THE COURT: When you say the tribal council you're  
18 referring to the Candalaria group?

19 A. No, no.

20 MR. FORDYCE: Can you be clear Mr. Stein for the  
21 Court?

22 A. I'm sorry. The tribal accountant agreed, did I  
23 say the council? The tribal accountant agreed that given  
24 the unusual circumstances that it was in the best interest  
25 of everyone including the tribal accountant, Talley and  
26 company to take a snapshot of the financial situation given  
27 that the checkbook -- that the tribal council had run off  
28 with the check books.

1 Q. .

2 Q. BY MR. FORDYCE: And I don't want to leave this  
3 exhibit right now but when you say the snapshot, is it fair  
4 to Shea that the Talley report we've looked at again and  
5 again, Exhibit 5 '77 is that the snapshot to which you're  
6 referring to?

7 A. Yes. And because it was -- because the tribal  
8 accountant wanted to do it, they didn't want to go into  
9 great detail or spend a lot of money they just wanted to  
10 get a snapshot because they were worried about their  
11 liability the same way I was worried about any liability,  
12 there were investor funds, they were being mishandled and  
13 the professionals were concerned.

14 Q. Mr. Stein at the time of Exhibit 520 did you have  
15 a good faith, honestly that there was misappropriation of  
16 tribal funds taking place?

17 A. Yes.

18 Q. And is Exhibit 520 and we'll talk just briefly  
19 about the other steps that you took with the bank accounts,  
20 are these steps that you took based on your good faith  
21 honest belief as to what you believed was happening with  
22 the Libra funds?

23 A. Yes.

24 Q. What did you stand to benefit or gain? Had anyone  
25 promised you money for example by taking this action in  
26 520?

27 A. No.

28 Q. In communicating with the tribal council?

1           A.    No.

2           Q.    Do you have an understanding as to what the status  
3 of the Gabrielino-Tongva Tribe's finances was at the time  
4 you wrote this?

5           A.    The Gabrielino-Tongva Tribe was insolvent, it  
6 was -- it had debts of about \$4,000,000, SMDC was about  
7 half of that because it also owed Crane Group, it also owed  
8 a dozen of vendors, none of which got paid, any one of  
9 those people could sue GT Tribe or sue SMDC for being in  
10 conspiracy with GT Tribe. The investors could obviously  
11 sue GT Tribe if they were spending money different from the  
12 budget and different from the covenants that they had  
13 agreed to in the Libra agreement and they could sue the  
14 tribal accountant as well for failing to keep track of the  
15 money that the tribal accountant was in part handling.

16          Q.    At the time of this letter, did you have an  
17 understanding as to the status of the Libra funds?

18          A.    Yes the --.

19          Q.    What was the status?

20          A.    The status.

21          Q.    To your knowledge?

22          A.    Was that all signatory authority was in the hands  
23 of Elizabeth Aronson only and Elizabeth Aronson had you  
24 know in long conversation with me, long and emotional  
25 conversations with me, indicated that whatever the tribal  
26 council wanted her to do she would do, she didn't feel she  
27 had to follow the Libra budget and she -- you know and  
28 if -- and that was that.



1 Q. Mr. Stein let's try a different type of  
2 hypothetical.

3 THE COURT: Did she tell you why she felt she  
4 didn't need to follow the Libra budget?

5 A. She was working for the tribal council and she  
6 would do what they wanted to do.

7 THE COURT: Okay so did she say that they told her  
8 not to follow the Libra budget, I mean typically only do  
9 what their clients ask them to do?

10 A. And --.

11 THE COURT: So was that what they said, they don't  
12 want me to follow the Libra budget so that's why I'm not  
13 going to following it or what was her reasons?

14 A. I asked her those exact questions and her  
15 reasoning was to avoid answering the questions and to just  
16 simply say I'm going to do what they want me to do.

17 Q. BY MR. FORDYCE: So Mr. Stein looking again at  
18 Exhibit 520, is there anything that you see in this exhibit  
19 that says you must be reinstated, was that a requirement  
20 that you had?

21 A. No. No, it wasn't a requirement, and it wasn't  
22 something that I expected at all.

23 Q. You've used the term free agent in your testimony.  
24 Would you consider yourself a free agent at this point?

25 A. Yes.

26 Q. Let's try a different hypothetical. If you have  
27 had a good faith belief that in fact the tribe had not  
28 misappropriated the Libra funds would you have taken the

1 steps that you did in Exhibit 520?

2 A. No there would be no need.

3 Q. Okay. Let's talk about the letters to Union Bank  
4 and Wells Fargo, do you know to what I'm referring?

5 A. Yes.

6 Q. And is this -- were these further steps -- in fact  
7 please explain the union bank account, how is it different  
8 from the Wells Fargo account?

9 A. The Wells Fargo account had the majority of the  
10 money in it. Out of the \$898,000 it had approximately  
11 seven 27,000. The union bank accounts there were two of  
12 them and they had the balance of the \$898,000.

13 Q. At the time after November 2006, did you have a  
14 good faith belief that there was misappropriation of funds  
15 in either of those bank accounts taking place?

16 A. Yes.

17 Q. And what steps did you take place base on the  
18 record your belief at that time?

19 A. I wrote a already to simply ask whether a  
20 temporary hold could be put on so that cooler heads could  
21 prevail as it were.

22 Q. What do you stand to gain if anything from doing  
23 this.

24 THE COURT: Under what authority did you do that,  
25 had you been fired at this time already, so under what  
26 authority could you call the bank and tell them for  
27 temporary distribution of the funds? Were you fired at  
28 that time?

1           A.    I had --

2           THE COURT:   Or resigned.

3           A.    I'd like to see the date of the letter but I had  
4 resigned on September 9th but it was not my opinion at that  
5 time that the resignation was effective, had the same  
6 questions that this court had which was was it an tension  
7 to resign or was it an actual resignation.

8           THE COURT:   Had you been fired by the -- or you or  
9 SMDC?

10          A.    The October 3 was terminated butler's were several  
11 weeks before that.

12          Q.    BY MR. FORDYCE:   And again Mr. Stein do you  
13 have --.

14          THE COURT:   So your authority was what?

15          A.    My authority was twofold at that point.

16          THE COURT:   Well were you an officer?   Were you a  
17 signator to the accounts, were you -- I mean were you --?

18          A.    Three fold, I'm sorry my authority was three fold.

19          THE COURT:   All right?

20          A.    And I don't want to talk over the court.

21          THE COURT:   All right so your said your authority  
22 was three fold, give me the three?

23          A.    One I had been the signatory on at least the Wells  
24 Fargo account ask was removed so I had a relationship with  
25 Wells Fargo and also liability as a signatory.   So when I  
26 was removed, I have wanted to communicate with them about  
27 that.   Second I -- at the time -- I now recognize that the  
28 September 9th letter was a resignation because at the time

1 I thought it was just inn don't resign and so I felt that I  
2 was still CEO until I actually got a letter that says  
3 you're fired and that's CEO of the GTGA and the GTGA was  
4 the parties with two of the three accounts. Third SMDC was  
5 involved in the casino project, was a contractor but had  
6 been given -- the tribal council had given the right to  
7 SMDC to supervise third party professionals and some of the  
8 banking relationships so I could act under that authority  
9 so those were the three.

10 THE COURT: So SMDC was a contractor who could  
11 supervise banking relationships, is that what you --

12 A. Yes that's right.

13 THE COURT: And that's enumerated in the SMDC  
14 agreement somewhere?

15 A. I would like to look at it.

16 THE COURT: That's okay I'll take a look at it,  
17 I'll see if it's there?

18 A. But I think you'll see it under the financial  
19 powers.

20 THE COURT: All right I'll take a look at it under  
21 the financial powers.

22 Q. BY MR. FORDYCE: And again Mr. Stein at the time  
23 was there any doubt in your mind that you were taking  
24 prudent action on behalf of SMDC when you contacted the  
25 bank, either Wells Fargo or Union Bank?

26 A. Yes. And again this all occurred -- right around  
27 September 19th, before the October 3 termination and I did  
28 not communicate with him after the account three.

1 Q. Let's move on to the writ of attachment we talked  
2 about that briefly. Please explain your understanding of  
3 the writ of attachment and I believe this is 78 Five I  
4 think it might have been or 789.

5 THE COURT: You're still getting me the full writ  
6 of attachment right.

7 MR. FORDYCE: Yes, Your Honor.

8 A. Yes.

9 MR. FORDYCE: We have the documentation here and  
10 support.

11 THE COURT: The supporting documentation right?

12 A. Several.

13 THE COURT: The supporting documentation, right,  
14 the declarations.

15 A. Some of them, not all of them.

16 THE COURT: Well, I need to see all of them. Are  
17 there declarations that you have, Mr. Fordyce?

18 MR. FORDYCE: Your Honor I mean we have some right  
19 here.

20 THE COURT: That's fine I'm just asking if you  
21 have declarations.

22 MR. FORDYCE: Oh sure yes.

23 THE COURT: You don't need to get them, continue  
24 your examination.

25 MR. FORDYCE: Thank you.

26 Q. BY MR. FORDYCE: So Mr. Stein what was your  
27 understanding of how far the writ of attachment that we've  
28 seen in exhibit 789 works or worked?

1 A. Well we first submitted the papers --.

2 THE COURT: Who's we?

3 A. Seyfarth Shaw and -- and SMDC, exited the papers  
4 right after November 2, I think it was like November 5 or  
5 November 6, somewhere in there.

6 Q. I apologize it's 78 Five, if the court and Mr.  
7 Stein wants to look.

8 THE COURT: Thank you.

9 MR. FORDYCE: Sorry about that?

10 A. So those papers were submitted but it took several  
11 months for the decision to be rendered.

12 Q. And Mr. Stein what actions if any did you take  
13 pursuant to this writ of attachment pursuant to 78 Five?

14 A. I was -- I made sure that it reached the Sheriff's  
15 office and I stayed? Communication with the Sheriff office  
16 so that I could be present during the Sheriff's execution  
17 of the writ.

18 Q. What was your --?

19 A. In two location.

20 Q. What was your understanding of how the Sheriff's  
21 levied on the writ if they did?

22 A. They had two levees, one was at 50 one Santa  
23 Monica Boulevard at the tribal administration office and  
24 they levied on all the materials that had been left behind  
25 as well as the computers.

26 Q. Please explain that, what you mean by left behind?

27 A. The tribal council and Elizabeth Aronson when they  
28 left on September 9th took a great many notebooks including

1 all the contracts and including the quantum meruit time  
2 sheets and all the resolutions. They also copied all the  
3 materials off the computer, both the Quickbooks and the  
4 office documents, the mike soft office documents.

5 MS. IBARRA: Objection contradicts prior testimony  
6 by a witness.

7 THE COURT: All right I'll consider whether it  
8 contradicts, thank you.

9 Q. BY MR. FORDYCE: Mr. Stein did you ever get a  
10 computer through this levying on this writ?

11 A. There were several different computers that were  
12 levied upon.

13 Q. And is this what we saw -- this I believe is  
14 exhibit 789 that counsel brought up to you the other day it  
15 says PC computer down at the bottom?

16 A. No.

17 Q. Is this what other we're talking about.

18 THE COURT: You know, can we back up a little bit?

19 A. Sure.

20 MR. FORDYCE: Sure Your Honor.

21 THE COURT: These items were taken from the tribal  
22 council office correct?

23 A. The answer to the question, the court is correct,  
24 this is only part of the list, this is the list from the  
25 second levee not the first levee.

26 THE COURT: So my first question would be it  
27 belonged to them, right, it it's in their office and it  
28 belongs to them, I guess I'm trying to figure out why you

1 indicts agreed with you taking items from their own office?

2 A. I'm sorry.

3 THE COURT: You seem to have a problem with them  
4 taking items from their own office. The tribal council  
5 office was their office right, it was set up separately,  
6 why was it an issue for them taking -- for them to take  
7 their own records, they belonged to the organization and I  
8 considered them to be renegade at that point because my  
9 view was they were just going to take the \$898,000 which is  
10 exactly what they did.

11 THE COURT: So your view is they were renegades  
12 that's what you're saying.

13 A. Yes my view is they were a renegade.

14 THE COURT: So they didn't have authority to take  
15 the records from the tribal council office?

16 A. I don't know.

17 THE COURT: But at that point --

18 A. If they did have the authority or not, I would  
19 assume they did have the authority I just viewed them as  
20 renegade but I believe.

21 THE COURT: But the Candalaria group was not even  
22 in exist tentative tense at this point right?

23 A. I'm sorry.

24 THE COURT: (Ditto)?

25 A. Right.

26 THE COURT: So if they were renegade, who was the  
27 tribe that you think was entitled to the records?

28 A. The organization with 1600 members or 1700



1 members.

2 THE COURT: Right who the tribal council  
3 represents right.

4 A. Yes.

5 THE COURT: Okay thank you?

6 A. And Your Honor if I may answer the Court's point,  
7 I never said that they couldn't take the records, I left  
8 the office open with them in it so that they could take  
9 whatever records they took so there was no effort to stop  
10 them.

11 THE COURT: Then why would you get a writ to get  
12 them back?

13 A. The --

14 THE COURT: What was said in the writ to get them  
15 back that your claim walls they weren't entitled to?

16 A. A writ of attachment is to collect whatever you  
17 can collect, it doesn't matter whether they're records.

18 THE COURT: Well you have to have a title to them  
19 no?

20 A. No you don't, that's the mistake perhaps that the  
21 court is making that is not what a writ of attachment is, a  
22 writ of attachment says you can collect this much money  
23 from their property, so for example if there were clothes  
24 hanging in the closet, I would have taken those clothes to  
25 seek the sale of money they didn't have.

26 THE COURT: I see, so you needed 16 binders or 20  
27 binders because you were going to sell them to satisfy a  
28 judgment is what you're saying?

1           A.     That's exactly what you're entitled to do under  
2 California law.

3           THE COURT:   Well I guess we'll see what the  
4 application says had you may continue?

5           A.     It says it in the right to attach order, the bank  
6 records in the right to attach order.

7           THE COURT:   All right.

8           A.     I've done the same thing to factories.

9           Q.     BY MR. FORDYCE:   So Mr. Stein as you sit here  
10 today do you think had you did -- I hate to use the term  
11 did you think, you did anything wrong as far as in writ go?

12          A.     No, I didn't do anything, the Sheriff did the  
13 actions, the Sheriff -- the judge authorized collection of  
14 business records and the levee on both the old tribal  
15 administration office and the new tribal administration  
16 office. The court gave an order saying you can take the  
17 business records, you can take the computer.

18          Q.     Just a couple more questions, I believe you  
19 testified already and if not -- in fact I'm sure you did.  
20 You said that the tribe didn't care about the writ. Is  
21 that your impression?

22          A.     Yes.

23          Q.     Can you expand on that, what do you mean the tribe  
24 didn't care, why or why not?

25          A.     Because of two factors, number one, there is a  
26 statutory mechanism where it you have do care of what's  
27 been levied on, if you do care about the dresses hanging in  
28 the closet and you don't want them to shoulder to Goodwill

1 you have a certain amount of time to make an objection,  
2 otherwise the levying party has the right to sell them to  
3 collect against the amount on the writ which in this case  
4 was \$812,000. The second thing that -- reason was because  
5 I got a personal phone call from Sheriff Lee Baca who said  
6 that he had been contacted by Richard Polanco over this, so  
7 we had a very long conversation about writ procedures.

8 MS. IBARRA: Objection hearsay.

9 THE COURT: Yeah.

10 MS. IBARRA: As to conversation with Lee Baca.

11 THE COURT: Sustained, answer is stricken.

12 Q. BY MR. FORDYCE: Well Mr. Stein let me ask you  
13 this: Did the tribe already have information that was  
14 contained in the computers that were levied on here?

15 A. Yes.

16 Q. In your opinion, is that one of the reasons why  
17 perhaps they didn't care all that much about this writ  
18 proceeding?

19 A. Yes. They had notice -- they had like six  
20 months -- Five months or six months notice that a writ  
21 might be issued and my understanding is that they copied  
22 everything on the computers to Virginia Carmelo's personal  
23 computer in Orange County and we never levied in Orange  
24 County.

25 Q. Do you have any knowledge as to what the tribe was  
26 doing it if anything between this writ application in  
27 November 2006 and it looks like April 2007 when this  
28 document was stamped by the L.A. Superior Court?

1           A.    Yes they spent 95 or 99 percent of the money  
2           except for a small amount this that they hid in Elizabeth  
3           Aronson's attorney-client trust account.

4           MR. FORDYCE:   Your Honor I have nothing further  
5           for Mr. Stein and I think I'm about 30 minutes.

6           THE COURT:   All right very good, thank you Mr.  
7           Stein.  You may step down, unless you're going to call him  
8           as your next witness you can roll right into the  
9           questioning.

10          MR. FORDYCE:   Can we have a breath, Your Honor?

11          THE COURT:   Yes.

12          A.    And Your Honor, may we address one issue not  
13          connected with --

14          THE COURT:   Before the break, sure.  Let's go  
15          ahead ahead and address the issue.

16          MR. STEIN:   Thank you.

17          MR. FORDYCE:   Because I can -- it certainly wasn't  
18          my plan but I can start with Mr. Stein if needed.

19          MR. STEIN:   Yeah.  Your Honor.

20          THE COURT:   Yes.

21          MR. STEIN:   Okay so there are two or three  
22          different issues, one is the issue of the order of expert  
23          testimony and again you're role here is to attempt 20  
24          cooperate with the court to get this finished as soon as  
25          possible and free up the court to take other cases.  The  
26          only problem we have is we don't believe that Mr. Margolis  
27          is allowed to rebut the testimony of Mr. Mills, in other  
28          words Mr. Margolis may finish his testimony because he was

1 ready to finish it when my health incident occurred but he  
2 may not come back to rebut it, that's not --

3 THE COURT: Then In 2000 that's not accurate,  
4 plaintiff has a rebuttal case so if they want to call him  
5 back to rebut, absolutely they can do that so yeah.

6 MR. STEIN: And could the court explain its  
7 rationale because I --

8 THE COURT: Case in chief, defense, rebuttal, if  
9 they want to call their expert as a rebuttal, they can call  
10 their expert as a rebuttal, not a problem. Done all the  
11 time.

12 MR. STEIN: If that's the case if it please the  
13 court, Mr. Mills will be ready to testify on direct for the  
14 remainder of today and at least all of tomorrow.

15 THE COURT: Okay.

16 MR. STEIN: He also has written materials that  
17 will be handed out today then he would be available for  
18 Thursday as well. I'm not sure if he's available Friday  
19 tore not and during that time of course Ms. Ibarra would  
20 have a chance to not only hear the testimony but also  
21 review the materials before having to cross-examine him.  
22 Would that suit the Court's convenience for --.

23 THE COURT: Yeah I guess that means you're going  
24 to put is a side your testimony for now and we can.

25 MR. STEIN: Nods.

26 THE COURT: Okay.

27 MR. STEIN: And again we're just trying to  
28 cooperate with the court.

1 THE COURT: I'm fine with that.

2 MS. IBARRA: I'm happy to hear Mr. Mills now.

3 THE COURT: If you have want to put on --.

4 MR. STEIN: The court clarified our ones concern  
5 which is the experts, the court stated its views and in  
6 that case Mr. Mills will be convenient here from it's  
7 convenience with the court.

8 THE COURT: Yes after the break.

9 MR. FORDYCE: But just so we're clear is the  
10 plaintiff has rested Your Honor.

11 MS. IBARRA: I can't rest without Mr. Margolis'.

12 THE COURT: Yeah this isn't --

13 MR. FORDYCE: Fair enough, fair enough, Plaintiffs  
14 case you're quite correct but Plaintiffs case in chief is  
15 done, I just want to be clear where we are.

16 THE COURT: No, I don't think so because mills  
17 handed -- mills it your witness.

18 MS. IBARRA: Margolis.

19 THE COURT: Margolis I'm sorry no Mr. Margolis is  
20 not neither.

21 MS. IBARRA: And we've Ms. Aronson that's coming  
22 up from San Diego.

23 THE COURT: So technically they don't conclude  
24 until they have put on this all their evidence.

25 MR. FORDYCE: Including rebuttal okay that's fine.

26 THE COURT: No rebuttal is not put on after the  
27 case in chief rebuttal is put on after the defense case.

28 MR. FORDYCE: That's why I'm asking for

1 clarification, that's what I thought I heard Your Honor  
2 week he can.

3 MR. STEIN: And once again we're just trying to  
4 cooperation.

5 THE COURT: So what's the confusion Mr. Fordyce.

6 MR. FORDYCE: I guess there's no nor confusion,  
7 you've cleared it up.

8 THE COURT: Right the case in chief is not  
9 finished.

10 MR. FORDYCE: Understood.

11 THE COURT: Look, if we can accommodate witnesses  
12 we can accommodate them , but they haven't rested  
13 technically. They haven't rested because they haven't put  
14 in all their evidence yet, so they have all these other  
15 witnesses to call, so technically they're not going to say  
16 we've rested yet.

17 MR. STEIN: And Your Honor, if I may point out one  
18 thing in the court's earlier comments.

19 THE COURT: Yes.

20 MR. STEIN: And again, we're just here to  
21 cooperate with the court. We have a -- SMDC has a right to  
22 put on a case in chief that is not part of the case being  
23 presented by Plaintiff or our defense to that. In other  
24 words, there are two different cases --

25 THE COURT: I understand, but all the testimony  
26 that's been put in though is going to apply equally to both  
27 and you've testified for hours and hours and hours so.

28 MR. STEIN: I just would not want to --.

1 THE COURT: We're not going to go another hours  
2 and hours and hours and hours with you because we've  
3 already done that so --.

4 MR. STEIN: Yeah the problem is we have not done  
5 that to present that to the present the case in chief, we  
6 have done that to present the defense, that's my point.  
7 That's my point.

8 THE COURT: I've heard a lot of defensive  
9 testimony in that example so no we're not going to go six,  
10 10 days with your testimony, it's just not going to happen.

11 MR. STEIN: And that's not what we're looking for,  
12 we just want to be able to present the simple, we have  
13 three causes of action, contract, quantum meruit and the  
14 account stated, very simple.

15 THE COURT: True they are very simple I'm glad you  
16 clarified that, all right 10 minutes I'll see you back.

17 THE CLERK: Counsel make sure you only take 10  
18 minutes.

19 MR. FORDYCE: Yes.

20 (Break taken.) 10:54 AM to 11:04 AM.

21 THE COURT: Gabrielino versus Stein, BC361307.  
22 Okay well we're going to now take a defense witness, that  
23 would be William Mills; is that right?

24 MR. STEIN: Yes, Your Honor. An expert witness.

25 THE COURT: Okay we'll call -- thank you an  
26 expert, thank you. Mr. Mills come forward, stand behind  
27 the court reporter to my left, face the clerk to my  
28 right.



1 THE CLERK: Please raise your right hand \* \* swore  
2 \* \*?

3 A. I do.

4 THE CLERK: Thank you sir you may have a seat?

5 A. Good morning Your Honor.

6 THE COURT: Good morning.

7 THE CLERK: And sir can you please state and spell  
8 your first and last name?

9 A. W-i-l-l-i-a-m A., Mills, M-i-l-l-s.

10 THE CLERK: Thank you.

11 MR. STEIN: Thank you, you may begin.

12 Q. BY MR. STEIN: Mr. Mills thank you for coming this  
13 morning. Mr. Mills are you a member of the state bar?

14 A. I am.

15 Q. And are you certified?

16 A. I am a certified specialist in legal malpractice  
17 law.

18 Q. And can you tell us your expert qualifications?

19 A. Well I am a 1979 graduate of Harvard college, 1982  
20 graduate of UCLA law school, I've not practicing for last  
21 35 years, 25 of which have been predominantly in the area  
22 of prosecuting and defending lawyers, consulting in  
23 connection with legal malpractice, malicious prosecution  
24 matters, defending claims of various -- prosecuting and  
25 defending claims of various business -- complex business  
26 related matters and I am a former member of the state bar  
27 ethics committee, COPRAC. I am also MCLE certified both as  
28 a general MCLE provider and as a legal malpractice

1 specialist -- specialization provider. I have testified  
2 approximately -- well I've been retained in excess of 30  
3 times as an expert witness, I have been qualified to  
4 testify in court approximately 10 times, I've actually  
5 testified probably fewer times than that.

6 THE COURT: You mean in a trial?

7 A. Trial, yes, ma'am, yes Your Honor.

8 THE COURT: Have you testified in depositions  
9 before?

10 A. Of course.

11 THE COURT: Probably more than 10 right?

12 A. Probably close to -- in excess of 30, in most of  
13 the cases in which I've actually been designated and it's  
14 gone this yes I've been deposed. Not in this one of course  
15 but most other cases.

16 THE COURT: Yes.

17 Q. BY MR. STEIN: And what firms have you worked with  
18 during that 35 years?

19 A. What firms have I been employed by?

20 Q. Right.

21 A. And it's sort of an ambiguous question because I  
22 obviously represent -- have represented a number of local  
23 and national firms over the course of my career as well but  
24 I have -- I was a partner of Lewis, Brisbois which is now L B  
25 BS, anyway, it's close Lewis, Brisbois, Bisgaard & Smith.  
26 I have been with law firm of Parker Mills and its  
27 predecessors for the last 22 years since 1995.

28 Q. And how many employees does Parker Mills have

1 today?

2 A. We have slightly less than 30.

3 Q. And you're the mills of Parker Mills?

4 A. That's correct.

5 Q. Very good. Have you ever been retained by an  
6 Indian nation?

7 A. I, for a period of approximately three years,  
8 represented the Cherokee nation which is the second largest  
9 Native American tribe in the country as outside litigation  
10 counsel providing advice on a number of subjects which I  
11 can't really get into but I served in that capacity in  
12 connection with litigation primarily involving federal  
13 claims against the department of agriculture.

14 Q. Have you ever been represented an unincorporated  
15 association?

16 A. Yes in various aspects, I have represented start  
17 ups, entities that ultimately were -- became -- were  
18 incorporated in the general sense as LLC's, as limited  
19 liability companies, as limited partnerships and as  
20 corporate -- ultimately becoming corporations, I have  
21 represented unincorporated associations as general counsel  
22 in various capacities as the -- through more than just  
23 start up, through the preparation of their operative  
24 documents. I've represented a number of incorporated  
25 public and private entities, I'm also -- I was general  
26 counsel to a publicly held company for about 10 years, I  
27 retired as their lawyer when I took a place on the board,  
28 I'm secretary of that corporation now.

1 Q. Have you, you personally been a member of a board  
2 of directors?

3 A. Yes, many.

4 Q. Which ones?

5 A. As I said, public and private. The nonprofits are  
6 probably too many to list. The privately held companies  
7 also too numerous to list and the names wouldn't  
8 essentially mean anything to anyone anyway, but LLC's,  
9 corporations, S corporations, C corporations, a couple of  
10 foreign corporations and as well as one public  
11 corporation.

12 Q. What do you do for the united way of Los Angeles?

13 A. I was a member and served in that capacity for a  
14 couple of years, served on several different committees,  
15 you probably know that the United Way utilizes its members  
16 mostly in fundraising capacities so that was my primary  
17 object.

18 Q. And what did you do for the constitutional rights  
19 foundation?

20 A. Same thing.

21 Q. And the Didi Hirsch mental health foundation?

22 A. Same thing but I was also -- it's a much  
23 smaller -- at the time I was on the board it was a much  
24 smaller non profit, it had managed psychological health  
25 entities and medical centers and treatment centers  
26 throughout southern California and so I served on a number  
27 of interim committees including fundraising but also  
28 governance and search committees and other things of that

1 nature.

2 Q. What area -- what areas have you had publications  
3 or lectures?

4 A. I have written in almost every area in which I  
5 practice. I have -- the materials that I have authored or  
6 co-authored range from risk management to litigation  
7 practice to paperless office solutions, our law firm has  
8 been paperless for the last 10 years. In addition to  
9 ethics questions including those relating to 3-310, 3-300,  
10 6147, 48, 49 6068(E). 6068 including 6068 E.

11 THE COURT: That's the business and professionals?

12 A. Business and professionals code, correct. And a  
13 number -- I try to publish three or four times a year.

14 Q. And can you identify your C.V.?

15 A. I've attached had under Roman numeral three any my  
16 notebook.

17 THE COURT: In this notebook.

18 A. Yes Your Honor.

19 Q. BY MR. STEIN: And does that contain an accurate  
20 summary?

21 A. Correct.

22 MR. STEIN: May we move zero that into evidence.

23 THE COURT: Yes we should probably mark it h  
24 although I don't want to call it three because we have  
25 another three, call it some other defense now.

26 MR. STEIN: Yeah.

27 THE COURT: Neli can look for the correct number.

28 MR. FORDYCE: Neli do you have 15 51 to 15 52

1 would be next.

2 MS. IBARRA: Just for the record it's a bio,  
3 biography.

4 THE CLERK: Your next in line, 1551.

5 THE COURT: There are some items that would be  
6 found in a C.V. but it looks like a bio.

7 MR. STEIN: May we move it into evidence as --.

8 THE COURT: Hold on I'm asking a question.

9 THE CLERK: 15 52.

10 THE COURT: Okay 15 52 C.V. slash bio. Do you  
11 have a different document called a C.V. or is this what you  
12 generally use for a C.V.?

13 A. I use it for both purposes.

14 THE COURT: So it's kind of a general?

15 A. Correct.

16 THE COURT: You wouldn't call it a bio, what would  
17 you call it? Do you have a name for this.

18 A. I don't. That's why it's bio. We called it C.V.  
19 on the index but it is literally just a summary of.

20 THE COURT: Okay so let's call it a summary of  
21 personal characteristics?

22 A. Background summary.

23 THE COURT: Background summary okay we'll call it,  
24 thank you that's fine. Yes, it will be admitted.

25 Q. BY MR. STEIN: Mr. Mills I'd like to turn to the  
26 foundation for your expert opinion. What were you retained  
27 to do?

28 A. I was retained to initially to assist in

1 responding to a motion for summary judgment in this matter,  
2 it's been a long time I don't recall specifically the dates  
3 but I prepared a declaration which I understand was  
4 submitted in court in connection with the opposition for  
5 that summary judgment motion several years ago. I have  
6 since refined opinions reflected in that declaration to  
7 support the defense of claims alleged against the  
8 Defendants in this case as well as to support certain  
9 claims for -- that are being pursued on a cross-complaint.

10 Q. May I refer you to the first section of the  
11 notebook, can you tell us what that document is?

12 A. It is a -- it's approximately 10 pages, 13 pages  
13 sorry. I've titled it expert opinions, it reflects seven  
14 different opinions that -- and the basis for each of the  
15 opinions.

16 Q. And can I move into evidence as Exhibit 155 three  
17 expert opinions.

18 THE COURT: That's had been disclosed.

19 MS. IBARRA: Yeah.

20 MR. STEIN: Yes.

21 MS. IBARRA: I just got it today so.

22 THE COURT: Why is this just received today.

23 MR. STEIN: It was finished yesterday.

24 THE COURT: Was it requested in discovery.

25 MS. IBARRA: I don't think it was drafted in  
26 discovery.

27 THE COURT: No, did you request the expert  
28 reports.

1 MR. STEIN: Your Honor no there was no request.

2 MS. IBARRA: No there was no request.

3 THE COURT: So yes. These are your opinions?

4 A. Correct.

5 THE COURT: Well okay received.

6 MR. STEIN: And it's received in evidence Your  
7 Honor.

8 THE COURT: Right.

9 MR. STEIN: Okay as Exhibit 155 three.

10 THE COURT: That -- Neli will determine that.

11 THE CLERK: Yes Your Honor that's next, 15 53.

12 THE COURT: Okay 15 53.

13 Q. BY MR. STEIN: And what else did you review before  
14 you reached these opinions?

15 A. Well this is the summary of the opinions and the  
16 bases for these opinions. I reviewed numerous documents in  
17 addition to those relating to the summary judgment motion  
18 which I reviewed again in preparation of this document, I  
19 also reviewed a number of resolutions of the tribe, I  
20 understand that's what is being referred to. I've also  
21 reviewed the SMDC agreement, I've reviewed some trial  
22 testimony including that of Mr. -- I'm not sure whether  
23 it's a complete -- whether it's Mr. Margolis' complete  
24 testimony but I've reviewed several days of testimony, the  
25 15th and the 21st of July I believe and I have obviously  
26 reviewed the various cases, statutes and other materials  
27 that are referenced in the opinions as well as the  
28 pleadings.



1 Q. And what research have you done?

2 A. Well my -- the research was relatively extensive  
3 because we were focused on a number of discreet issues and  
4 research involving rules 3-310 and 3-300 as well as other  
5 rules that as they relate to the opinion. There are a  
6 number of cases, there are -- that are -- most of which are  
7 referenced in the document in front of you as well as law  
8 review articles, treatises, ethics opinions by both -- by  
9 among other crow practical and L.A. County bar, I have also  
10 reviewed some San Francisco and San Diego bar association  
11 opinions and this is -- this is very much what I do on a  
12 daily basis so many of the -- 3-310, 3-300, its application  
13 and issues surrounding those kinds of things I advise  
14 clients on literally on a daily basis so it's something I  
15 have to be familiar with.

16 Q. Your Honor on the basis of Mr. Mills' testimony  
17 today may I move to allow his testimony as an expert  
18 witness in this matter.

19 THE COURT: Any objection.

20 MS. IBARRA: No objection.

21 THE COURT: Yes you may.

22 Q. BY MR. STEIN: Mr. Mills can I turn you to the  
23 first page of Exhibit 155 three and the number one first  
24 opinion?

25 A. My first opinion and rather than summarize Your  
26 Honor I'll read and if there are specific questions that  
27 either Your Honor has or Mr. Stein has to follow up I'm  
28 happy to respond. My first opinion is that Mr. Stein was

1 not GT Tribe's attorney in connection with transactions,  
2 litigations or other legal work at any time from January  
3 2000 to December 2006. As a result he had no duties to GT  
4 Tribe that a lawyer would owe to a client.

5 Q. And what is the basis of that opinion?

6 A. The primary basis of that opinion is that there  
7 is -- there was no consent by Mr. Stein but in fact no  
8 consent generally, that is by the other signatories -- the  
9 other prospective client, GT Tribe to an attorney  
10 agreement, that is an agreement. All agreements between  
11 lawyers and clients -- excuse me, all relationships between  
12 lawyers and clients begin with an agreement that the  
13 lawyer -- the client needs legal advice, the lawyer agrees  
14 to provide that legal advice and that forms the basis of an  
15 attorney-client relationship.

16 Q. And is there any --.

17 THE COURT: You would agree there was no writing  
18 right?

19 A. That was my understanding.

20 THE COURT: In other words there was no retainer  
21 agreement right?

22 A. That's right.

23 THE COURT: So we can put that one aside right?

24 A. That's right. And I have also understand there  
25 was no oral agreement and so what we're really talking  
26 about is an implied agreement if there was one at all. And  
27 I found based on my analysis that there was no implied  
28 agreement as well.

1 THE COURT: Okay we'll get there but I just want  
2 today kind of set aside the fact that there is no -- there  
3 has been no retainer that's been reduced?

4 A. Correct.

5 THE COURT: There hasn't been a retainer that's  
6 been produced here either so.

7 Q. BY MR. STEIN: And Mr. Mills did you learn about  
8 the stipulation by Plaintiff's counsel?

9 A. I believe that it was stippled that there was no  
10 writing and there was no oral expression of that agreement.

11 MS. IBARRA: Northerly a stipulation about no oral  
12 express, I recall a stipulation about no written retainer  
13 agreement.

14 THE COURT: Is that the stipulation.

15 MR. STEIN: No, it's not. The stipulation was --.

16 THE COURT: Well we'll have to find out, why don't  
17 you produce it, if you believe there is one that exists.

18 MR. STEIN: We have it Your Honor, we have it?

19 A. I assumed Your Honor for purposes of my analysis  
20 that there is certainly no writing and I believe -- I'm  
21 aware of any facts, regardless of the stipulation there are  
22 November facts that support the existence of an oral  
23 agreement.

24 MR. STEIN: We're pulling up the oral stipulation  
25 right now Your Honor.

26 THE COURT: Okay?

27 A. I believe I reviewed that part of the testimony as  
28 well.

1 MR. FORDYCE: Your Honor this is from July 18 and  
2 counsel with read over my shoulder and I'm starting the  
3 middle of Page 29 of the rough and it says question --.

4 MS. IBARRA: Is this the witness.

5 MR. FORDYCE: This is actually between you and Mr.  
6 Stein.

7 THE COURT: And the court.

8 MR. FORDYCE: And the witness was Barbara Garcia I  
9 think was on the stand but I don't believe she testifies  
10 here?

11 A. So it starts and did you see any evidence of that  
12 in the meetings, that's Mr. Stein's questions, answer by  
13 Barbara Garcia is no, sorry evidence by the Court and then  
14 Mr. Stein any written or oral resolutions to appoint sign  
15 as the attorney to GT Tribe.

16 The court: I think there would be a stipulation  
17 there's no resolution, correct.

18 Ms. Ibarra: Yes, we don't contend that there is.

19 Mr. Stein: Is it stipulated.

20 Ms. Ibarra: Yeah, we don't contend there are  
21 resolutions.

22 Court: I think their contention was there was an  
23 attorney-client relationship regardless if it was any  
24 writing.

25 Ms. Ibarra: Exactly.

26 The Court: So the stipulation was it was had not  
27 in writing.

28 Mr. Stein: And there was no oral decision of the

1 GT Tribe?

2 Ms. Ibarra: Oral resolution of such.

3 Mr. Stein: Yeah.

4 Ms. Ibarra: So stipulated.

5 Mr. Stein: I stipulate, as well.

6 Mr. Fordyce: So do I.

7 THE COURT: So there was no oral or written.

8 MR. FORDYCE: Or written.

9 MS. IBARRA: Resolution.

10 MR. FORDYCE: Correct.

11 THE COURT: Resolution.

12 MS. IBARRA: Okay.

13 Q. BY MR. STEIN: And this again this would be a  
14 contract between what two parties?

15 A. Well I think the assertion was that Mr. Stein was  
16 GT Tribe's attorney and I'm aware of no oral -- based on  
17 stipulation there was no oral or written resolution that  
18 Mr. Stein would be GT Tribe's attorney, I found no -- in my  
19 review of testimony, documents, et cetera, I saw no  
20 indication that there was any oral agreement between Mr.  
21 Stein and the tribe to professional legal services.

22 Q. And can you read Paragraph 1 A?

23 A. Sure. There was no consent by Mr. Stein to an  
24 implied-in-fact attorney-client contract, relying on Cou  
25 versus Rubios Restaurants 109 Cal.App.4th 719, an  
26 attorney-client relationship is not created by the  
27 unilaterally declaration by one party of the relationship,  
28 rather the relationship can only be created by contract

1 expressed or implied. Also citing Gulf Insurance Co. V  
2 Berger Kahn Shafton Mosk Fiegler Simon & Gladstone, 79  
3 Cal.App.4th 114. Quoting in determining whether an  
4 attorney-client relationship has been established several  
5 guiding principles are applicable. It is elementary that  
6 the relationship between a client and his retained in paren  
7 or non court appointed close paren, counsel arises from a  
8 contract, whether written or oral or implied or express.

9 Q. BY MR. STEIN: Is there any type of  
10 attorney-client relationship that can be created without a  
11 contract?

12 A. Yes but it's not a contract in any meaningful  
13 sense. As the cases indicate a client can't just say you  
14 are my client and bind the lawyer to a contract in that  
15 way. It is often misunderstood that when a client has an  
16 expectation that the lawyer is -- that the lawyer -- that  
17 the attorney that he's talking to is his lawyer for  
18 purposes of that communication, that establishes  
19 confidentiality, it means that the client and the lawyer --  
20 the lawyer cannot reveal those confidence as though the  
21 client were actually the lawyer and there were a contract  
22 but that's very limited and it's -- I give the example of  
23 that we've all experienced when we're standing at on a  
24 field at a soccer game and someone who knows we're a lawyer  
25 saddles up to you and says I've got a question for you and  
26 we want to be helpful because we're lawyers but we also  
27 should be cautious that by communicating with this person  
28 we are potentially disqualifying ourselves from working on

1 the matter, we may be accepting confidential information  
2 but it doesn't pain mean that wove an agreement that I am  
3 your lawyers.

4 Q. Can I use an example that I'll refer to again and  
5 again and that is Mr. Fordyce who's an accomplished jazz  
6 musician is in a studio and in the studio is another  
7 musician with a legal work and the other musician said to  
8 Mr. Fordyce gee now that we have a break and we're all  
9 resting and waiting for something I'd like to ask you a  
10 legal question and Mr. Fordyce says well listen I  
11 absolutely want to make it clear I don't want to be your  
12 lawyer and the guy says absolutely clear you're not my  
13 lawyer, we both agree you're not my lawyer, he then  
14 proceeds to ask a legal question and Mr. Fordyce proceeds  
15 to answer it. Does the mere fact that Mr. Fordyce gave  
16 legal advice create an attorney-client relationship?

17 A. No.

18 Q. Why not?

19 A. There is no -- certainly within that hypothetical  
20 there is no agreement between Mr. Fordyce and the person  
21 he's talking to that there is an attorney-client  
22 relationship which is required for that contractual  
23 relationship. As I said --.

24 Q. And why would a contract not be formed by the  
25 simple giving of legal advice?

26 A. Because they are both fully aware that Mr. Fordyce  
27 has said he doesn't want to be your lawyer and the client  
28 has said I understand you're not my lawyer. And so you

1 know it is a -- for the communication of Visqueen advice, I  
2 use that -- I might even put advice in quotes because it's  
3 communication of information. Lawyers are entitled to give  
4 their opinions they're entitled to do everything to anyone  
5 they want to that doesn't make them automatically a client.

6 Q. And can you read point B of the first --

7 THE COURT: Can I ask you a question?

8 A. Sure.

9 THE COURT: If that person keeps coming back to  
10 you and asking you for legal advice over and over does the  
11 fact that you say well I'm not your lawyer does that  
12 somehow change the dynamic, in other words if the person  
13 keeps asking you and you keep giving legal advice and let's  
14 just assume it's legal advice, don't question whether it is  
15 or not just assume it is?

16 A. Sure.

17 THE COURT: If the person keeps coming back to you  
18 and you give legal advice let's say over five years, does  
19 that change the nature of the relationship?

20 A. Do you want me to answer it in the context in  
21 general or in the context of the case.

22 THE COURT: Well first in general?

23 A. In general I think it created when an individual  
24 talks to a lawyer.

25 THE COURT: A lawyer and asking advice?

26 A. And asking while the lawyer is conveying it, there  
27 certainly is a possibility that the client -- regardless of  
28 what the lawyer is saying is reasonably expect they're



1 giving advice they can rely on.

2 THE COURT: So just assume it's legal advice,  
3 though, just assume it is?

4 A. Right.

5 THE COURT: The client understands it's legal  
6 advice, the attorney understands it's legal advice?

7 A. And anytime the lawyer says I'm not your lawyer  
8 but I'll tell you this.

9 THE COURT: Right.

10 A. As long as he's saying I'm not your lawyer, it's  
11 going to be hard for the client to reasonably believe that  
12 he is his lawyers.

13 THE COURT: If he says that everytime --

14 A. Well, he shouldn't have to say it every time, but  
15 my practice is focused on defensive.

16 THE COURT: Yes?

17 A. Defensive lawyers and risk management.

18 THE COURT: Yes?

19 A. If I'm confronted with that situation I've got to  
20 get a retainer agreement from this client I've got to  
21 remove the ambiguity, I have to have remove the argument  
22 that that's what's the clients doing, if I can put it in  
23 the context of this case, I view that -- I view that to the  
24 extent that that is an analogous to what happened in this  
25 case I believe that it's substantially different. The  
26 client -- the prospective client is the tribe, the tribe  
27 can only act through its governing board, through format  
28 action, okay that's why we talk about resolutions, okay?

1 The fact that they -- a member asks Mr. Stein a legal  
2 question doesn't necessarily mean that the -- that whether  
3 he's asked that question -- questions repeatedly in general  
4 doesn't make it necessarily reasonable for a single member  
5 who by himself condition bind the corporation doesn't make  
6 that his reliance on Mr. Stein and that information as a  
7 reasonable extension of an implied agreement. More  
8 importantly.

9 THE COURT: So rough saying there are  
10 circumstances it depends on what the facts are?

11 A. Well of course.

12 THE COURT: I think is what you're saying?

13 A. In this instance there's a really important thing,  
14 as you know and I believe there's been substantial evidence  
15 and one really just has to read the SMDC agreement which  
16 has in at least eight locations that there is no  
17 attorney-client relationship, even more instances there's  
18 no fiduciary relationship.

19 THE COURT: Can a written agreement change the  
20 nature of the relationship if it already exists? In other  
21 words if there's an attorney-client relationship that's  
22 created can the fact that you have later say there isn't  
23 ant attorney-client relationship change the fact that there  
24 was.

25 A. Yes.

26 THE COURT: Okay so even though there was at the  
27 beginning if you later did I say avow it then --?

28 A. That's one thing about three 3-310, 3-300 is that

1 they're based on consent and you can under the proper  
2 circumstances, 3-300 requires independent counsel and if  
3 you have independent counsel and you have five years of  
4 this ambiguous relationship, your counsel can walk -- we  
5 assume that your counsel has the ability to walk you  
6 through that and when you sign it and say there has been no  
7 attorney-client relationship then you understood what all  
8 that was about and that you are now agreeing, consenting  
9 and waiving, there's no waiver in the statute of course but  
10 that you are consenting to the fact that all that stuff  
11 occurred without there ever being an attorney-client  
12 relationship. The SMDC agreement though as I said is an  
13 integrated agreement that has in multiple locations  
14 expressly states that there's no attorney-client  
15 relationship and in order to modify that on behalf of the  
16 tribe there has to be formal tribal action. So his -- the  
17 anecdotal individual talking to lawyer doesn't really work  
18 in this context because we're not talking about the  
19 individuals expectation or reasonable expectation we're  
20 talking about what the tribe as an organization can -- is  
21 reasonable -- the tribes expectation and that those -- that  
22 expectation is measured by the terms, the express terms of  
23 the SMDC agreement.

24 THE COURT: And would it make a difference in  
25 connection with those -- those representations whether or  
26 not the tribe was represented in connection with the SMDC  
27 agreement to begin with and whether the subsequent counsel  
28 that they have, whether that counsel was independent or

1 not?

2 A. Well the answer is yes.

3 THE COURT: It would depend?

4 A. Well in the general sense, it may depend. One of  
5 the things I am not seeing is a real different anything  
6 else of independents which you mate be interested in,  
7 independent means -- an independent lawyer is one that  
8 doesn't have any financial or measurable connection to the  
9 transaction.

10 THE COURT: So if they're getting paid somehow  
11 from the transaction then that would be problematic?

12 A. No. Let me be a little clearer.

13 THE COURT: Okay.

14 A. I understand that there's an allegation that  
15 Lamothe was not independent, she was general counsel for  
16 the tribe, that's not disputed as I understand, but the  
17 assertion is she was not independent because Mr. Stein had  
18 some measure of control over certain aspects of the  
19 legal -- certain aspects of legal things that she was  
20 doing. Ms. Lamothe was employed independently and  
21 separately from the SMDC agreement by the tribe. Mr. Stein  
22 if he was the lawyer was -- well Mr. Stein forget about  
23 whether he was the lawyer, Mr. Stein was SMDC -- an SMDC  
24 representative and I have seen nothing that would put Ms.  
25 Lamothe on the Sammy Lai same side of the relationship,  
26 every contract has two sides, she's never on Mr. Stein's  
27 side financially, intellectually, academically and the fact  
28 that he supervises which is also you know something that

1 long discussed in the SMDC agreement, it's authorized and  
2 it is part of the terms of that agreement doesn't mean  
3 that -- doesn't deprive of her independence so that's one  
4 aspect, independence she was not the only general counsel,  
5 that there was successive injects all of whom were -- all  
6 of whom have the responsibility for determining whether or  
7 not the SMDC agreement was valid and enforceable and they  
8 affirmed that. Each of them had independent responsibility  
9 to actually determine whether it was valid and enforceable  
10 so even if Ms. Lamothe was not independent each successive  
11 general counsel's obligation was to -- was to examine it  
12 and their sign off on it cleaned the history.

13 THE COURT: Okay?

14 A. Otherwise corporations couldn't work very well if  
15 that were the case.

16 THE COURT: Okay.

17 Q. BY MR. STEIN: Can you read Paragraph B of the  
18 first opinion?

19 A. Merely giving legal advice does not establish an  
20 implied in fact attorney-client agreement. The standard  
21 for the determining the existence of an implied in fact  
22 agreement is an objective standard and is articulated in  
23 responsible citizens V Superior Court. You don't want me  
24 to read the quote do you.

25 THE COURT: I can read it, you don't need to read  
26 it to me this is in evidence so?

27 A. Right.

28 Q. BY MR. STEIN: And exhibit -- can you read sub

1 paragraph C of the first opinion?

2 A. Correct I will. There was no consent by GT Tribe  
3 the organization accounting through its govern body the  
4 tribal council so implied factor an attorney-client  
5 contract with Mr. Stein. And I cite Corporations Code  
6 Section 300 A which is quoted the business and affairs of  
7 the corporation shall be managed and all corporate powers  
8 being excised by or under the direction of the board. The  
9 corporation shall be image amount and all court powers  
10 shall be exercised under the ultimate direction of the  
11 board. Understanding that this is an unincorporated  
12 association which is governed in general terms by  
13 Corporations Code section 18,000 one et seq but case law  
14 there's probably an incorporating statute as well where  
15 most -- whether it's non profits or whether -- most of the  
16 other entities recognized by the Corporations Code  
17 generally subscribe to the exact same premise.

18 MS. IBARRA: I'm going to object to the  
19 characterization of the plaintiff as an unincorporated  
20 association. It's.

21 THE COURT: Okay. Well there was a jury finding  
22 in this case.

23 MS. IBARRA: The jury finding was -- did not  
24 include a characterization of what kind of entity that it  
25 was or that it was an unincorporated association Your  
26 Honor.

27 MR. STEIN: Your Honor it did.

28 MS. IBARRA: Just that it was real party in

1 interest.

2 MR. STEIN: Your Honor it did, to be a real party  
3 in interest in the jury instruction to be an real party in  
4 interest you have had to be an association if you were not  
5 an unincorporated association then you were not a real  
6 party in interest and so that was part of the jury  
7 instruction for the real party in interest.

8 MS. IBARRA: We've been through this, it's not.

9 THE COURT: Whatever the definition, there was a  
10 definition, I'm not sure that it unincorporated association  
11 was the only way to have standing so we'll have to look  
12 back at it?

13 A. My only point Your Honor is that it doesn't matter  
14 because whether it's a corporation or whether it's some  
15 other corporate like entity they're bound by the same basic  
16 principles and it's articulated in various places, not  
17 specifically referenced in 18,000 one but all boards, all  
18 boards run -- all entities run through their boards.

19 Q. BY MR. STEIN: So if I can give you a hypothetical  
20 and that is that Sam Dunlap was a tribal council man of the  
21 San Gabriel group, a different organization, it was a not  
22 for profit corporation in San Gabriel and as a tribal  
23 council man for that different group, he thought  
24 individually that he had formed an attorney-client  
25 relationship with Mr. Stein. Does that impact the -- any  
26 attorney-client relationship between Mr. Stein and GT  
27 Tribe, the organization?

28 A. I think the simple answer is no but if I may

1 clarify. As I said before, the anecdotal belief of an  
2 individual members even if he were a member of the GT --  
3 board of directors of GT Tribe acting alone, his view is  
4 really irrelevant without some formal action by GT Tribe.  
5 If you assembled all Five of the members of GT Tribe and  
6 you polled them at any point in time it would be violating  
7 the brown act probably but if you polled them individually  
8 to get what you expect might be a vote of the tribe should  
9 it occur, that's also irrelevant.

10 THE COURT: So if all Five of them said yeah I  
11 thought he was my lawyer that doesn't matter?

12 A. That doesn't matter, correct.

13 Q. BY MR. STEIN: And in this case Mr. Alcala Cal a-  
14 is one of the decision makers, he's now dead so he  
15 obviously was not polled, is that your understanding?

16 A. I don't know.

17 Q. And Cindy Alvitri was not called as a witness so  
18 she was not polled, is that your understanding?

19 A. I have no understanding.

20 Q. And Elizabeth Dunlap another tribal council man of  
21 at this time the recission of Sam Dunlap was not polled,  
22 was that your understanding?

23 A. I don't know. My point is if you said -- if you  
24 polled.

25 THE COURT: Even if you did?

26 A. Even if you polled all of them they were all a-  
27 live healthy and well if polled them outside the context of  
28 the meeting that's irrelevant because they can only act in



1 the formal context of a board which requires notice and a  
2 meeting and ultimately results in a resolution.

3 THE COURT: But doesn't the consequence of implied  
4 consent kind of do away with that though?

5 A. No. And that's -- if this were strictly -- if  
6 there were no contracts involved, there were no writings,  
7 there might be an argument that -- that there would be some  
8 reasonable implication, you assemble -- there's no SMDC  
9 agreement with all of its disclaimers and and provisions  
10 that I'm sure you're thoroughly familiar with by now, if  
11 none of that existed and the board -- you polled them  
12 collectively and they all said well they all the thought he  
13 was the lawyer you might get an argument that there was an  
14 implied relationship but I view the SMDC agreement as a  
15 wall that has to be scaled and the only weigh it can be  
16 scaled is based on the integration clause is in writing  
17 through formal action by the board and so in order to  
18 overcome the numerous phrases, Mr. Stein is not a lawyer,  
19 our lawyer, there is no attorney-client relationship, you  
20 have to -- you can't -- you can't resolve that, you can't  
21 change that according to the SMDC agreement unless you do  
22 it in writing by -- a modification signed by the signers of  
23 the SMDC agreement and that never occurred and that's the  
24 whole reason that you do it so that we don't get into a  
25 fight about the -- in general about whether it's sellers  
26 remorse or just changed minors minds over a period of years  
27 we would never be able to practically enforce a contract if  
28 we were to permit interpretations of agreements in that

1 way.

2 Q. And in fact isn't that the number of the dispute  
3 here, the effort to avoid enforcement of a major -- of a  
4 very large contract?

5 A. Well that certainly appears to be a significant  
6 rational to the litigation. If that flies directly in the  
7 face of a case that's kind of a rare thing for it to happen  
8 it's a case a inn re: Acre shall which I've cited, it's a  
9 case in which and it's much more my occasions adversary  
10 proceeding in bankruptcy court in which a client load his  
11 lawyer \$40,000, the client -- the lawyer did not comply  
12 with 3-300.

13 MR. STEIN: Did the lawyer loan the client?

14 A. No the client.

15 THE COURT: The client loaned the lawyer?

16 A. Yeah I'm sorry the lawyer loaned the client.

17 THE COURT: Oh the lawyer loaned the client.

18 A. If the lawyer loaned the client \$40,000 and 3-300  
19 the client contended that I don't have to pay you back  
20 because you didn't -- you didn't comply with 3-300 because  
21 3-300 required as you know that the transaction be fair,  
22 that the terms be disclosed in writing that the client be  
23 given an consultant with independent counsel and the  
24 consent to that transaction be in writing, the lawyer  
25 didn't comply but the client was using offensive Lee in  
26 order to have repave the 40,000 the court found that  
27 offense to use the rules as a -- as a tactic to avoid what  
28 would otherwise have been a legitimate obligation that

1 really had no do.

2 THE COURT: Well under normal circumstances  
3 doesn't the court give quantum meruit under those  
4 circumstances if the lawyer hadn't complied with the rule?

5 A. Quantum meruit, the whole concept of quantum  
6 meruit is -- well I'm sorry let me answer the question  
7 slightly different.

8 THE COURT: Okay?

9 A. Quantum meruit has nothing to do with that  
10 particular relationship.

11 THE COURT: That case?

12 A. The reason is that the lawyer gave.

13 THE COURT: Oh it was outside?

14 A. A real \$40,000 that was outside of the  
15 attorney-client relationship.

16 THE COURT: In other words it wasn't for legal  
17 fees or legal work it was some other contract?

18 A. He said gosh I need to pay some bills can you --  
19 can I borrow 40 grand you're any lawyer, the lawyer says I  
20 trust you which was obviously a bad decision and he gave  
21 him money. Very much like that 40 -- that loan for 40,000  
22 is very much like SMDC agreement. It has nothing to do  
23 with the purported provision of legal services.

24 MS. IBARRA: Is it Hirsch or Kirsh?

25 A. K-i-r-s-h.

26 MS. IBARRA: It's cited in here.

27 MR. STEIN: If I can refer you to -- would you  
28 like to find the citation in your document?

1 A. Yeah I'm happy to.

2 THE COURT: So in that context the attorney  
3 washes?

4 A. '97 three.

5 THE COURT: No legal advice given in connection  
6 with that loan at all, no legal advice?

7 A. That's right.

8 THE COURT: Nothing legal, it was all?

9 A. Yeah. 973 F 2nd 1454.

10 THE COURT: It was a federal case?

11 MR. STEIN: Why was.

12 THE COURT: Wait a minute. Hold on. Can you cite  
13 it again.

14 A. 973 F 2nd 1454.

15 MR. STEIN: But in fact.

16 THE COURT: Hold on. I'm not done. 1454?

17 A. Correct.

18 THE COURT: And is that the Ninth Circuit?

19 A. Correct.

20 THE COURT: And they're interpreting California  
21 law I'm assuming.

22 A. Yes.

23 THE COURT: And it's Hirsch?

24 A. Kirsh, K-i-r-s-h, it's cited on Page 7 of my  
25 report.

26 THE COURT: Thank you you may continue.

27 Q. BY MR. STEIN: In fact in re: Kirsh there was  
28 legal advice being given on a regular basis between the

1 lawyer and the client wasn't there?

2 A. Well there was no dispute that there was an  
3 attorney-client relationship but the money was loaned, you  
4 know there are new cases.

5 THE COURT: Outside of the -- in other words,  
6 there was no legal advice given in connection with that  
7 loan?

8 A. The 40,000 had nothing to do with advice that was  
9 being given.

10 Q. BY MR. STEIN: Why to us that's analogous to the  
11 SMDC agreement and the offensive use of the claims here by  
12 Plaintiff?

13 A. Well there appears to have been a legitimate  
14 agreement, SMDC agreement for a specific purpose, that's  
15 casino development that was executed and operating for a  
16 number of years, 2000 to 2006. All of the ethical  
17 violations appear to be technical if they exist at all.  
18 Didn't -- you know there had to be an attorney-client  
19 relationship and if so you violate 3-300 and 3-310 and a  
20 number of other violations but if you're not the lawyer and  
21 I was struck -- I review these kinds of agreements all the  
22 time, I advise clients on how to draft them, both corporate  
23 counsel and in the context of retainer agreements and they  
24 arise in a lot of different -- every day about these kind  
25 of agreements and the and there was because of the  
26 number -- I'm not much on redundancy but this was -- there  
27 was so -- it was so obvious to me as a reader of this  
28 document that Mr. Stein went through an enormous amount of

1 effort to assure that there was no ambiguity as to whether  
2 or not he was providing legal services to avoid the very  
3 circumstances he's embroiled in now.

4 THE COURT: I guess any question is I'm not your  
5 lawyer but in fact gives legal advice that doesn't matter?

6 A. No, correct.

7 THE COURT: In other words can you characterize  
8 something has not an attorney-client relationship even if  
9 it is.

10 A. Yes, that's what they've done.

11 THE COURT: All right?

12 A. And the point is Your Honor that this is a very  
13 complex business transaction of which Mr. Stein had  
14 significant expertise, some of which was legal and some of  
15 which was not. And.

16 THE COURT: I have guess the reason why it's  
17 confusing is because there are prohibitions of attorneys'  
18 fees getting into business attorneys with their clients  
19 because they get into this situation all the time and so  
20 there are things that have to go on, independent counsel,  
21 you know waivers, all those things?

22 A. We're getting to that in my opinions but I believe  
23 that the SMDC agreement fully complied with 3-300.

24 THE COURT: Okay?

25 A. To the extent that there was a requirement by Mr.  
26 Stein assuming that he had some allegation to comply with  
27 it, it does.

28 THE COURT: Okay?

1           A.     It also complies with 3-310 for very similar  
2 reasons and so and as I said Mr. Stein's been practicing  
3 law a long time and he in writing this agreement appeared  
4 just from reading it, from my reading of it took great  
5 pains to try to avoid having himself placed in a situation  
6 where there was some ambiguity about whether or not he was  
7 providing legal services to the tribe, the tribe had a  
8 general counsel, I won't say every second of the relevant  
9 period but for all of the relevant time that I could  
10 discern they had general counsel and to politely say that  
11 the general counsel was somehow not independent as an  
12 execution that they really aren't acting as a lawyer is a  
13 disservice to the bar frankly. I'm pretty sure Ms. Lamothe  
14 didn't even agree with that but the reality is that she had  
15 an obligation to protect the tribe independently of what  
16 supervisory tasks Mr. Stein reserved for himself under the  
17 SMDC agreement and in my view her independence was not  
18 impaired and shouldn't be questions.

19           THE COURT:   Okay we have a couple minutes, can you  
20 continue.

21           Q.     BY MR. STEIN:   Okay so if we can cover point  
22 subparagraph D and E in the remaining time?

23           A.     Okay. I think yes, D, under the SMDC agreement  
24 section 14 in paren entire agreement, and other clauses any  
25 attorney-client contract between GT Tribe and Mr. Stein  
26 must be in writing. Plaintiffs stipulated there was no GT  
27 Tribe tribal council resolution or any attorney-client  
28 contract with Mr. Stein.

1 Q. And is that captured in your testimony so far?

2 A. Right, we covered that earlier.

3 Q. Paragraph E please?

4 A. At minimum according to testimony from several  
5 witnesses Mr. Stein was not GT Tribe's attorney in  
6 connection with Resolution 10 which approved the SMDC  
7 agreement in March 2001. As a result he had no duties to  
8 GT Tribe that a lawyer would owe to a client on the date  
9 Resolution 10 was approved and I would add for any period  
10 before that.

11 THE COURT: And Lamothe was the lawyer at this  
12 time?

13 A. I believe so.

14 MR. STEIN: No Your Honor, this is the testimony  
15 of the witnesses that signed Resolution 10, Diane Scanning  
16 electron microscope and victim Velasquez.

17 THE COURT: All the tribal members but there was  
18 no attorney set.

19 MR. STEIN: There was no attorney representing  
20 them at the time but they said that Mr. Stein was not their  
21 attorney either, so they truly were not represented by an  
22 attorney-client including Mr. Stein.

23 MS. IBARRA: This is the Otto controversy.

24 THE COURT: Otto wrote a letter saying he was not  
25 the lawyer but okay.

26 Q. BY MR. STEIN: The point in E if I can refer back  
27 to Mr. Mills, the point of the testimony was the witnesses  
28 did not think that Mr. Stein acted as the attorney for



1 their organization in connection with Resolution 10, you're  
2 concluding as a result?

3 A. As a result he wasn't their lawyer. To the extent  
4 as I said I'd still think the SMDC agreement covers it but  
5 to the extent it sort of eliminate the implied contract  
6 idea, he can't -- if they don't believe he was their lawyer  
7 then he wasn't their lawyer.

8 Q. And then maybe we can finish the first opinion if  
9 the court will allow husband one or two extra minutes.

10 THE COURT: We don't want to get into another one  
11 but we can finish that one. Just finish that that one and  
12 that's fine.

13 Q. BY MR. STEIN: Can you state Paragraph F?

14 A. At minimum according to testimony Mr. Stein was  
15 not GT Tribe's attorney at least through September 28, 2003  
16 the date of resolution 46 approved and ratified the SMDC  
17 agreement as amended. According to Rae Lamothe's testimony  
18 the language of resolution 46 itself and the SMDC agreement  
19 as amended, the law offices of Rae Lamothe was GT Tribe's  
20 attorney and acted on behalf of GT Tribe. There was no  
21 mention of Mr. Stein as attorney for GT Tribe, as a result  
22 Mr. Stein had no duties to GT Tribe that a lawyer would oh  
23 to a client on the date resolution 46 was approved.

24 MS. IBARRA: Can I just object not to this  
25 paragraph but to the prior one that it misstates testimony  
26 of several of the witnesses as to what happened in  
27 Resolution 10.

28 THE COURT: Well if the testimony is different

1 than.

2 MS. IBARRA: Okay.

3 THE COURT: It impeaches the bases for the  
4 testimony but you have to bring that out, I mean he says he  
5 has an understanding of what the testimony was, that's his  
6 understanding. If that wasn't the testimony, the court  
7 will take that into consideration in evaluating the weight  
8 to give the opinions.

9 MS. IBARRA: Okay.

10 Q. BY MR. STEIN: So in opinions E and subsections E  
11 and F, you're looking at specific dates and saying that on  
12 the date Resolution 10 was approved there was no duties of  
13 Mr. Stein as an attorney?

14 A. Correct.

15 THE COURT: We're referring to subsection E right?

16 A. That's right.

17 MR. STEIN: Yes?

18 A. Same for subsection F.

19 THE COURT: Although F talks about 46, resolution  
20 46?

21 A. It's a later date, that was the point, they both  
22 refer to dates.

23 Q. BY MR. STEIN: And so subsection F was --  
24 subsection E referred to 2001, subsection F referred to  
25 September 2003?

26 A. Correct.

27 Q. Subsection G please?

28 A. There are at least three reasons it's unreasonable

1 for GT Tribe the organization to expect that Mr. Stein was  
2 its lawyer. One, the express language of the SMDC  
3 agreement and resolutions, two GT Tribe at all relevant  
4 times had independent counsel at all relevant times --  
5 excuse me, Rae Lamothe, Liz Aronson, Marilyn Barrett,  
6 Judith Shapiro and Honorable Cruz Reynoso, et cetera, and  
7 three, at all relevant times the interest of the SMDC --  
8 and Mr. Stein and the SMDC agreement were different from  
9 and ethically adverse to GT Tribe's interests.

10 Q. Let's look at each of those three reasons very  
11 briefly and if the court would rather take over questioning  
12 about those three feel free.

13 THE COURT: Well no, Cruz Reynoso might have been  
14 an inadvertent, did you understand that Cruz Reynoso was  
15 the tribes attorney?

16 A. I understood that he fulfilled that role on some  
17 level.

18 THE COURT: All right.

19 MR. STEIN: He gave the opinion on the California  
20 constitution at the request of the GT Tribe.

21 THE COURT: Well he was hired right as an expert.

22 MR. STEIN: Right by GT Tribe?

23 A. Is there a difference in that context.

24 MR. STEIN: And he was paid by GT Tribe.

25 THE COURT: Well I don't know you tell me if you  
26 think there's a difference between that and whether he's  
27 actually their lawyer. He was doing legal work?

28 A. He was doing legal work so they hired him to

1 provide an opinion it sounds like.

2 THE COURT: All right I'm just --?

3 A. I understand it's different than if he were their  
4 expert because experts are governed by 2034 u you know zero  
5 point zero.

6 THE COURT: Did you see an opinion also by Cruz  
7 Reynoso?

8 A. I believe I did see an opinion.

9 THE COURT: Did you see one by Armand Arabian?

10 A. No.

11 THE COURT: If Armand Arabian gave the same point  
12 would you say Armand Arabian why also representing the  
13 tribe?

14 A. If he were hired and paid by the tribe.

15 THE COURT: Right.

16 A. Yes.

17 THE COURT: Okay.

18 Q. BY MR. STEIN: But is your understanding that Rae  
19 Lamothe was tribal general counsel?

20 A. Tribal general counsel as was Liz Aronson as  
21 waters Marilyn Barrett was --.

22 Q. Marilyn Barrett was an outside attorney?

23 A. Outside attorney, correct.

24 Q. Judy Shapiro was an outside attorney?

25 A. That's my understanding.

26 Q. And Honorable Cruz Reynoso would be an outside  
27 attorney too?

28 A. Correct.

1 Q. That's only based on your understanding?

2 A. Right.

3 Q. Number 3 can you explain why Number 3 is  
4 important. First one Number 3 is and why it's important?

5 A. Well I think I explained before that there are  
6 always two sides to an agreement and SMDC was on one side  
7 the tribe was on the other. They had a common goal,  
8 completion of this project but they had different interests  
9 and they were ethically adverse in that the tribe wanted to  
10 control costs, Mr. Stein and SMDC wanted to get paid for  
11 the work that they did, there were specific terms in the  
12 SMDC agreement that involved payment and duties of each and  
13 their fulfillment of that contract was up to each of them,  
14 so ethically they were adverse and on opposite sides of the  
15 transaction and so it was unreasonable for the corporation  
16 GT Tribe as an organization to consider Mr. Stein to be the  
17 lawyer because of that ethically adverse relationship. So  
18 they --.

19 THE COURT: Should they have been advised of the  
20 conflict, in other words is it the burden on the lawyer to  
21 tell the client, look these are the conflicts that we could  
22 run into that I see --?

23 A. The answer is yes if he is their lawyer and --.

24 THE COURT: Well even if he's getting into a  
25 business relationship and he's a lawyer, do you think  
26 maybe --?

27 A. I think that lawyers --.

28 THE COURT: Just --?

1           A.    We as lawyers run into problems whenever we do  
2 business transactions with civilians because there's always  
3 an opportunity for the civilian to say well you were the my  
4 lawyer or I thought you were my lawyer it happens all the  
5 time.

6           THE COURT:  I know, eye know?

7           A.    And that's why Mr. Stein took such great care in  
8 including all those phrases in the SMDC agreement to avoid  
9 the impression or to avoid any ambiguity that there might  
10 have been.

11           THE COURT:  So you're saying if he -- if he says  
12 you know I'm not your lawyer, I'm just your business  
13 partner, then he doesn't have any obligation to tell you  
14 have about any conflict?

15           A.    Correct.

16           THE COURT:  It's only if -- all right?

17           A.    Otherwise every time we but ask, anytime we did  
18 anything we'd have to explain which this relationship.

19           MR. STEIN:

20           Q.    And and what was the -- was the ethical -- because  
21 the fact that SMDC was ethically adverse to GT Tribe's  
22 interests obvious to you -- in your opinion?

23           A.    Absolutely.

24           Q.    Why?

25           A.    SMDC -- they are -- SMDC has an obvious profit  
26 motive base on the record SMDC agreement.  The tribe has an  
27 obvious motive to not to profit but to control costs and to  
28 get the project built.  They both have that mutual

1 obligation but that's why you have separate counsel, that's  
2 you have those disclosures, you have can't -- especially on  
3 a corporate level, you have can't -- it's easy for -- you  
4 know for individuals to say well someone put this in front  
5 of me and I didn't read it, happens all the time but even  
6 in those contexts you're presumed if you signed it to have  
7 read the document and it's much more important with a  
8 document of this importance and the significance tort  
9 tribe, its long term -- this is a big deal from the tribes  
10 perspective. They cannot get the benefits of portions of  
11 the agreement and say that they didn't really understand or  
12 didn't know the other portions, especially where they have  
13 independent counsel, that's the whole point of having  
14 independent counsel.

15 Q. Can you tell me the origin of the presumption that  
16 if you sign an agreement you've read it?

17 A. I think it's -- you know I think it's so anecdotal  
18 I don't think they even cite cases for it any more, it's  
19 got to be 200 years Old, I have mean how old is our justice  
20 system?

21 Q. Because --?

22 A. And you have people try to say frequently that  
23 they didn't read it and sometimes they get away with it and  
24 there is a presumption that you know the drafting  
25 presumption, that gives civilians an opportunity not to be  
26 taken advantage of lawyers and at least argue that if there  
27 is an ambiguity or something --.

28 THE COURT: You have mean that it's construed

1 against the drafter, that kind of thing?

2 A. Exactly, exactly. Buff there's nothing like that  
3 in this kind of agreement as had you would not expect to be  
4 in an agreement that that is expected to be between  
5 sophisticated parties.

6 THE COURT: Well do you know if there was app  
7 exchange between SMDC and the tribes lawyer in drafting the  
8 SMDC agreement, in other words?

9 A. I don't know, I assume so.

10 THE COURT: Okay?

11 A. This is -- like I said, this is not the kind  
12 of --.

13 THE COURT: In other words who was the drafter is  
14 what I'm asking h do you know who the drafter is?

15 A. I don't know that it matters. That's the -- the  
16 point is that the agreement is so complicated that you  
17 can't construe drafting issues from one side or the other,  
18 that's why they both have lawyers, when you both have  
19 lawyers, your lawyer -- even if he doesn't make a red line  
20 through anything but has reviewed it and says this is  
21 acceptable, he sort of assumes all of the burdens.

22 THE COURT: If you have a lawyer when it's drafted  
23 right and it's going back and forth but if you don't the  
24 Maxim is you construe it against the drafter correct?

25 A. No.

26 THE COURT: No.

27 A. The Maxim is it's construed against the drafter.

28 THE COURT: If --?



1           A.     In general so it has nothing to do with whether  
2 there's an exchange or not.

3           MS. IBARRA:   And.

4           THE COURT:   Okay.

5           Q.     BY MR. STEIN:   And the presence of a later  
6 ratification in 2003?

7           A.     Absolves all of those issues.

8           Q.     Again let me ask you to assume that in Resolution  
9 10 the sign hers did not have an attorney although they had  
10 opportunity to get an attorney and then in 2003 they did  
11 have an attorney when -- when there was an amendment and  
12 modification, what is the affect of the later amendment and  
13 modification on the agreement?

14          A.     The easy answer is as I said earlier that the  
15 signing of the ratification in 2003 corrects everything  
16 that happened before and adopts and symptoms it.  The more  
17 refined answer though is under 3-300 the client is not  
18 tried get a lawyer, the client is required -- the lawyer is  
19 only required to advise the client to get a lawyer and in  
20 this instance I don't think there's any doubt -- any  
21 dispute that the tribe was given an opportunity to obtain  
22 counsel, whether they exercised it or not is really none of  
23 our business because it would be privileged, you can't get  
24 an answer to that question.

25          MR. STEIN:   This would be a very good -- let me  
26 just preview for the Court.  The second opinion and through  
27 the seventh address various assumptions in favor of  
28 Plaintiffs, in other words if you assume that Plaintiffs

1 are correct, then what happens.

2 THE COURT: All right.

3 MR. STEIN: But this is the first opinion and will  
4 be a very good place to stop Your Honor.

5 THE COURT: Okay very good thank you. I guess  
6 we'll see you tomorrow?

7 A. What time.

8 THE COURT: Well you 10:00 o'clock, the rest of  
9 you nine 45, okay.

10 MR. STEIN: Yes Your Honor.

11 THE COURT: Ms. Ibarra I hear you have meetings  
12 that you've been trying to attend in the morning but you  
13 need to get out of them a little early because there are  
14 issues that we want to talk about so make sure had you get  
15 here a little early okay?

16 A. Thank you Your Honor. 12:09 PM.

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