

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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1 GABRIELINO-TONGVA TRIBE VS. STEIN, TRIAL DAY 30

2 ROUGH TRIAL TESTIMONY OF RAE LAMOTHE

3 10:23 AM.

4 THE COURT: GABRIELINO VERSUS STEIN BC361307.

5 GOOD MORNING.

6 MR. FORDYCE: GOOD MORNING YOUR HONOR.

7 MS. IBARRA: GOOD MORNING.

8 MR. STEIN: GOOD MORNING.

9 THE COURT: OKAY THERE'S A TRANSCRIPT IN FRONT OF
10 ME. I'M ASSUMING THIS DEALS WITH THE ISSUE. DID YOU MEET
11 AND CONFER.

12 MS. IBARRA: THIS MORNING AND WE COULDN'T AGREE
13 SO.

14 THE COURT: OKAY.

15 MS. IBARRA: I THINK THE QUESTION PENDING WAS
16 WHETHER ALL OF THE IDEAS FROM THE RESOLUTION CAME FROM MS.
17 LAMOTHE AND I --.

18 THE COURT: WHICH RESOLUTION.

19 MS. IBARRA: 46.

20 MR. STEIN: THAT'S THAT WAS NOT THE ISSUE.

21 THE COURT: 46.

22 MR. STEIN: THAT WAS NOT THE ISSUE.

23 MR. FORDYCE: DO YOU WANT TO HANDLE IT JONATHAN OR
24 SHOULD I, THE STIPULATION WAS TO WHAT EXTENT MS. LAMOTHE
25 WAS INVOLVED IN DRAFTING THE RESOLUTION.

26 THE COURT: WAS THAT THE EXACT QUESTION.

27 MR. FORDYCE: I THINK IT WAS YOUR HONOR.

28 MS. IBARRA: CAN YOU -- CAN WE GO BACK TO THE

1 EXACT QUESTION.

2 MR. STEIN: SHE'S SAYING IT'S THE IDEAS BEHIND THE
3 RESOLUTION, OBVIOUSLY LOOK AT WHO DRAFTED IT BUT WE HAVE
4 THREE.

5 THE COURT: LET'S LOOK AT THE QUESTION AND.

6 MR. STEIN: YEAH.

7 THE COURT: I MEAN WE CAN ALWAYS CHANGE THE
8 QUESTION I SUPPOSE, RIGHT, SO LET'S START WITH WHAT THE
9 QUESTION ORIGINALLY WAS. SO IS THERE ANYTHING ELSE WHILE
10 THE COURT REPORTER IS LOOKING THAT UP.

11 MS. IBARRA: IT'S JUST THAT --.

12 MR. STEIN: YOUR HONOR.

13 MS. IBARRA: SO I THINK THE PAGE 19 REFERS TO THE
14 BEGINNING OF THE DISCUSSION --.

15 THE COURT: NOT THIS, NOT THIS, I WANT TO PUT THIS
16 ASIDE SHE'S GOING TO LOOK AT THE QUESTION.

17 MS. IBARRA: OKAY NO.

18 THE COURT: IS THERE SOMETHING ELSE OTHER THAN
19 THAT.

20 MR. STEIN: I JUST WANT TO SHEA.

21 THE COURT: DOES IT CONCERN SOMETHING OTHER THAN
22 THIS.

23 MR. STEIN: YES.

24 THE COURT: WHAT IS IT.

25 MR. STEIN: WHATEVER WE CAN DO TO AVOID HOW
26 YESTERDAY WENT AND I'D LIKE TO APOLOGIZE FOR MY ROLE IN IT
27 BUT THERE SEEMS TO BE -- WE'RE TRYING TO BREAK THE PATTERNS
28 THAT KIND OF MADE THE TRIAL IN JULY POISONOUS AND I'VE GOT

1 A VERY GOOD REASON NOW WITH MY HEALTH TO WANT TO DO THAT, I
2 WAS SICK AS A DOG YESTERDAY AROUND BECAUSE OF THE UPSET
3 TRYING TO DEAL WITH THIS AND THE COURT -- AND YOU KNOW THE
4 COURT IS TRYING TO DEAL WITH IT.

5 THE COURT: YES.

6 MR. STEIN: YOU'RE TRYING TO MOVING THINGS ALONG,
7 I SEE HOW BUSY THIS PLACE YOU'RE TRYING TO MOVE THINGS
8 ALONG AND IF I WOULD POINT OUT AND IF I WOULD AND I
9 WOULDN'T MIND IF THIS WAS OFF THE RECORD.

10 THE COURT: NO I THINK SHE SAY ON THE RECORD.

11 MR. STEIN: ON THE RECORD IS FINE, THIS IS JUST A
12 CONTRACT ACTION THERE'S MILLIONS OF DOLLARS OWED FOR
13 SERVICE THAT'S WEREN'T PART PAID, IT WAS PART PERFORMANCE,
14 IT WAS AN INTENSIVE CONTRACT, THEY THINK THEY HAVE A BADGE
15 I CAN BULLET DEFENSE, THIS IS NOT UNUSUAL. BASIC CONTRACT
16 ACTION, NO MORE NO LESS, WITH A MAGIC BULLET DEFENSE AND
17 THEY ARE JUDGMENT PROOF, THEY ARE -- AS OF TODAY I AM
18 JUDGMENT PROOF SO I AM JUDGMENT PROOF, THEY ARE JUDGMENT
19 PROOF, THIS IS A CONTRACT ACTION WITH A MAGIC BULLET
20 DEFENSE, WE'VE BEEN GOING ALL OVER THE PLACE OVER SOMETHING
21 THAT SHOULD BE SIMPLE AND DIRECT AND THAT'S WHAT'S LED TO
22 MY SHARE OF THE UPSET IS FREE REIGN TO GO ALL OVER THE
23 PLACE FOR AN HOUR, IT WAS SUPPOSED TO BE 10 MINUTES
24 YESTERDAY, A SOLID HOUR FOR MS. IBARRA, THE SECOND I HOPE
25 OPEN MY MOUTH, I COULD NOT EVEN WRITE ON A BILL BOARD WHICH
26 I'VE BEEN DEPOSITING THE WHOLE TRIAL AND THEN I COULDN'T
27 GET IN OPINION TESTIMONY, NOT NEW OPINION AS AN EXPERT BUT
28 IN 2003, DOUBLE X AND THIS TYPE OF -- AND SO TO SEE THE

1 CONTRAST BETWEEN GOING ALL OVER THE PLACE OVER A CONTRACT
2 ACTION WHERE BOTH PARTIES ARE JUDGMENT PROOF VERSUS I CAN'T
3 EVEN GET IN A NORMAL OPINION TESTIMONY THAT ANY SECOND YEAR
4 LAW STUDENT WOULD PROBABLY BE COMPETENT TO TALK ABOUT, IT'S
5 BEEN DIFFICULT FOR ME. AND WHAT I WANT TO DO IS I WANT TO
6 JUST AVOID HEALTH COMPLICATIONS FROM THIS.

7 THE COURT: WELL I HAVE A SUGGESTION THEN, WHY
8 DON'T WE HAVE ALL THE WITNESSES FROM THIS POINT FORWARD
9 SUBMIT DECLARATIONS AND THEN THEY CAN JUST BE CROSSED ON IT
10 IF IT'S CAUSING YOU PROBLEMS. SO ALL WITNESSES FROM THIS
11 POINT FORWARD WILL SUBMIT DECLARATIONS AND THEN WE'LL JUST
12 DO CROSS AND IF SOMEBODY HAS OBJECTIONS TO THE DIRECT THEY
13 CAN SUBMIT THOSE IN WRITING, THAT WAY WE CUT THE TIME IN
14 HALF.

15 MR. STEIN: COULD WE DO THAT STARTING WITH MS.
16 LAMOTHE, COULD WE BRING HER IN HERE AND SEE IF SHE'D BE
17 WILLING TO DO THAT BECAUSE I THINK THAT SHE WOULD.

18 THE COURT: WELL OKAY.

19 MS. IBARRA: SHE'S HERE SO MAYBE WE SHOULD ASK
20 HER.

21 THE COURT: WE CAN TALK ABOUT THAT. BUT I'M
22 TRYING TO REMEMBER HOW MANY OTHER WITNESSES WE HAVE.

23 MS. IBARRA: WE HAVE -- WE NEED TO FIND MR. STEIN
24 AND THEN WE HAVE TWO EXPERTS, WE HAVE -- WE'VE DONE MOST OF
25 MY EXPERT, WE WERE IN THE MIDDLE OF CROSS, WHEN WE TOOK MS.
26 LAMOTHE OUT OF ORDER AND THEN WE WERE ALL OF MY MILLS WHO'S
27 MR. STEIN'S.

28 THE COURT: RIGHT.

1 MS. IBARRA: AND THEN THERE'S ONGOING NEGOTIATIONS
2 WITH MS. ARONSON WHO IS IN SAN DIEGO AND SHE WOULD BE --
3 AND SHE WOULD BE OUR LAST WITNESS.

4 MR. STEIN: OKAY WELL HOLD IT, LET'S BREAK THAT
5 DOWN SO WE HAVE --.

6 MS. IBARRA: OH I'M SORRY, THERE'S ONE MORE THING,
7 THERE'S MS. MARILYN BARRETT BECAUSE THAT ISSUE CAME UP.

8 THE COURT: RIGHT.

9 MS. IBARRA: SO HERS WOULD BE VERY DISCREET AND
10 ALL OF THESE FROM MY SIDE WOULD BE DONE IN DECLARATION.

11 THE COURT: OKAY.

12 MR. STEIN: MILLS COULD DO A DECLARATION, HE'S
13 ALREADY TWO-THIRDS THROUGH WHAT WOULD BE AN EXPERT REPORT
14 SO THAT WOULD BE BASICALLY THE DECLARATION. AND -- BUT IT
15 WOULD BE A VERY LONG ONE. I CAN DO A DECLARATION
16 OBVIOUSLY, IT WOULD BE THE SAME TESTIMONY, NOT JUST ON 776
17 ISSUES BUT -- SEE WHAT THE COURT HASN'T SEEN IS THE HEART
18 OF THE ACTION, IN OTHER WORDS TO GIVE YOU ARE AN IDEA OF
19 HOW FAR AFIELD WE ARE, THIS ACTION IS OVER, THE SMDC
20 CONTRACT, WHERE FIVE YEARS OF SERVICES AT 25,000 A MONTH
21 COMES OUT TO 2.7 MILLION.

22 THE COURT: I UNDERSTAND MR. STEIN BUT LET'S JUST
23 KIND OF GO BACK TO -- I KNOW WHAT THE ACTIONS ABOUT, I WANT
24 TO TALK ABOUT HOW TO MOVE FORWARD IN TERMS OF DECLARATIONS,
25 CAN WE DO THAT.

26 MR. STEIN: YEAH.

27 THE COURT: SO WE CAN TALK ABOUT THAT.

28 MS. IBARRA: I DON'T WANT TO GET INTO THAT BECAUSE

1 HIS SIDE OF HIS ACTION BUT OBVIOUSLY MY CLIENT HAS A
2 DIFFERENT STORY JUST FOR THE RECORD.

3 THE COURT: CORRECT I UNDERSTAND THAT, THAT'S WHY
4 I SAID I DON'T WANT TO HAVE GET INTO IT BECAUSE HUH GUYS
5 HAVE YOUR OWN SIDES THAT'S WHAT THE TRIAL IS ABOUT I'M
6 TRYING TO FIGURE OUT HOW TO MOVE FORWARD AND CUT DOWN ON
7 THE TRIAL TIME, AND YOU ALL HAVE THINGS TO DO AND MR. STEIN
8 CAN ONLY BE HERE TWO HOURS, MAYBE WE CAN MAKE BETTER USE OF
9 THE TIME IN TERMS OF HAVING CROSS RATHER THAN LET THE
10 DECLARATIONS ACT AS THE DIRECT, THEN THERE'S CROSS, THEN
11 SHORT REDIRECT AND WE'RE DONE, SO WE CAN ELIMINATE THE
12 DIRECT, NOW SOME OF THESE WITNESSES HAVE ALREADY TESTIFIED
13 SO.

14 MS. IBARRA: YES.

15 MR. STEIN: WELL AND I WOULD MENTION IF SHE'S
16 BRINGING BACK AARON SON AND BARRETT AND ONCE AGAIN I'D
17 RATHER STREAMLINE IT THAN DO ANY OF THIS BUT BARBARA GARCIA
18 WOULD TALK ABOUT QUANTUM MERUIT REMEMBER WE HAVE OF THE
19 OUTSTANDING ISSUE.

20 THE COURT: RIGHT.

21 MR. STEIN: AND THAT'S VERY LIMITED AND STEVEN
22 JOHNSON AND BOTH OF THOSE THEY TESTIFIED AND THE COURT CUT
23 THEM OFF SAYING THAT'S QUANTUM MERUIT THERE'S AN ISSUE WITH
24 THAT THEY WOULD COME BACK TO SAY THE THINGS THEY WERE COST
25 YOU CUT OFF.

26 MS. IBARRA: AFTER THEY FINISH BRIEFLY.

27 THE COURT: AFTER THEY SUBMIT A BRIEF AND RULE ON
28 IT THEY WOULD SUBMIT DECLARATIONS ET CETERA.

1 MS. IBARRA: I WOULD HAVE TO CONFER WITH MY CLIENT
2 BECAUSE I DON'T THINK THERE'S A LOT OF OBJECTION TO THAT.

3 THE COURT: IT MAY HELP BECAUSE OF THE LIMITED
4 NUMBER OF HOURS WE HAVE SO THAT WHAT WE'RE DOING IS
5 CROSS-EXAMINATION LIVE AND THAT'S IT, SO WE DON'T DO THE
6 DIRECT LIVE, I WON'T LET YOU WANDER INTO DEPOSITING DIRECT
7 LIVE EITHER, IT'S JUST GOING TO BE LIMITED TO CROSS. AND
8 THEN THE REDIRECT WOULD HOPEFULLY STRICTLY ACCORDING TO
9 SEMINAR STYLE REDIRECT, YOU OPEN THAT TOPIC YOU CAN ONLY
10 REDIRECT ON THAT TOPIC, THAT IDEA. AND I WOULD CERTAINLY
11 LIVE WITH THAT BECAUSE -- AND I WANT THE COURT TO
12 UNDERSTAND, THIS IS OUR CASE IN CHIEF THAT WE'RE
13 SACRIFICING THIS ON AND I AM HAPPY TO DO SO BECAUSE THE
14 COURT'S MORE THAN GENEROUS CONSIDERATION OF MY HEALTH
15 ISSUES SO THAT'S WHAT I -- I WANT TO ACCOMMODATE THE COURT
16 AND COOPERATE.

17 THE COURT: WELL I'M TRYING TO ACCOMMODATE YOU.

18 MR. STEIN: YES.

19 THE COURT: BECAUSE YOU'RE THE ONE THAT'S SAYING
20 HEY THIS IS TAKING TOO LONG AND I HAVE THINGS TO DO AND I
21 DON'T FEEL WELL AT THE END OF THE DAY OR END OF THE
22 MORNING, WHATEVER THE SITUATION IS, I DON'T WANT TO PRY
23 INTO YOUR MEDICAL CAN BE, IF YOU TELL ME YOU'RE NOT FEELING
24 WELL THEN YOU'RE NOT FEELING WELL AND I'M TRYING TO
25 DISCOVER OR FIGURE OUT A WAY THAT WE CAN GET ACCOMPLISHED
26 WHAT NEEDS TO BE DONE AND STILL ACCOMMODATE YOU.

27 MR. STEIN: THIS WOULD BE FINE.

28 THE COURT: THAT WORKS OKAY.

1 MR. STEIN: AND THE ONLY THING THAT WE WOULD ASK
2 WITH RAY IS WHETHER SHE WOULD BE WILLING TO PARTICIPATE AND
3 I THINK IF IT MEANT NOT COMING BACK TOMORROW AND ONLY
4 COMING BACK FOR MAYBE AT MOST AN HOUR OR A HALF AN HOUR,
5 THEN THAT WOULD -- SHE WOULD PROBABLY GO FOR THAT AND SHE'S
6 RIGHT OUTSIDE.

7 MS. IBARRA: WELL TECHNICALLY I DID CROSS ON MS.
8 LAMOTHE SO I'M -- YOU KNOW SO WHAT'S LEFT FOR.

9 MR. STEIN: WELL TECHNICALLY.

10 THE COURT: THAT'S TRUE. WELL WHY DON'T WE JUST
11 FINISH HER SHE'S HERE RIGHT.

12 MR. FORDYCE: YES YOUR HONOR.

13 THE COURT: SO WE CAN JUST FINISH HER.

14 MR. STEIN: YOUR HONOR, YOUR HONOR.

15 THE COURT: WELL YOU HAVE AN ISSUE WITH FINISHING
16 HER TODAY OR.

17 MR. STEIN: WELL, I DON'T THINK FOUR HOURS WILL
18 FIT BETWEEN NOW AND NOON.

19 THE COURT: OH WE'RE NOT GOING TO GO FOUR HOURS,
20 THIS IS REDIRECT, YOU'RE FINISHED WITH YOUR CROSS, THIS IS
21 REDIRECT WE'RE NOT GOING TO GO FOUR HOURS.

22 MR. STEIN: WELL THEN LET ME RAISE THE ISSUE THAT
23 WE'RE TALKING ABOUT AND ONCE AGAIN WHATEVER THE COURT'S
24 DECISION I'M HERE TO COOPERATE WITH IT IT'S JUST THAT WE
25 TALKED ABOUT TWO BITES AT THE APPLE THAT YOU KNOW SHE WAS
26 BASICALLY REDID ALL OF HER TESTIMONY GOING BACK SAYING PIT
27 WAY YOU REMEMBER WE TALKED ABOUT THIS, SHE REDID ALL HER
28 TESTIMONY AND WHEN I OBJECTED, THE COURT SAID WELL IT HAS

1 BEEN SIX MONTHS AND SO I ONLY ASK THAT I ALSO GET TWO BITES
2 AT THE APPLE AND I WOULD LIKE TO REDO MY FULL DIRECT.

3 THE COURT: WELL NO YOU'RE NOT GOING TO REDO YOUR
4 FULL DIRECT, PLAINTIFFS COUNSEL DIDN'T DEPOSIT REDO HER
5 FULL DIRECT, WE'RE NOT GOING TO GO BACK IF THERE'S SOMETHING
6 THE WITNESS NEEDS REFRESHING OR THE COURT NEEDS REFRESHING
7 GO AHEAD AND LAY THAT FOUNDATION BUT WE DON'T NEED HER TO
8 BE HERE MUCH LONGER THAN TODAY, I MEAN IT'S 10:30 NOW IF YOU
9 USE THE TIME BETWEEN NOW AND 12, THAT'S PLENTY OF TIME.

10 MR. STEIN: IF RAE LAMOTHE COULD DO THE
11 DECLARATION WITH EVERYTHING ELSE I'M SURE SHE WOULD BE
12 COOPERATIVE AND --.

13 THE COURT: WELL YES LET'S JUST BRING HER IN.

14 MR. STEIN: AND HONESTLY I THINK THAT DECLARATION
15 AND MS. BARRETT I DON'T SEE THE DIFFERENCE BETWEEN HER MS.
16 ARONSON MS. BARRETT BARBARA GARCIA AND STEVEN JOHNSON,
17 THAT'S WHY.

18 MS. IBARRA: THERE'S A HUGE DIFFERENCE.

19 THE COURT: SHE'S HERE LET'S GET HER DONE.

20 MS. IBARRA: SHALL WE RESOLVE THE ISSUE ABOUT 46.

21 THE COURT: I JUST WANT TO FINISH, I HAVE JUST
22 WANT TO GET HER DONE AND GET HER OUTER BECAUSE SHE'S A BUSY
23 LAWYER AND WE'VE NOW TAKEN THREE DAYS BECAUSE WE'VE TAKEN
24 TWO HOURS A DAY, SHE'S BEEN HERE A NUMBER OF DAYS NOW LET'S
25 JUST FINISH HER AND WITNESSES COMING IN THE FUTURE WE CAN
26 TALK ABOUT THE DECLARATIONS.

27 MS. IBARRA: I'M JUST WONDERING IF WE NEED TO
28 RESOLVE THE ISSUE ABOUT THE PENDING QUESTION.

1 MR. STEIN: IF I CAN --.

2 THE COURT: NO, I DON'T THINK SO LET'S JUST HAVE
3 HER ASK A NEW QUESTION, I'VE STRICKEN THE TESTIMONY THAT
4 WAS RE-READ YESTERDAY FROM THE TRANSCRIPT FOR PURPOSES OF
5 THIS WITNESSES QUESTIONING, OBVIOUSLY THE ORIGINAL STILL
6 REMAINS BUT THEY CAN ASK WHATEVER QUESTION THEY WANT TO,
7 WHY DON'T YOU ASK A NEW QUESTION.

8 MR. STEIN: UH-HUH. MS. LAMOTHE?

9 A. I WANTED TO TRIPLE CHECK MY PHONE WAS OFF.

10 THE COURT: OKAY YOU'RE STILL UNDER OATH.

11 A. YES.

12 THE COURT: WE'RE HOPING THAT YOU WILL BE FINISHED
13 THIS MORNING?

14 A. OKAY.

15 MR. STEIN: CAN WE GET TO EXHIBIT 569. AND PAGE 5
16 29 IS WHERE WE LEFT OFF THE AMENDMENT AND MODIFICATION
17 AGREEMENT?

18 A. PAGE 5 29 OF EXHIBIT 569 I'M THERE.

19 THE COURT: I THINK IT'S BEEN RENUMBERED BUT
20 THAT'S ALL RIGHT, SOMEBODY PUT IT ALL TOGETHER BUT THAT'S
21 FINE.

22 MR. FORDYCE: 1550 YOUR HONOR.

23 MR. STEIN: IT'S NOW 1550 FOR THE RECORD AND
24 PERHAPS -- SINCE WE'RE GOING TO READ FROM T MAYBE THE COURT
25 CAN.

26 THE COURT: ALL RIGHT. NELI CAN YOU GET IT FOR
27 ME.

28 THE CLERK: WHICH ONE I'M SORRY.

1 THE COURT: GO AHEAD AND CONTINUE WITH YOUR
2 QUESTIONS.

3 Q. BY MR. STEIN: IF YOU CAN READ THE WHEREAS CLAUSE
4 AT THE BOTTOM?

5 A. WHEREAS CLAUSE, ON JANUARY 27, 2002, THE TRIBAL
6 COUNCIL APPROVED RESOLUTION NUMBER 37 APPROVAL OF AMENDMENT
7 TO DEVELOPMENT AGREEMENT BETWEEN TRIBE AND SAINT MONDAY
8 DEVELOPMENT COMPANY, LLC, WHICH AMENDED, APPROVED AND
9 RATIFIED THE AGREEMENT AND AFFIRMED THE AGREEMENT, AS
10 AMENDED, AS VALID, BINDING AND ACTUALLY ADOPTED OBLIGATIONS
11 OF THE TRIBAL COUNCIL AND THE TRIBE; .

12 Q. NOW BY JANUARY 27TH, 2002, YOU WERE TRIBAL GENERAL
13 COUNSEL?

14 A. YES.

15 Q. AND ACCORDING TO YOUR EARLIER TESTIMONY, YOU WROTE
16 RESOLUTION 37?

17 A. I BELIEVE I DID.

18 Q. AND THE RESOLUTION 37 ON -- IN JANUARY OF 2002
19 AMENDED THE AGREEMENT BUT ALSO RATIFIED THE SMDC AGREEMENT.
20 IS IT YOUR UNDERSTANDING -- BY WRITING THIS, WERE YOU STATE
21 THAT LONG --.

22 THE COURT: WELL MAYBE YOU SHOULD ASK HER WHAT WAS
23 YOUR UNDERSTANDING, OKAY? THIS IS NOT 776.

24 MR. STEIN: VERY GOOD.

25 THE COURT: THIS IS --.

26 Q. BY MR. STEIN: WHAT WAS YOUR UNDERSTANDING OF WHAT
27 IT MEANT TO RATIFY THE SMDC AGREEMENT ON JANUARY 27, 2002?

28 A. THAT THE COUNCIL WAS RATIFYING OR AGREEING WHAT

1 HAD PREVIOUSLY BEEN DONE.

2 Q. IF --?

3 A. THE CURRENT TRIBAL COUNCIL. I DON'T KNOW WHO WAS
4 ON THE COUNCIL ORIGINALLY SO IF THERE WAS ANY CHANGE, THE
5 CURRENT TRIBAL COUNCIL WAS RATIFYING AND AGREEING TO
6 WHATEVER HAD BEEN DONE PREVIOUSLY.

7 Q. IS IT YOUR UNDERSTANDING OF THE TERM RATIFYING THE
8 AGREEMENT THAT --.

9 THE COURT: THAT'S LEADING COUNSEL. YOU NEED
10 TO -- OKAY THIS IS NOT 776 SO DON'T ASK LEADING QUESTIONS,
11 THIS HAS BEEN KIND OF AN ONGOING ISSUE SO I JUST WANT TO
12 REMIND YOU THAT THIS ISN'T 776 THIS IS YOUR WITNESS SO YOU
13 NEED TO ASK APPROPRIATE QUESTIONS, NON LEADING, NON
14 LEADING.

15 MR. STEIN: YEAH I'LL TRY MY BEST AND I'M SURE THE
16 COURT WILL CORRECT ME IF I MAKE A MISTAKE.

17 THE COURT: WELL I'M TRYING TO MOVE IT ALONG BUT
18 AT THE SAME TIME IT'S JUST --.

19 MR. STEIN: YES OKAY.

20 Q. BY MR. STEIN: IF THERE WAS -- AS THE TERM
21 RATIFIED IS USED HERE, IF THERE WERE ANY FLAWS IN PREVIOUS
22 APPROVALS, WAS THE JANUARY 2002 RATIFICATION MEANT TO FIX
23 THEM?

24 A. YES.

25 Q. AND WHEN IT SAYS YOU'RE AFFIRMING THE SMDC
26 AGREEMENT.

27 THE COURT: WHAT DOES IT MEAN WHEN YOU SAY YOU'RE
28 AFFIRMING, THAT'S THE APPROPRIATE QUESTION.

1 MR. STEIN: THANK YOU.

2 Q. BY MR. STEIN: WHAT DOES IT MEAN WHEN YOU SAY
3 AFFIRMING THE AGREEMENT?

4 A. THAT THE TRIBE WAS IF THERE WAS SUCH A WORD, RE
5 AGREEING TO THE AGREEMENT.

6 Q. AND SO IF THERE WAS A FLAW SUCH AS AN UNDISCLOSED
7 ATTORNEY-CLIENT RELATIONSHIP EARLIER WAS THIS DESIGNED TO
8 FIX THE FLAW?

9 A. I DON'T KNOW HOW TO ANSWER THAT. IT WAS DESIGNED
10 TO THAT THE TRIBE AGREED TO THE CONTRACT.

11 Q. AND THAT WAS WITH YOU AS TRIBAL GENERAL COUNSEL IN
12 JANUARY OF 2002?

13 A. YES.

14 Q. AND WAS IT ALSO -- AND THEN WHAT DID YOU MEAN BY
15 VALID BINDING AND DULY ADOPTED OBLIGATIONS OF THE TRIBAL
16 COUNCIL AND THE TRIBE?

17 A. THAT THE OBLIGATIONS IN THE SMDC AGREEMENT WERE
18 VALID OBLIGATIONS OF THE TRIBE.

19 Q. AND WOULD THAT INCLUDE CLAUSES THAT SAID THERE WAS
20 NO ATTORNEY-CLIENT RIP IN THE SMDC AGREEMENT?

21 A. YES.

22 Q. CAN WE GO TO THE NEXT WHEREAS CLAUSE CAN YOU READ
23 IT PLEASE?

24 A. WHEREAS --.

25 THE COURT: DID YOU GO OVER THAT PROVISION WITH
26 THEM, IN OTHER WORDS, THE GOAL OF NO ATTORNEY-CLIENT
27 RELATIONSHIP, DID YOU GO OVER THAT WITH THE CLIENTS
28 SPECIFICALLY?

1 A. I DON'T RECALL THEM ASKING A QUESTION OR ME
2 DISCUSSING IT WITH THEM.

3 THE COURT: OKAY. YOU HAVE DON'T RECALL WHICH
4 MEANS THEY COULD HAVE AND YOU JUST DON'T REMEMBER OR --?

5 A. THEY COULD HAVE, I JUST DON'T --.

6 THE COURT: WOULD YOU HAVE REMEMBERED SOMETHING
7 LIKE THAT THOUGH IF THEY HAD SAID ATTORNEY-CLIENT ISSUE IS
8 CONCERNING?

9 A. I BELIEVE SO BECAUSE MR. STEIN --.

10 THE COURT: WELL I ASKED WOULD YOU HAVE REMEMBERED
11 THAT IS WHAT I'M SAYING?

12 A. LIKELY.

13 THE COURT: LIKELY. BUT AS OF NOW YOU DON'T HAVE
14 THAT MEMORY?

15 A. I CAN'T SAY 100 PERCENT THEY DIDN'T ASK ME, I
16 DON'T RECALL ANYONE -- I DON'T RECALL ANY DISCUSSION ON
17 THAT POINT.

18 THE COURT: AND YOU HAVE DIDN'T RAISE THAT THAT
19 WITH THEM EITHER H YOU HAVE DIDN'T SAY THIS IS A CONCERNING
20 PROVISION OR ARE YOU WILLING TO REAFFIRM THIS OR LET'S TALK
21 ABOUT THIS OR --?

22 A. NO, I DON'T RECALL DOING THAT.

23 THE COURT: OKAY.

24 Q. BY MR. STEIN: THE NEXT WHEREAS CLAUSE PLEASE ON
25 PAGE 5 30?

26 A. WHERE WAS, THE TRIBE IS SATISFIED WITH THE
27 AGREEMENT AND BY THIS RESOLUTION IT SEEKS TO APPROVE AND
28 RATIFY ONCE AGAIN, AND TO RECOGNIZE OVER 28 MONTHS OF

1 SATISFACTORY PERFORMANCE OF ECONOMIC DEVELOPMENT TASKS BY
2 DEVELOPER.

3 Q. WAS IT THE -- WHAT WAS THE PURPOSE OF THIS WHEREAS
4 CLAUSE?

5 A. THE TRIBE WAS AGREEING THAT THE WORK HAD BEEN DONE
6 OVER THE LAST TWO PLUS YEARS AND THEY WERE HAPPY WITH THE
7 WORK -- OR PLEASED WITH THE WORK THAT WAS BEING DONE.

8 Q. AND WHEN THEY -- AND THE PHRASE -- WHAT DID YOU
9 MEAN BY THE PHRASE AND BY THIS RESOLUTION SEEKS IT APPROVE
10 AND RATIFY IT ONCE AGAIN?

11 A. IT'S BELTS AND SUSPENDERS OF WHAT THE PRIOR CLAUSE
12 WAS, THAT THE TRIBE IS REAFFIRMING THE CONTRACT.

13 Q. THEN IF WE CAN -- THE NEXT TWO WHEREAS CLAUSES,
14 WE'LL SKIP TO WHEREAS THE TRIBAL COUNCIL HAS REQUESTED, CAN
15 YOU READ THAT?

16 A. WHEREAS, THE TRIBAL COUNCIL HAS REQUESTED THAT
17 DEVELOPER DEFER PAYMENT OF MOST OF THE MONTHLY AMOUNTS
18 WHICH ACCRUED IN THE PAST 28 MONTHS, TO ALLOW THE
19 DEVELOPMENT MONEY TO BE USED FOR OTHER PURPOSES.

20 Q. WHAT WAS THE PURPOSE OF THAT WHEREAS CLAUSE?

21 A. MY RECOLLECTION IS THE AGREEMENT -- THE SMDC
22 AGREEMENT PROVIDED FOR PAYMENT TO VARIOUS VENDORS INCLUDING
23 SMDC -- OR STRIKE THAT. THE SMDC AGREEMENT PROVIDED FOR
24 PAYMENT TO SMDC FROM INVESTMENT MONEY. THIS WAS SMDC
25 AGREEING TO DEFER PAYMENTS.

26 Q. AND I --?

27 A. FURTHER DEFER PAYMENTS AND NOT TAKE ACCRUED
28 AMOUNTS OUT OF AN INITIAL MILLION DOLLARS INVESTMENT.

1 Q. SO WAS SMDC GIVING CONSIDERATION FOR --.

2 THE COURT: THAT'S LEADING COUNSEL.

3 Q. BY MR. STEIN: WAS SMDC GIVING CONSIDERATION.

4 MS. IBARRA: THAT'S LEADING.

5 THE COURT: YEAH SUSTAINED.

6 MR. STEIN: FOR THIS AGREEMENT.

7 Q. WHAT WAS SMDC -- WHAT WAS THE -- WHAT WAS THE
8 CONSIDERATION FOR THIS AGREEMENT BY EACH SIDE?

9 A. SMDC HAD AN ACCRUAL OF MONIES OWED AND WAS
10 AGREEING TO CONTINUE -- TO FURTHER DEFER THAT AND NOT TAKE
11 THOSE MONIES OUT OF THE CURRENT -- OR THE POTENTIAL
12 INVESTMENT POT THAT WAS COMING IN.

13 Q. AND WHAT WAS SMDC GETTING BACK?

14 A. THE AMENDMENT TO THE AGREEMENT.

15 Q. SO WAS THE TRIBE GIVING TO SMDC ITS APPROVAL OF
16 THE AGREEMENT.

17 THE COURT: I GUESS MY QUESTION IS SO THE TRIBE
18 WAS GETTING THE DEFERRAL?

19 A. CORRECT.

20 THE COURT: IS THAT WHAT YOU'RE SAYING?

21 A. THERE WAS ONLY -- THIS PURPORTS TO REPRESENT -- OR
22 THIS REPRESENTS IT WAS A POTENTIALLY A MILLION DOLLARS
23 COMING IN.

24 THE COURT: RIGHT?

25 A. WHICH WOULD HAVE BEEN GOBBLED UP BY THE VARIOUS.

26 THE COURT: MONTHLY FEES?

27 A. MR. STEIN'S, MINE AND OTHER PEOPLE.

28 THE COURT: SURE. AND SO THEY WERE GETTING A

1 DEFERRAL OF THAT AND THEY WERE GETTING THIS AMENDMENT?

2 A. CORRECT.

3 THE COURT: IS HOW I UNDERSTAND IT. OKAY. HOW
4 YOU UNDERSTOOD THE AGREEMENT?

5 A. CORRECT.

6 Q. BY MR. STEIN: SO WAS THE TRIBE GIVING MR. STEIN
7 ITS APPROVAL OF THE AGREEMENT AND ITS WAIVER OF ANY FLAWS
8 FROM THE PAST IN RETURN FOR THAT DEFERRAL.

9 THE COURT: THAT'S LEADING, THAT'S LEADING,
10 SUSTAINED.

11 MR. STEIN: HOW SHOULD I SAY THAT YOUR HONOR.

12 THE COURT: THERE IS NO WAY NOW SO.

13 Q. BY MR. STEIN: WHAT WAS THE TRIBE GIVING SMDC.

14 THE COURT: I THINK THAT'S BEEN ASKED AND
15 ANSWERED.

16 MR. STEIN: RIGHT.

17 THE COURT: SHE SAID IT WAS THE ACCRUAL AND --.

18 MR. STEIN: THAT'S IT.

19 Q. BY MR. STEIN: CAN WE GO TO THE --.

20 THE COURT: SEE THE PROBLEM IS I'M SURE YOU'RE
21 AWARE, LEADING SUGGESTIONS SUGGEST THE ANSWER AND THAT'S
22 THE PROBLEM SO YOU NEED TO KEEP THEM OPEN-ENDED.

23 MR. STEIN: YEAH BUT YOU HAVE TO DEFINE THE
24 SUBJECT MATTER AND WE'VE HAD THIS DISCUSSION BEFORE AND I
25 HAVE WANT TO DEFER TO THE COURT WHO HAS A LOT BETTER FEEL
26 FOR THIS BUT AGAIN IF YOU CAN'T TELL HER WHAT THE SUBJECT
27 MATTER IS THEN HOW COULD SHE KNOW WHAT TO ANSWER AND YOU'RE
28 SAYING.

1 THE COURT: AND THAT'S THE PROBLEM, YOU CAN'T GIVE
2 HER THE ANSWER IN THE QUESTION.

3 MR. STEIN: THAT'S NOT.

4 THE COURT: THAT'S THE PROBLEM WITH LEADING
5 QUESTIONS. NOW IT CAN BE DONE ON CROSS BUT SHE'S YOUR
6 WITNESS SO --.

7 MR. STEIN: SHE'S NOT OUR WITNESS YOUR HONOR,
8 SHE'S BETH TRIALS WITNESS, THEY WERE ON -- SHE WAS ON HER
9 EXHIBIT LIST.

10 MS. IBARRA: VERY TRUE BUT THE SUBPOENA WAS YOUR
11 SUBPOENA.

12 MR. STEIN: AND SHE WAS THE COUNCIL FOR THE TRIBE,
13 WHICH IS AN ADVERSE PARTY SO I DON'T SEE WHY SHE'S MY
14 WITNESS.

15 THE COURT: AND YOU SUBPOENAED HER RIGHT. ONLY
16 BECAUSE THEY DID NOT.

17 MS. IBARRA: YOU WERE QUICKER TO THE DRAW BUT IT
18 WAS YOUR SUBPOENA, IT WAS MR. STEIN'S SUBPOENA.

19 MR. STEIN: I DON'T SAY HOW THAT MAKE HER MY
20 WITNESS YOUR HONOR.

21 THE COURT: WELL HER ANSWERS ALSO -- THE CORE HAS
22 TO LOOK AT WHETHER -- 776 WITNESSES ALSO COMMONLY KNOWN AS
23 A HOSTILE WITNESS SO THE COURT HAS TO LOOK AT HOW THE
24 QUESTIONS ARE GOING, HOW THEY'RE BEING ANSWERED, WHAT THE
25 LEADING QUESTIONS, HOW THE ANSWERS COME OUT, ALL OF THAT,
26 SO --.

27 MR. STEIN: YOUR HONOR SHE'S A TRIBAL GENERAL
28 COUNSEL OF THE ADVERSE PARTY.

1 THE COURT: RIGHT I'M AWARE OF THAT SO YOU CALLED
2 HER SO SHE'S YOUR WITNESS.

3 MR. STEIN: VERY GOOD.

4 THE COURT: NO LEADING QUESTIONS.

5 MR. STEIN: AND THE COURT'S GIVEN MELEE WAY SO
6 WE'LL DO OUR BEST.

7 Q. BY MR. STEIN: CAN WE READ THE WHEREAS CLAUSE
8 ABOVE THAT, WE SKIPPED ONE?

9 A. ABOVE --

10 Q. ABOVE THE WHEREAS CLAUSE HAD YOU JUST READ ABOUT
11 THE 28 MONTHS?

12 A. WHEREAS, UNDER THE AGREEMENT DEVELOPER IS DUE TO
13 THE PAID \$25,000 PER MONTH, FROM FEBRUARY 1, 2001 THROUGH
14 THE PRESENT, FOR A TOTAL OF APPROXIMATELY \$725,000 TO DATE,
15 FROM THE INVESTMENT MONEY AND THIS WOULD TAKE UP A LARGE
16 PORTION OF THE INVESTMENT MONEY THAT EACH INVESTMENT GROUP
17 HAS DISCUSSED INVESTING THE TRIBE.

18 Q. WAS THIS TRUE WHEN YOU WROTE IT?

19 A. I BELIEVE SO, YES.

20 Q. WAS THIS TRUE WHEN YOU SIGNED IT?

21 A. I BELIEVE SO, YES.

22 Q. HAVE ANY FACTS COME TO YOUR ATTENTION THAT WOULD
23 NOT MAKE THIS TRUE TODAY?

24 A. NO.

25 Q. GOING TO THE NEXT PARAGRAPH, WAS THE PARAGRAPH --
26 THE TRIBAL COUNCIL REQUESTED DEFERRED PAYMENT OF MONTHLY
27 AMOUNTS ACCRUING -- I'M SORRY. ON THE WHEREAS CLAUSE WHERE
28 THE TRIBE IS SATISFIED WITH THE AGREEMENT AND BY THIS

1 RESOLUTION SEEKS TO APPROVE AND RATIFY ONCE AGAIN AND TO
2 RECOGNIZE OVER 28 MONTHS OF SATISFACTORY PERFORMANCE BY
3 DEVELOPER, WAS THAT TRUE WHEN YOU WROTE IT?

4 A. YES.

5 Q. WAS THAT TRUE WHEN YOU SIGNED THIS AGREEMENT?

6 A. YES.

7 Q. HAVE ANY FACTS COME INFORM YOUR ATTENTION SINCE
8 THAT DATE THAT WOULD MAKE THIS LESS THAN TRUE?

9 A. NO.

10 Q. WE WILL THEN SKIP THE NEXT WHEREAS CLAUSE AND GO
11 TO THE WHEREAS TRIBAL GENERAL COUNSEL?

12 A. WHEREAS, TRIBAL GENERAL COUNSEL, HAVING REVIEWED
13 THE AGREEMENT BETWEEN DEVELOPER, DEVELOPMENT COMPANY LLC,
14 AS AMENDED AND HAVING REVIEWED THIS 2003 AMENDMENT, HAS
15 OPINED TO THE TRIBAL COUNCIL THAT PAREN LITTLE I THE
16 AGREEMENT, AS PREVIOUSLY AMENDED IS A VALID, BINDING AND
17 ENFORCEABLE OBLIGATION OF THE TRIBAL COUNCIL AND THE TRIBE
18 AS WRITTEN, AND PAREN LITTLE TWO I AFTER APPROVAL AND
19 ADOPTION BY THE TRIBAL COUNCIL, THIS 2003 AMENDMENT WILL BE
20 A VALID, BINDING AND ENFORCEABLE AMENDMENT TO THE AGREEMENT
21 AND, PAREN THREE LITTLE I AND AFTER ADOPTION OF THE 2003
22 AMENDMENT, THE AGREEMENT AS AMENDED BY 2003 AMENDMENT WILL
23 ALSO BE VALID, BINDING AND ENFORCEABLE IN ACCORDANCE WITH
24 ITS TERMS; .

25 Q. WAS THIS TRUE WHEN YOU WROTE IT?

26 A. YES.

27 Q. WAS THIS TRUE WHEN YOU SIGNED IT?

28 A. YES.

1 Q. HAS ANYTHING COME TO YOUR ATTENTION SINCE THIS WAS
2 WRITTEN AND SIGNED THAT MAKES THIS LESS TRUE?

3 A. NO.

4 THE COURT: MR. STEIN REMIND ME, DO YOU HAVE A --
5 I KNOW YOU HAVE A CROSS ACTION, IS QUANTUM MERUIT ONE OF
6 THE CAUSES OF ACTION.

7 MR. STEIN: YES.

8 THE COURT: IN THAT -- OKAY JUST MAKING SURE,
9 THANK YOU.

10 Q. BY MR. STEIN: AND THEN -- SO NOW THEREFORE, IF
11 YOU CAN READ THAT?

12 A. NOW, THEREFORE, PURSUANT TO SECTION 14 OF THE
13 AGREEMENT, AND? CONSIDERATION OF THESE PREMISES AND THE
14 PROMISES, COVENANTS, AGREEMENTS AND ACKNOWLEDGMENTS
15 CONTAINED IN THIS AGREEMENT, THE TRIBAL COUNCIL, ON ITS OWN
16 BEHALF AND ON BEHALF OF THE TRIBE, AND DEVELOPER AGREE TO
17 THE FOLLOWING MODIFICATIONS IN THE FOLLOWING SECTIONS THE
18 AGREEMENT: .

19 Q. WHAT WAS OF THE PURPOSE OF THIS CLAUSE?

20 A. TO SET UP WHAT THE AMENDMENTS, WHAT THE CHANGES TO
21 THE AGREEMENT WITH GOING TO BE.

22 Q. AND DID THE TRIBE IN FACT AGREE?

23 A. YES.

24 Q. CAN WE READ SECTION 7 PLEASE AND I'M SKIPPING SOME
25 STUFF I WOULD COVER OTHERWISE, I'M JUST TRYING TO MOVE
26 FASTER SO PAGE 53 TWO, SECTION 7, APPROVAL AND RATIFICATION
27 OF AGREEMENT, IF YOU CAN READ THAT SHORT SECTION?

28 A. THE TRIBAL COUNCIL, ON BEHALF OF THE TRIBE H HAS

1 REVIEWED THE AGREEMENT, AS AMENDED, AND HEREBY APPROVE AND
2 RATIFY THE AGREEMENT, AS AMENDED. THE TRIBAL COUNCIL, ON
3 BEHALF OF TRIBE, HAS AGREED THE DEVELOPER HAS PERFORMED ALL
4 OF THE TERMS AND CONDITIONS OF THE AGREEMENT THROUGH THE
5 DATE OF THE 2003 AMENDMENT.

6 Q. WHAT WAS THE PURPOSE OF SECTION 7?

7 A. THE TRIBE IS CONFIRMING THAT THE AGREED UPON TASKS
8 HAVE BEEN PERFORMED TO DATE.

9 Q. AND LOOKING AT JUST THE PART THAT READS THE TRIBAL
10 COUNCIL ON BEHALF OF THE TRIBE HAS REVIEWED THE AGREEMENT,
11 WAS THAT TRUE ON THE DATE THAT YOU WROTE IT?

12 A. I BELIEVE SO. THEY WERE PROVIDED THE AGREEMENT IS
13 A HEAD OF TIME, PROVIDED THE AGREEMENT AT THE MEETING.

14 Q. AND WAS IT TRUE ON THE DATE THAT YOU SIGNED IT?

15 A. YES TO THE EXTENT THAT I BELIEVE THEY REVIEWED IT.
16 IF THEY WERE STARING OUT THE WINDOW AND NOT READING IT WHEN
17 THEY LOOKED LIKE THEY WERE READING IT I DON'T KNOW BUT YES
18 THEY APPEARED TO HAVE REVIEWED IT.

19 Q. AND THEN IT SAYS THE TRIBAL COUNCIL ON BEHALF OF
20 THE TRIBE HEREBY APPROVE AND RATIFY THE AGREEMENT AS
21 AMENDED, WAS THAT TRUE ON THE DATE THAT YOU WROTE IT?

22 A. YES.

23 Q. AND WAS IT TRUE ON THE DAYS THAT YOU SIGNED IT?

24 A. YES.

25 Q. AND HAS ANYTHING COME TO YOUR ATTENTION THAT WOULD
26 MAKE THAT LESS THAN TRUE TODAY?

27 A. NO.

28 Q. AND THEN THE PHRASE THAT THE TRIBAL COUNCIL AGREES

1 THAT THE DEVELOPER HAS PERFORMED ALL THE TERMS AND
2 CONDITIONS OF THE AGREEMENT THROUGH THE DATE OF THE 2003
3 AMENDMENT WAS THAT TRUE ON THE DATE THAT YOU WROTE IT?

4 A. YES.

5 Q. WAS IT TRUE ON THE DATE THAT YOU SIGNED IT?

6 A. YES.

7 Q. HAVE ANY FACTS COME TO YOUR ATTENTION THAT WOULD
8 MAKE THAT ANY LESS TRUE TODAY?

9 A. NO.

10 Q. THEN TURNING TO PAGE 53 THREE, IS THAT YOUR
11 SIGNATURE?

12 A. YES.

13 Q. AND THE DATE AUGUST 10TH, WAS THAT AN ACCURATE
14 DATE?

15 A. I BELIEVE SO.

16 THE COURT: WHAT YEAR AGAIN?

17 A. 2003.

18 THE COURT: THANK YOU.

19 Q. BY MR. STEIN: GOING BACK TO SECTION 6 NOW,
20 SECTION 6, LEGAL ADVICE, MAY I ASK YOU TO READ THAT?

21 A. SO IT'S BATES STAMPED 532, SECTION 6, LEGAL
22 ADVICE, THE LANGUAGE OF SECTION 23 SHALL BE MODIFIED BY
23 ADDING THE FOLLOWING SENTENCE TO THE END OF THE SECTION,
24 THE TRIBAL COUNCIL FURTHER ACKNOWLEDGES THE TRIBAL GENERAL
25 COUNSEL, RAE LAMOTHE, ESQ PERIOD HAS REVIEWED THE
26 AGREEMENT, AS AMENDED, AND FOUND THAT IT IS A VALID,
27 BINDING AND ENFORCEABLE OBLIGATION OF THE TRIBAL COUNCIL,
28 ON ITS OWN BEHALF AND BEHALF OF THE TRIBE. IN ADDITION,

1 THE TRIBAL COUNCIL HAS DRAFTED THIS 2003 AMENDMENT AND
2 FOUND THAT IS A VALID, BINDING AND ENFORCEABLE OBLIGATION
3 OF THE TRIBAL COUNCIL, ON ITS OWN BEHALF AND BEHALF OF THE
4 TRIBE. AND IN ADDITION, THE AGREEMENT AS AMENDED BY THE
5 2003 AMENDMENT, AND -- LET ME READ THAT AGAIN. AND IN
6 ADDITION, THE AGREEMENT AS AMENDED BY THE 2003 AMENDMENT,
7 AND FOUND THAT IT IS THE VALID, BINDING AND ENFORCEABLE
8 OBLIGATION OF THE TRIBAL COUNCIL, ON ITS OWN BEHALF AND
9 BEHALF OF THE TRIBE.

10 THE COURT: I HAVE ANOTHER QUESTION. NORMALLY IN
11 THESE QUANTUM MERUIT OF CASES THERE'S EXPERTS THAT TESTIFY
12 ON BOTH SIDES AS TO THE VALUE OF THE SERVICES PROVIDED, ARE
13 EITHER OF YOU PRESENTING EXPERT TESTIMONY ON THAT.

14 MS. IBARRA: NO.

15 THE COURT: IT'S USUALLY BOTH SIDES THAT DO, IN
16 OTHER WORDS I KNOW THERE'S A DISPUTE AS TO THE VALUE OF THE
17 SERVICES THERE'S A CONTRACT AMOUNT BUT THERE'S ALSO EXPERT
18 TESTIMONY THAT YOU KNOW -- I'M JUST ASKING IS THAT
19 SOMETHING THAT --.

20 MR. STEIN: IT'S A GREAT QUESTION; IT'S A GREAT
21 QUESTION. YOU'LL FIND THE CASE LAW THAT INDICATES THAT
22 EXPERT TESTIMONY IS NOT REQUIRED BUT THE FACT THAT THEY'RE
23 TALKING ABOUT IT SHOWS THAT IT'S OFTEN DONE. MR. MILLS,
24 OUR EXPERT CAN TESTIFY AS TO THE QUANTUM MERUIT THE WORK
25 DONE BUT.

26 MS. IBARRA: HE'S HAD NOT DESIGNATED AS TO THAT SO
27 WE WOULD OBJECT TO THAT IF THAT'S WHAT HE'S TESTIFYING ON
28 HE WASN'T DESIGNATED TO THE VALUE OF LEGAL SERVICES TO

1 DETERMINE WHETHER LEGAL SERVICES WERE PERFORMED.

2 MR. STEIN: THAT IS NOT TRUE AT.

3 THE COURT: WHETHER LEGAL SERVICES WERE AT ALL.

4 MR. STEIN: THAT'S NOT TRUE AT ALL.

5 THE COURT: MAYBE I SHOULD WAIT TO HEAR BUT
6 ANYWAY, SO YOUR BRIEFING WILL ADDRESS THAT.

7 MR. STEIN: YEAH AND THE BRIEFING ALREADY SAYS YOU
8 CAN PUT INTO EVIDENCE, I WILL BE SPEAKING AS TO THE WHAT
9 THE VALUE OF THE LEGAL SERVICES, THE COURT IS ALLOWED TO --
10 THE CONTRACT REQUIRED THAT ANTERIOR '87 \$5 PER HOUR RATE,
11 THE COURT CAN CHANGE THAT HOURLY RATE WE HAVE CHANGE THE
12 NUMBER OF HOURS PROVIDED WE HAVE EAVE SPREADSHEET THAT SHOW
13 THE NUMBER OF HOURS AND WE ALSO HAVE THE ORIGINAL TIME
14 SLIPS THAT SHOW THE NUMBER OF HOURS SO WHEN PUFF PUT THAT
15 YOU'LL TOGETHER SO NUMBER ONE ANY EVIDENCE WORKS AND NUMBER
16 2 THE COURT IS FREE TO DISREGARD THAT OR DISREGARD THAT OR
17 MAKE ITS OWN ESTIMATE IN THE -- BECAUSE IT'S AN ECONOMIC
18 ACTION.

19 THE COURT: WELL LET ME LOOK AT THE BRIEFING. I'M
20 SORRY MY BRAIN IS IS THINKING OF THESE ISSUES.

21 {RIGHT1}: BY THE WAY IT'S DEVELOPER SERVICES NOT
22 LEGAL SERVICES.

23 MS. IBARRA: EXACTLY AND MR. MILLS IS A LAWYER SO
24 I'M NOT SURE HOW EVES GOING TO OPINE AS TO THE DEVELOPER
25 SERVICES AS OPPOSED TO HIS SERVICES AS THE LAWYER.

26 THE COURT: I SUPPOSE THE COURT CAN LOOK AT THE
27 CONTRACT VALUE, I'M NOT SURE YOU ABSOLUTELY HAVE TO HAVE
28 EXPERTS ALTHOUGH THE CASES OR TRIALS I HAVE WITH QUANTUM

1 MERUIT WITH LEGAL FEES HAVE BEEN WITH EXPERTS, I DON'T KNOW
2 IF IT'S ABSOLUTELY REQUIRED BUT I'LL LOOK AT YOUR BRIEFING.

3 MR. STEIN: AND ONCE AGAIN YOU MAY REMEMBER DAN
4 CRANE GAVE QUANTUM MERUIT TESTIMONY BEFORE THE COURT
5 STOPPED HIM AND AND THAT TESTIMONY WAS THEY DON'T WORK BY
6 THE HOUR THERE, THIS WAS A DEVELOPMENT AGREEMENT IT'S NOT
7 BY THE HOUR IT'S BY THE MONTH AND THE ONLY THING WE WERE
8 SHOWING IS IF WE WORKED EVERY MONTH SO IF I WORKED HALF AN
9 HOUR THAT WOULD QUALIFY FOR \$25,000 ON THE OTHER HAND IF I
10 MADE ONE PHONE CALL AND BRING IN \$21,000,000 THAT ALSO ALSO
11 QUALIFIES FOR ONLY \$25,000 SO THE AGREEMENT IS THERE'S A
12 DEVELOPER AGREEMENT NOT A LAW AGREEMENT.

13 THE COURT: YEAH ALL RIGHT.

14 MR. STEIN: SO THE THING IS IF WE CAN GO TO LINE
15 ITEMS, WHAT I'D LIKE TO DO IS START WITH THE ORIGINAL
16 SECTION 23 OF THE AGREEMENT IN EXHIBIT 569 AND THEN GIVE
17 YOU THE BATES PAGE OF THAT WHICH IS 49 FOUR. DOES THE
18 COURT HAVE THE AGREEMENT.

19 THE COURT: NOT -- I HAVE THE SMDC BUT ALL THE
20 VARIOUS AMENDMENTS AND RESOLUTIONS NO I DON'T HAVE THEM IN
21 FRONT OF ME BUT IF YOU HAVE READ PARTICULAR RESOLUTIONS I'M
22 OKAY WITH THAT.

23 MR. STEIN: VERY GOOD YOUR HONOR.

24 Q. AGAIN THE ORIGINAL SMDC AGREEMENT LANGUAGE BEFORE
25 BEING MODIFIED IN 2003 ASSOCIATION THIS IS THE 2001
26 LANGUAGE COULD YOU READ LEGAL ADVICE SECTION 23?

27 A. THE PARTIES HERE TO ACKNOWLEDGE THAT WE HAVE AN
28 ADVISED AND ENCOURAGE TO SEEK LEGAL ADVICE FROM INDEPENDENT

1 COUNSEL, AND GIVEN THE OPPORTUNITY TO DO SO, PRIOR TO
2 SIGNING THIS AGREEMENT.

3 Q. IN AFFIRMING -- AND THIS MODIFICATION CHANGED THAT
4 SAME SECTION, CAN YOU READ HOW IT CHANGED IT? YOU JUST
5 READ HOW IT CHANGED IT, CAN YOU READ THE FIRST PARAGRAPH AS
6 TO SECTION 6, LEGAL ADVICE IN THE 2003 MODIFICATION?

7 A. THE SUBSTANTIVE PARAGRAPH OR THE FIRST SENTENCE.

8 Q. THE FIRST SENTENCE?

9 A. THE LANGUAGE OF SECTION 23 OF THE AGREEMENT SHALL
10 BE MODIFIED BY ADDING THE FOLLOWING SENTENCE TO THE END OF
11 THE SECTION.

12 Q. SO AS MODIFIED IF YOU CAN TELL US WHAT THE PURPOSE
13 OF THE MODIFICATION TO SECTION 23 WAS?

14 A. TO CONFIRM THAT NOT ONLY DID THE TRIBE HAVE THE
15 OPPORTUNITY TO DISCUSS THE AGREEMENT WITH OUTSIDE -- WITH
16 COUNSEL, THEY HAD ME TO TALK TO AND DID TALK -- AND DID
17 DISCUSS IT WITH ME.

18 Q. SO THE OPPORTUNITY WAS IN WHAT YEAR?

19 A. '03.

20 Q. YOU MEAN --?

21 A. YOU MEAN THE ORIGINAL?

22 Q. IN THE ORIGINAL AGREEMENT?

23 A. THE ORIGINAL AGREEMENT IS AS OF FEBRUARY 1, 2001.

24 Q. SO IS IT YOUR TESTIMONY THAT THE OPPORTUNITY TO
25 SEEK LEGAL COUNSEL WAS IN FOR THE FEBRUARY 2001 VERSION --.

26 THE COURT: YOU MEAN THAT PROVISION WAS IN THE
27 FEBRUARY.

28 MR. STEIN: YES.

1 THE COURT: 23.

2 MR. STEIN: YES?

3 A. CORRECT.

4 MR. STEIN:

5 Q. AND THAT WOULD MATCH THE FACT THAT STEVE OTTO HAD
6 RESIGNED AS TRIBAL GENERAL COUNSEL BEFORE THE SIGNATURE?

7 A. I DON'T KNOW.

8 Q. RIGHT.

9 A. I WASN'T THERE.

10 Q. THEN IN 2000 THREE, THE MODIFICATION ADDED --
11 DOES IT ADD OR SUBSTITUTE THE LANGUAGE IN 2003?

12 A. IT ADDS -- IT ADDS IT TO, SO THE COMPLETE -- DO
13 YOU WANT ME TO READ THE COMPLETE PARAGRAPH THE 26 THEM
14 TOGETHER.

15 THE COURT: JUST SO I'M CLEAR, THIS IS A
16 MODIFICATION OF THE 2001, IT'S ADDING LANGUAGE?

17 A. RIGHT.

18 THE COURT: TO THAT PROVISION THAT DISCUSSES LEGAL
19 ADVICE AND SEEKING INDEPENDENT COUNSEL RIGHT?

20 A. RIGHT.

21 THE COURT: OKAY SURE YOU CAN READ IT IN TOTALITY,
22 IN OTHER WORDS WITH ITS AMENDMENT THAT WHAT YOU WANT HER TO
23 DO.

24 MR. STEIN: YES YOUR HONOR.

25 THE COURT: ALL RIGHT YES YOU HAVE MAY?

26 A. THE PARTIES HERE TO ACKNOWLEDGE THAT WE HAVE BEEN
27 ADVISED AND ENCOURAGED TO SEEK ADVICE FROM INDEPENDENT
28 COUNSEL, AND GIVEN HEADLIGHT OPPORTUNITY TO DO SO, PRIOR TO

1 SIGNING THIS AGREEMENT. ADD ON THE FOLLOWING: THE TRIBAL
2 COUNCIL FURTHER ACKNOWLEDGES THE TRIBAL GENERAL COUNSEL RAE
3 LAMOTHE.

4 THE COURT: YOU?

5 A. DO YOU WANT ME TO READ THE WHOLE THING.

6 THE COURT: YES?

7 A. RAE LAMOTHE ESQ HAS REVIEWED THE AGREEMENT AS
8 AMENDED AND FOUND THAT IT IS A -- IT IS THE VALID, BINDING
9 AND ENFORCEABLE OBLIGATION OF THE TRIBAL COUNCIL ON ITS OWN
10 BEHALF AND BEHALF OF THE TRIBE. IN ADDITION, TRIBAL
11 GENERAL COUNSEL HAS DRAFTED THIS 2003 AMENDMENT AND FOUND
12 THAT IT IS A VALID THE, BINDING AND ENFORCEABLE OBLIGATION
13 OF THE TRIBAL COUNCIL ON ITS OWN BEHALF AND BEHALF OF THE
14 TRIBE AND IN ADDITION THE AGREEMENT AS AMENDED BY THE 2003
15 AMENDMENT AND FOUND THAT IT IS A VALID BINDING AND
16 ENFORCEABLE OBLIGATION OF THE TRIBAL COUNCIL ON ITS OWN
17 BEHALF AND BEHALF OF THE TRIBE.

18 MR. STEIN: OKAY.

19 Q. BY MR. STEIN: AS THE MODIFICATION SECTION 6, THE
20 TRIBAL COUNCIL FURTHER ACKNOWLEDGES TRIBAL GENERAL COUNSEL
21 RAE LAMOTHE HAS REVIEWED THE AGREEMENT AS AMENDED, IS THAT
22 TRUE -- WAS THAT TRUE ON THE DATE THAT YOU --

23 A. YES.

24 Q. WROTE THIS? WAS IT TRUE ON THE DATE THAT YOU
25 SIGNED IT?

26 A. YES.

27 Q. WOULD THE PASSAGE OF TIME THROUGH THE PRESENT IS
28 IT ANY LESS TRUE TODAY?

1 A. NO.

2 Q. THE PHRASE THAT TRIBAL GENERAL COUNSEL IN 2003
3 FOUND THAT IT'S VALID, BINDING AND ENFORCEABLE OBLIGATION
4 OF THE TRIBAL COUNCIL AND THE TRIBE, WAS THAT TRUE ON THE
5 DATE THAT YOU WROTE IT?

6 A. YES.

7 Q. AND WAS IT TRUE ON THE DATE THAT YOU SIGNED IT?

8 A. YES.

9 Q. AND IS IT TRUE TODAY? IS THERE ANY FACTS THAT
10 YOU'VE LEARNED SINCE THEN THAT MAKES IT LESS TRUE TODAY?

11 A. NO.

12 Q. THE PHRASE IS THAT IN ADDITION TRIBAL GENERAL
13 COUNSEL DRAFTED THE 2003 AMENDMENT, IS IT -- WAS IT TRUE ON
14 THE DATE THAT YOU WROTE THIS?

15 A. YES.

16 Q. AND WAS IT TRUE ON THE DATE THAT YOU SIGNED IT?

17 A. YES.

18 Q. AND HAVE ANY FACTS COME TO YOUR ATTENTION THAT
19 MAKES IT ANY LESS TRUE TODAY?

20 A. NO.

21 Q. AND THE FACT THAT IN ADDITION THE AGREEMENT AS
22 AMENDED BY THE 2003 AMENDMENT IS VALID BINDING AND
23 ENFORCEABLE OBLIGATION OF THE TRYING ON ITS OWN BEHALF AND
24 BEHALF OF THE TRIBE, WAS THAT TRUE ON THE DATE THAT YOU
25 WROTE THIS?

26 A. YES.

27 Q. WAS IT TRUE ON THE KATE DATE THAT YOU SIGNED IT?

28 A. YES.

1 Q. HAVE ANY FACTS COME TO YOUR ATTENTION THAT MAKES
2 IT ANY LESS TRUE TODAY?

3 A. NO.

4 Q. I WOULD LIKE TO MOVE NOW TO ANSWER SOME POINTS
5 RAISED BY MS. IBARRA. DOES THE WITNESS NEED A FIVE-MINUTE
6 BREAK OR.

7 MR. FORDYCE: I COULD ACTUALLY USE THE BATHROOM.

8 MR. STEIN: THREE MINUTES EVEN.

9 THE COURT: SURE, WE CAN COME BACK FIVE MINUTES,
10 WE HAVE A MEN'S RESTROOM IN THE JURY ROOM.

11 MR. FORDYCE: YES THANK YOU YOUR HONOR.

12 THE COURT: YOU HAVE MAY STEP DOWN.

13 (BREAK TAKEN.) 11:07 AM TO 11:17 AM.

14 THE COURT: GABRIELINO VERSUS STEIN BC361307, YOU
15 MAY CONTINUE.

16 MR. STEIN: THANK YOU.

17 Q. BY MR. STEIN: MS. LAMOTHE WE'D LIKE TO RUN YOU
18 THROUGH SIX EXHIBITS THAT YOU SPOKE ABOUT YESTERDAY AND
19 HOPEFULLY FINISH BY NOON AND RELEASE YOU. SO THE FIRST ONE
20 IS EXHIBIT 250 WHICH IS THE RAE LAMOTHE RETAINER AGREEMENT?

21 A. YES.

22 Q. AND CAN WE GO TO RECITALS, CAN YOU READ B AND C
23 TOGETHER PLEASE?

24 A. B THE TONGVA DESIRE TO EMPLOY THE LEGAL SERVICES
25 OF ATTORNEY TO ADVISE AND REPRESENT THE TRIBE AS TRIBAL
26 GENERAL COUNSEL IN CONNECTION WITH CERTAIN ECONOMIC
27 DEVELOPMENT TASKS, WITH THE UNDERSTANDING THAT ALL ULTIMATE
28 DECISIONS IN CONNECTION THERE WITH SHALL AT ALL TIMES

1 RESIDE SOLELY WITH THE TRIBE AND THEIR COUNSEL. BULLET B
2 C, ON JUNE 24, 2001, THE COUNCIL PASSED ECONOMIC
3 DEVELOPMENT RESOLUTION NO. 15 APPOINTING RAE LAMOTHE ESQ AS
4 TRIBAL GENERAL COUNSEL, AND SETTING FORTH CERTAIN TERMS AND
5 CONDITIONS TO BE INCORPORATED INTO THIS RETAINER AGREEMENT.
6 MS. LAMOTHE HAS ALREADY BEGUN SIGNIFICANT WORK AS TRIBAL
7 GENERAL COUNSEL AS EN ADVICE-D BY RESOLUTION NUMBER 15.

8 Q. VERY GOOD IN TURNING TO B , IT STATES THAT THE
9 TRIBE WANTED YOU TO ACT AS TRIBAL GENERAL COUNSEL IN
10 CONNECTION WITH CERTAIN ECONOMIC DEVELOPMENT TASKS, ARE THE
11 SAME ECONOMIC DEVELOPMENT TASKS THAT SMDC WAS CONTRACTED TO
12 DO AS A DEVELOPMENT CONTRACTOR?

13 A. I BELIEVE SO.

14 Q. SO WERE YOU REQUIRED TO DO THE LEGAL WORK AS
15 REQUIRED FOR THE TRIBE.

16 MS. IBARRA: OBJECTION LEADING.

17 THE COURT: YEAH SUSTAINED.

18 MR. STEIN: FORGIVE ME, WHAT LEGAL WORK WERE YOU
19 SUPPOSED TO DO FOR THE TRIBE?

20 A. THE WORK RELATED TO THE ECONOMIC DEVELOPMENT TASKS
21 MAINLY WITH AN EYE TO GETTING A CASINO, GETTING FEDERAL
22 RECOGNITION AND/OR GETTING A CASINO WITH STATE RECOGNITION.

23 Q. WOULD THIS INCLUDE ALL LEGAL WORK NEEDED BY THE
24 TRIBE IN CONNECTION WITH THE WORK THAT SMDC WAS DOING?

25 A. YES.

26 Q. SO THEN ON JUNE 24 --.

27 THE COURT: JUST SO IT'S CLEAR, THAT'S ALL IN
28 CONNECTION WITH RECOGNITION AND CASINOS; RIGHT?

1 A. CORRECT.

2 THE COURT: THAT'S ALL SMDC WAS DOING?

3 A. CORRECT.

4 THE COURT: IT'S JUST KIND OF RESTATING THE SAME
5 THING BUT -- THAT WAS YOUR UNDERSTANDING OF WHAT SMDC WAS
6 DOING AS WELL WAS HELPING THE TRIBE GET TO THOSE POINTS OF
7 RECOGNITION AND CASINO?

8 A. CORRECT, ALTHOUGH I DIDN'T REPRESENT TRIBAL
9 MEMBERS.

10 THE COURT: YES?

11 A. I WAS THE CLEARING HOUSE FOR EVERY DUI, EVERY U D,
12 EVERY MATTER THAT ANYONE EVER HAD BUT WHAT I WAS RETAINED
13 TO DO WAS THE CASINO OPERATION OPERATION OR CASINO SEARCH.

14 Q. BY MR. STEIN: SO DID MR. STEIN ACT AS AN ATTORNEY
15 TO DO LEGAL WORK UNDER THE SMDC AGREEMENT FOR GT TRIBE?

16 A. NO THE AGREEMENT SPECIFIED THAT YOU WERE DOING THE
17 DEVELOPMENT WORK.

18 Q. AND WHO DID THAT LEGAL WORK FOR THE TRIBE?

19 A. I DID ONCE I ARRIVED.

20 Q. MOVING TO -- AND YOU WERE THERE FOR FIVE YEARS?

21 A. APPROXIMATELY, YES.

22 Q. AND MOVING TO C IT SAYS ON JUNE 24, 2001, THE
23 COUNCIL PASSED RESOLUTION 15 APPOINTING YOU AS GENERAL
24 COUNSEL. DID THAT RESOLUTION -- AND IT SAYS.

25 THE COURT: YOU NEED TO REPHRASE THAT.

26 MR. STEIN: AND IT SAYS FURTHER SETTING FORTH
27 CERTAIN TERMS AND CONDITIONS TO BE INCORPORATED INTO THIS
28 RETAINER AGREEMENT. DID THE ORIGINAL RESOLUTION FUNCTION

1 AS AN ATTORNEY-CLIENT RETAINER AGREEMENT PRIOR TO THIS
2 AGREEMENT?

3 A. I SUPPOSE I NEVER CONSIDERED THAT BUT YES I -- IT
4 WAS MY UNDERSTANDING THAT I WAS RETAINED AS OF JUNE,
5 PAYABLE RETROACTIVE TO WHEN I STARTED DOING THE WORK IN
6 MAY.

7 Q. WAS RESOLUTION 15 IN WRITING?

8 A. YES.

9 Q. WAS IT SIGNED BY THE TRIBAL COUNCIL?

10 A. YES.

11 Q. IN YOUR VIEW DID THAT COMPORT.

12 THE COURT: WELL NO.

13 MS. IBARRA: OBJECT TO LIKE BEST EVIDENCE RULE OR
14 SOMETHING IF IT EXISTS.

15 MR. STEIN: IT'S NOT MY QUESTION.

16 THE COURT: YEAH.

17 MR. STEIN: IF I CAN ASK MY QUESTION.

18 THE COURT: GO AHEAD, FINISH YOUR QUESTION.

19 Q. BY MR. STEIN: IN YOUR VIEW, DID THAT COMPORT WITH
20 NINE REQUIREMENTS FOR YOU TO START LEGAL WORK FOR THE TRIBE
21 IN JUNE OF 2001?

22 A. YES.

23 Q. WHY?

24 A. I HAD MET WITH THE TRIBE ON A NUMBER OF OCCASIONS,
25 THEY HAD A CHANCE TO MEET ME H GET TO KNOW ME AND THEN THEY
26 VOTE TODAY RETAIN ME TO BE GENERAL COUNSEL. I MET WITH THE
27 TRIBAL COUNCIL, NOT THE TRIBE.

28 Q. AND IT SAYS HEARSAY MS. LAMOTHE HAS ALREADY BEGUN

1 SIGNIFICANT WORK AS TRIBAL GENERAL COUNSEL AS ENVISIONED BY
2 RESOLUTION 15 AND IT'S SAYING THAT AS OF THE JANUARY 2002
3 DATE HERE. IS THAT -- WAS THAT TRUE?

4 A. YES.

5 Q. TURNING TO PAGE 5 OF THE AGREEMENT H ATTORNEYS
6 RESPONSIBILITIES UNDER D, CAN YOU READ THAT PLEASE?

7 A. D ATTORNEYS RESPONSIBILITIES, ATTORNEY SHALL BE
8 RESPONSIBLE FOR THE LEGAL WORK REQUIRED, NECESSARY OR
9 ADVISIBLE TO COMPLETE THE ECONOMIC DEVELOPMENT TASKS;
10 PROVIDED, UNDERLINED, THAT THE TRIBE MAY RETAIN THIRD PARTY
11 PROFESSIONALS FOR CERTAIN ECONOMIC DEVELOPMENT TASKS. IN
12 SUCH CASE, ATTORNEY SHALL BE NOT RESPONSIBLE FOR THE THIRD
13 PARTY PROFESSIONALS. ATTORNEY WILL NOT BE RESPONSIBLE FOR
14 ADMINISTRATIVE WORK FOR THE TONGVA BUT RATHER THE ONLY
15 SCOPE OF WORK DESCRIBED ABOVE.

16 Q. WAS THIS TRUE ON THE DATE IT WAS SIGNED?

17 A. YES.

18 Q. AND DID YOU FULFILL THE TASKS OF PROVIDING THE
19 LEGAL WORK REQUIRED NECESSARY OR VISIBLE TO COMPLETE THE
20 ECONOMIC DEVELOPMENT TASKS?

21 A. YES.

22 Q. AND WHO DID YOU PROVIDE THAT LEGAL WORK TO?

23 A. THE TRIBAL COUNCIL AND THE TRIBE.

24 Q. THANK YOU. PAGE 15 UNDER NOTICES. ACTUALLY
25 FORGIVE ME, LET'S GO TO PAGE 17 FIRST, SECTION 2 TWO LEGAL
26 ADVICE.

27 THE COURT: DID WE GO OVER THIS OR IS THIS THE
28 SAME.

1 MS. IBARRA: WE DIDN'T GO OVER THIS.

2 MR. STEIN: THIS WAS THE RETAINER AGREEMENT.

3 THE COURT: YOU'RE RIGHT.

4 MR. STEIN: THIS WAS THE RECONSIDER FOR LAMOTHE.

5 MS. IBARRA: WE DIDN'T GO OVER THE SPECIFIC
6 PROVISIONS.

7 THE COURT: RIGHT WE WENT OVER I HAVE PROVISION 23
8 HE JUST REFERENCED 22 SO WE'RE GOING OVER.

9 MR. STEIN: 23 WAS THE AMENDMENT TO THE SMDC
10 AGREEMENT WE'RE NOW TALKING ABOUT THE RETAINER AGREEMENT
11 AND MS. IBARRA LAYS RAISED THE POINT THAT SAYS WELL THIS
12 RETAINER AGREEMENT WAS NO GOOD BUT THERE WAS WASN'T
13 INDEPENDENT COUNSEL AND I WOULD LIKE ASK HER TO REAL 22
14 LEGAL ADVICE.

15 MS. IBARRA: OBJECTION I DIDN'T RAISE THAT, THAT
16 WASN'T MY CONCERN, I BROUGHT IT IN, I DON'T -- IT'S NOT
17 EVEN SIGNED SO I ASKED THE WITNESS WHETHER THIS WAS -- IF
18 SHE RECALLED ENTERING INTO THIS BUT WE DON'T KNOW IF THIS
19 IS FINAL BECAUSE IT'S NOT SIGNED.

20 THE COURT: AND I UNDERSTAND IT'S NOT SIGNED BUT
21 SHE APPEARS TO BE ADOPTING IT AS THE AGREEMENT.

22 MS. IBARRA: OKAY.

23 THE COURT: I UNDERSTAND IT'S NOT SIGNED AND I
24 WILL --.

25 MS. IBARRA: AND WE DON'T KNOW IF IT'S THE FINAL
26 VERSION AND I THINK WE ALL ACKNOWLEDGE THAT TOO SO GO
27 AHEAD.

28 Q. BY MR. STEIN: MS. LAMOTHE CAN YOU READ PAGE 17

1 SECTION 2 TWO LEGAL ADVICE?

2 A. THE TONGVA ACKNOWLEDGE THAT THEY HAVE SOUGHT
3 INDEPENDENT LEGAL COUNSEL FROM THE LAW OFFICES OF ED
4 HAMBURGER TO REVIEW THIS AGREEMENT, PRIOR TO PSYCHE THIS
5 AGREEMENT.

6 Q. TO YOUR KNOWLEDGE, WAS THAT TRUE ON THE DATE THAT
7 THIS AGREEMENT WAS ADOPTED?

8 A. YES.

9 Q. AND IS THAT TRUE TODAY.

10 MS. IBARRA: OBJECTION ASSUMES FACTS NOT IN
11 EVIDENCE THAT THAT THE AGREEMENT WAS EVER ADOPTED.

12 Q. BY MR. STEIN: TO YOUR KNOWLEDGE WAS THIS
13 AGREEMENT ADOPTED BY THE TRIBE?

14 A. A RETAINER AGREEMENT WAS ADOPTED BY THE TRIBE, I
15 DON'T KNOW IF THERE WERE MINOR CHANGES BETWEEN THE NOT
16 SIGNED VERSION AND THE SIGNED VERSION BUT THIS GENERALLY IS
17 MY RECOLLECTION OF THE RETAINER AGREEMENT.

18 Q. AND DOES THIS AGREEMENT MATCH YOUR RECOLLECTION OF
19 WHAT YOUR AGREEMENT WITH THE TRIBE WAS AS THE TRIBAL
20 GENERAL COUNSEL?

21 A. AS TO THE PARTS WE'VE READ, YES.

22 Q. INCLUDING THE LEGAL ADVICE ED HAMBURGER ACTING AS
23 INDEPENDENT LEGAL COUNSEL?

24 A. YES.

25 Q. AND IS ED HAMBURGER THE PERSON WHOSE NAME YOU
26 COULDN'T RECALL YESTERDAY WHEN MS. IBARRA REFUSED TO GIVE
27 YOU ANY NAME TO REFRESH YOUR RECOLLECTION.

28 MS. IBARRA: OBJECTION MISCHARACTERIZES.

1 THE COURT: IT'S ARGUMENTATIVE, SUSTAINED.

2 MS. IBARRA: YEAH IT'S ARGUMENTATIVE.

3 BY {RIGHT1}:

4 Q. WAS HE THE UNNAMED ATTORNEY YOU WERE REFERRING
5 TO?

6 A. YES HE'S THE GENTLEMAN I MET WITH MR. MCMULLIN AT
7 HARRAH'S RANCH.

8 Q. AND WAS HE ALSO TRIBAL GENERAL COUNSEL BEFORE YOU?

9 A. I BELIEVE SO.

10 Q. AND CAN WE GO TO PAGE 15 UNDER NOTICES.

11 THE COURT: I'M SORRY YOU SAID PAGE 15.

12 MR. STEIN: PAGE 15, SECTION 13 UNDER NOTICES. IS
13 LAW OFFICES OF ED HAMBURGER COPIED FOR ALL COMMUNICATIONS
14 UNDER THIS AGREEMENT.

15 A. YES.

16 Q. GOING NOW TO PAGE -- THE LAST PAGE OF THE
17 AGREEMENT, PAGE 18 UNDER GABRIELINO-TONGVA TRIBAL NATION.

18 THE COURT: HOLD A- ON A SECOND, WERE YOU
19 RESPONSIBILITY FOR DISTRIBUTING IT TO THE CCS, IN OTHER
20 WORDS IF HE'S COPIED, WERE YOU THE PERSON RESPONSIBLE FOR
21 THE SENDING THE RETAINER, A COPY -- IN OTHER WORDS --?

22 A. A SIGNED COPY OR THE COPY RE-REVIEWED.

23 THE COURT: ANYTHING I GUESS, ANYTHING.

24 A. YES I WOULD HAVE CIRCULATED IT.

25 THE COURT: SO YOU WOULD HAVE SENT IT TO HAMBURGER
26 THEN.

27 A. YES.

28 THE COURT: THAT WOULD HAVE BEEN YOUR

1 RESPONSIBILITY.

2 A. YES.

3 THE COURT: ALL RIGHT.

4 Q. BY MR. STEIN: AND ON PAGE 18, THE SIGNATURE
5 BLOCKS?

6 A. YES.

7 Q. THE SIGNATURE BLOCKS ARE WHAT ARE THE THREE
8 SIGNATURE BLOCKS?

9 A. AN UNNAMED TRIBAL COUNCIL MEMBER.

10 Q. FOR WHOM?

11 A. THE GABRIELINO-TONGVA TRIBAL NATION, A BLOCK FOR
12 INDEPENDENT COUNSEL ED HAMBURGER AND A BLOCK FOR MY
13 SIGNATURE.

14 Q. AND TO YOUR KNOWLEDGE AN AGREEMENT THAT WAS VERY
15 MUCH LIKE THIS AGREEMENT WAS IN FACT SIGNED?

16 A. YES.

17 Q. AND TO YOUR KNOWLEDGE, RESOLUTION 36 WAS IN FACT
18 ADOPTED?

19 A. YES.

20 Q. AND CAN WE TURN TO EXHIBIT 251.

21 MR. FORDYCE: I HAVE A COPY FOR MS. LAMOTHE?

22 A. CAN I SAY ONE THING?

23 THE COURT: YES.

24 A. IT'S POSSIBLE I CIRCULATED IT TO MR. DUNLAP WHO
25 DELIVERED IT TO MR. HAMBURGER. MR. HAMBURGER MAY OR MAY
26 NOT HAVE HAD E-MAIL.

27 THE COURT: WELL, YOU EITHER SENT A HARD COPY OR
28 E-MAIL. YOU'RE SAYING YOU'RE NOT SURE -- YOU'RE SURE YOU

1 SENT IT TO DUNLAP, BUT YOU'RE NOT SURE WHETHER YOU SENT IT
2 TO HAMBURGER?

3 A. RIGHT. I UNDERSTAND IT GOT TO HAMBURGER, BUT I'M
4 NOT SURE IF I'M THE ONE THAT SENT IT OR MR. DUNLAP IS THE
5 ONE THAT SENT IT TO HIM.

6 MR. FORDYCE: HER HONOR MAY I APPROACH AND GIVE
7 THE WITNESS 251 I DON'T THINK THERE'S A COPY IT UP THERE.

8 THE COURT: OKAY 251

9 MR. FORDYCE: THANK YOU.

10 THE COURT: REMIND ME WHAT 251 IS. IS IT A
11 RESOLUTION?

12 A. RESOLUTION 36 APPROVING --

13 THE COURT: ALL RIGHT.

14 Q. BY MR. STEIN: AND WAS THIS THE RESOLUTION THAT
15 ADOPTED THE RETAINER AGREEMENT THAT SIMILAR TO EXHIBIT 250?

16 A. YES.

17 Q. AND IS IT SIGNED BY THE MAJORITY OF THE TRIBAL
18 COUNCIL --

19 A. YES.

20 Q. -- SERVING AT THAT TIME?

21 A. YES.

22 Q. CAN I TURN TO YOU EXHIBIT 753 AND EXHIBIT 19
23 TOGETHER.

24 MR. FORDYCE: AND MS. LAMOTHE 75 THREE IS BEHIND
25 YOU.

26 MR. STEIN: MAY MR. FORDYCE HELP HIM.

27 MR. FORDYCE: SURE.

28 THE COURT: YES. 19 WOULD THAT BE IN PLAINTIFFS

1 BOOK.

2 MR. FORDYCE: YES YOUR HONOR IT WOULD BE.

3 MR. STEIN: AND 75 THREE WOULD BE IN OURS.

4 THE COURT: SO THIS IS A NEW EXHIBIT 753 IS NEW.

5 MR. FORDYCE: I'M NOT SURE ABOUT THAT YOUR HONOR,
6 LET ME CHECK MY NOTES YOUR HONOR AND I'LL SEE IF THAT'S
7 BEEN ADMITTED OR.

8 THE COURT: WELL PLAINTIFF, DO YOU KNOW IF THAT'S
9 AN ADMITTED, 75 THREE, RAE LAMOTHE CONTRACT OF INTEREST
10 WAIVER FOR MORALES LITIGATION.

11 MS. IBARRA: 75 THREE.

12 THE COURT: YES THAT'S A DEFENSE EXHIBIT, I MEAN
13 SHE'S HERE SHE CAN TESTIFY ABOUT IT.

14 MS. IBARRA: I'M PRETTY SURE IT HASN'T, I DON'T
15 RECALL DISCUSSING THAT, WE ONLY HAD FOUR EXHIBITS THAT SHE
16 WAS HERE BEFORE AND THIS WASN'T ONE OF THE EXHIBITS.

17 THE COURT: SO WE'LL NEED A LAY A FOUNDATION FOR
18 IT.

19 MR. STEIN: VERY GOOD THANK YOU.

20 THE COURT: YOU CAN CONTINUE THOUGH, SHE'S GOING
21 TO LOOK FOR IT.

22 MR. STEIN: I THINK IT MAY HAVE BEEN ADMITTED SO
23 LET'S START.

24 THE COURT: NO, IT'S NOT NELI DOESN'T HAVE IT BUT
25 YOU CAN LAY THE FOUNDATION KNOW IF YOU WANT.

26 Q. BY MR. STEIN: ACTUALLY THE DOCUMENT, EXHIBIT 19
27 WHICH I DON'T HAVE HERE, IT'S NOT IN MY NOTEBOOK, IS IT IN
28 THE COURT'S NOTEBOOK.

1 THE COURT: YES 19 IS IN MY NOTEBOOK.

2 MR. STEIN: AND CAN YOU IDENTIFY -- AND I BELIEVE
3 IT HAS BEEN ADMITTED.

4 THE COURT: OH YOU'RE TALKING ABOUT 19.

5 MR. STEIN: YES.

6 THE COURT: I DON'T KNOW IF 19 HAS BEEN
7 ADMITTED -- CAN NELI CAN YOU CHECK YOUR RECORDS FOR 19,
8 PLAINTIFFS 19. AGAIN SHE'S -- I'M LOOKING AT IT, IT LOOKS
9 LIKE SHE SIGNED IT SO SHE COULD LAY A FOUNDATION FURR IT.

10 MR. STEIN: YES.

11 Q. BY MR. STEIN: MS. LAMOTHE CAN YOU LAY -- CAN YOU
12 TELL US WHAT EXHIBIT 19 IS AND IF YOU DON'T MIND I'LL LOOK
13 OVER YOUR SHOULDER?

14 A. EXHIBIT 19, THE BEGINNING OF 19 IS PLAINTIFFS
15 COMBINING OPPOSITION TO DEMURRER AND AMENDED DEMURRER.

16 Q. DOES THIS REFRESH YOUR RECOLLECTION AS TO WHETHER
17 GT TRIBE WAS A PARTY IN THE MORALES LITIGATION?

18 A. YES IT DOES.

19 Q. AND WAS GT TRIBE A PARTY TO THE MORALES
20 LITIGATION?

21 A. THE CORPORATE ENTITY, YES, WAS.

22 Q. I'M SORRY NO. THE -- THAT IS THE MORALES
23 CORPORATE ENTITY?

24 A. SORRY. THE --.

25 THE COURT: WELL?

26 A. YES.

27 THE COURT: IT SAYS GABRIELINO-TONGVA TRIBAL
28 COUNCIL INC. AS THE PLAINTIFF.

1 A. YES.

2 THE COURT: AND THEN GABRIELINO-TONGVA TRIBAL
3 COUNCIL INC. AS A DEFENDANT SO INTO YEAH.

4 THE COURT: I DON'T KNOW.

5 MR. STEIN: THAT'S A DERIVATIVE ACTION, A
6 DERIVATIVE ACTION BY A MEMBER OF A NOT FOR PROFIT
7 CORPORATION SO YOU NAME THE CORPORATION BOTH AS A PLAINTIFF
8 AND AS A DEFENDANT I BELIEVE IS THE HABIT BUT TO YOUR
9 KNOWLEDGE.

10 THE COURT: BUFF IT'S THE SAME ENTITY.

11 MR. STEIN: YES.

12 Q. BY MR. STEIN: TO YOUR KNOWLEDGE WAS THAT ENTITY
13 THE MORALES -- WAS THAT ENTITY THE MORALES
14 GABRIELINO-TONGVA TRIBAL GROUP?

15 A. I DON'T RECALL. I DON'T RECALL IF WE WERE THE
16 INC. OR THE LLC.

17 Q. WELL WAS GT TRIBE, WERE THE PLAINTIFFS THE
18 INDIVIDUAL TRIBAL COUNCIL PEOPLE?

19 A. YES.

20 Q. AND WERE THEY SUING MR. MORALES?

21 A. YES.

22 Q. WERE THEY SUING OTHER INDIVIDUALS ASSOCIATED WITH
23 MORALES' GROUP?

24 A. YES.

25 Q. WERE THEY SUING MORALES' NOT FOR PROFIT
26 CORPORATION?

27 A. YES.

28 Q. WAS GT, WAS GABRIELINO-TONGVA TRIBE THE STATE

1 UNINCORPORATED ASSOCIATION THAT MR. DUNLAP WAS PART OF, WAS
2 THAT A PLAINTIFF?

3 A. NO IT WAS THE INDIVIDUAL MEMBERS.

4 Q. SO TO REFRESH YOUR RECOLLECTION FROM YESTERDAY,
5 WHEN YOU WERE NOT -- DOES THIS REFRESH YOUR RECOLLECTION
6 FROM YESTERDAY THAT GT TRIBE WAS NOT A PARTY TO THE MORALES
7 LITIGATION?

8 A. YES IT REFRESHES MY RECOLLECTION.

9 Q. THANK YOU VERY MUCH. CAN WE NOW GO TO EXHIBIT
10 753?

11 A. YES.

12 Q. AND CAN YOU TELL US WHAT THE TITLE -- CAN YOU
13 IDENTIFY THIS DOCUMENT PLEASE?

14 A. IT IS RESOLUTION 39 FROM MARCH 24TH OF 2002
15 APPROVING A CONFLICT OF INTEREST WAIVER FOR ME TO REPRESENT
16 INDIVIDUAL TRIBAL MEMBERS WHO WERE ALSO TRIBAL COUNCIL
17 MEMBERS IN THE MORALES LITIGATION.

18 Q. AND WHAT WAS THE PURPOSE OF THAT ATTORNEY-CLIENT
19 CONFLICT WAIVER?

20 A. I BEEN RETAINED TO REPRESENT THE TRIBE, NOT
21 INDIVIDUALS AND WE NEEDED A WAIVER -- I THOUGHT WE NEEDED A
22 WAIVER SO THAT THE TRIBE ENTITY COULD APPROVE ME WORKING
23 FOR INDIVIDUAL TRIBAL COUNCIL MEMBERS AND AMONGST THEM SO
24 THAT THEY WAIVED ANY CONFLICT IF ONE OF THEM WANTED TO
25 SETTLE, ONE DIDN'T, WHAT HAVE YOU.

26 Q. AND WAS THAT CONFLICT WAIVER ACCOMPLISHED BY THAT
27 RESOLUTION?

28 A. I BELIEVE THERE'S ALSO A SEPARATE CONFLICT WAIVER

1 BUT THE RESOLUTION WOULD HAVE DONE IT BUT I BELIEVE THERE
2 MAY HAVE ALSO BEEN A SEPARATE DOCUMENT, I DON'T RECALL.

3 Q. AND WAS -- TO YOUR RECOLLECTION WAS THAT SIGNED BY
4 THE TRIBAL COUNCIL ACTING AS A BODY FOR GT TRIBE?

5 A. YES.

6 Q. AND THAT WAIVED THE -- ANY CONFLICT BETWEEN YOU
7 REPRESENTING THE TRIBE AND YOU WORKING FOR INDIVIDUALS IN A
8 LAWSUIT FOR MORALES LITIGATION?

9 A. CORRECT.

10 Q. AND BY THIS TIME YOU WERE WORKING AS TRIBAL
11 GENERAL COUNSEL?

12 A. YES.

13 Q. DID YOU DO A CONFLICT WAIVER FOR MR. STEIN TO WORK
14 FOR SAM DUNLAP AS AN INDIVIDUAL PLAINTIFF?

15 A. I DON'T RECALL SO BECAUSE YOU DIDN'T REPRESENT
16 ANYBODY -- THERE WAS NO ONE -- YOU HAVE ONLY HAD ONE CLIENT
17 IN THAT CASE.

18 Q. SO IS IT YOUR TESTIMONY THAT MR. STEIN WAS NOT
19 ATTORNEY FOR THE GT TRIBE AND SO IT DID NOT NEED A WAIVER?

20 A. AT THAT TIME YES.

21 Q. TO YOUR KNOWLEDGE, AT ANY TIME WAS MR. STEIN AN
22 ATTORNEY FOR GT TRIBE?

23 A. TO NOT MY KNOWLEDGE.

24 Q. IF YOU DID HAVE THAT KNOWLEDGE, WOULD YOU HAVE
25 REQUIRED MR. STEIN TO SIGN A CONFLICT WAIVER FOR HIS WORK
26 WITH SMDC?

27 A. SAY THAT AGAIN, COULD YOU READ THAT BACK I'M JUST
28 LISTENING TO IT SLOWLY.

1 THE COURT: SURE.

2 (RECORD READ.)?

3 A. AS TO THE MORALES LITIGATION? .

4 Q. BY MR. STEIN: NO AS TO ANYTHING?

5 A. I WOULD HAVE HAD TO RESEARCH IT BUT I -- I DON'T
6 KNOW THAT THERE'S A CONFLICT WAIVER REQUIRED, I'D HAVE TO
7 RESEARCH IT BUT I --.

8 Q. IF MR. STEIN ACTED ON BEHALF OF SMDC AS AN
9 INDEPENDENT -- WHICH WAS AN INDEPENDENT CONTRACTOR, WOULD
10 THERE BE A CONFLICT FOR MR. STEIN TO ACT AS ATTORNEY FOR GT
11 TRIBE AT THE SAME TIME?

12 A. THERE WOULD BE A POTENTIAL CONFLICT.

13 Q. AND WOULD THAT BE THE TYPE OF CONFLICT THAT WOULD
14 REQUIRE A CONFLICT WAIVER IN YOUR VIEW?

15 A. YES. YEAH, IF I SIT AND DO THE STEPS.

16 Q. AND SO ASK WE NOW PUT THAT TOGETHER, YOU HAVE
17 TESTIFIED THAT MR. STEIN WAS NEVER ATTORNEY FOR GT TRIBE,
18 I'M ASKING YOU IF YOU THOUGHT HE WAS, WOULDN'T YOU HAVE
19 REQUIRED A CONFLICT WAIVER BECAUSE HE WAS WORKING FOR SMDC
20 AT THE SAME TIME?

21 A. I ASSUME SO, YES I'D HAVE TO SIT AND DO THE
22 RESEARCH AT THE TIME BUT -- I MEAN IT'S A -- IT WAS A NON
23 ISSUE SO IT DIDN'T ARISE.

24 Q. AND YOU NEVER REQUIRED ANY SUCH WAIVER?

25 A. NO.

26 Q. I'D LIKE TO TURN YOU TO EXHIBIT 36.

27 MR. FORDYCE: HAVE YOU GOT IT. AND JUST FOR WHAT
28 IT'S WORTH FOR THE RECORD EXHIBIT 19 WAS IDENTIFIED ON JULY

1 7TH.

2 MR. STEIN: MAY WE MOVE IT TO BE ADMITTED.

3 THE COURT: THAT'S THE OPPOSITION TO DEMURRER.

4 MR. FORDYCE: CORRECT YOUR HONOR.

5 MR. STEIN: OR JUST A COUPLE PAGES OR JUST THE
6 FIRST PAGE.

7 THE COURT: IS THERE ANY OBJECTION TO IT.

8 MS. IBARRA: IT'S JUST THE COVER PAGE.

9 MR. STEIN: YES SURE.

10 THE COURT: I MEAN WAS IT FILED IN L.A. SUPERIOR
11 COURT, I CAN TAKE JUDICIAL NOTICE OF EVEN IF.

12 MS. IBARRA: YES, IT WAS.

13 THE COURT: OKAY SO IF YOU WANT THE COVER PAGE,
14 THEN THE COVER PAGE.

15 Q. BY MR. STEIN: AND EXHIBIT 753 CAN WE MOVE THAT
16 INTO EVIDENCE.

17 THE COURT: RESOLUTION --.

18 MR. FORDYCE: I WASN'T ABLE TO FIND THAT.

19 MS. IBARRA: NO 753 IS NEW.

20 MR. FORDYCE: I THINK IT'S NEW.

21 THE COURT: 75 THREE.

22 MS. IBARRA: AND IT'S ALSO UNSIGNED FOR THE
23 RECORD.

24 MR. STEIN: SHE SAYS SHE RECALLS THAT IT WAS
25 SIGNED.

26 THE COURT: SHE DID SAY THAT.

27 MS. IBARRA: YEAH.

28 THE COURT: I MEAN LIKE I SAID, THIS GOES TO THE

1 WEIGHT PERHAPS NOT THE ADMISSIBILITY.

2 MS. IBARRA: GOT IT.

3 MR. STEIN: SO IS IT ADMITTED.

4 THE COURT: I'M JUST TRYING TO HAVE NELI CHECK.

5 THE CLERK: I HAVE 37, I DON'T HAVE 39.

6 THE COURT: 39, SO YES IT'S RECEIVED.

7 MR. STEIN: SO 75 THREE IS RECEIVED.

8 THE COURT: YEAH THAT'S RESOLUTION 3975 THREE.

9 MR. FORDYCE: CORRECT.

10 MR. STEIN: AND EXHIBIT 19 THE COVER PAGES.

11 THE COURT: IT'S ADMITTED.

12 MR. STEIN: ADMITTED, THANK YOU.

13 Q. BY MR. STEIN: SO TO EXHIBIT 36 MS. LAMOTHE YOU
14 DISCUSSED THIS E-MAIL CHAIN BETWEEN YOU AND MR. STEIN
15 REGARDING THE DID YOU KNOW LAP BANKRUPTCY?

16 A. YES.

17 Q. WHAT IS THE DATE OF THE E-MAIL CHAIN?

18 A. NOVEMBER 30, 2005.

19 Q. WHEN YOU SAID THAT YOU DID NOT THINK THAT MR.
20 STEIN ACTED AS ATTORNEY FOR GT TRIBE WOULD THAT INCLUDE THE
21 PERIOD NOVEMBER 30, 2005.

22 MS. IBARRA: I'M GOING ZERO OBJECT THAT IT CALLS
23 EXPERT OPINION.

24 THE COURT: IT DOES SUSTAINED.

25 Q. BY MR. STEIN: WAS THERE ANY -- WAS THERE
26 ANYTHING --.

27 THE COURT: YOU CAN ASK HER IF IT WAS HER BELIEF
28 WHETHER YOU WERE REPRESENTING THE TRIBE.

1 MR. STEIN: THANK YOU.

2 THE COURT: I HAVE THINK YOU CAN ASK THAT BUT IN
3 TERMS --.

4 Q. BY MR. STEIN: WHEN YOU WERE CORRESPONDING IN
5 NOVEMBER OF 2005, WAS IT YOUR BELIEF THAT MR. STEIN WAS
6 ACTING AS AN ATTORNEY FOR GT TRIBE?

7 A. YOU CERTAINLY WANTED TO SUPERVISE -- TO MAKE --
8 SINCE I KNEW LITTLE TO NOTHING ABOUT BANKRUPTCY, YOU HAVE
9 WANTED TO MAKE SURE THAT THE BANKRUPTCY WAS HANDLED
10 PROPERLY. I DON'T KNOW THAT EITHER OF US -- I COMMUNICATED
11 WITH MR. DUNLAP'S BANKRUPTCY ATTORNEY A NUMBER OF TIMES, I
12 DON'T RECALL THAT THERE WAS ANY SUBSTANTIVE WORK DONE ONE
13 WAY OR THE OTHER.

14 Q. SO ARE YOU SAYING THAT THERE WAS NO LEGAL WORK FOR
15 GT TRIBE DONE IN CONNECTION WITH THIS E-MAIL CHAIN.

16 THE COURT: WHICH.

17 MR. STEIN: BY ANYONE?

18 A. I BELIEVE I DID SOME -- I WANTED TO CLARIFY WITH
19 MR. DUNLAP'S BANKRUPTCY ATTORNEY, I HAD A NUMBER OF
20 CONVERSATIONS WITH HIM, TO MAKE -- TO MAKE SURE THAT THE
21 TRIBE DIDN'T GET SUCKED INTO AN ADVERSARIAL PROCEEDING OR
22 SOMEHOW SUCKED INTO THE BANKRUPTCY SO TO THE EXTENT THAT I
23 WAS REPRESENTING THE TRIBE AS COUNSEL, THERE WAS SOME WORK
24 DONE ON BEHALF OF THE TRIBE RELATED TO THE DUNLAP
25 BANKRUPTCY.

26 Q. AND WAS THAT DONE BY YOU?

27 A. I DON'T KNOW IF YOU EVER SPOKE WITH MR. DUNLAP'S
28 ATTORNEY OR NOT BUT I KNOW I DID.

1 Q. VERY GOOD H SO ACCORDING TO YOUR RETAINER
2 AGREEMENT YOU WERE SUPPOSED TO DO THE LEGAL WORK FOR GT
3 TRIBE FOR ALL THE WORK THAT SMDC DID AS INDEPENDENT
4 CONTRACTOR, IS THIS ONE MORE EXAMPLE OF YOU DOING THE LEGAL
5 WORK FOR THE TRIBE WHILE SMDC.

6 MS. IBARRA: OBJECTION.

7 MR. STEIN: WAS TRYING TO DO ITS JOB GETTING A
8 CASINO INCLUDING MAKING SURE THAT THE TRIBE DIDN'T GET
9 MESSED UP BY SAM DUNLAP'S BANKRUPTCY.

10 MS. IBARRA: LEADING.

11 THE COURT: SUSTAINED, IT'S LEADING.

12 MR. STEIN: RIGHT.

13 Q. BY MR. STEIN: WAS IT YOUR JOB UNDER YOUR RETAINER
14 AGREEMENT TO DO THE LEGAL WORK IN CONNECTION WITH THE
15 DUNLAP BANKRUPTCY.

16 THE COURT: ON BEHALF OF --.

17 MR. STEIN: ON BEHALF OF THE TRIBE.

18 THE COURT: WELL THE TRIBE WAS HAD NOT A PARTY TO.

19 MR. STEIN: RIGHT.

20 THE COURT: THE BANKRUPTCY, RIGHT?

21 A. CORRECT.

22 THE COURT: SO THE ONLY THING IT SOUNDS LIKE WHAT
23 YOUR TESTIMONY IS I JUST COMMUNICATED WITH THE BANKRUPTCY
24 ATTORNEYS TO KEEP THE TRIBE OUT OF IT BUT THAT WAS THE
25 EXTENT OF MY INVOLVEMENT, THAT'S WHAT I'M HEARING BUT?

26 A. CORRECT.

27 THE COURT: IS THAT --?

28 A. MY RECOLLECTION IS THERE WAS SOME CONCERN -- THERE

1 WAS THE JUDGMENT, MR. DUNLAP'S PAYMENT WERE BEING GARNISHED
2 FROM HIS CLIENTS, I DON'T KNOW IF THERE WAS A JUDGMENT --
3 THERE WAS SOME COLLECTION ACTIVITY GOING OBJECT AND THEN
4 MR. DUNLAP FILED BANKRUPTCY AND THE CONCERN WAS THAT THEY
5 WOULD -- THAT SOMEHOW HIS TRIBAL MEMBERSHIP WOULD BE AN
6 ASSET, THERE WAS A VARIETY OF ESOTERIC DISCUSSIONS OF HOW
7 THE TRIBE COULD GET FOR LACK OF A BETTER TERM SUCKED INTO
8 THE BANKRUPTCY COURT AND THERE WAS DISCUSSION AS TO HOW TO
9 PREVENT THAT, THAT WAS OUR CONCERN. WAS IT UNDER THE SCOPE
10 OF MY RETAINER, IT WAS CERTAINLY ON THE FRIDGE, SAMPLES
11 BANKRUPTCY IS ON THE OUTERMOST FRINGE BUT EITHER WAY I DID
12 THE WORK, WHETHER IT WAS UNDER THE RETAINER OR NOT I DID
13 THE WORK.

14 Q. AND YOU DID -- AND YOU DID THE LEGAL WORK FOR GT
15 TRIBE TO THE EXTENT THAT LEGAL WORK WAS INVOLVED?

16 A. YES BECAUSE MR. DUNLAP HAD HIS OWN ATTORNEY IN THE
17 BANKRUPTCY.

18 Q. AND SO --

19 THE COURT: BUT THE LEGAL WORK I GUESS WHAT I'M
20 TRYING TO FIGURE OUT WAS JUST TELEPHONE CALLS TO?

21 A. CORRECT.

22 THE COURT: OKAY.

23 A. I NEVER APPEARED IN THE BANKRUPTCY COURT, I
24 NEVER -- I WAS NEVER -- I NEVER REPRESENTED THE TRIBE IN
25 THE BANKRUPTCY COURT, THERE WAS JUST DISCUSSIONS TO -- SO
26 THAT MR. DUNLAP'S ATTORNEY WOULD BE SENSITIVE TO THE ISSUE.

27 THE COURT: AND WHO WAS HIS ATTORNEY AGAIN.

28 MR. STEIN: SCOTT RUDIBAUGH.

1 THE COURT: DOES THAT RING A BELL?

2 A. I KNOW EXACTLY WHERE HIS OFFICE IS. IT RINGS A
3 BELLWHEN YOU SAY IT. I COULD DRIVE YOU TO HIS OFFICE BUT
4 WHEN YOU SAY THE NAME IT DOESN'T RING A BELL.

5 THE COURT: SO YOU WERE HAVING DISCUSSIONS WITH
6 HIM ON BEHALF OF THE TRIBE.

7 A. YES.

8 THE COURT: ALL RIGHT.

9 Q. BY MR. STEIN: AND TO YOUR KNOWLEDGE MR. STEIN WAS
10 NOT DOING ANY LEGAL WORK FOR THE DUNLAP BANKRUPTCY FOR THE
11 TRIBE OR ANYONE ELSE?

12 A. NOT THAT I WAS AWARE.

13 Q. TURNING TO EXHIBITS 41 AND 42, THE LIBRA E-MAILS
14 YOU HAVE REVIEWED.

15 THE COURT: EXHIBIT 41 AND 42, THESE ARE E-MAILS
16 CORRECT.

17 MS. IBARRA: YES.

18 THE COURT: NO 42 IS E-MAILS AND THERE'S AN
19 ATTACHMENT IS THAT IS IT INTO NO.

20 THE COURT: SO THE E-MAIL OR WHAT.

21 MS. IBARRA: THAT'S JUST A BAD COPY OF SOMETHING,
22 IT'S NOT RELATED TO IT. I DON'T EVEN KNOW WHAT IT IS.

23 MR. STEIN: OKAY 41.

24 MS. IBARRA: SO IT'S JUST THE FIRST PAGE, I DON'T
25 KNOW WHAT THE REST OF IT IS.

26 THE COURT: ARE WE TALKING ABOUT PAGE 41 -- I HAVE
27 MEAN EXHIBIT 41? 41 HAS TWO E-MAIL STRINGS.

28 MR. STEIN: RIGHT AND 42 IS THE SAME E-MAIL SO

1 LET'S JUST LIMIT OURSELVES TO EXHIBIT 4 ONE.

2 MS. IBARRA: WHAT WE DID BEFORE IS WE LIMITED 41
3 TO THE FIRST E-MAIL STRING AND THEN 41 IS A DIFFERENT
4 E-MAIL STRING BUT WE COULD DO WHATEVER.

5 MR. STEIN: OKAY.

6 Q. BY MR. STEIN: SO REGARDING EXHIBITS 41 AND 42 AS
7 PREVIOUSLY DISCUSSED?

8 A. YES.

9 Q. WAS THERE ANY IN THESE E-MAILS BETWEEN YOU AND MR.
10 STEIN CONCERNING THE LIBRA AGREEMENT THAT WAS LEGAL WORK
11 FOR THE TRIBE?

12 A. SORT OF PARALEGAL WORK, IN THE SENSE I HAD TO
13 MARSHALL UP A VARIETY OF DOCUMENTS AND FIND THE RELATIVE
14 PORTIONS IN THEM. THERE WERE COMPACTS WITH OTHER TRIBES
15 THAT HAD EXCLUSIVITY CLAUSES THAT THE GOVERNOR HAD SIGNED.
16 SO THOSE COMPACTS SAID THAT IF WE GIVE ONE OF THEM, PALMA,
17 A CASINO WE WON'T GIVE ANYONE ELSE A CASINO, WE PROMISE.
18 SO AN INVESTOR WOULD OBVIOUSLY BE INTERESTED IN THAT.

19 Q. AND WERE YOU DOING THE LEGAL WORK IN CONNECTION
20 WITH THE ECONOMIC DEVELOPMENT TASKS WHEN WORKING ON THESE
21 ISSUES FOR GT TRIBE?

22 A. TO THE EXTENT THAT IT WAS LEGAL WORK YES I THINK
23 IT WAS PROBABLY NOT PARALEGAL-ISH BUT LEGAL, I MEAN I WAS
24 DEPOSITING THE CORRECTION OF DOCUMENTS ET CETERA.

25 Q. AND TO YOUR UNDERSTANDING AT THE TIME WAS MR.
26 STEIN WORKING ON BEHALF OF SMDC THE INDEPENDENT CONTRACTOR
27 TRYING TO GET FUNDING FOR THE CASINO PROJECT?

28 A. YES.

1 Q. AND WAS MR. STEIN DOING ANY WORK FOR THE GT TRIBE
2 IN CONNECTION WITH THESE E-MAILS?

3 A. NOT THAT I AM AWARE OF.

4 Q. AND EXHIBIT 5 '77, THE TALLEY REPORT.

5 THE COURT: WHICH EXHIBIT.

6 THE CLERK: FIVE '77.

7 MR. STEIN: YEAH AND I THINK IT'S RIGHT AT THE
8 BEGINNING OF THE SECOND VOLUME.

9 MR. FORDYCE: IT IS IT'S RIGHT AT THE BEGINNING OF
10 THE EXHIBIT BINDER.

11 MR. STEIN: OH GOOD FOR YOU?

12 A. GOT IT.

13 THE COURT: I DON'T HAVE ANYTHING IN 57 SEVEN
14 HERE. NELI DO YOU HAVE 57 SEVEN.

15 {RIGHT1}: IT IS ADMITTED.

16 MR. FORDYCE: I'M PRETTY CERTAIN THIS WAS ADMITTED
17 YOUR HONOR.

18 MS. IBARRA: WE TALKED ABOUT IT A LOT AT THE
19 BEGINNING.

20 THE COURT: SORRY I DON'T HAVE A COPY OF THE
21 TALLEY REPORT.

22 THE CLERK: YOU DO.

23 THE COURT: NO, I DON'T IT'S NOT IN HERE BUT GO
24 AHEAD.

25 Q. BY MR. STEIN: MAY I TURN YOU IT PAGE 60 FOUR AND
26 IT SHOWS AN ENTRY FOR A CHECK FOR \$60,000 ON MAY 24TH,
27 2006, WERE YOU PAID \$60,000 BY GT TRIBE ON MAY 24TH, 2006?

28 A. YES MY RECOLLECTION IT WAS AT THE BEGINNING OF

1 JUNE BUT THAT'S THE SAME TIME.

2 Q. AND AFTER THAT PAYMENT IT SHOWS THAT THERE WAS A
3 BALANCE OWING OF 560,000 ON THAT DATE?

4 A. YES.

5 Q. WAS THE BALANCE OWING IN 2006 FOR 560,000?

6 A. WHAT WOULD BE \$10,000 A MONTH OVER HOWEVER MANY
7 MONTHS MINUS THE 60 SO I'D HAVE TO GO BACK BUT IT SOUNDS
8 ABOUT RIGHT.

9 Q. SO CALCULATING IF IT WAS 560,000 PLUS THE 60 THAT
10 YOU WERE PAID IS A TOTAL OF HOW MUCH?

11 A. SIX 20.

12 Q. SIX 20,000, HOW MANY MONTHS DID YOU WORK FOR THE
13 GT TRIBE?

14 A. MAY 1 OF 2001 THROUGH MAY 31 OF -- EITHER MAY 31
15 OR JUNE 30 OF '06 SO THAT WOULD BE 60, '61, '62 MONTHS
16 DEPENDING ON WHAT THE TERMINATION DATE WAS.

17 Q. OKAY. AND DOES THAT REFLECT YOUR TENURE WITH THE
18 TRIBE FROM MAY 1 OF 2001 THROUGH MAY 31 OF 2006?

19 A. YES.

20 Q. AND DURING THAT TENURE YOU WERE GIVEN -- YOU
21 ACCRUED 10,000 PER MONTH?

22 A. YES.

23 THE COURT: THAT WAS PURSUANT TO THE WRITTEN
24 CONTRACT.

25 A. YES.

26 Q. BY MR. STEIN: AND OUT OF THAT AMOUNT YOU WERE
27 PAID IN HAND ON MAY 24TH OF 2006 AS YOU LEFT \$60,000?

28 A. YES.

1 Q. AND YOU WERE OWED 560,000?

2 A. YES.

3 Q. SO ON THE DATE THIS AGREEMENT WAS PREPARED WHICH
4 WAS OCTOBER OF 2006, WERE THOSE ACCURATE FIGURES?

5 A. I BELIEVE SO, YES.

6 Q. THANK YOU. NO FURTHER QUESTIONS.

7 THE COURT: THANK YOU ANY REDIRECT.

8 MR. FORDYCE: YOU ACTUALLY IT WOULD BE RECROSS.

9 THE COURT: OKAY RECROSS.

10 MR. FORDYCE: SORRY YOUR HONOR JUST --.

11 THE COURT: THAT'S ALL RIGHT. KEEP ME STRAIGHT.

12 MR. FORDYCE: YEAH.

13 MS. IBARRA: YES.

14 THE COURT: OR ANYTHING FURTHER, HOW ABOUT THAT BY
15 EITHER SIDE.

16 MS. IBARRA: YES JUST VERY BRIEFLY.

17 Q. BY MS. IBARRA: SO WHEN WE DISCUSSED THE TALLEY
18 REPORT YESTERDAY 57 SEVEN?

19 A. YES.

20 Q. YOU SAID HUH DIDN'T THINK THIS WAS OWED ANY MORE,
21 CORRECT?

22 A. THAT WAS OWED WHEN I DEPARTED.

23 Q. OKAY THANK YOU. BUT AS OF TODAY IT'S NOT -- NO
24 LONGER OWED?

25 A. I BELIEVE MY CONTRACT EXPIRED, ASSUMING THAT THE
26 TRIBE DIDN'T GET A CASINO I DIDN'T KNOW ABOUT IT, IF -- IF
27 ASSUMING THERE IS NO THEN I BELIEVE MY CONTRACT EXPIRED 10
28 AFTER I DEPARTED.

1 Q. SO -- AND YESTERDAY THE COURT ASKED YOU IF YOU HAD
2 DONE ANY RESEARCH WITH YOUR ORIGINAL SMDC AGREEMENT AND YOU
3 SAID -- I DON'T RECALL WHAT YOUR RESPONSE WAS TO THAT?

4 A. I DON'T RECALL DOING ANY PARTICULAR RESEARCH
5 RELATED TO THE -- NO I THINK I SAID I MAY HAVE RESEARCHED
6 SOME OF THE CORPORATE QUESTIONS, CORPORATE ISSUES.

7 Q. OKAY. SO SOME OF THE CORPORATE ISSUES BUT YOU
8 DIDN'T RESEARCH ANY OF THE TRIBAL?

9 A. I DON'T RECALL DOING THAT, NO.

10 THE COURT: THAT'S A LITTLE VAGUE THOUGH H I
11 DIDN'T RESEARCH THE TRIBAL IT'S VAGUE.

12 MS. IBARRA: THE ISSUES RELATED TO -- THE
13 CORPORATE ISSUES RELATED TO A TRIBE AND THE TRIBE ENTERING
14 INTO -- A TRIBE WITH FEDERAL RECOGNITION ENTERING INTO THIS
15 SORT OF AGREEMENT.

16 MR. FORDYCE: UNINTELLIGIBLE.

17 THE COURT: I'M HAVING A LITTLE TROUBLE
18 UNDERSTANDING WHAT YOU'RE ASKING AS WELL.

19 Q. BY MS. IBARRA: SO DID YOU DO ANY RESEARCH WITH
20 REGARDS TO ANY PROBLEMS RELATED TO THIS KIND OF TRIBAL
21 ENTITY ENTERING INTO THIS SORT OF AGREEMENT? IS THAT
22 CLEAR?

23 A. I WOULD HAVE DONE THAT RESEARCH WHEN WE WERE
24 DECIDING WHAT KIND OF ENTITY TO SET UP, I BELIEVE AS
25 OPPOSED TO THE TRIBE OR THE CORPORATE ENTITY. I WOULD HAVE
26 DONE SOME RESEARCH SETTING UP THE CORPORATE ENTITY.

27 Q. OKAY BUT THEN YOU CIRCLE BACK AND YOU HAVE DON'T
28 ACTUALLY FIX THE AGREEMENT TO MAKE IT AS BETWEEN SMDC AND

1 THAT CORPORATE ENTITY IS THAT CORRECT?

2 A. CORRECT.

3 Q. SO YOU THINK YOU DID RESEARCH AS TO CORPORATE
4 ENTITIES BUT THEN YOU DON'T FIX -- YOU DON'T HAVE THE SMDC
5 AGREEMENT BE BETWEEN THAT NEW CORPORATE ENTITY, YOU LEAVE
6 IT BETWEEN THE TRIBE AND SMDC?

7 A. YES.

8 Q. SO DO YOU THINK THAT YOU DID RESEARCH ABOUT THAT?

9 A. I BELIEVE I DID BUT I DON'T RECALL THE RESULTS. I
10 MEAN I BELIEVE I DID AT THE TIME.

11 Q. DO YOU THINK THAT YOU GAVE ADVICE TO SOMEBODY
12 ABOUT THAT.

13 THE COURT: ABOUT.

14 Q. BY MS. IBARRA: ABOUT -- ABOUT -- SO YOU DID -- SO
15 JUST TO CLARIFY, YOU BELIEVE THAT YOU DID RESEARCH ABOUT
16 WHETHER A TRIBAL ENTITY COULD ENTER INTO THE AGREEMENT LIKE
17 SMDC; THAT'S CORRECT?

18 A. YES.

19 Q. AND THEN YOU THINK THAT YOU FORM -- DID YOU FORM
20 AN OPINION ABOUT WHETHER THIS KIND OF TRIBAL ENTITY COULD
21 ENTER INTO THE SMDC AGREEMENT.

22 MR. FORDYCE: I MEAN TO THE EXTENT CALLED FOR AN
23 EXPERT OPINION.

24 THE COURT: YEAH OKAY, SUSTAINED.

25 MR. STEIN: YEAH.

26 MS. IBARRA: OKAY.

27 Q. BY MS. IBARRA: DO YOU THINK THAT YOU DID RESEARCH
28 AND HAD -- FORMED A BELIEF ABOUT WHETHER A TRIBAL ENTITY

1 LIKE THE GT TRIBE HERE COULD ENTER INTO THE SMDC
2 AGREEMENT?

3 A. YES.

4 Q. YOU FORMED A BELIEF.

5 THE COURT: MR. STEIN -- MR. STEIN PLEASE STOP
6 SHAKING YOUR HEAD UP AND DOWN.

7 MR. STEIN: OH MAN.

8 THE COURT: AGAIN H SEE THE PROBLEM WITH THAT NOW
9 IS ALL YOUR TESTIMONY.

10 MR. STEIN: THAT'S EXACTLY RIGHT.

11 THE COURT: I CAN'T GIVE IT ANY CREDIBILITY YOU
12 REALLY NEED TO STOP DOING THAT. I KNOW YOU'RE INVOLVED IN
13 THIS CASE BUT.

14 MR. STEIN: NO THE COURT IS EXACTLY RIGHT.

15 THE COURT: IT JUST IMPEACHES HER TESTIMONY.

16 MR. STEIN: OF COURSE.

17 THE COURT: WITHOUT -- AND I THINK SHE'S TRYING
18 HER BEST BUT YOU KNOW.

19 MR. STEIN: I'M JUST -- GIVEN THE DIFFICULTY OF
20 THE QUESTIONS AND WHAT IT IS AND I'M PRETTY MUCH AGREEING
21 THAT IT IS EXPERT TESTIMONY THAT SHE'S ASKING FOR.

22 THE COURT: NO, IT'S ONLY TO THE EXTENT THAT
23 YOU'RE DOING THE SAME THING, YOU'RE ASKING FOR BELIEFS.

24 MR. STEIN: YOU'RE CORRECT.

25 THE COURT: AND WHAT SHE BELIEVED AT THE TIME.

26 MR. STEIN: YOU'RE CORRECT.

27 THE COURT: YOU HAVE REALLY DO HAVE TO REFRAIN
28 FROM THAT AND UN FORT NEATLY I HAVE TO PUT THAT ON THE

1 RECORD BECAUSE OTHERWISE IT ISN'T AVAILABLE. IF THE COURT
2 DISREGARDS CERTAIN TESTIMONY -- ANYWAY. MS. LAMOTHE I KNOW
3 YOU'RE TRYING YOUR BEST BUT I'M SURE IT'S GOT TO BE
4 DISTRACTING AT THE TIME?

5 A. I'M LOOKING MOSTLY AT MS. IBARRA.

6 THE COURT: ALL RIGHT.

7 Q. BY MS. IBARRA: SO YOU WERE ACTING AS AN
8 ATTORNEY?

9 A. YES.

10 Q. AND DID YOU FORM A PERSON OPINION AS AN ATTORNEY
11 AS TO WHETHER AN ENTITY LIKE THE GABRIELINO-TONGVA TRIBE
12 COULD END INTO -- AFTER DOING RESEARCH, YOU SAID YOU DID
13 RESEARCH, AFTER DOING RESEARCH, DID YOU FORM A PERSONAL
14 OPINION AS A LAWYER ACTING IN THAT CAPACITY ABOUT WHETHER
15 GT TRIBE COULD ENTER INTO AN AGREEMENT LIKE THE SMDC
16 AGREEMENT.

17 MR. FORDYCE: SAME OBJECTION IT'S AN EXPERT
18 OPINION.

19 THE COURT: YEAH DON'T USE THE WORD OPINION, JUST
20 ASK IF SHE HAD THE BELIEF AND THEN WHAT SHE ADVISED HER
21 CLIENT OR SOMETHING.

22 MS. IBARRA: YEAH I'M TRYING TO GET OUT WHETHER
23 YOU GAVE THEM ANY -- WHETHER YOU HAVE A SPECIFIC
24 RECOLLECTION THAT YOU GAVE THE TRIBE ANY ADVICE ABOUT THAT
25 BECAUSE HUH SAID YOU HAVE THINK YOU DID RESEARCH?

26 A. RIGHT.

27 Q. SO DID YOU GIVE THEM ANY ADVICE ABOUT THAT?

28 A. I'M TRYING TO REMEMBER. I KNOW -- THE DISCUSSION

1 GENERALLY WAS WHEN WE SET UP THE ENTITY BECAUSE THE COUNCIL
2 WAS ASKING WHY DO WE -- YOU KNOW WHAT ARE WE DOING WHY DO
3 WE HAVE TO DO THIS AND THE DISCUSSION WAS THAT THIRD
4 PARTIES MAY NOT FEEL COMFORTABLE DOING BUSINESS WITH A
5 TRIBE BECAUSE IT IS AN UNUSUAL ENTITY THAT MOST BUSINESSES
6 AREN'T FAMILIAR WITH AND AREN'T WILLING TO DO BUSINESS
7 WITH. MR. STEIN ON THE OTHER HAND WAS WILLING TO DO
8 BUSINESS WITH THE TRIBAL ENTITY.

9 Q. OKAY. SO IF --.

10 THE COURT: SO THAT'S A "YES", YOU DID GIVE THEM
11 ADVICE OR --?

12 A. WE DISCUSSED WHY WE HAD SET UP A SEPARATE ENTITY,
13 MR. STEIN WAS WILLING TO DO BUSINESS WITH JUST THE TRIBAL
14 ENTITY H OUR CONCERN WAS THAT POSSIBLY THIRD PARTIES WOULD
15 NOT BE SO THAT'S WHY --.

16 THE COURT: BUT DID YOU DISCUSS I GUESS THE
17 BENEFITS VERSION US THE PROBLEMS WITH THE TRIBE ENTERING
18 INTO THE AGREEMENT WITH SMDC VERSUS THE LLC ENTERING INTO
19 THE AGREEMENT WITH SMDC? HE MAY HAVE BEEN WILLING IT TO IT
20 WITH THE TRIBE BUT MY QUESTION IS DID YOU TALK TO THE TRIBE
21 ABOUT THE BENEFITS, THE PROBLEMS IF ANY OF DOING THAT.

22 A. I DON'T RECALL DOING THAT, NO.

23 Q. BY MS. IBARRA: DO YOU RECALL MR. STEIN GIVING YOU
24 DIRECTION ABOUT THAT TOPIC?

25 A. NO.

26 Q. DO YOU RECALL ANY DISCUSSIONS WITH MR. STEIN ABOUT
27 IT AT ALL?

28 A. NO BECAUSE -- NO MY RECOLLECTION IS JUST THAT WE

1 TOOK THE AGREEMENT THAT HAD PREVIOUSLY BEEN DRAFTED AND
2 THEN MOVED ON USING THE SAME DOCUMENT OR YOU KNOW AMEND THE
3 SAME DOCUMENT.

4 Q. SO YOU DID RESEARCH BUT YOU DON'T RECALL
5 DISCUSSING THAT MATTER WITH MR. STEIN, THE RESEARCH THAT
6 YOU DID?

7 A. NO BECAUSE HE WOULD BE ENTERING INTO -- IF -- HE
8 IS RESPONSIBLE FOR HIS OWN SIDE OF THE AGREEMENT SO.

9 THE COURT: WELL YOU WEREN'T ADVISING HIM?

10 A. CORRECT, I'M NOT ADVISING HIM AS TO WHETHER OR NOT
11 THE TRIBE CAN -- WHETHER OR NOT THE TRIBE CAN ENFORCE THE
12 AGREEMENT.

13 MS. IBARRA: OKAY. .

14 Q. BY MS. IBARRA: SO GETTING BACK TO 57 SEVEN WHICH
15 IS THE TALLEY REPORT?

16 A. YES.

17 Q. SO THESE ARE GENERALLY WE LOOKED AT IT YESTERDAY
18 AND WE LOOKED AT IT AGAIN TODAY, CORRECT?

19 A. YES.

20 Q. IS THERE ANYTHING -- SO THIS IS ALL REFERENCES
21 DEBTS OWED BY THE TRIBE?

22 A. CORRECT.

23 Q. SO THEN THIS NEW ENTITY THAT YOU SET UP DIDN'T
24 TAKE ON THIS SET EITHER SO THERE'S A LOT OF VENDORS WHO
25 DIDN'T DO BUSINESS WITH THE OTHER -- THIS CORPORATE ENTITY
26 THAT YOU SET UP?

27 A. MY RECOLLECTION IS THE VENDORS DID BUSINESS WITH
28 THE ENTITY, THE TRIBE -- THERE WAS ONLY ONE BANK ACCOUNT, I

1 MEAN THERE WAS ONLY ONE -- IT'S A --.

2 THE COURT: OF THE ENTITY DIDN'T HAVE A SEPARATE
3 BANK ACCOUNT, THIS LLC OR CORPORATE ENTITY OR WHATEVER?

4 A. IT DID, THE TRIBE DIDN'T HAVE.

5 THE COURT: OH THE TRIBE DIDN'T HAVE A BANK
6 ACCOUNT BULLET LLC HAD A BANK ACCOUNT OR --?

7 A. I BELIEVE -- I BELIEVE THAT IS THE CASE BECAUSE
8 THAT'S ANOTHER THING, THE BANK WON'T OPEN AN ACCOUNT FOR A
9 TRIBE, YOU HAVE KNOW.

10 THE COURT: OKAY?

11 A. SO THAT'S MY RECOLLECTION.

12 THE COURT: SO YOUR RECOLLECTION IS THE LLC HAD A
13 BANK ACCOUNT OR WHAT I'VE BEEN CALLING LLC OR CORPORATE
14 ENTITY?

15 A. RIGHT.

16 Q. BY MS. IBARRA: AND SO WHERE DID THESE FUNDS COME
17 FROM AT THIS TIME BECAUSE THIS IS BEFORE LIBRA AGREEMENT SO
18 THERE WAS A BANK ACCOUNT WITH FUNDS FROM WHERE?

19 A. THERE WAS SOME AMOUNT -- MONEY GENERALLY WAS
20 LOANED FROM MR. STEIN, HE ADVANCED MOST OF THE EXPENSES, IN
21 FACT INFORM TO MY KNOWLEDGE -- WELL I SHOULDN'T --.

22 THE COURT: WHEN YOU SAY MR. STEIN ARE YOU
23 REFERRING TO THE SMDC CORPORATION OR MR. STEIN PERSONALLY
24 OR DO YOU KNOW?

25 A. I BELIEVE IT WAS THE DEVELOPMENT COMPANY ADVANCED
26 ANY EXPENSES THAT THE TRIBE HAD, SAM DUNLAP ALSO I BELIEVE
27 ADVANCED SOME EXPENSES -- THE TRIBE DID NOT HAVE -- THE
28 ENTITY DID NOT HAVE SIGNIFICANT ASSETS, IF THERE WAS AN

1 ACCOUNT IT HAD ENOUGH IN IT TO OPEN THE ACCOUNT WHICH WOULD
2 HAVE BEEN ADVANCED BY MR. -- BY THE DEVELOPMENT COMPANY.

3 Q. SO THEN IF SMDC WAS PUTTING FUNDS INTO THIS
4 ACCOUNT FOR THIS CORPORATION THAT HAD THE TRIBES NAME IN
5 IT, WHO CONTROLLED IT, DID SMDC AND STEIN CONTROL IT?

6 A. I DON'T KNOW IF MR. STEIN -- IF SMDC PUT THE MONEY
7 INTO THE TRIBAL ACCOUNT AND THEN THE TRIABLE ACCOUNT PAID,
8 I DON'T THINK SO, I THINK SMDC JUST PAID EXPENSES DIRECTLY
9 IS MY RECOLLECTION AND THEN KEPT A LOT OF THE EXPENSES IT
10 HAD PAID.

11 Q. OKAY. .

12 THE COURT: WHEN YOU'RE SAYING IT DIDN'T RUN
13 THROUGH THE BANK ACCOUNT, THE PAYMENT WOULD GO DIRECTLY
14 FROM SMDC ACCOUNT TO A VENDORS OR SOMETHING?

15 A. THAT'S MY RECOLLECTION. AND THEN TALLEY WOULD
16 KEEP A RUNNING LOG OF THE EXPENSES.

17 THE COURT: OKAY.

18 Q. BY MS. IBARRA: SO DO YOU HAVE ANY FAMILIARITY
19 WITH THE LIBRA AGREEMENT? YOU SAID HAD YOU DID PARALEGAL
20 WORK FOR IT?

21 A. WELL I DID THE ROUNDING UP OF THE THINGS THAT MR.
22 STEIN -- THAT SMDC NEEDED TO NEGOTIATE WITH LIBRA.

23 Q. DO YOU KNOW WHY THE LIBRA AGREEMENT WAS NOT WITH
24 THIS OTHER ENTITY AND WAS DIRECTLY WITH THE TRIBE?

25 A. NO.

26 Q. DID YOU KNOW IT WAS DIRECTLY WITH THE TRIBE AND
27 NOT WITH THIS CORPORATE ENTITY?

28 A. I DON'T KNOW.

1 Q. OKAY.

2 A. I DON'T RECALL IF I WAS THERE WHEN IT WAS
3 FINALIZED OR NOT. IT WAS IN THE WORKS BUT I DON'T RECALL
4 IF IT WAS FINALIZED OR NOT.

5 MS. IBARRA: I THINK THAT'S ALL I HAVE THANKS.

6 THE COURT: ANYTHING FURTHER.

7 MR. STEIN: NO.

8 THE COURT: OKAY THANK YOU MS. LAMOTHE. I THINK
9 YOU ARE EXCUSED NOW?

10 A. OKAY.

11 THE COURT: THANK YOU. WELL IT'S A LITTLE AFTER
12 12/12 '05 SO TOMORROW IS FRIDAY ALREADY.

13 THE CLERK: FRIDAY.

14 THE COURT: FRIDAY OH MY GOSH, SO LET'S TALK ABOUT
15 WHO WE HAVE TOMORROW.

16 MR. STEIN: DECLARATIONS I THOUGHT.

17 THE COURT: ARE WE DOING DECLARATIONS OR ARE WE
18 FINISHING WITH WITNESSES.

19 MS. IBARRA: WELL --.

20 MR. STEIN: I DON'T NEED TO TALK TO MR. MARGOLIS
21 AGAIN EXCEPT FOR WHAT SHE HAS ON DIRECT.

22 MS. IBARRA: RAILROAD REDIRECT.

23 MR. STEIN: OR HER REDIRECT YEAH.

24 THE COURT: I GUESS WHAT I'M ASKING HAD YOU IS
25 SOME OF THESE WITNESSES HAVE TESTIFIED LIVE, DO YOU WANT
26 THEM TO FINISH TESTIFYING LIVE.

27 MR. STEIN: NO.

28 THE COURT: OR DO WE PUT THE REST OF THEIR

1 TESTIMONY INTO DECLARATION AND DO THE REST OF THE CROSS OR
2 DO WE WANT TO DO DECLARATIONS FOR ANY NEW WITNESSES, I MEAN
3 THAT'S KIND OF OPTIONS I THINK WE HAVE RIGHT NOW.

4 MR. STEIN: WELL BARBARA GARCIA WOULD BE ONLY
5 ADDRESSING QUANTUM MERUIT AS WOULD STEVE JOHNSON THAT WOULD
6 BE THE ONLY DECLARATIONS FOR THEM, YOU HAVE HAD MENTIONED
7 MS. ARONSON.

8 MS. IBARRA: MS. ARONSON WOULD BE THE STRONG
9 REASON TO DO MS. ARONSON IN DECLARATION BECAUSE SHE DOESN'T
10 WANT TO COME ALL THE WAY FROM SAAB SAYING.

11 THE COURT: WELL SHE'S GOING TO HAVE TO SUBJECT
12 HERSELF TO CROSS.

13 MR. STEIN: THAT'S RIGHT.

14 THE COURT: AND IT STILL CUTS DOWN ON TIME, IT'S
15 JUST TO HAVE THE DECLARATIONS AS THE DIRECT TESTIMONY AND
16 THERE'S CROSS, SO THERE STILL WILL BE LIVE TESTIMONY SO I
17 DIDN'T MEAN TO --.

18 MS. IBARRA: AND THEN THERE'S ALSO MS. BARRETT IS
19 PROBABLY A BETTER CANDIDATE FOR IT BECAUSE SHE HAS A
20 DISCREET ISSUE.

21 MR. STEIN: WHAT IS THE ISSUE FOR MS. BARRETT SEE
22 I DON'T UNDERSTAND WHY THIS I SHALL HUGH WAS NEW H IT WAS
23 COVERED.

24 MS. IBARRA: RIGHT BUT WHEN SHE WAS ON THE STAND,
25 NOBODY ASKED HER WHETHER SHE HAD A SEPARATE RETAINER
26 AGREEMENT WITH SMDC OR WHETHER SHE WAS FIRED ON BEHALF OF
27 SMDC WHICH WAS THE CONTENTION THAT CAME UP AFTER SHE LEFT
28 THE STAND. SO WE HAVE ALL THIS TESTIMONY.

1 MR. STEIN: THAT'S NOT TRUE.

2 MS. IBARRA: ALL THIS TESTIMONY FROM HER.

3 MR. STEIN: THAT'S ABSOLUTELY NOT TRUE AND WE'D BE
4 HAPPY TO BRING IN THE ROUGH TRANSCRIPT TO SHOW THAT IT'S
5 NOT TRUE.

6 MS. IBARRA: YES.

7 MR. STEIN: MS. BARRETT ADDRESSED THE FACT THAT
8 SHE WAS FIRED BY SMDC.

9 MS. IBARRA: SHE DID NOT.

10 MR. STEIN: BY MR. STEIN ON BEHALF OF SMDC AND
11 THAT SHE WAS LATER FIRED BY THE TRIBE AND IF SHE DIDN'T ASK
12 THE RIGHT QUESTION AT THE TIME SHE SHOULD HAVE.

13 THE COURT: YES.

14 MR. STEIN: WE DISMISSED THE WILT AND --.

15 MS. IBARRA: I HAVE THE TRANSCRIPT.

16 THE COURT: THIS WOULD BE REBUTTAL I GUESS IS.

17 MS. IBARRA: YES THIS IS REBUTTAL.

18 THE COURT: OKAY SO THE QUESTION REMAINS DO WE
19 WANT TO -- THE WITNESSES WHO HAVE TESTIFIED LIVE, SHALL WE
20 JUST CONTINUE WITH THEIR LIVE TESTIMONY OR DO WE WANT FROM
21 THIS POINT FORWARD TO DO DECLARATIONS OR CALL THEM FOR
22 CROSS WHICH MEANS WE'LL TAKE A FEW DAYS TO GET THOSE
23 DECLARATIONS TOGETHER.

24 MS. IBARRA: IT SOUNDS LIKE WE HAVE TO CROSS THEM
25 ANYWAY BECAUSE BARRETT CAN SUBMIT A DECLARATION SAYING SHE
26 WASN'T FIRED ON BEHALF OF SMDC THAT SHE WAS FIRED ON BEHALF
27 OF YOU HAVE KNOW HER WORK ON THE LIBRA AGREEMENT ON BEHALF
28 OF THE TRIBE AND -- BUT MR. STEIN CAN -- MR. STEIN IS STILL

1 GOING TO WANT TO DO A CROSS OF HER SO I DON'T KNOW IF IT
2 MAKES ANY SENSE TO DO THAT.

3 THE COURT: OCCUPATION OKAY THEN, THEN LET'S JUST
4 HAVE IT LIVE THEM THEN IT'S JUST NOT.

5 MR. STEIN: WELL HOLD ON WAIT A SECOND, FORGIVE ME
6 YOU'VE HAD AN INTENSIVE TALK WITH HER, OKAY? I DO NOT WANT
7 TO DO IT LIVE FOR ANYTHING THAT WE CAN DO BY DECLARATION,
8 IF SHE WANTS TO CARVE-OUT FROM THE RULE OF DO IT BY
9 DECLARATION MS. BARRETT I WILL GO WITH WHATEVER THE COURT
10 WANTS TO DO.

11 MR. FORDYCE: BUT YOUR HONOR.

12 MR. STEIN: WE'RE HERE TO COOPERATE, BUT THE MAIN
13 TESTIMONY, 90 PERCENT OF THE TESTIMONY THAT IS FROM HERE
14 FORWARD, 90 PERCENT, IS MR. STEIN ON 776 WHEN HE WAS CALLED
15 776.

16 MS. IBARRA: RE-CROSS BY ME.

17 MR. STEIN: MR. STEIN ON THE HEART OF YOU ARE
18 COMPLAINT WHICH IS THE SMDC CONTRACT AND THEN SEPARATELY
19 THE SMDC QUANTUM MERUIT ACTION AND SUPPORTING THE CRANE
20 CONTRACT AND QUANTUM MERUIT ACTION AND MR. MILLS TO PROVIDE
21 HIS REBUTTAL TO MR. MARGOLIS AND WE MORE OR LESS FINISHED
22 WITH MR. MARGOLIS DIRECT AND CROSS ALREADY.

23 MR. FORDYCE: BUT WITH MS. BARRETT ISN'T THIS OUR
24 TITLE DECLARATION, IT'S A SIMPLE STRAIGHTFORWARD ISSUE, WHY
25 BRING HER ALL THE WAY IN HERE TO DO THIS.

26 THE COURT: WELL SHE STILL HAS TO BE CROSSED
27 THAT'S WHAT I'M SAYING.

28 MR. STEIN: WELL WE MAY WAIVE CROSS ON -- SEE WHAT

1 I WAS HOPING IS WITH SOMEBODY LIKE MS. BARRETT IS THAT
2 BEFORE SHE SIGNED THE DECLARATION WE WOULD HAVE OUR CHANCE
3 TO INPUT ON THE DECLARATION AND THEN IT MAY BE THAT THE
4 DECLARATION CAN BE MADE SO THAT SHE DOESN'T HAVE TO APPEAR,
5 I BELIEVE MS. BARRETT WOULD NOT WANT TO APPEAR AND THOUGHT
6 THAT SHE HAS FULFILLED OUR SUBPOENA.

7 MS. IBARRA: WELL NO I'VE SPOKE TONER AND SHE
8 WANTS TO TESTIFY ON THAT TOPIC BECAUSE SHE BELIEVES COUNSEL
9 HAS MISREPRESENTED WHAT SHE SAID AND THE TRANSCRIPT SPEAKS
10 FOR ITSELF BUT IT WAS BROUGHT UP AFTER SHE LEFT THE STAND.

11 MR. STEIN: CAN WE SHOW THE TRANSCRIPT FROM
12 MS. BARRETT.

13 MS. IBARRA: YES.

14 MR. STEIN: AGAIN THIS IS LIKE FIVE PERCENT OF THE
15 TOTAL, 95 PERCENT CAN BE DONE BY DECLARATION, LET'S NOT GET
16 DISTRACTED BY THIS.

17 THE COURT: WELL I GUESS ANY QUESTION IS WHO WANTS
18 TO DO WHAT DECLARATIONS AND WHO WANTS TO DO COMPLETELY
19 LIVE.

20 MS. IBARRA: I WOULD LIKE TO DO MS. ARONSON BY
21 DECLARATION BECAUSE SHE'S DONE LIKE FIVE DURING THE COURSE
22 OF THIS ACTION BUT I KNOW THAT MR. STEIN WILL WANT TO DO A
23 CROSS.

24 THE COURT: RIGHT THAT'S FINE THAT'S A NORMAL --
25 SO AARON SON BY DECLARATION IF SHE'S WILLING TO DO THAT AND
26 THEN YOU CAN CROSS.

27 MR. STEIN: CORRECT, MR. STEIN BY DECLARATION.

28 THE COURT: YOU WANT TO DO THE REST OF YOUR

1 TESTIMONY BY DECLARATION AND THEN JUST CROSS LIVE.

2 MR. STEIN: YES, MA'AM.

3 MR. FORDYCE: AND SO --.

4 MR. STEIN: AND BARBARA GARCIA AND STEVE JOHN BY
5 DECLARATION BECAUSE THEY'RE VERY LIMIT TODAY QUANTUM
6 MERUIT.

7 MS. IBARRA: WELL THOSE ARE RESERVED DEPENDING ON
8 HOW THE COURT RULES ON THE QUANTUM MERUIT.

9 THE COURT: TRUE BUT LET'S JUST ASSUME WE'RE GOING
10 TO GO THAT WAY. ANY OTHER -- WE'VE STARTED --.

11 MS. IBARRA: OH MILLS SHOULD GO BY DECLARATION.

12 MR. STEIN: MILLS BY DECLARATION.

13 THE COURT: MILLS BY DECLARATION.

14 MS. IBARRA: HE'S ALREADY DONE A DECLARATION AND
15 WE COULD DO A BARRETT DECLARATION AND IF THEY WANT TO BRING
16 HER TO CROSS THAT'S FINE.

17 THE COURT: ALL RIGHT SO EVERYBODY IS AGREEING
18 THEN TO DO -- TO FINISH -- BECAUSE WE HAVE AARON SON BY
19 DECLARATION H BARRETT BY DECLARATION H FINISH MR. STEIN HIS
20 DECLARATION AND THEN YOU LIVE CROSS.

21 MS. IBARRA: YES.

22 THE COURT: GARCIA DECLARATION, LIVE CROSS,
23 JOHNSON DECLARATION LIVE CROSS, MILLS DECLARATION, LIVE
24 CROSS. WHAT ABOUT YOUR EXPERT.

25 MS. IBARRA: MY EXPERT I MEAN I FINISHED HIS
26 DIRECT AND LET ME SPEAK TO HIM ABOUT PUTTING TOGETHER A A
27 FULL DECLARATION BECAUSE HE -- WE DID PRODUCE HIS NOTES
28 THAT WERE ALL OVER THE PLACE, DO YOU RECALL THAT THERE WAS

1 A -- THE COURT ORDERED THAT WE PRODUCED.

2 MR. STEIN: WELL THIS WOULD NOT BE A DECLARATION
3 TO GO BACK AND SAY OKAY WELL NOW LET ME CLEAN UP WHAT WAS A
4 MESS BEFORE, THIS WOULD BE A DECLARATION ONLY IN REDIRECT.

5 MS. IBARRA: NO HE -- THE COURT REQUESTED THAT I
6 TURNOVER HIS HANDWRITTEN NOTES SO IF MR. MILLS IS GOING TO
7 HAVE AN ACTUAL EXPERT DECLARATION THEN I WOULD HOPE THAT
8 MR. MARGOLIS CAN TYPE UP HIS HANDWRITTEN NOTES INTO AN
9 ACTUAL EXPERT DECLARATION.

10 MR. FORDYCE: HOW IS THIS NOT A SECOND BITE AT THE
11 APPLE, MR. MARGOLIS.

12 MR. STEIN: THAT'S EXACTLY RIGHT.

13 MR. FORDYCE: WAS IDENTIFIED -- WAS EXAMINED ON
14 DIRECT EXAMINATION, THERE'S CROSS-EXAMINATION HAD HE
15 DOESN'T GET TO GO AGAIN RIGHT.

16 THE COURT: LET'S GO AHEAD.

17 MR. STEIN: SHALL WE COME BACK TOMORROW WITH LIKE
18 A DOCUMENT THAT BOTH COUNSEL CAN SIGN.

19 THE COURT: WELL MY CONCERN CONCERNS MAYBE WE
20 SHOULD FINISH MARGOLIS LIVE AND MR. STEIN YOU'RE ALMOST
21 FINISHED RIGHT.

22 MR. STEIN: NO NOT NOWHERE CLOSE.

23 MR. FORDYCE: UNFORTUNATELY, NO I'VE GOT MULTIPLE
24 EXHIBITS TO GO WITH HIM BUT BECAUSE HE'S BEING CROSSED ON
25 776, IT'S FUNCTIONALLY A DIRECT. SO MR. STEIN HAS MADE
26 CLEAR TO ME THAT HE'S HAPPY DOING THE REST OF HIS BY
27 DECLARATION AND AT THAT POINT WE HAVE TO JUST ESTABLISH
28 WHERE I STOPPED, IT WAS ACTUALLY FOR THE RECORD ON EXHIBIT

1 ORDER 37, I'M SORRY RESOLUTION 37 I JUST NEED TO TAKE THEM
2 THROUGH.

3 MS. IBARRA: BUT THEN I NEED TO CROSS HIM ON STUFF
4 THAT HE'S ALREADY TESTIFIED ON.

5 MR. FORDYCE: REDIRECT, 776 REDIRECT.

6 MS. IBARRA: YEAH.

7 THE COURT: I DON'T WANT TO HAVE REHASH, I DON'T
8 WANT A DECLARATION THAT'S A REHASH OF EVERYTHING HAS
9 HAPPENED.

10 MR. STEIN: AND THAT'S WHAT MR. MARGOLIS WOULD BE
11 DOING.

12 THE COURT: I'M TALKING ABOUT FROM STEIN THIS IS
13 WHAT I THINK WE SHOULD DO I THINK WE SHOULD JUST FINISH
14 STEIN THE WAY WE'VE BEEN PROCEEDING AND MARGOLIS BECAUSE
15 THEY'VE ALREADY STARTED TESTIFYING, THE OTHERS WE HAVE
16 EXCUSED OR HAVEN'T CALLED AT ALL SO THEY WOULD ONLY BE
17 PRESENTING NEW INFORMATION. SO THAT'S THE WAY WE'RE GOING
18 TO DO IT. SO WE'RE GOING TO FINISH MARGOLIS LIVE AND MR.
19 STEIN LIVE.

20 MR. STEIN: STEIN 776 OR DIRECT.

21 THE COURT: NO 776. YOU'RE BE 776.

22 MR. FORDYCE: BUT I'M CROSSING 776.

23 MS. IBARRA: WE HAVEN'T STARTED HIS --.

24 MR. STEIN: TIME OUT TIMEOUT, SO THE WAY WE
25 DIVIDED IT UP IS SHE DID THE ATTORNEY CLIENT STUFF ON 776
26 AND HE IS NOW CROSS-EXAMINING.

27 MS. IBARRA: IF THAT'S --

28 MR. STEIN: AND THAT HAS NOTHING TO DO WITH THE

1 CASE IN CHIEF, THAT IS TO ANSWER THE ATTORNEY-CLIENT CHARGE
2 IN HER COMPLAINT, THAT'S WHY I -- THAT'S WHAT SHE HE HAVE
3 CALLED ME ON 776 IS HER COMPLAINT SAYS THERE'S MALPRACTICE
4 HERE AND ATTORNEY-CLIENT RELATIONSHIP.

5 MR. FORDYCE: AND WE'RE HAPPY TO HANDLE ON
6 DECLARATION OR LIVE.

7 MS. IBARRA: THERE'S MORE THAN THAT IN MY -- IN
8 MY --.

9 THE COURT: WELL LET'S PUT IT THIS WAY, THERE
10 REALLY ISN'T -- ALL THE TESTIMONY SHOULD COME OUT
11 REGARDLESS OF WHEN.

12 MR. STEIN: RIGHT.

13 THE COURT: THE QUESTION IS WHETHER IT'S ON 776 OR
14 WHETHER IT'S DIRECT AND 776 IS WHEN MS. IBARRA CALLS, IT'S
15 DIRECT WHEN THIS SIDE, WHETHER IT'S MR. FORDYCE OR MR.
16 STEIN THEN IT SHOULD BE ON DIRECT, IT IS NOT A 776
17 EXAMINATION SO TO ME IT DOESN'T MATTER WHO CALLS WHO WHEN,
18 THAT'S THE BASIC SET UP.

19 MR. STEIN: UH-HUH, UH-HUH.

20 MS. IBARRA: WE'RE JUST ELICITING THE TESTIMONY IS
21 WHAT THE COURT IS SAYING.

22 THE COURT: RIGHT, BASICALLY.

23 MS. IBARRA: RIGHT.

24 MR. FORDYCE: SO IF I'M UNDERSTANDING.

25 MR. STEIN: SO SO MY POINT WAS BECAUSE OF THE
26 VOLUME CAN WE DO LIVE FOR

27 IN ANSWERING IN THE -- IN THE CROSS-EXAMINATION
28 FOR MS. IBARRA DIRECT TESTIMONY THAT I DID AND THEN DO THE

1 REST BY DECLARATION.

2 THE COURT: NO WE'RE GOING TO DO IT ALL, JUST
3 ORALLY.

4 MR. STEIN: THAT'S FINE JUST AS LONG AS I WARN YOU
5 ABOUT THE VOLUME.

6 THE COURT: YEAH THAT'S FINE AND BECAUSE OF THE
7 VOLUME IT'S PROBABLY BETTER TO DO IT ORALLY RATHER THAN
8 BECAUSE THEN IT WILL BE THAT THICK.

9 MS. IBARRA: IT IS TOO CONFUSING OTHERWISE.

10 THE COURT: IT'S CONFUSING AND I CAN ALREADY TELL
11 I'M GOING TO HAVE GET A DECLARATION THAT'S THREE FEET TALL
12 SO LET'S NOT DO THAT.

13 MR. STEIN: SO TO REVIEW WHAT THE COURT SAID FOR
14 THE RECORD.

15 THE COURT: YES.

16 MR. STEIN: AARON SON BY DECLARATION WITH A LIVE
17 CROSS-EXAMINATION.

18 THE COURT: YES.

19 MR. STEIN: GARCIA BY DECLARATION WITH A LIVE
20 CROSS-EXAMINATION IF THE 402 HEARING SUCCEEDS, JOHNSON.

21 MS. IBARRA: SAME.

22 MR. STEIN: DECLARATION, LIVE CROSS IF 402
23 SUCCEED, EXPERT MILLS DECLARATION WITH LIVE CROSS, MARGOLIS
24 LIFE REDIRECT.

25 THE COURT: DID YOU FINISH YOUR CROSS ON MARGOLIS
26 I THOUGHT YOU HAVE DIDN'T FINISH.

27 MR. STEIN: NO CROSS AND REDIRECT.

28 THE COURT: I THOUGHT YOU HAD A LITTLE BIT MORE TO

1 GO BUT IF YOU DON'T.

2 MS. IBARRA: IF YOU DON'T THEN I CAN JUST DO
3 REDIRECT AND THAT'S FINE.

4 MR. STEIN: AND THEN STEIN LIVE FOR EVERYTHING,
5 LIVE EVERYTHING.

6 THE COURT: YEAH I DON'T WANT TO GET -- I CAN SEE
7 IT COMING NOW, IT'S THREE FEET TALL.

8 MR. FORDYCE: OH YOUR HONOR WHAT ARE YOU TRYING TO
9 SAY.

10 MR. STEIN: .

11 THE COURT: WELL YOUR EXHIBIT BOOKS YOU HAVE FOUR
12 OR FIVE EXHIBIT BOOKS I CAN TELL IT'S GOING TO BE VERY
13 TALL.

14 MS. IBARRA: SO THE ONLY LIVE OF WITNESSES WE KNOW
15 FOR SURE ARE MARGOLIS AND MR. STEIN. EVERYBODY ELSE, ONLY
16 IF THERE'S CROSS ON THEIR DECLARATIONS.

17 THE COURT: NODS.

18 MR. STEIN: NOW MAY I HAVE ASK ONE THING AND AGAIN
19 COUNSEL MAY AGREE OR DISAGREE AND THE COURT MAY WANT TO DO
20 IT OR NOT, IT WOULD SEEM TO ME THAT SEEING A DRAFT
21 DECLARATION AND GIVING INPUT MIGHT BE VALUABLE BEFORE
22 FINALIZING OR ALTERNATIVELY -- AND SO THE QUESTION IS
23 WHETHER OPPOSING COUNSEL WOULD HAVE THAT OPPORTUNITY OR
24 NOT.

25 THE COURT: NO THAT'S NOT NORMALLY, I MEAN THAT
26 SIDE PRESENTS ITS DECLARATIONS AS THE DIRECT TESTIMONY AND
27 THEN YOU CAN.

28 MR. FORDYCE: CROSS.

1 THE COURT: CROSS OR WHOEVER YOU WANT TO CROSS
2 OTHERWISE YOU GUYS WILL BE SPENDING ALL YOUR TIME TRYING TO
3 MEET AND CONFER OVER STUFF AND -- AND FRANKLY YOU SAVE YOUR
4 SURPRISE ON CROSS, RIGHT, YOU DON'T TIP YOUR HAND. ANY
5 WAY.

6 MR. STEIN: VERY GOOD, GOOD POINT.

7 THE COURT: SO.

8 MR. FORDYCE: SO WHAT'S TOMORROW THEN.

9 THE COURT: I HAVE THOUGHT MAYBE MARGOLIS, THAT'S
10 A GOOD QUESTION. WHO IS TOMORROW, WHO IS READY FOR
11 TOMORROW.

12 MS. IBARRA: ARE YOU -- SO YOU WERE FINISHING
13 CROSS, IF NOT I CAN GO TO REDIRECT WITH MARGOLIS.

14 MR. FORDYCE: NO I'VE GOT.

15 MR. STEIN: IS MR. MARGOLIS AVAILABLE TOMORROW.

16 MS. IBARRA: I CHECKED WITH HIM EARLIER IN THE
17 WEEK BECAUSE TENTATIVELY AND I THINK HE WAS BUT I HAVE TO
18 DOUBLE CHECK NOW BECAUSE.

19 MR. STEIN: SO HE MAY HAVE NOT.

20 MS. IBARRA: IT WAS LOOKING LIKE IT WAS GOING TO
21 BE STEIN.

22 MR. STEIN: WELL I WILL FILL UP TOMORROW
23 OBVIOUSLY.

24 THE COURT: SO IF WE DON'T HAVE MARGOLIS YOU'LL
25 STEP UP.

26 MR. STEIN: AND THEN MAYBE YOU CAN BRING FORWARD A
27 SCHEDULE WITH MR. MARGOLIS CONFIRMED WITH THEM.

28 MS. IBARRA: ILLINOIS DO THAT TODAY.

1 MR. STEIN: AND I WOULD LIKE TO FINISH HIM BEFORE
2 START MR. MILLS.

3 MR. FORDYCE: SO WE'RE GOING TO SAY NO MARGOLIS
4 TOMORROW.

5 THE COURT: NO I THINK SHE'S GOING TO TRY TO GET
6 MARGOLIS TOMORROW.

7 MR. STEIN: NO NO NO.

8 THE COURT: NO.

9 MR. STEIN: IT WAS GOING TO BE.

10 MS. IBARRA: DO YOU WANT TO GO TOMORROW?

11 MR. STEIN: WE'RE JUST GOING TO CONTINUE BECAUSE
12 WE'RE ALL PREPARED FOR THAT AND THAT GIVES HER THE WEEKEND
13 TO CONFIRM UP FOR MARGOLIS AND THEN SHE WAS GOING TO COME
14 IN WITH A CONFIRMED SCHEDULE FOR HIM AND MR. MILLS WILL
15 FOLLOW UP.

16 THE COURT: YOU CAN CONTINUE WITH HIS CROSS. I
17 UNDERSTAND YOU'VE PREPARED FOR THAT WE'LL GO FORWARD WITH
18 THAT. ALL RIGHT. ALL RIGHT THANK YOU.

19 MS. IBARRA: THANK YOU.

20 MR. FORDYCE: THANK YOU FOR YOUR PATIENCE YOUR
21 HONOR. 12:22 PM.

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