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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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1 GABRIELINO-TONGVA TRIBE VS. STEIN

2 TRIAL TESTIMONY OF W. MILLS

3 10:19 AM.

4 THE COURT: Gabrielino versus Stein, BC361307.  
5 Counsel make your appearances.

6 MS. IBARRA: Delia Ibarra on behalf of Plaintiff  
7 Gabrielino-Tongva Tribe.

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

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

12 A. Good morning Her Honor.

13 THE COURT: Thank you Mr. Mills again good  
14 morning. Okay let's continue with Mr. Mills. He was  
15 giving us his opinions.

16 MR. STEIN: Yes.

17 THE COURT: He was on the fourth I think.

18 MR. STEIN: Yes on Page 8, Mr. Mills if I could  
19 bring your attention to Page 8, Exhibit 1553, can you read  
20 your fourth opinion.

21 A. Sure. Assuming arguendo that Mr. Stein formed a  
22 implied-in-fact attorney-client contract with GT Tribe  
23 beginning on the date of the implied-in-fact  
24 attorney-client agreement there was an attorney-client  
25 relationship that required compliance with 3-300 and 3-310,  
26 but Mr. Stein failed to completely comply with 3-310. So  
27 that's assuming that contrary to my first opinion that  
28 there is actually an attorney-client -- implied-in-fact

1 attorney-client relationship -- contract between the tribe  
2 and Mr. Stein if in were the case then the SMDC agreement  
3 remains enforceable and all amounts remain due and owing  
4 regardless of any 3-310 violation.

5 Q. How is the fourth opinion different than the third  
6 opinion that we discussed yesterday?

7 A. The three dash -- excuse me, the third opinion is  
8 that the focus is on violation of 3-310, the assumption is  
9 there was a violation of 3-310 -- excuse me, 300 and the  
10 fourth opinion focuses on the assumption that there was  
11 separately a violation under 3-310.

12 Q. In light of the -- so the fourth opinion is a what  
13 happens then opinion?

14 A. Correct, as is the fourth opinion.

15 Q. Is it your -- do you still hold to your second  
16 opinion that even if there were an attorney-client  
17 relationship that there was compliance with rule 300 and  
18 three 10?

19 A. I do.

20 Q. So this is just assuming that you're wrong in your  
21 second opinion for the sake of finding out what happens  
22 then?

23 A. Correct, we talked about what happens if there's a  
24 rule 3-300 violation under opinion three and now we'll talk  
25 about what happens if there is a 3-310 violation under  
26 opinion four.

27 Q. What does Paragraph A say?

28 A. Rule 3-310 B requires only disclosure while rule

1 3-310 C requires disclosure and consent. Rule 3-310 does  
2 not address a transaction between a lawyer and a client.  
3 That's rule 3-300. Rule 3-310 relates to conflicts within  
4 an attorney-client relationship to prevent collection of  
5 attorneys' fees for services renders to -- as an  
6 attorney.

7 Q. So what do you mean when you say rule 3-310 did  
8 not address the transaction between an attorney and a  
9 client that's rule 3-300?

10 A. Rule 3-300 is expressly that, transactions between  
11 lawyers and clients where there is an assumption that  
12 there's a lawyer client relationship and that the lawyers  
13 presumed to have had a trustee relationship with the client  
14 and is bound to treat the client as a beneficiary of a  
15 trust and it's implied that the agreement is -- or it's  
16 assumed that the agreement is unfair, that it is -- that it  
17 is not advantageous to the client and that's why 3-300  
18 requires fairness, disclosure, referral to a -- to seek  
19 advice from outside counsel and the consent in writing to  
20 ensure that despite the fact of these assumptions that  
21 it's -- that it's an unfair and fiduciary relationship that  
22 those are all resolved in the clients favor.

23 Q. So rule 3-310, so does the sentence that it does  
24 not address the transaction, how does that apply to this  
25 case?

26 A. 3-310 arises that variety of contexts and can  
27 arise throughout the course of an attorney-client  
28 relationship. If a -- when a lawyer seeks to represent a

1 client h the lawyer has to determine whether or not the  
2 lawyer himself as conflicts based on 3-310 as to whether  
3 there are certainly or business or other relationships that  
4 are required to be disclosed under 3-310 B or if those  
5 relationships are current and involve confidential  
6 information it requires the consent, both disclosure and  
7 consent to and of both parties, the current client and the  
8 former and possibly current client for the lawyer to  
9 commence representation or to continue representation, that  
10 happens because in a corporate context there are mergers  
11 and acquisitions, there are changes in the corporate  
12 entity, there are changes within the law firm and when  
13 anything changes that affects -- that creates a conflict  
14 the lawyer has to stop h get that consent, and if they  
15 can't get the consent from both clients and/or have not  
16 done it in the beginning in the proper way then they are  
17 subject to disqualification.

18 Q. So --?

19 A. And other bad things.

20 Q. So.

21 THE COURT: Well you mean if they don't withdraw  
22 they are subject to the bad things but I mean if the  
23 conflict kind of arises somewhat later in the relationship?

24 A. The choice is obtain the consent when it arises or  
25 withdraw yes.

26 MR. STEIN: And then the sentence rule 3-310  
27 relates to conflicts within an attorney-client relationship  
28 to prevent the collection of attorneys' fees for services

1 rendered as an attorney. In your knowledge in this case  
2 are there any attorneys' fees for services rendered as an  
3 attorney?

4 A. None that I'm aware of.

5 Q. Is it your understanding that Mr. Stein did not  
6 charge any attorneys' fees for services rendered as an  
7 attorney?

8 A. That's my understanding yes.

9 Q. So even if the assumptions are true, rule 3-310  
10 would do what?

11 A. In the context of this case, I don't think there  
12 really is anything that 3-310 would do other than  
13 potentially require withdrawal.

14 Q. Can you go to Paragraph B and read it please?

15 A. There are no cases interpreting 3-310 which have  
16 been applied to void a separate contract between an  
17 attorney and its client relating to non legal services,  
18 much like the SMDC agreement. As a result, any violation  
19 of 3-310 would not avoid amounts due under the SMDC  
20 agreement whether at the beginning or at any point during  
21 the course of the contract.

22 Q. Turning to the first sentence, no cases  
23 interpreting rule 3-310 have been applied to void a  
24 separate contract between an attorney and its client  
25 relating to non legal services, how did you determine that?

26 A. Well part of the work that we -- that I do on a  
27 daily basis involves both being familiar with cases under  
28 3-310 and we did some additional research to ensure that

1 there weren't anything we missed, because obviously we  
2 don't look at every case every time, but we were able to  
3 determine that all of the cases that interpret 3-310  
4 involve either express, written or implied agreements and  
5 there really isn't any dispute as to whether or not the  
6 lawyer is representing the client.

7 Q. How long have you been trying to keep current on  
8 the new cases coming down under rule 3-310?

9 A. Personally about 10 years. 3-310 I think was  
10 first added in 1988 or 9, that was before I started doing  
11 this but I didn't get into the analysis, evaluation and  
12 consulting relating to issues like 3-310 until about the  
13 last 10 years, it might have been a little bit longer than  
14 that but it's around that time frame.

15 Q. So would it be accurate to say that for 10 years  
16 you've tried to keep on top of every case coming down under  
17 3-310?

18 A. Correct.

19 Q. Did you also look at case that's came down before  
20 the 10 year period began?

21 A. Yes of course.

22 Q. And turning to the second sentence, as a result  
23 any violation of 3-310 would not avoid amounts due under  
24 the SMDC agreement, what did you mean by that?

25 A. It means that because there are no cases that seek  
26 to limit or reduce or impact separate non lawyer -- or  
27 contracts for non lawyer services, and they could be  
28 anything from broker agreements to development agreements

1 like this one, it could be an agreement to buy itself cars,  
2 almost anything, but there are no case that's interpret  
3 those kinds of agreements. It's my opinion that because  
4 rule 3-310 just focuses on conflicts within the  
5 attorney-client relationship that there would be no -- no  
6 application of 3-310 to those kinds of agreements.

7 Q. Is one reason that there's no application of 3-310  
8 is because 3-300 so squarely addresses non  
9 attorney-client's contracts between an attorney and his  
10 client?

11 A. That's correct.

12 Q. Can you read Paragraph C?

13 A. One penalty for a rule 3-310 violation is  
14 disqualification. Mr. Stein could have been -- assuming  
15 that there was a violation which is --.

16 THE COURT: Okay yes I --?

17 A. Mr. Stein would have been required to withdraw as  
18 GT Tribe's counsel if there was that relationship but GT  
19 Tribe never sought Mr. Stein's withdrawal from any legal  
20 matter and including the SMDC agreement to the extent that  
21 they now claim that there's an attorney for them in  
22 connection with this agreement. Mr. Stein never charged  
23 the attorneys' fees which might be evidence that there was  
24 that Mr. Stein believed there was an attorney-client  
25 relationship.

26 THE COURT: He believed there wasn't a  
27 relationship?

28 A. If he had charged fees he believed there were, but



1 it's one --.

2 THE COURT: It's one factor to consider?

3 A. Exactly. Moreover, the 2006 termination Mr. Stein  
4 on September 9 and October 3, the termination of Mr. Stein  
5 on October 6, 9 and then the SMDC agreement on October 3  
6 also terminated any implied-in-fact attorney-client  
7 contract so there doesn't appear to be any dispute that at  
8 least as of October 3 whatever there might have been  
9 between the tribe and Mr. Stein the SMDC agreement was  
10 implied-in-fact attorney-client relationship was over.

11 Q. In Paragraph C the first two sentences I'm going  
12 to ask about, one penalty for rule 3-310 violation is  
13 disqualification, Mr. Stein could have been required to  
14 withdraw as GT Tribe's counsel but GT Tribe never sought  
15 Mr. Stein's withdrawal from any legal matter and Mr. Stein  
16 never charged any attorneys' fees to GT Tribe, those three  
17 sentences together, I'd like to ask you a series of  
18 questions. Now, it's part of your opinion, it's your -- is  
19 it your understanding that Rae Lamothe was an independent  
20 tribal general counsel for GT Tribe?

21 A. That's right we discussed independence on day one.

22 THE COURT: Right you already testified to that,  
23 yes.

24 A. Yes.

25 Q. BY MR. STEIN: Is it your -- do you have an  
26 understanding as to whether Rae Lamothe ever said under  
27 3-310 Mr. Stein you should be disqualified because you have  
28 an attorney-client relationship?

1           A.    I don't believe that issues was ever raised until  
2 this -- this case was filed.

3           Q.    Do you believe that --.

4           THE COURT:  Wait a minute, okay just so I'm clear.  
5 So your understanding is that Rae Lamothe never told Mr.  
6 Stein you need to withdraw or you're fired or anything like  
7 that right?

8           A.    Right not that I'm aware of.

9           THE COURT:  Okay just?

10          A.    Not just Rae Lamothe, but no one representing GT  
11 Tribe or GT Tribe itself independently ever said you have a  
12 conflict you have to withdraw.

13          THE COURT:  But doesn't -- well okay.  Does the  
14 obligation though reside with the attorney himself to  
15 withdraw?

16          A.    Well someone's got to identify the conflict.

17          THE COURT:  Right?

18          A.    And as far as I know, let's leave it at that, no  
19 one ever identified a conflict until after the lawsuit --  
20 until the lawsuit was filed.

21          THE COURT:  Basically what you're saying is even  
22 if the attorney had an obligation to himself which I think  
23 attorneys do right?

24          A.    Sure.

25          THE COURT:  They have way obligation to say I have  
26 a conflict or appearance of a conflict so I need to advise  
27 my client, get a waiver, consent or just withdraw?

28          A.    Correct.

1 THE COURT: But if that doesn't happen there were?  
2 Other attorneys relating the tribe who didn't raise it  
3 either?

4 A. That's right.

5 THE COURT: All right.

6 A. All of the general counsels should have known  
7 about the same rule, should have been able to identify if  
8 they had any sense that Mr. Stein was representing the  
9 tribe in the context of the SMDC agreement outside -- it  
10 could only be outside the SMDC agreement but they could  
11 very easily have raised it and to start the dialogue that  
12 would ultimately have resulted in at least a discussion  
13 about -- about withdrawal.

14 MS. IBARRA: I'm going to object that it misstates  
15 testimony and evidence that we've already seen including  
16 some communications with Ms. Aronson and Mr. Stein.

17 THE COURT: That's -- you can raise that on cross  
18 if you need to but I -- go ahead.

19 MS. IBARRA: Okay.

20 Q. BY MR. STEIN: Would -- taking Rae Lamothe for  
21 five years or Ms. Aronson for her six months, either of  
22 those two, if there was in fact an attorney-client  
23 relationship with Mr. Stein, wasn't it part of their duty  
24 of care to identify that on behalf of GT Tribe?

25 A. Yes.

26 Q. And the failure to do so, if in fact this  
27 attorney-client relationship was that a breach of their  
28 duty of care to their own client?

1           A.    I think so.

2           Q.    Could you explain why you think so?

3           A.    Well conflicts aren't examined in a vacuum just as  
4 Mr. Stein if he were their lawyer would be required to  
5 examine conflicts. The lawyers representing GT Tribe would  
6 also be required to and should have examined conflicts and  
7 they should be looking at both Mr. Stein and other  
8 relationships that they or the tribe might be engaged with  
9 with outside professionals to determine whether or not  
10 there was some potential violation and California is not a  
11 whistle blower state so they had no -- the standard of care  
12 doesn't extend to their writing a letter to the state bar  
13 or advising anything like that, but I think they owed it to  
14 their clients to recognize it as part of the standard of  
15 care and to have said something about it.

16           THE COURT: But does the primary obligation rest  
17 with the lawyer though?

18           A.    No question, that's what I'm saying.

19           THE COURT: All right. But in the absence --

20           A.    We're talking about if a lawyer who was not Mr.  
21 Stein recognized there was a potential problem with that  
22 relationship and they represented the tribe and the tribe  
23 would be affected by it, they had an obligation to  
24 communicate that to the tribe.

25           THE COURT: I'm just saying there are multiple  
26 obligations?

27           A.    Right. It doesn't relate to Mr. Stein's  
28 obligation.

1 THE COURT: We'll relieve him of his, but there  
2 are others who may also have had it, okay.

3 Q. BY MR. STEIN: Is the fact that Rae Lamothe or  
4 Elizabeth Aronson had to commit malpractice for failure to  
5 identify a conflict, is that in your mind one more reason  
6 for your opinion.

7 THE COURT: Was that your opinion though, if they  
8 failed to identify the conflict, they're somehow failing in  
9 their duties, I just want to make sure that --?

10 A. Malpractice is.

11 THE COURT: It's clear?

12 A. Malpractice is a conclusion that I would leave to  
13 the court. There are elements to the cause of action  
14 requires duty, breach, you know et cetera.

15 THE COURT: All right?

16 A. So the answer would be it's below the standard of  
17 care for them not to have done that and that could provide  
18 the basis for a malpractice claim.

19 THE COURT: Okay?

20 A. Should anyone care to pursue it.

21 THE COURT: Okay go ahead Mr. Stein. I think you  
22 have wanted him to assume it was below the standard of  
23 care, something like that.

24 MR. STEIN: Could we take our morning break a  
25 little bit early today.

26 THE COURT: Sure.

27 MR. STEIN: I was matters of ceremonies for 250  
28 person dinner last night I'm a little fatigued.

1 THE COURT: A little under the weather.

2 MR. STEIN: Just five minutes.

3 THE COURT: Okay go ahead and step down.

4 (Break taken.) 10:37 AM to 11:06 AM.

5 THE COURT: Gabrielino versus Stein h BC361307.

6 Mr. Stein are you ready to continue or.

7 MR. STEIN: Yes Your Honor and thank you for the  
8 court's indulgence.

9 MR. FORDYCE: I also want to thank the court as  
10 well, you know I've known Mr. Stein for a couple of years  
11 now and he commits himself to everything he does with a  
12 passion and a diligence and sometimes I think it might not  
13 be to his best health ends and I'm just going to keep my  
14 eye on him so thank you Your Honor we appreciate the time.

15 THE COURT: All right thank you.

16 Q. BY MR. STEIN: Mr. Mills may I direct your  
17 attention to Paragraph D.

18 THE COURT: Mr. Stein do you want Mr. Fordyce to  
19 do some of this and we can continue.

20 MR. STEIN: I don't think Mr. Fordyce.

21 THE COURT: He didn't prepare.

22 MR. STEIN: Yeah.

23 MR. FORDYCE: Yeah it's better for Mr. Stein to do  
24 it Your Honor.

25 THE COURT: All right.

26 A. Yes if you don't mind, I think you asked me a  
27 question and I will be happy to read Paragraph D. Another  
28 penalty for a 3-310 violation is Mr. Stein might be subject

1 to the tribes claim for legal malpractice if all other  
2 elements of a malpractice claim can be proven violation of  
3 3-310 alone does not establish the claim for legal  
4 malpractice, citing Stanley versus Richmond and the quote  
5 in violation of the rules of professional conduct does not  
6 in and of itself render an attorney liable for damages.

7 Q. So for Paragraph D, why did you put that in the  
8 fourth opinion?

9 A. Just to contrast what is available, I said what  
10 3-310 doesn't do but it does -- but 3-310 does have some  
11 teeth, disqualification as I indicated under C, potential  
12 claims for legal malpractice under Paragraph D is another  
13 penalty and then I go on and discuss in Paragraph E that it  
14 might be -- violation of 3-310 might subject Mr. Stein to a  
15 claim of breach of fiduciary duty by an attorney again if  
16 all other necessary elements of breach of fiduciary duty  
17 can be proven, the claims for breach of fiduciary duty are  
18 the same elements as a claim for breach of -- claim for  
19 legal malpractice, the proof may vary, the evidence may  
20 vary but the elements are basically the same.

21 Q. So let me stop you there. So if I can ask, you  
22 state in -- and I'm going to build three pieces together,  
23 you state in B that one penalty under 3-310 is not avoiding  
24 amounts under the SMDC agreement but rather there are three  
25 penalties under 3-310, one disqualification, two legal  
26 malpractice when the other elements are present and three  
27 breach of fiduciary duty if those elements are present?

28 A. That's right there are other potential penalties

1 but none that are really relevant to this context.

2 Q. Okay. And so is that your testimony that you --  
3 3-310 does three things but does not do the fourth which  
4 would be --?

5 A. Well I think it's the other way around.

6 Q. Please.

7 A. It does one thing, it does not void the agreement  
8 but it does permit, there are remedies in the general sense  
9 that a client has if there's a violation of 3-310.

10 Q. And which of these three penalties,  
11 disqualification, legal malpractice or breach of fiduciary  
12 duty, of those three things, which did you see a violation  
13 of 3-310 alone, without more, allow as a penalty?

14 A. Potentially just disqualification but there's  
15 additional facts that are required to prove  
16 disqualification.

17 Q. And the case law that you mentioned saying that  
18 you -- saying that 3-300 is not sufficient for legal  
19 malpractice is Stanley V Richmond. Is that also the same  
20 for breach of fiduciary duty?

21 A. Yes.

22 Q. Is it the same case law?

23 A. Yes. It's 3-310 not 3-300 but yes.

24 THE COURT: Is that because you have to meet the  
25 other elements?

26 A. Yes and that's basically Stanley versus Richmond  
27 says, you can't have any of these claims without meeting  
28 each, collectively all of the elements.



1 Q. BY MR. STEIN: Did we move to subparagraph F  
2 please?

3 A. Sure. I note here that Mr. Stein would have been  
4 subject to a disqualification as an attorney for SMDC in  
5 the present action, assumption -- assumption there was an  
6 attorney-client relationship and assuming he violated  
7 3-310, if -- I find it curious that GT Tribe has not sought  
8 Mr. Stein's disqualification as SMDC's attorney at any time  
9 in this action and it appears to me to be an indication  
10 that the present action is based on a belated and improper  
11 litigation tactic rather than a substantive ethical  
12 violation. Again, I cite in re: Kirsh, which I've  
13 mentioned several times before.

14 THE COURT: Can I ask you what you mean by  
15 improper litigation tactic, in other words usually the  
16 claim is made when they try to disqualify, usually the  
17 claim you're trying to use that as a litigation tactic to  
18 get rid of a really qualified attorney, in other words when  
19 they make a motion, the other side says you're trying to  
20 disqualify me that's a litigation tactic to get rid of an  
21 effective attorney, so how is it in this circumstance like  
22 the opposite as a litigation tactic?

23 A. I don't know if it's always done to get rid of an  
24 effective attorney, certainly has been my experience it has  
25 been does to do that and perhaps in those instances they  
26 wouldn't care if they felt they did better with him than  
27 without him, I suppose, but it's -- normally when there is  
28 a -- when the facts are identified by the attorney for the

1 client that there was a 3-310 violation, you raise it  
2 immediately. Usually there is a confidentiality aspect to  
3 it. The argument is that because there was this conflict,  
4 you got confidential information as a result of the  
5 representation, you can't use that confidential information  
6 against the former client which -- and when I mentioned  
7 earlier that there were additional fact, it's that fact  
8 that was missing from that fact pattern, there is no -- I'm  
9 not aware of any argument that there is confidential  
10 information that was being used but usually if you find it  
11 you do it immediately and you know if there's just a  
12 technical violation and the client does not identify.

13 THE COURT: I have guess --?

14 A. Doesn't say specifically that there was  
15 confidential information, that's all the client has to do  
16 there was confidential information, he doesn't have to  
17 identify what it is, and the lawyer is -- he's gone.

18 THE COURT: But my question is what benefit --  
19 because you say it's a litigation tactic, what benefit is  
20 the plaintiff getting by not trying to disqualify Mr. Stein  
21 is the question I have. In other words if they did I say  
22 qualified it?

23 A. Well I think they waived it by now, number one.

24 THE COURT: Okay.

25 A. And Number 2, doing it late, the idea of being  
26 late means that it's too late because they've already sort  
27 of waived it for waiting to litigate it as long as they've  
28 litigated it. I can't go into their minds as to why it

1 might be beneficial or not, they're trying to have use the  
2 3-310 violation not to disqualify Mr. Stein but to prevent  
3 him from collecting on the fees that are due under the SMDC  
4 agreement to which 3-310 probably doesn't apply anyway. So  
5 that's the -- that's the tactic.

6 THE COURT: So by not disqualifying him here, they  
7 -- I mean they're still making the claim --.

8 MR. STEIN: No Your Honor.

9 THE COURT: Well let me ask, in other words  
10 whether he's in the litigation or not, they're still making  
11 the claim that he committed legal malpractice, that he  
12 shouldn't get his fees and all that, so whether he's here  
13 or not, that claim still exists, so my question is by  
14 getting rid of him -- or by not getting rid of him how are  
15 they benefitting, maybe that's not really what you mean by  
16 this?

17 A. I didn't discuss in terms of benefit I think.

18 THE COURT: Well you said --?

19 A. I think it's a tactic that is late and that --  
20 it's late to suggest that it was something that was thought  
21 up in the context of trying to did I say engage from the  
22 SMDC agreement as opposed to other way around. You  
23 don't -- if it's real, then you litigate on its own, and as  
24 I said you do it immediately once it's discovery and even  
25 if they didn't realize it had happened until after the SMDC  
26 agreement had been fully performed and terminated, you  
27 still expect them to raise it in some way.

28 THE COURT: So I think what I hear you saying is

1 it's kind of a re -- another -- you're restating that  
2 they're getting it?

3 A. That's what I why I cited Kirsh, it's the same  
4 issue.

5 THE COURT: It's kind of same thing you sewed  
6 earlier is now they're trying to avoid it so they don't  
7 have to pay fees?

8 A. Exactly.

9 THE COURT: But what I heard you say is in this  
10 litigation meaning in this lawsuit they didn't bring a  
11 motion to disqualify him from representing SMDC here?

12 A. That's right, they could have.

13 MR. STEIN: Yeah.

14 THE COURT: So I'm not understanding, okay well?

15 A. It just suggests to me that they're not really  
16 serious about the 3-310 violation.

17 THE COURT: Okay?

18 A. However it benefits them.

19 THE COURT: So you're saying it doesn't appear  
20 that they are taking it seriously is that --?

21 A. No. They appear to be pursuing it as an  
22 afterthought, having found it -- having set their minds to  
23 invalidating the SMDC agreement, this is just -- this is  
24 just another aspect of it that their expert Mr. Margolis is  
25 saying existed when it really number one doesn't exist but  
26 also the he fixtures of it would be to invalidate  
27 entitlement to the recovery of the amounts under the SMDC  
28 agreement and it serves no other meaningful purpose.

1 Q. BY MR. STEIN: So looking at the three years  
2 between the September 2003 resolution 46 affirmation that  
3 the SMDC agreement was valid and binding and that Rae  
4 Lamothe had as independent counsel given legal advice and  
5 the termination in October, did you see any evidence of any  
6 effort by Rae Lamothe or Liz Aronson to bring up a  
7 potential conflict under rule 3-310 to their client GT  
8 Tribe.

9 MS. IBARRA: Objection that's -- he's asking the  
10 expert witness to testify as to facts that occurred? I  
11 don't -- it's vague.

12 THE COURT: Overruled. If he in his review of any  
13 of the materials, because experts are provided materials so  
14 the question is in your review of the materials did you see  
15 that, I guess the follow-up would be did you rely on it to  
16 form your opinion in some way to I'm going to overrule the  
17 objection and allow him to answer the question?

18 A. The answer is I was provided no information that  
19 contained facts that I was able to discern would establish  
20 that fact.

21 Q. BY MR. STEIN: And in the --.

22 THE COURT: So you don't know basically based on  
23 your review you didn't see anything one way or the other on  
24 what you were provided?

25 A. Well I will not sure I would phrase it that way.  
26 I didn't find -- there was nothing in the information  
27 that --.

28 THE COURT: That you were provided right?

1           A.     That I was provided that contained evidence of  
2 that fact.

3           THE COURT:   Okay thank you.

4           Q.     BY MR. STEIN:   And in the 11 years of litigation  
5 since the lawsuit was filed November 2006 through the  
6 present have you seen any indication that GT Tribe has ever  
7 tried to disqualify Mr. Stein because of a purported  
8 violation of rule 3-310?

9           A.     No.

10          Q.     In your experience, if a party is sincerely  
11 concerned that there is in fact a rule 3-310 violation, in  
12 your experience, would you have seen evidence in -- in that  
13 three years or in that 11 years?

14          A.     Well I -- yes.   I would expect to have seen  
15 evidence supporting a 3-310 violation prior to it being  
16 asserted in the complaint in this matter.   I would have  
17 seen one of the general counsels who was -- who's job it  
18 was to protect the tribe to sent a cease and desist letter  
19 not literally in those terms but something that would say  
20 you have this conflict, we recognize that you should  
21 withdraw or you're terminated and that letter would support  
22 some transition to new counsel if that were the -- if it  
23 had been recognized and as I said in something that each of  
24 the general counsels, the successive general counsels and  
25 maybe even some of the outside lawyers depending on their  
26 role in the circumstance should have been alert to the idea  
27 that Mr. Stein was actually performing legal services  
28 outside the SMDC agreement and therefore, have been

1 complied to require with 3-310 and had failed.

2 Q. In the 11 years, is it your -- in forming these  
3 opinions, is it your understanding --.

4 THE COURT: What 11 year period are we talking  
5 about.

6 MR. STEIN: In the 11 years since this litigation  
7 was filed, is it your understanding that counsel for GT  
8 Tribe have included Sheppard Mullin, Jeffers, Mangle and  
9 Butler; card [TPHUS] Gonzalez, law offices of Michael  
10 Gonzalez, Lara Ibarra and Davis, and now Albright Yee and  
11 Schmidt.

12 MS. IBARRA: Objection relevance.

13 Q. BY MR. STEIN: Is it your.

14 THE COURT: Overruled he can answer continue the  
15 question.

16 Q. BY MR. STEIN: In your forming of the opinions,  
17 would you have expected that one of those six different law  
18 firms would have come forward with a motion to disqualify  
19 if in fact they thought there was a rule 3-310 violation by  
20 Mr. Stein.

21 MS. IBARRA: Objection asked and answered, we've  
22 already covered this, it's duplicative.

23 THE COURT: Overruled you mean move to disqualify  
24 you for counsel of SMDC in in litigation.

25 MR. STEIN: Yes.

26 THE COURT: Okay overruled?

27 A. Of course I would have expected it to happen early  
28 because if it doesn't happen early it's subject to as I

1 indicated a waiver argument and I think after 11 years it's  
2 hard to imagine that the waiver argument wouldn't be  
3 successful but that's certainly not my call.

4 Q. BY MR. STEIN: Can we go to finish this opinion  
5 with subparagraph G?

6 A. The present case appears to be an offensive use of  
7 fabricated violations of the CRPC as in re: Kirsh because  
8 GT Tribe is trying to avoid payment to SMDC under amounts  
9 incurred under the SMDC agreement prior to any violation.  
10 At most the reported violations, if they think exist at  
11 all, technical violation and there's no apparent evidence  
12 GT Tribe is damaged based on purported ethical violations.  
13 Now that's very similar to what I testified yesterday about  
14 opinion Number 3 and if we need to discuss it further I'm  
15 happy to.

16 Q. So why is subparagraph G repeated for the fourth  
17 opinion?

18 A. Because it applies equally to a violation of 3-310  
19 as it did to 3-300.

20 Q. Does the court have any other points that it  
21 wishes to seek clarified before we move to the fifth  
22 opinion.

23 THE COURT: No I guess my only question would be  
24 if whether a conflict existed, is at the heart of the  
25 litigation, would you expect that a motion would be brought  
26 to disqualify somebody, in other words the heart of the  
27 litigation is whether or not there was such a  
28 disqualification or a violation of ethics, bringing the



1 motion --?

2 A. Would be consistent with the idea that he was  
3 their lawyer and -- I mean it's just -- it's almost -- it's  
4 a nuts and bolts thing. If you think that opposing counsel  
5 was the lawyer for your client, the very first thing you do  
6 whether you think he's valuable or not is you assert that  
7 and you have him disqualified at the very beginning because  
8 it's consistent with the argument that he was the tribes  
9 counsel from the very beginning and so that --.

10 THE COURT: I guess my question though is if that  
11 begs the -- it kind of begs the question because the  
12 litigation itself was initiated because they thought there  
13 was a conflict and that was the basis for the complaint  
14 itself to it would almost not requiring the court to  
15 adjudicate the merits of the claim here if the court  
16 disqualified Mr. Stein right off the bat, I probably  
17 wouldn't do that, I wouldn't --?

18 A. I I wouldn't presume to tell a judge how to rule  
19 on something like that.

20 THE COURT: Yes?

21 A. But in my view they could be dealt with separately  
22 because if Mr. Stein is only representing himself which he  
23 is entitled to do even if there was that conflict.

24 THE COURT: He's not representing --?

25 A. He's not doing that.

26 THE COURT: Right he's not representing himself?

27 A. Yeah he would be able to represent himself h Mr.  
28 Stein and Mr. Fordyce switched rolls so Stein is renting

1 himself and his law corporation.

2 THE COURT: Here?

3 A. No if he has.

4 MS. IBARRA: But he has at different points?

5 A. The point is that would have been -- and you  
6 disqualified him from serving as SMDC's lawyer, okay, that  
7 would have satisfied the clients, former clients -- the  
8 assumption that the former complaint has a valid 3-310  
9 argument, not necessarily adjudicating the question because  
10 as you know there isn't -- the idea whether it actually  
11 happened or not as is the basis for this case, can be  
12 delayed.

13 THE COURT: Yes?

14 A. But it's often that lawyers are disqualified  
15 without much proof at all, just the assertion is made.

16 THE COURT: Kind of a protective measure?

17 A. Yeah it's Sal Tori, it happens to make sure at  
18 least on an ongoing basis there's no pollution of the -- or  
19 confusion of the issues but as I said that is something  
20 only if the motion is made and that is -- I have been in  
21 that particular circumstance, we deal with disqualification  
22 motions all the time and they're made regularly where  
23 there's a whiff of a conflict and they only become  
24 challenging when there is a -- when the lawyer can prove  
25 that there's really no dispute about the lack of  
26 reasonableness of the clients expectation he was the  
27 lawyer.

28 THE COURT: Okay?

1           A.    So you would have to adjudicate whether he was or  
2 not, it is just disqualification would be proper or was  
3 available.

4           MR. STEIN:   Turn to Page 10.

5           THE COURT:   Are you onto the next opinion now, the  
6 fifth.

7           Q.    BY MR. STEIN:   On Page 10, the fifth opinion as  
8 stated.   Could you read it please?

9           A.    Yes.   Assuming arguendo that Mr. Stein informed an  
10 implied-in-fact attorney-client contract with GT Tribe  
11 beginning on the date of that implied-in-fact agreement,  
12 attorney-client agreement, there was an attorney-client  
13 relationship that required compliance with Rules 3-300 and  
14 three 10, again the exact same assumptions as the others.  
15 And Mr. Stein failed to comply with one or both rule 3-300  
16 or 3-310.   If this were the case, then GT Tribe cannot  
17 establish the elements necessary to prove a claim for legal  
18 malpractice.   We've discussed just a few minutes ago that  
19 in order to have a claim for both legal malpractice and as  
20 we see here and in the sixth opinion nor breach of  
21 fiduciary duty any Defendant would have to -- any plaintiff  
22 would have to prove each of the required elements and in my  
23 view there are several elements for each that could not be  
24 established based on information that's provided.

25           Q.    So before proceeding to the rest of opinion, let  
26 me just go over simple ground.   Your first assumption is  
27 Mr. Stein formed an implied-in-fact attorney-client  
28 contract with GT Tribe.

1           THE COURT: Mr. Stein I'm going to ask you to move  
2 on because unless you're asking a new question, he's  
3 already testified to that so --.

4           Q. BY MR. STEIN: So that is not your -- that is not  
5 your opinion?

6           A. As I said before, I disagree with that opinion but  
7 we're using it as an assumption so we can complete the  
8 analysis on the other points.

9           THE COURT: Right and the court understand that  
10 you don't need to go over that Mr. Stein.

11          MR. STEIN: Right very good.

12          THE COURT: I understand all those assumptions  
13 he's not stating there was any evaluation he's saying  
14 assuming.

15          A. This violation that's been consistent throughout  
16 the opinions then.

17          MR. STEIN: Then how is the fifth machine  
18 different from the earlier opinions?

19          A. Legal malpractice and the duties that could be  
20 breached in connection with the legal malpractice claim  
21 could be broader than a violation of 3-310 or 3-300 and  
22 specifically I talk in the fifth opinion the standard of  
23 care.

24          Q. Can we go to Paragraph A please?

25          A. GT Tribe has failed to identify any conduct by Mr.  
26 Stein as an attorney for GT Tribe that fell below the  
27 standard of care.

28          Q. Why did you add that to the fifth opinion?

1           A.    Well because in reading the materials and the  
2   allegations asserted, there are violations alleged and if  
3   you assume as we do for this opinion and the others that  
4   those violations actually occurred we get to the point  
5   where you just say so what, what is -- yes they're  
6   violations, Stanley versus Richmond says violations alone  
7   don't establish legal malpractice, you have to -- have to  
8   satisfy the elements and so now we look at what elements,  
9   which elements have been or cannot be satisfied I guess  
10   that's the most direct way because I think that for this  
11   and for the other there are at least two elements for this  
12   claim and one for the other that can't be satisfied based  
13   on the information provided.

14           Q.    So what you're saying is that while a -- you  
15   have -- you did not see any conduct pointed to that fell  
16   below a standard of care?

17           A.    If Mr. Stein were the lawyer, correct.

18           Q.    A standard of care for what, for?

19           A.    Standard of care in the context of legal  
20   malpractice is defined by statute, but various rules from  
21   the -- in statutes the Evidence Code, the rules of the  
22   professional conduct, the business and professions code,  
23   the Code of Civil Procedure, the probate code, there are  
24   just a number of codes that apply to determine the general  
25   foundation for the standard by which lawyers operate, you  
26   place that in the context of what a reasonable lawyer would  
27   do while guided by those rules in the context in which we  
28   find any particular -- the superstructure for these

1 allegations. The standard of care in this case would be of  
2 a business -- assuming that Mr. Stein is the lawyer he  
3 would be a litigator or transaction lawyer representing a  
4 corporate entity would be too narrow to say representing a  
5 tribe because it's hard to measure that among lawyers which  
6 is hard enough, any of us know who do that, and you know  
7 what would a reasonable lawyer would do. Normally it's  
8 within the geographic region but we found that the practice  
9 in Los Angeles is not substantially different than the  
10 practice in the standard of care in San Diego or San  
11 Francisco.

12 Q. And would that standard of care be impacted by the  
13 presence already of Rae Lamothe or Elizabeth Aronson as  
14 lawyers for the GT Tribe?

15 A. No.

16 Q. Paragraph B please.

17 THE COURT: So the fact that they have some other  
18 counsel doesn't impact?

19 A. The standard of care, correct.

20 Q. BY MR. STEIN: Read Paragraph B please?

21 A. To the contrary Mr. Stein's actions in the second  
22 half of 2006 appears to meet the standard of care. Mr.  
23 Stein attempted to save guard assets of GT Tribe, the  
24 organization, following requirements of securities laws and  
25 Libra investor agreement which were important to the  
26 organization and safeguard membership records which are on  
27 the other hand by individual members of GT Tribe, the  
28 organization, Mr. Stein continued to act in the best

1 interest of GT Tribe, the organization, and its members  
2 even if he acted in the best interest of the GT Tribe  
3 tribal council, the governing board of the organization.

4 Q. Can you -- so referring to the second half of  
5 2006, you have pull out these three elements?

6 A. Right.

7 Q. Can you discuss the first element?

8 A. Safeguarding the assets of the organization is --  
9 lawyers have a duty of loyalty H that duty of loyalty  
10 requires that you keep client secrets and confidences. And  
11 also protect the clients financial assets if that is within  
12 the scope of your -- some lawyers don't have that  
13 responsibility but it's clear that you can't -- that if --  
14 to extent that would breach of a lawyer if you assume it is  
15 one those things within his control.

16 Q. And that duty extend to go the organization or to  
17 the tribal council?

18 A. His duty is to the -- his primary duty is to the  
19 organization and the best interest of the individual  
20 members of the organization although they are not his  
21 clients he is a trustee for their interests and assets.

22 Q. Point Number 2, could you explain why you point to  
23 that?

24 A. The securities laws and the sub agreements,  
25 including the Libra investor agreement are fully within the  
26 province, if he is a lawyer, fully within the province of  
27 things that lay people don't know about and because of that  
28 if he is their lawyer, he has responsibility to make sure

1 that his clients interest, that is the -- his -- the  
2 members interests are protected with respect to those --  
3 those aspects of those agreements that he can control.

4 THE COURT: And he needs to place their interest  
5 above his own, does he not?

6 A. Correct.

7 Q. BY MR. STEIN: But to follow the requirements of  
8 securities laws, if Mr. Stein is standing up to the tribal  
9 council and urging as securities laws be violated, that  
10 performing the duty of care?

11 A. If Mr. Stein is advocating for violation of  
12 securities laws.

13 Q. Is advocating that the securities laws should be  
14 followed?

15 A. That is part of his standard -- the standard of  
16 care, yes, a lawyer in that position should be doing  
17 exactly that.

18 Q. And if Mr. Stein is advocating that the Libra  
19 investor agreement budget should be followed, is that  
20 working within the duty of care?

21 A. Yes.

22 Q. The third is safeguard membership records owned by  
23 individual members. How does that uphold the duty of care?

24 A. Individual member records are not owned by the  
25 tribe or the tribal council, they're owned by the  
26 individual members and whether it is HIPAA or whether it is  
27 article one of the constitution or whatever it is -- the  
28 state constitution that apply personal privacy rights Mr.



1 Stein as -- if he is GT Tribe's lawyer has an obligation to  
2 protect those records consistent with privacy laws.

3 Q. And if Mr. Stein sees violations and cannot stop  
4 them, what would Mr. Stein, if he were the lawyer supposed  
5 to do?

6 A. Mr. Stein's obligations would be to report up the  
7 chain.

8 THE COURT: Chain of --

9 A. Chain of within a corporate hierarchy, usually if  
10 there's a an obstruction of the corporate usually occurs as  
11 a pinch point, a single person or a group, if you can go up  
12 the chain you should if you can't or if you think the  
13 organization is about to perform something that is illegal  
14 or at the top are.

15 THE COURT: What if the people are -- let's  
16 suppose going up the chain here would be going to the  
17 tribal council, if the allegation was that the tribal  
18 council was doing something illegal then what or contrary  
19 to the Libra investor agreement, what --?

20 A. If they didn't follow his advice Mr. Stein would  
21 have no choice but to resign.

22 THE COURT: Withdraw.

23 MR. STEIN: And.

24 THE COURT: Which means do nothing basically?

25 A. Which means -- basically.

26 THE COURT: Do nothing, okay.

27 MR. STEIN: And?

28 A. Advise them, write a strong letter if they

1 couldn't file they would have to show subsequent counsel.

2 THE COURT: Protect himself?

3 A. And show the Attorney General if he showed up,  
4 which would be a real problem because obviously the  
5 attorney general has ultimate purview over the enforcement  
6 of the obligations of corporations especially  
7 unincorporated associations and non profits, you write a  
8 letter to protect yourself and to expose those things that  
9 are available to the tribe and you deliver that letter to  
10 the tribal council.

11 THE COURT: Saying you're doing this things and I  
12 think they're wrong and you have to withdraw and that way  
13 you protect yourself from any claim that you were complicit  
14 in that wrongdoing?

15 A. As it were yesterday. You were a former  
16 prosecutor, I don't know.

17 THE COURT: It may not stop the wrongdoing but at  
18 least it protects yourself right.

19 A. That would be.

20 MR. STEIN: So --

21 A. The more important point is that it puts the tribe  
22 on notice of what you think was the right thing to do.

23 Q. BY MR. STEIN: Now I have to ask a foundational  
24 question, and Your Honor tell me if I'm doing it right, is  
25 it your understanding in forming this opinion that Mr.  
26 Stein told the tribal council when faced with wrongdoing  
27 that they had to either get rid of Elizabeth Aronson or  
28 they had to get rid of SMDC and Mr. Stein is that your

1 understanding of your opinion?

2 A. That's my understanding.

3 Q. Is that ultimatum of get rid of her or get rid of  
4 me, a functional equivalent to withdrawing?

5 A. I presume that the get get rid of her was intended  
6 to eliminate a portion of at least the more serious problem  
7 that Mr. Stein had with whatever the tribe was doing and  
8 you know keep me --.

9 THE COURT: Mr. Stein again please the shaking of  
10 the head Mr. Stein.

11 MR. STEIN: I'm sorry.

12 THE COURT: You continually do that and what  
13 happens is it just -- I can't give him credibility to  
14 answer if you continue to do that, that's the problem.  
15 Anyway.

16 MR. STEIN: My apologies.

17 THE COURT: Is that the functional equivalent of  
18 the Doug, saying it's either her or me, is that a  
19 withdrawal from representation?

20 A. Yeah it very well could be.

21 THE COURT: Okay.

22 Q. BY MR. STEIN: In other words if Ms. Aronson is  
23 permitting --.

24 THE COURT: No ask an open-ended question, no  
25 leading questions Mr. Stein.

26 MR. STEIN: Very good.

27 Q. BY MR. STEIN: And Paragraph C?

28 A. I'm aware of no evidence that GT Tribe, the

1 organization, sustained any damage. In particular GT Tribe  
2 received and spent all of its \$898,100, which Mr. Stein  
3 unsuccessfully attempted to temporarily safeguard. In  
4 addition, records for individual members were preserved in  
5 accordance with privacy rights.

6 Q. Why did you add Subparagraph (c) to your opinion?

7 A. Well the fifth opinion is based on an inability to  
8 prove the element. One element that we talked about is  
9 breach, didn't breach the duty was there's no -- I saw  
10 nothing that fell below the standard of care and secondly  
11 the other element that Paragraph C goes to is damage and a  
12 breach regardless of how egregious it might be without  
13 damage does not amount to much of anything from a civil  
14 standpoint

15 Q. And you referred to in particular GT Tribe  
16 received and spent all of its \$898,100 which Mr. Stein  
17 unsuccessfully attempted to temporarily safeguard, what did  
18 you mean by that sentence?

19 A. Well it's my understanding that the disagreement  
20 went Mr. Stein and Ms. Aronson involved the distribution --  
21 the improper did I say distribution of that amount of money  
22 to various people to various things, Mr. Stein disagreed  
23 with it, suggested that it shouldn't be done and tried to  
24 put a stop payment at the bank or something of that nature  
25 and his effort in trying to do that in order to save guard  
26 the money until whether cooler heads to prevail or  
27 something else might happen, was unsuccessful and the  
28 tribe -- ultimately the distributions were made in exactly

1 the way the tribe -- are those in charge decided they  
2 wanted to do it despite Mr. Stein's view that it violated  
3 the investors agreements and violated the potential  
4 securities laws.

5 Q. So are you saying that because the tribe was --.

6 THE COURT: Are we testifying Mr. Stein or are we  
7 asking questions that are open-ended, you can't lead the  
8 witness okay.

9 MR. STEIN: Very good.

10 THE COURT: So you need to ask open-ended  
11 questions because --.

12 MR. STEIN: Turning to the third sentence h in  
13 addition records from individual members were preserved in  
14 accordance with privacy laws, what did you mean by that  
15 sentence?

16 A. I believe that it's -- that the personal  
17 information that I mentioned earlier was not disclosed to  
18 third parties which was consistent with privacy laws and  
19 obviously I don't know what happened to it after Mr. Stein  
20 lost the ability to access the information but he was  
21 successful at least while he was on guard to avoid the  
22 distribution of confidential information to those who are  
23 not entitled to receive it.

24 Q. And was does the court --.

25 THE COURT: Was there anybody requesting the  
26 information?

27 A. I wanted you to finish your your question I'm  
28 sorry.

1 THE COURT: Yeah was there anybody requesting that  
2 Mr. Stein disclose information that he shouldn't have?

3 A. I think that there was at least one request that  
4 the confidential information be provided to someone that  
5 was not the individuals themselves, the information related  
6 to either 15 or 1800 individual members and someone else  
7 wanted to get that information, Mr. Stein refused to give  
8 it to them, he did as I understand it provide what when an  
9 individual member asked to see their information he gave it  
10 to that individual member but not otherwise.

11 THE COURT: So if the individual member said give  
12 it to a third person then --?

13 A. That would be okay.

14 THE COURT: That would be okay?

15 A. But there should be precautions you'd want to take  
16 if you're doing that but in general.

17 MR. FORDYCE: Your Honor as Mr. Stein's counsel,  
18 can we stop today.

19 THE COURT: Sure.

20 MR. FORDYCE: Thank you I appreciate that are you  
21 okay with that.

22 THE COURT: Yes, there was a concern.

23 MR. STEIN: No no what I'd like to do since you're  
24 stopping is I'd like to just get through the last opinions  
25 even if it took a little bit longer and the court is doing  
26 most of the questioning so.

27 MR. FORDYCE: Are you okay doing that.

28 MR. STEIN: I'm following the Court's advice so

1 I'm --

2 A. If I may Your Honor the fifth and sixth opinions  
3 are very similar in terms of their conclusions, the  
4 difference is that the sixth opinion is basically that Mr.  
5 Stein with all those assumptions did not violate -- or the  
6 tribe can't establish a breach of fiduciary duty for the  
7 same reasons but the primary reasons I focused on.

8 MR. STEIN: Mr. Mills.

9 THE COURT: Let him finish because he's going to  
10 get through this pretty quickie so you can get on with  
11 getting home Mr. Stein.

12 MR. STEIN: Very good.

13 THE COURT: Okay?

14 A. Let me finish what I was going to say and then if  
15 you want me to read it I'll be happy to. The tribe failed  
16 to identify damage, that's the only -- identify any damage  
17 that was -- that resulted from -- and I'm not talking  
18 proximate cause, I'm just saying was there any damage that  
19 arguably related to the purported breach of fiduciary duty  
20 and I was not aware of any and as far as I know they  
21 haven't identified anything. But as I said before, the  
22 assumptions the part I'm not reading, are the same  
23 assumptions but this time it's a breach of breach of  
24 fiduciary duty under six.

25 THE COURT: And seven?

26 A. Seven and I'll read this one, GT Tribe claims  
27 there is separately a breach of fiduciary duty of Mr. Stein  
28 as the officer of GT Tribe not as its attorney. Mr. Stein

1 had no fiduciary duty as an officer of GT Tribe for two  
2 complimentary reasons, either reason is sufficient to  
3 defeat a claim for breach of fiduciary duty as an officer  
4 of GT Tribe.

5 Q. BY MR. STEIN: So Mr. Mills let me stop you there.  
6 On the 7th opinion then, how is the seventh opinion  
7 different from the other six opinions?

8 A. The seventh opinion is unique because it relates  
9 to him in his capacity not as an attorney but as a quote  
10 officer of GT Tribe. And based on my understanding, Mr.  
11 Stein was never an officer of GT Tribe. He held several  
12 different titles, he was the CEO of the Gabrielino-Tongva  
13 gaming authority which independents was never really formed  
14 and was not -- that was not an officer, didn't occupy a  
15 role as officer of the actual tribe, and he was also  
16 something called a tribal development officer which is also  
17 not a formal title recognized under Corporations Code  
18 18,000 I believe it's 10 defines the official officers of  
19 an unincorporated association which is similar to those  
20 official officers of an incorporated association. They  
21 include a president, a secretary, a treasurer.

22 THE COURT: Why would somebody do that though, why  
23 would they --?

24 A. Everyone needs a title in order to sometimes do  
25 the thing that they have to do and it's easier -- if Mr.  
26 Stein is obviously not a member of the tribe.

27 THE COURT: Right?

28 A. But he's dealing with under the context of the



1 SMDC agreement, he is acting on behalf of the tribe in  
2 various capacities using a title, sometimes facilitates  
3 communication and makes things easier, it does not by  
4 itself extent fiduciary duties just because you have a  
5 title.

6 Q. BY MR. STEIN: Mr. Mills, your experience in  
7 advising corporations, Indian tribes, and unincorporated  
8 associations, have you ever seen a contractor take a title  
9 of the organization as a nominal matter?

10 A. Yes I've seen developers who call themselves  
11 project manager, called themselves a vice president of  
12 finance, called themselves a variety of things because it's  
13 easier than put on a business card because you want to  
14 convey to a third party that you have some formal capacity  
15 but that title doesn't -- while you know we don't -- we can  
16 talk about third party -- I mean.

17 THE COURT: So you would want?

18 A. Agency.

19 THE COURT: Convey to somebody that you have some  
20 position or authority in the organization?

21 A. That's right. That doesn't mean that you have --.

22 THE COURT: That you actually have it?

23 A. Oh that you have fiduciary obligation that's flow  
24 from that title.

25 Q. BY MR. STEIN: So following up on the questions  
26 and the Court's point, if the developer puts down a  
27 business card that says he's a project manager for the  
28 organization that he's contracting with or if the developer

1 says that I'm vice president of finance of that  
2 organization, does that representation create fiduciary  
3 duties to the organization?

4 A. No.

5 Q. Why not?

6 A. I think that they're -- well the only actual  
7 officers of a corporation I'm not you're ostensible  
8 officers but only actual officers have fiduciary  
9 obligations he may have other obligations but depending on  
10 the real or implied contractual relationship he might have  
11 with the tribe but in terms of whether the tribe can rely  
12 on him to -- a fiduciary duty of a corporate officer  
13 requires -- is a duty of loyalty, it's much more limited  
14 than an attorney's duty to a client, he as you indicated  
15 before has to put his own interest first.

16 THE COURT: Huh mean the attorneys interest or the  
17 clients?

18 A. I'm talking about the client, the corporations  
19 interest above his own.

20 THE COURT: Yes?

21 A. And that means that he can't unless expressed in  
22 bylaws or authorized by statute he can't compete, he  
23 can't -- he can't do a variety of things that you would  
24 otherwise do relative to the corporation.

25 Q. BY MR. STEIN: Mr. Stein was manager or president  
26 of SMDC; is that your understanding?

27 A. Yes.

28 Q. Was Mr. Stein's first duties to SMDC or to GT

1 Tribe the organization?

2 A. Mr. Stein's only duties to GT Tribe were to --  
3 were those expressed in the SMDC agreement and they were  
4 limited by the terms of the SMDC agreement but Mr. Stein  
5 as -- had completely separate and -- separate duties to  
6 SMDC of which he was an officer as I understand and  
7 president.

8 Q. So as officer of SMDC was Mr. Stein required to  
9 put SMDC's interests in front of the interest of GT Tribe,  
10 the organization?

11 A. I don't think that there's an easy answer to that  
12 question. I think that as I said he has separate duties to  
13 both but his duties to SMDC tribe were limited -- are  
14 limited generally but they are further limited by what's  
15 defined in the SMDC agreement. I don't --

16 Q. Can you read Paragraph A please.

17 THE COURT: You have six more minutes to get  
18 through Mr. Stein, there are -- so you spend it however you  
19 want but he'll be done with opinion it's in evidence so.

20 MR. STEIN: Very good.

21 Q. Can you read Paragraph A please?

22 A. Sure. First, the parties agreed pursuant to the  
23 SMDC agreement Section 3 D that Mr. Stein would have no  
24 fiduciary duties. Because of the SMDC agreement section 14  
25 entire agreement, this integration of clause would require  
26 that any fiduciary duty be expressly established in a  
27 writing saying so and there's no evidence of any such  
28 writing as a result fiduciary duties can be-g contribute

1 today at conduct as CEO of Gabrielino tribal gaming  
2 authority or tribal development officer, the two titles I'm  
3 aware that he had.

4 Q. Have you seen any indication that having those  
5 titles changed the duty -- the requirement for no fiduciary  
6 duties under the SMDC agreement?

7 A. No.

8 Q. Can you move to paragraph B and read it?

9 A. Sure. Second the parties agree pursuant to SMDC  
10 agreement Section 19 limitations of liability that the  
11 standard of conduct will be willful or misconduct or gross  
12 negligence. As a result, fiduciary duties cannot be  
13 contributed to Mr. Stein's conduct as CEO of GTGA or as  
14 tribal development officer.

15 Q. Why do you say that?

16 A. Well fiduciary duties -- a breach of fiduciary  
17 duty is akin to negligence rather than -- and is limited to  
18 negligence. Gross -- willful misconduct or gross  
19 negligence has an actual intent or a reckless intent, mens  
20 rhea requirement that is not required for fiduciary duty.  
21 So just fiduciary duty does not rise to the level of the  
22 willful misconduct or gross negligence.

23 THE COURT: Can the parties -- I don't know the  
24 answer to this, I may have the parties brief this issue,  
25 but can --

26 A. I think it's a statute, Your Honor. I think it's  
27 perfectly acceptable and I have seen it in a number of  
28 these kinds of agreements.

1 THE COURT: So it's a attorney or parties can  
2 negotiate away avenue fiduciary duty or standard and lower  
3 the standard, higher the standard.

4 A. Yes I think it's more accurate to say that they  
5 can create that limitation and I think the limitation might  
6 be statutory that is unless an officer or direct tore of a  
7 corporation as oppose today's a lawyer is guilty of willful  
8 Nick that's one of the things expressly by statute that  
9 they can agree to as a limitation.

10 THE COURT: But can an attorney do that?

11 A. If he were their attorney, no not in advance.

12 THE COURT: The rules of professional conduct  
13 would take over that, right, you can just say they don't a-  
14 my to me?

15 A. That's right because there's a rule against.

16 THE COURT: Yes?

17 A. A specific rule that says a lawyer can't contract  
18 away future liability.

19 Q. BY MR. STEIN: But if there's an agreement that  
20 specifically says that this agreement is not to create an  
21 attorney-client relationship and the purported client  
22 agrees to that agreement that there is no relationship, can  
23 that agreement negotiate away the duties?

24 A. The SMDC agreement on its -- expressly as I've  
25 said a couple times expressly states and properly and  
26 appropriately and validly states that Mr. Stein was not  
27 their lawyer so yes you can do that.

28 Q. And GT Tribe the organization agreed to that?

1           A.    Agreed and ratified and approved it multiple times  
2 as we've discussed.  If this were a retainer agreement, I  
3 might have a different answer but this is not a retainer  
4 agreement, it's expressly intended to not establish a  
5 attorney-client relationship.

6           THE COURT:  So if you thought there was no  
7 attorney-client relationship you have wouldn't need to put  
8 anything in the agreement that the rules of professional  
9 code don't apply to me?

10          A.    You wouldn't have to.

11          THE COURT:  Right.  Because there's an agreement  
12 that you're not an attorney for the tribe.

13          A.    Yeah, that's why they're essentially the same  
14 thing.

15          THE COURT:  All right.

16          MR. STEIN:  And the last one elements I beleive we  
17 can cover in the three minutes remaining?

18          A.    Additionally Mr. Stein used his informed business  
19 judgment in the best interest of GT Tribe, the  
20 organization.  Mr. Stein acted as CEO of GTGA to safeguard  
21 the personal information of GT Tribe's members depridation  
22 and then released that information to those members who  
23 requested it.  Mr. Stein acted to stop diversion of casino  
24 project funds under the Libra agreement to noncasino  
25 purposes.

26          Q.    So why is the informed business judgment important  
27 to the seventh opinion?

28          A.    The Corporations Code says that an officer of a

1 corporation acting -- it's a business judgment rule,  
2 acting -- based own -- essentially in good faith based on  
3 information available to officers and directors can make  
4 business judgments and even if they're wrong, they have no  
5 liability.

6 Q. And Paragraph D?

7 A. According to Mr. Stein's testimony he had a good  
8 faith belief that the financial oversight committee  
9 represented the best interest of GT Tribe the organization  
10 and the overwhelming majority of GT Tribe members.

11 Q. Why do C and D -- why are C and D stated together?

12 A. Well because again Mr. Stein's view was --  
13 qualified for the business judgment rule because of Liz  
14 good faith belief that he was operating appropriately if he  
15 were an officer or director of GT Tribe which he wasn't but  
16 if he were then the business judgment rule would permit him  
17 to do the things that he did.

18 Q. And if Mr. Stein was wrong that the financial  
19 oversight committee represented the best interest of the  
20 tribe or he was wrong to try to save guard the information  
21 undulate-er legal analysis, would this informed business  
22 judgment, would this good faith belief be sufficient to  
23 avoid liability for breach of fiduciary duty as an  
24 officer?

25 A. Yes.

26 Q. And this is --?

27 A. Again it's the application of the business  
28 judgment rule.

1 Q. And this is only if your opinion that he was a  
2 nominal employee not anybody that owed a fiduciary duty  
3 is --?

4 A. No that would be true even if he owed fiduciary  
5 duties. So the fact is he was only a nominal director and  
6 had no duties but even if he had his exercise of the  
7 business judgment rule would limit.

8 THE COURT: Excuse it mistakes?

9 A. Limit his liability.

10 THE COURT: Okay limit his liability.

11 MR. STEIN: Does the court have any other  
12 questions before concluding the seventh opinion.

13 THE COURT: I see your last except sense here  
14 there is still no damage assuming all that's true there's  
15 still no damage.

16 A. Correct.

17 THE COURT: That you see? Okay. No. Why don't  
18 we try to figure out a time.

19 THE CLERK: For tomorrow.

20 THE COURT: Yes for cross.

21 THE CLERK: 10:00 o'clock.

22 (Discussion held off the record.).

23 THE COURT: Let's just start at 10 then, hopefully  
24 and this morning we started 20 minutes late so -- all  
25 right. Okay thank you Mr. Stein take care of yourself,  
26 make sure that you get some rest.

27 MR. STEIN: And Your Honor we would -- there is  
28 another section that we would like to go over but we would



1 rather allow cross-examination to occur so we can finish  
2 by --.

3 THE COURT: Well you'll have some redirect you  
4 can -- right.

5 MR. STEIN: That would be great, sure.

6 THE COURT: You have some redirect and if you can  
7 clean up you can clear it up.

8 MR. FORDYCE: Thank you Your Honor.

9 MR. STEIN: And Your Honor if we can take just a  
10 moment and it need not be order on the record so we  
11 understand Ms. Aronson is available Wednesday Thursday and  
12 Friday.

13 MS. IBARRA: That's what we discussed yesterday.

14 MR. STEIN: We will I just want to give a  
15 disclosure to the court we will be attempt to go  
16 communicate with Ms. Aronson if she gives us permission to,  
17 to try to go see what testimony she has to offer or say  
18 what we'll ask questions on with the hope that we can make  
19 three days turn into two days since she's coming from a  
20 long distance.

21 THE COURT: Okay parties are free to contact.

22 MS. IBARRA: Yeah I don't control the witness so.

23 THE COURT: She's free to talk to whoever --  
24 either talk to or not talk to whoever she wants to she's.

25 MR. STEIN: Perfect.

26 THE COURT: But thank you for that. Thank you?

27 A. Thank you.

28 THE COURT: We'll see you tomorrow. 12:03 PM.

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