

1 CAUTIONS IN USING A REALTIME PARTIALLY EDITED TRANSCRIPT

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

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

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

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GABRIELINO-TONGVA TRIBE VS. STEIN

TRIAL TESTIMONY OF JONATHAN STEIN, 1/27/17

10:28 AM.

THE COURT: GABRIELINO VERSUS STEIN, BC361307.
GOOD MORNING.

MR. STEIN: GOOD MORNING.

MR. FORDYCE: GOOD MORNING.

MS. IBARRA: GOOD MORNING.

THE COURT: COUNSEL MAKE YOUR APPEARANCES.

MS. IBARRA: DELIA IBARRA FOR PLAINTIFF
GABRIELINO-TONGVA TRIBE.

MR. FORDYCE: NIALL FORDYCE FOR MR. STEIN AND LAW
OFFICES OF JONATHAN STEIN.

MR. STEIN: JONATHAN STEIN ON BEHALF OF SMDC AND
THE CRANE GROUP.

THE COURT: OKAY THANK YOU. YESTERDAY WE HAD
LAMOHE AND SHE WAS EXCUSED SO ARE WE COMMENCING OR
RECOMMENCING WITH MR. STEIN.

MR. FORDYCE: THAT'S CORRECT YOUR HONOR.

THE COURT: OKAY.

MR. FORDYCE: JUST A SUPER QUICK CLERICAL JUST SO
GET IT ON THE RECORD SO WE'RE NOT CONFUSED, JUST REVIEWING
EVERYTHING I REALIZED THAT PLAINTIFF HAD ALREADY USED
EXHIBITS 250 AND 251 WHICH WERE THE MOST RECENT NUMBERS
GIVEN TO PLAINTIFFS RECENT EXHIBITS. SO THOSE NEED TO BE
REDONE AT 25 TWO AND 25 THREE.

THE COURT: OH DID YOU MARK THEM OR DID THE COURT

1 MARK THEM? IN OTHER WORDS DID YOU IDENTIFY THEM AS 250 AND
2 251 WHEN THEY --.

3 MS. IBARRA: I DON'T RECALL I HAVE TO LOOK AT THE
4 TRANSCRIPT.

5 MR. FORDYCE: YOUR HONOR I THINK YOU DID, I THINK
6 YOU SEWED THIS WILL BE 250 AND 251 SO IT SHOULD BE 25 TWO
7 AND 25 THREE.

8 MR. STEIN: PLAINTIFF GAVE YOU THE NUMBERS AND YOU
9 GAVE THE DESIGNATION BASED ON PLAINTIFF SAYING THE NUMBERS
10 AND WE'RE LOOKING BACK, AND SIMPLE CLERICAL MISTAKE.

11 MR. FORDYCE: JUST WANT TO MAKE SURE THE RECORD'S
12 CLEAR.

13 THE COURT: SO SOMEBODY MADE A MY TAKE, ME,
14 PLAINTIFFS SOMEBODY MADE A MISTAKE SO LET'S CLEAN IT UP.
15 SO YOU'RE SAYING IT SHOULD BE -- NELI DO YOU HAVE -- THIS
16 WILL BE PLAINTIFFS EXHIBITS? PLAINTIFF'S EXHIBITS.

17 MS. IBARRA: THIS WAS BECAUSE WE WERE TALKING
18 ABOUT MS. LAMOTHE'S --

19 THE COURT: RETAINER.

20 THE CLERK: I HAVE 250.

21 MR. FORDYCE: IT SHOULD BE 252?

22 MR. STEIN: CAN WE REFER TO IT AS 250 A ONLY
23 BECAUSE IT'S BEING REFERRED TO AS 520 ALL THROUGHOUT THE
24 TESTIMONY.

25 THE COURT: WHAT WAS 250?

26 MR. FORDYCE: 250 WAS A SEPTEMBER 19TH, 2006
27 E-MAIL FROM MR. MCSHANE TO MR. STEIN ON A BANK LETTER AND
28 THAT WAS IDENTIFIED ON JULY 16, 2016.

1 THE COURT: IT DOESN'T REALLY MAKE SENSE BECAUSE
2 IT'S NOT RELATED TO 250, BUT MAYBE IT WOULD HELP IN THE
3 TRANSCRIPT.

4 MR. FORDYCE: AS YOU WISH YOUR HONOR. EITHER WAY.

5 THE COURT: WE'LL CALL IT 250 A, THAT WAY IT STAYS
6 CLEAR.

7 MR. FORDYCE: RIGHT. IT MAKES SENSE.

8 MR. STEIN: AND THAT'S 250.

9 THE COURT: RETAINER.

10 MR. FORDYCE: THAT'S CORRECT, YOUR HONOR.

11 THE COURT: THE LAMOTHE RETAINER.

12 MR. FORDYCE: CORRECT.

13 MR. STEIN: SO THE LAMOTHE RETAINER IS NOW 250 A.

14 THE COURT: RIGHT WE CAN MAKE THE SECOND EXHIBIT
15 AS 250 B OR.

16 MS. IBARRA: EXCEPT WE REFERRED TO IT AS 251.

17 THE COURT: OKAY. SO LET'S MAKE IT 251 A. WHAT
18 WAS 251.

19 MR. FORDYCE: 251 IS A FAX FROM MR. STEIN ON THE
20 SAME DATE, SEPTEMBER 19, 2006 FROM MR. STEIN TO MCSHANE
21 WITH A COPY OF THE LETTER THAT MR. STEIN SENT TO THE BANKS
22 AND THAT WAS ALSO IDENTIFIED ON JULY 15, 2016.

23 THE COURT: AS 251.

24 MR. FORDYCE: AS 251, CORRECT, YOUR HONOR.

25 MR. STEIN: FORGIVE ME.

26 THE COURT: NOW 250 251 WILL NOW BE.

27 MS. IBARRA: THAT WAS THE RESOLUTION.

28 THE CLERK: NUMBER 31.

1 MS. IBARRA: 31 REFERRING TO THE LAMOTHE RETAINER
2 AGREEMENT.

3 MR. STEIN: RESOLUTION 36.

4 MS. IBARRA: 36.

5 THE COURT: LET'S BE CLEAR, NELI IT'S 36.

6 THE CLERK: YES YOUR HONOR.

7 THE COURT: SO 251 A IS RESOLUTION 36 OR -- AND IT
8 COULD BE A MULTIPLE COPY BECAUSE WE COULD HAVE RESOLUTION
9 36 SOMEWHERE ELSE THAT'S COMPLETELY FINE, BUT JUST TO KEEP
10 IT STRAIGHT SO.

11 MS. IBARRA: YES IT'S RESOLUTION 36.

12 MR. STEIN: YOUR HONOR, IF I MAY SUMMARIZE, WHAT
13 WAS REFERRED TO IN TESTIMONY AS EXHIBIT 250 IS NOW 250 A,
14 THAT'S THE LAMOTHE RETAINER AGREEMENT AND WHAT WAS REFERRED
15 TO IN --

16 THE COURT: WELL THERE'S A 250 ALREADY SO WE --
17 THIS IS A NEW EXHIBIT SO JUST YESTERDAY WHAT WAS REFERRED
18 TO AS 250 IS NOW 250 A, NOT BECAUSE THERE IS A REAL 250 A
19 THAT WAS REFERRED TO EARLIER IN THE TRIAL SO WE NEED TO
20 KEEP THAT STRAIGHT. SO WHAT WAS REFERRED TO YESTERDAY AS
21 250 IS NOW 250 A.

22 MR. STEIN: AND THAT IS THE LAMOTHE RETAINER
23 AGREEMENT.

24 THE COURT: CORRECT.

25 MR. STEIN: AND THEN EXHIBIT WHAT WAS REFERRED TO
26 YESTERDAY AS EXHIBIT 251 IS NOW 251 A AND THAT IS THE
27 RESOLUTION 36 APPROVING THE LAMOTHE RETAINER AGREEMENT.

28 THE COURT: RIGHT. BECAUSE 251 HAS BEEN REFERRED

1 TO PRIOR TO YESTERDAY AS SOMETHING HE WAS AND NELI DO WE
2 KNOW WHAT THE 251 IS.

3 MR. FORDYCE: I DO YOUR HONOR IF YOU NEED IT.

4 THE CLERK: LET'S JUST MAKE SURE WE'RE ON THE SAME
5 PAGE.

6 MR. FORDYCE: TELL ME WHAT YOU HAVE IT NELI AND
7 I'LL CONFIRM IT.

8 THE CLERK: IT'S A FAX.

9 MR. FORDYCE: THAT'S CORRECT.

10 THE CLERK: E-MAIL.

11 MR. FORDYCE: THAT'S CORRECT, IT'S THE SEPTEMBER
12 19, 2006 FAX FROM MR. STEIN TO MR. MCSHANE.

13 THE COURT: THANK YOU FOR KEEPING THAT STRAIGHT.

14 MS. IBARRA: A SEPTEMBER 19 FAX FROM MR. MCSHANE
15 FROM STEIN TO MCSHANE.

16 THE COURT: ARE WE CLEAR NOW ON EVERYTHING.

17 MS. IBARRA: YES.

18 MR. FORDYCE: YEAH.

19 THE COURT: SO LET'S CONTINUE NOW WITH MR. STEIN'S
20 TESTIMONY.

21 MR. FORDYCE: YES YOUR HONOR.

22 THE COURT: AND YOU HAVE -- WHICH NOTEBOOK DO YOU
23 HAVE IN FRONT.

24 MR. FORDYCE: IT'S THE FIRST NOTEBOOK AND IT'S --.

25 THE COURT: VOLUME ONE.

26 MR. FORDYCE: YES WE'RE BACK INTO THE GOOD OLD
27 SMDC AGREEMENT AND RESOLUTIONS AND AMENDMENTS.

28 THE COURT: OKAY VERY GOOD. MR. STEIN YOU

1 UNDERSTAND YOU'RE STILL UNDER OATH.

2 A. YES YOUR HONOR.

3 THE COURT: OKAY THANK YOU.

4 MR. FORDYCE: I'LL JUST GIVE YOU A SECOND TO GET
5 SITUATED THERE. .

6 Q. ARE YOU SITTING COMFORTABLY?

7 A. MUCH MORE SO.

8 Q. THEN I'LL BEGIN. MR. STEIN YOU'RE STILL UNDER
9 OATH WHERE WE LEFT OFF A COUPLE OF DAYS AGO WAS WE HAD JUST
10 FINISHED LOOKING AT WHAT IS NOW EXHIBIT 15 45 AND THAT'S
11 RESOLUTION 20 SO WE'RE NOW GOING TO MOVE ON TO RESOLUTION
12 37 WHICH IS BATES NUMBER '05 10 AND IT IS NOW MARKED AS
13 EXHIBIT 15 46, I BELIEVE THAT'S IN FRONT OF YOU, DO YOU SEE
14 TO WHAT I'M REFERRING?

15 A. YES, I DO.

16 Q. WHAT IS THIS DOCUMENT?

17 A. THIS IS A RESOLUTION 37 WHICH APPROVED AMENDMENTS
18 TO THE SMDC AGREEMENT ON JANUARY 27 OF 2002.

19 THE COURT: WHAT WAS THE FORMER EXHIBIT NUMBER
20 BECAUSE I --.

21 MR. FORDYCE: OH 569 YOUR HONOR IT WAS PART OF THE
22 BIG 569.

23 THE COURT: YES THANK YOU.

24 Q. BY MR. FORDYCE: AND MR. STEIN HAVE YOU SEEN THIS
25 DOCUMENT BEFORE?

26 A. YES, I HAVE.

27 Q. AND DO YOU HAVE PERSONAL KNOWLEDGE AS TO THE
28 CONTENTS OF THE DOCUMENT?

1 A. I WAS THERE WHEN THEY ADOPTED IT.

2 THE COURT: I'M GOING TO NEED TO GET A COPY OF IT.

3 MR. FORDYCE: OH SURE YOUR HONOR ABSOLUTELY.

4 THE COURT: THAT'S ALL RIGHT.

5 MR. FORDYCE: ABSOLUTELY.

6 THE COURT: DO YOU HAVE AN EXTRA COPY OF
7 RESOLUTION IS IT 37.

8 MR. FORDYCE: CORRECT YOUR HONOR?

9 A. IT SHOULD BE ON.

10 MR. FORDYCE: I ACTUALLY HAVE AN ELECTRONIC
11 VERSION SO I COULD GIVE YOU MINE.

12 THE COURT: WELL, NO, YOU NEED YOURS.

13 MR. FORDYCE: IT ELECTRONICALLY?

14 A. WELL WASN'T IT PULLED OUT INTO HEY --.

15 THE COURT: WELL I'M SURE IT WAS BUT NELI HAS A
16 STACK OF THINGS SO I'M JUST GOING TO ASK FOR THE COPY.

17 MR. FORDYCE: NOT A PROBLEM.

18 THE COURT: SHE'LL LOOK FOR IT IN THE MEANTIME.
19 YOU DON'T HAVE TO GIVE ME THE WHOLE BINDER JUST TAKE IT
20 OUT, THAT WAY YOU HAVE THE REST OF YOUR EXHIBITS.

21 MR. FORDYCE: DOES YOUR HONOR HAVE -- BECAUSE
22 WE'RE GOING TO GO THROUGH THE REST OF THE SMDC AGREEMENT,
23 DO YOU HAVE ANY OF THE OTHER RESOLUTIONS AND AMENDMENTS OR
24 SHALL I JUST GIVE YOU ALL OF THEM.

25 THE COURT: I SHOULD, NELI SHOULD HAVE THEM BUT
26 SHE'S GOING TO HAVE TO LOOK FOR THEM BECAUSE.

27 MR. FORDYCE: NO PROBLEM I'LL JUST GIVE YOU 37 FOR
28 NOW.

1 THE CLERK: I'LL JUST GIVE YOU EVERYTHING I HAVE.

2 THE COURT: WELL YOU HOLD ONTO THEM AND I'M GOING
3 TO ASK YOU TO HAND THEM TO ME WHEN THEY REFER TO THEM SO I
4 CAN PAY ATTENTION THANK YOU.

5 MR. FORDYCE: NO PROBLEM SO LONG AS YOUR HONOR HAS
6 COPY AND MR. STEIN HAS A COPY WE'RE GOOD.

7 THE COURT: YES.

8 MR. FORDYCE: LET ME JUST GET TO WHERE I NEED TO
9 BE ELECTRONICALLY. THERE WE GO.

10 Q. SO MR. STEIN YOU JUST TESTIFIED YOU HAD PERSONAL
11 KNOWLEDGE OF THIS DOCUMENT, CORRECT?

12 A. YES.

13 Q. PLEASE READ THE FIRST WHEREAS CLAUSE INTO THE
14 RECORD?

15 A. WHERE'S ON MARCH 4TH, 2001 THE TRIBAL COUNCIL
16 APPROVED RESOLUTION 10 CONTRACTUAL AGREEMENT WITH THE SAINT
17 MONDAY DEVELOPMENT COMPANY ESTABLISHED A CONTRACT
18 RELATIONSHIP BETWEEN THE GT TRIBE AND SAINT MONDAY
19 DEVELOPMENT TO ACCOMPLISH CERTAIN DEVELOPMENT TASKS IN
20 CONNECTION WITH TRIBAL GOVERNMENT, THE FEDERAL RECOGNITION
21 PROCESS, THE PROCESS OF ESTABLISHING TRIBAL STATE GAMING
22 COMPACT, THE PROCESS OF LOCATING AND OBTAINING LANDS TO BE
23 PLACED INTO TRUST TO FORM A RESERVATION AND THE PROCESS OF
24 CONSTRUCTING AND OPENING A CASINO THERE ON.

25 Q. WHAT IS THE PURPOSE OF THIS WHEREAS CLAUSE?

26 A. IT WAS FOR THE TRIBAL COUNCIL TO ACKNOWLEDGE THAT
27 THEY HAD IN FACT APPROVED THAT ACTION EVEN THOUGH THEY --
28 THE PEOPLE HAD APPROVED IT OTHER THAN ONE OR TWO OF THEM

1 HAD RESIGNED.

2 Q. WHY IS IT IMPORTANT?

3 A. IT'S IMPORTANT TO SHOW THAT THE SMDC AGREEMENT
4 HAD -- WAS VALID AND BINDING, THIS WAS ONE STEP ALONG THE
5 ROAD TO THAT RESULT.

6 Q. AT THE TIME THAT YOU SAW THIS WHEREAS CLAUSE IS
7 THERE ANYTHING THAT YOU CONSIDERED TO BE UNTRUE IN THAT
8 WHEREAS CLAUSE?

9 A. NO.

10 Q. IS THERE ANYTHING YOU CONSIDER TO BE UNTRUE IN
11 THAT WHEREAS CLAUSE AS YOU SIT HERE TODAY?

12 A. NO.

13 Q. LET'S MOVE ON TO THE SECOND WHEREAS CLAUSE, PLEASE
14 READ THAT INTO THE RECORD?

15 A. WHEREAS ON MARCH 4, 2001 TRIBAL SECRETARY MAYOR
16 AGO ON BEHALF OF THE TRIBAL COUNCIL AND THE TRIBE, AND
17 JONATHAN STEIN PRESIDENT ON BEHALF OF SAINT MONDAY BOTH
18 EXECUTED THAT CERTAIN DEVELOPMENT AGREEMENT, THE AGREEMENT
19 OR THE DEVELOPMENT AGREEMENT, DATED AS OF FEBRUARY 1, 2001
20 WHICH MADE THE AGREEMENT VALID BINDING AND DULY ADOPTED
21 OBLIGATIONS OF THE TRIBAL COUNCIL AND THE TRIBE.

22 Q. WHAT IS IT YOUR BELIEF AS IT THE PURPOSE OF THIS
23 WHEREAS CLAUSE?

24 A. THIS WAS FOR THE TRIBAL COUNCIL TO ACKNOWLEDGE ON
25 JANUARY 27TH, 2002 THAT IN LOOKING BACK, THEY VIEWED THE
26 ACTIONS IN MARCH OF 2001 AS CREATING A VALID BINDING AND
27 DULY ADOPTED OBLIGATION, IT'S SO THAT THEY COULD NOT DO
28 EXACTLY WHAT THEY'RE DOING TODAY.

1 Q. AT THE TIME DID YOU BELIEVE THAT THE TRIBE HAD
2 DONE SO PURSUANT TO THIS WHEREAS CLAUSE?

3 A. YES.

4 MS. IBARRA: SORRY OBJECTION UNCLEAR BY DONE SO.

5 MR. FORDYCE: OH.

6 Q. DID --.

7 THE COURT: SUSTAINED.

8 MS. IBARRA: VAGUE.

9 MR. FORDYCE: ALL RIGHT.

10 Q. WELL MR. STEIN IS IT YOUR UNDERSTANDING THAT THE
11 TRIBE DULY ADOPTED THE OBLIGATIONS OF THE SMDC AGREEMENT?

12 A. YES.

13 MS. IBARRA: OBJECTION LEADING.

14 MR. FORDYCE: YES.

15 THE COURT: OVERRULED.

16 MR. FORDYCE:

17 Q. AND MR. STEIN WHY IS THIS CLAUSE IMPORTANT?

18 A. THE CLAUSE -- TO ANSWER YOUR FIRST QUESTION, IT'S
19 TRUE, I VIEWED THIS AS TRUE AT THE TIME AND I VIEW IT AS
20 TRUE TODAY AND IT WAS IMPORTANT BECAUSE I WOULD NOT HAVE
21 CONTINUED -- IF THEY SAID THAT I DID NOT HAVE A BINDER-G
22 AGREEMENT FROM THE VERY BEGINNING, I WOULD NOT HAVE WORKED
23 ANY FURTHER THAN JANUARY 27TH, 2002, I WOULD HAVE STOPPED
24 RIGHT THEN AND THERE AND SAID THANKS VERY MUCH I'M GOING TO
25 CUT MY LOSSES.

26 Q. LET'S MOVE ON TO THE NEXT WHEREAS CLAUSE PLEASE
27 READ IT INTO THE RECORD?

28 A. WHEREAS ON APRIL 17TH, 2000 19 TRIBAL COUNCIL

1 APPROVED RESOLUTION NUMBER 17 CONFIRMING NUMBER OF TRIBAL
2 COUNCIL POSITIONS AT 10 WHICH APPROVED AND RATIFIED ALL
3 PRIOR ACTIONS OF THE TRIBAL COUNCIL AND ADOPTED THEM AS
4 ACTIONS OF THE REFORMED TRIBAL COUNCIL INCLUDING RESOLUTION
5 10 AND THE SMDC AGREEMENT AND AFFIRMED THEM AS VALID
6 BINDING AND DULY ADOPTED OBLIGATIONS OF THE TRIBAL COUNCIL
7 AND THE TRIBE.

8 Q. WHAT IS THE PURPOSE OF THIS WHEREAS CLAUSE?

9 A. IT WAS RECITING A SECOND STEP TAKEN SIX WEEKS
10 LATER BY THE TRIBAL COUNCIL TO IS A FIRM AND RATIFY THE
11 AGREEMENT ADOPTED ON RESOLUTION 10 SO WHATEVER THE PROBLEMS
12 THAT HAD OCCURRED ON RESOLUTION 10, THEY WERE SAYING NO NO
13 NO, IT'S STILL SAY VALID BINDING AND DULY ADOPTED
14 OBLIGATION OF GT TRIBE, THEY WERE TELLING ME THAT AND BASED
15 ON THAT, I WAS ABLE TO CONTINUE WORKING WITH THEM.

16 Q. WAS THIS AN IMPORTANT CLAUSE TO YOUR BELIEF?

17 A. YES.

18 Q. WHY?

19 A. BECAUSE IT PREVENTED THEM FROM DEPOSITING EXACTLY
20 WHAT THEY'RE DOING TODAY, THEY WERE SAYING THEY WERE HE
21 STOPPING THEMSELVES, THEY WERE ACKNOWLEDGING THAT THEY HAD
22 A VALID AND BINDING OBLIGATION AND THEN EACH MONTH THAT
23 PAST BY, I WAS ACCRUING \$25,000 TO BE PAID ONCE WE RAISED
24 INVESTOR FUNDS.

25 Q. AT THE TIME OF THIS RESOLUTION DID YOU BELIEVE
26 THAT THE TRIBE HAD ADOPTED RESOLUTION 17 CONFIRM THE NUMBER
27 OF TRIBAL COUNCIL POSITIONS?

28 A. YES. I WAS THERE AND I BELIEVED IT TO BE TRUE.

1 Q. DID ANYTHING -- HAS ANYTHING HAPPENED TO CHANGE
2 YOUR MIND?

3 A. NO.

4 Q. LET'S MOVE ON TO THE NEXT WHEREAS CLAUSE, JUNE 24,
5 2001?

6 A. WHEREAS ON JUNE 24, 2000 19 TRIBAL COUNCIL
7 APPROVED RESOLUTION 15 CONTRACTUAL AGREEMENT WITH TRIBAL
8 COUNCIL WHICH AGREED TO RETAIN RAE LAMOTHE AS TRIBAL
9 GENERAL COUNSEL AND MS. LAMOTHE HAS IN FACT SERVED ADDS
10 TRIBAL COUNSEL SINCE MAY 2001.

11 Q. WHAT IS THE PURPOSE OF THIS WHEREAS CLAUSE?

12 A. IT WAS TO SHOW THAT RAE LAMOTHE BECAME TRIBAL
13 GENERAL COUNSEL IN MAY OF 2001 AND THAT HELPED MAKE FOR
14 AROUND EVEN BETTER AND EVEN STRONGER CASE THAT THEY WERE
15 BEING ADVISED BY THEIR OWN LAWYER AND SO WHAT THEY WERE
16 DOING WAS A VALID AND BINDING OBLIGATION OF THIS LOOSELY
17 ANYTIME UNINCORPORATED ASSOCIATION.

18 Q. NOW YOU JUST BASICALLY ANSWERED MY NEXT QUESTION
19 BUT I WANT THE RECORD TO BE CLEAR, WHY WAS THIS IMPORTANT
20 TO SMDC?

21 A. BECAUSE SMDC WAS ACCRUING MONIES, 25,000 A MONTH,
22 FOR APPROXIMATELY 75 HOURS A MONTH OF WORK. AND THAT --
23 AND THOSE MONIES WERE NOT GOING TO BE PAID UNLESS I COULD
24 RAISE INVESTOR FUNDS, THAT TOOK FIVE YEARS, THAT FIVES
25 YEARS, MONTH IN AND MONTH OUT OF WORK, HOPING THAT ONCE WE
26 RAISE THE MONEY THAT I WOULD GET PAID. AND AVOID A
27 SITUATION LIKE WE'RE IN TODAY WHERE THEY'RE TRYING TO SAY
28 OH WE DON'T OWE YOU ANY MONEY.

1 Q. TO BE CLEAR H SMDC AS YOU JUST TESTIFIED DID THE
2 WORK PURSUANT TO THE AGREEMENTS AND THE RESOLUTIONS AND THE
3 AMENDMENTS, CORRECT?

4 A. THAT'S RIGHT. SMDC PERFORMED THE CONTRACT MONTH
5 IN AND MONTH OUT THAT WAS SIGNED BY THEM AND THEY WERE NOW
6 SAYING I WAS CORRECT IN DOING SO BECAUSE IT WAS A VALID
7 BINDING AGREEMENT.

8 Q. YOU HEARD MS. LAMOTHE'S TESTIMONY YESTERDAY, IS
9 THERE ANYTHING AT THE TIME OF THIS AGREEMENT BY WHICH YOU
10 BELIEVED -- STRIKE THAT. AT THE TIME OF THIS AGREEMENT IS
11 THERE ANYTHING TO SUGGEST THAT MS. LAMOTHE HAD NOT BEEN
12 APPOINTED AS TRIBAL COUNSEL?

13 A. NO I WAS ACTUALLY THERE WHEN RESOLUTION 15 WAS
14 ADOPTED AND THE RESOLUTION 15 THAT WAS ORIGINALLY MEANT FOR
15 ED HAMBURGER WAS INSTEAD CHANGED BY RAE AND MADE RESOLUTION
16 15 FOR HER TO BE TRIBAL COUNSEL.

17 Q. AND AS YOU SIT HERE TODAY ANYTHING BETWEEN THE
18 DATE OF THIS RESOLUTION AND NOW THAT WOULD CHANGE YOUR
19 MIND?

20 A. NO.

21 Q. LET'S MOVE ON TO THE NEXT WHEREAS CLAUSE, PLEASE
22 READ WHEREAS TRIBAL GENERAL COUNSEL?

23 A. WHEREAS TRIBAL GENERAL COUNSEL HAVING REVIEWED THE
24 SMDC AGREEMENT HAS OPINED TO THE TRIBAL COUNCIL THAT THE
25 AGREEMENT IS VALID BINDING AND ENFORCEABLE OBLIGATION OF
26 THE TRIBAL COUNCIL AND THE TRIBE AS WRITTEN.

27 Q. MR. STEIN DO YOU HAVE PERSONAL KNOWLEDGE AS TO
28 WHETHER THIS TOOK PLACE?

1 A. YES. THERE WERE MEETINGS BETWEEN RAE AND THE
2 COUNCIL WHICH I ATTENDED AND I WENT OVER THIS RESOLUTION
3 WHICH WAS WRITTEN BY RAE AND I ASKED HER DID YOU DO THAT
4 AND IT IS MY UNDERSTANDING THAT IT HAD BEEN DONE BY HER.

5 Q. DID ANYTHING MS. LAMOTHE --

6 THE COURT: WHEN YOU SAY IT HAD BEEN DONE I'M
7 SORRY WHAT ARE YOU REFERRING TO.

8 A. OH I'M SORRY. THAT SHE HAD ACTUALLY TOLD THEM
9 YEAH THIS IS SWAY VALID BINDING OBLIGATION.

10 THE COURT: WELL YOU SAID I WAS PRESENT WHEN THERE
11 WAS A MEETING BETWEEN TRIBAL COUNCIL AND MS. RAE LAMOTHE
12 AND YOU HEARD HER DISCUSS THAT ISSUE THE VALIDITY OF THE
13 AGREEMENT WITH --?

14 A. NO, NO BECAUSE I WASN'T IN THE ROOM.

15 THE COURT: OH I.

16 MS. IBARRA: THAT'S WHAT YOU JUST TESTIFIED.

17 THE COURT: THAT'S WHAT YOU SAID, I WAS PRESENT?

18 A. WE STARTED THE MEETING TOGETHER AND WE TALKED
19 ABOUT THINGS BUT SHE WANTED TO BE ALONE WITH HER CLIENTS, I
20 SAID THAT SOUNDS LIKE A GREAT IDEA SO I LEFT THE ROOM.

21 THE COURT: SO YOU DON'T KNOW WHETHER SHE IN FACT
22 DISCUSSED THE VALIDITY OF THE AGREEMENT WITH THEM BECAUSE
23 YOU WEREN'T THERE?

24 A. AT THAT TIME CORRECT BUT LATER I -- WHEN REVIEWING
25 THIS RESOLUTION WITH HER SHE WROTE THE RESOLUTION AND I
26 REVIEWED IT I SAID DID YOU DO THAT, SHE SAID TO ME YES AND
27 IT WAS MY UNDERSTANDING THAT YES IT HAD BEEN DONE.

28 THE COURT: OKAY?

1 A. AND THEN THE OTHER REASON I BELIEVE IT WAS
2 DONE --.

3 THE COURT: SO YOU SAID YOUR UNDERSTANDING IS
4 BECAUSE SHE TOLD YOU THAT BUT YOU DON'T HAVE PERSONAL
5 KNOWLEDGE AS TO WHETHER --.

6 MS. IBARRA: HEARSAY TO THE EXTENT THAT IT'S --?

7 A. OTHER THAN -- IF I MAY ANSWER THE COURT'S
8 QUESTION.

9 THE COURT: AND THEN I'LL HEAR THE OBJECTION?

10 A. OTHER THAN.

11 THE COURT: YES?

12 A. OTHER THAN THE FACT THAT THEY SIGNED IT AND I --
13 THEY SIGNED IT, THEY'RE NOT DUMB PEOPLE.

14 THE COURT: I UNDERSTAND THAT?

15 A. THEY'RE NOT UNEDUCATED PEOPLE, THEY'RE EDUCATED
16 PEOPLE AND THEY SIGNED IT.

17 THE COURT: THERE'S A DISPUTE AS TO WHETHER
18 THEY'RE EDUCATED PEOPLE BUT THAT'S NOT WHAT WE'RE TALKING
19 ABOUT. MY POINT IS THAT NOT WHETHER THEY SIGNED IT, THE
20 QUESTION WAS WHETHER OR NOT YOU HAD HEARD THE STATEMENT OR
21 HEARD HER -- ACTUALLY HEARD HER DISCUSS IT WITH THE
22 CLIENTS, YOU'RE SAYING NO. ORIGINALLY YOU SAID YOU WERE IN
23 THE ROOM AND YOU HEARD IT NOW YOU'RE SAYING NO, I WASN'T IN
24 THE ROOM THE WHOLE TIME H I DIDN'T HEAR THAT BUT SHE TOLD
25 YOU AT SOME LATER TIME THAT SHE DISCUSSED THE VALIDITY OF
26 THE AGREEMENT?

27 A. WHEN WE.

28 THE COURT: AND THAT'S THE BASIS FOR YOUR

1 TESTIMONY?

2 A. THAT IS ONE BASIS FOR MY TESTIMONY THAT'S CORRECT.

3 THE COURT: OKAY?

4 A. THE OTHER BASIS IS THEY SIGNED IT AND --.

5 THE COURT: WELL THAT'S -- RIGHT, OKAY. BUT I'M
6 ASKING ABOUT --?

7 A. YOUR HONOR THE COURT OBVIOUSLY HAS A VERY
8 DIFFERENT VIEW OF WHAT IT MEANS WHEN SOMEBODY SIGNED A
9 DOCUMENT THAN I HAVE.

10 THE COURT: NO THAT'S --?

11 A. SO FORGIVE ME BUT THAT'S MY -- I'M JUST EXPRESSING
12 MY VIEW I'M NOT SAYING THAT'S CORRECT, I'M EXPRESSING MY
13 VIEW, SOMEBODY SIGNS SOMETHING THAT THEY READ IT.

14 THE COURT: WELL THAT IS AN ASSUMPTION (DITTO)

15 A. AND HAVING WORKED WITH THESE PEOPLE FOR FIVE
16 YEARS, IT WAS MY UNDERSTANDING THAT THEY NORMALLY READ
17 EVERYTHING THAT THEY -- THEY TOOK IT VERY SERIOUSLY.

18 THE COURT: WELL THAT'S FOR THE COURT TO DECIDE,
19 THAT IS NOT YOUR?

20 A. THAT'S EXACTLY CORRECT.

21 THE COURT: SO THAT IS JUST YOUR OPINION. OKAY SO
22 WHAT IS YOUR OBJECTION.

23 MS. IBARRA: SO MY OBJECTION IS THAT TO THE EXTENT
24 IT'S A COMMUNICATION FROM A THIRD PARTY WHO'S NOT A PARTY
25 TO THE ACTION IT'S HEARSAY.

26 THE COURT: SUSTAINED.

27 MR. FORDYCE: HER HONOR IT WAS NOT BEING USE FOR
28 THE EFFECT, IT'S BEING USED TO SHOW THE EFFECT ON MR. MR.

1 STEIN, IT'S NOT HEARSAY.

2 THE COURT: THE EFFECT ON MR. STEIN SO SHOW.

3 MR. FORDYCE: HE RELIED.

4 A. THAT'S CORRECT.

5 MR. FORDYCE: ON THEIR POSITION THAT THEY HAD
6 GENERAL COUNSEL REVIEW THE AGREEMENT, IT WAS THE BASIS FOR
7 WHAT MR. STEIN WAS DOING, IT'S NOT HEARSAY.

8 THE COURT: SO IT'S NOT BEING OFFERED TO SHOW IN
9 FACT THAT LAMOTHE DISCUSSED IT WITH THE CLIENT H THE COURT
10 WILL NOT ACCEPT IT FOR THAT PURPOSE SO IT'S JUST THAT MR.
11 STEIN FORMED A BELIEVE.

12 MR. FORDYCE: ABSOLUTELY.

13 THE COURT: THAT THEY HAD BUT THERE'S NO EVIDENCE
14 THAT IN FACT SHE HAD BECAUSE THAT WOULD BE SIGNIFICANT IT
15 FOR THE TRUTH OF THE MATTER.

16 MS. IBARRA: I THINK IT'S BEEN PROFFERED FOR THE
17 REASON OF SHOWING THAT SHE IN FACT DID DISCUSS IT AND
18 THAT -- THAT'S THE ULTIMATE FACT THAT THEY WERE -- THAT
19 THEY HAD INDEPENDENT COUNSEL WHO REVIEWED IT AND GAVE THEM
20 ADVICE, THAT'S WHY IT'S BEING OFFERED.

21 MR. FORDYCE: YOUR HONOR IT'S NOT BEING USED FOR
22 TRUTH.

23 THE COURT: IT'S NOT FOR THE TRUTH.

24 MR. FORDYCE: MS. LAMOTHE TESTIFIED DIRECTLY TO
25 THIS YESTERDAY SO THE RECORD WILL SPEAK FOR ITSELF.

26 MS. IBARRA: THAT'S NOT WHAT SHE TESTIFIED, SHE
27 DIDN'T RECALL AND IN FACT SHE DIDN'T EVEN RECALL SHE WAS
28 THERE.

1 MR. FORDYCE: YOUR HONOR I'M NOT GOING TO ENGAGE
2 IN A ARGUMENT WITH THE COUNCIL.

3 THE COURT: THAT IS TRUE THAT THE COURT WILL NOT
4 ACCEPT IT AS THE TRUTH THAT FAR SHE IN FACT DISCUSSED IF
5 THERE'S OTHER EVIDENCE SOMEWHERE THAT'S FINE THAT OTHER
6 EVIDENCE WILL STAND AS THE EVIDENCE BUT MR. STEIN'S
7 STATEMENT IS JUST TO SHOW HIS OWN STATE OF MIND THAT HE
8 BELIEVED THAT THE AGREEMENT WAS VALID AND THAT HE WOULDN'T
9 HAVE GONE FORWARD WITH THE AGREEMENT HAD HE NOT HAD THAT
10 BELIEF BUT IT'S NOT BEING ACCEPTED FOR THE TRUTH OF THE
11 FACT THAT LAMOTHE DID IN FACT DISCUSS IT WITH THE TRIBE.

12 MR. FORDYCE: PERFECT YOUR HONOR, THAT'S
13 ABSOLUTELY RIGHT.

14 Q. MR. STEIN DID YOU RE LINE ON THIS WHEREAS CLAUSE?

15 A. I RELIED ON THE WHEREAS CLAUSE AND I RELIED ON THE
16 SIGNATURES THAT THEY WERE SIGNING IT SAYING YES THIS IS
17 TRUE, ABSOLUTELY.

18 Q. OKAY. LET'S MOVE ON TO THE NEXT WHEREAS CLAUSE,
19 WHEREAS CLAUSE THE TRIBAL GENERAL COUNSEL DESIRES. SORRY
20 THAT'S ON --?

21 A. FORGIVE ME I JUST GOT OFF.

22 Q. THAT'S FINE?

23 A. I THINK THE MOST IMPORTANT THING IS TO AVOID ANY
24 BATTLES HERE.

25 Q. THERE YOU GO.

26 A. WHEREAS TRIBAL GENERAL COUNSEL DESIRES THAT THE
27 AGREEMENT BE AMENDED AND MODIFIED IN CERTAIN RESPECTS IN
28 THE INTEREST OF CLARITY AND THE TRIBAL COUNCIL AND

1 DEVELOPER MUTUALLY DESIRE TO MAKE THE AMENDMENTS AND
2 MODIFICATIONS TO THE EXISTING AGREEMENT STATED IN THE
3 AMENDMENT AND MODIFICATION AGREEMENT ATTACHED AS EXHIBIT A,
4 THE MODIFICATION.

5 Q. AND WE'LL GET TO EXHIBIT A IN DUE COURSE. WHAT IS
6 YOUR BELIEF AS TO THE PURPOSE OF THIS WHEREAS CLAUSE?

7 A. WELL RAE -- RAE IT WANTED TO GET ON TOP OF THE
8 SMDC AGREEMENT WHICH SHE INHERENT-D WHEN SHE STARTED IN MAY
9 OF 2001.

10 MS. IBARRA: OBJECTION --?

11 A. AND.

12 THE COURT: HOLD ON THERE'S AN OBJECTION.

13 MR. FORDYCE: YOUR HONOR DOES HE NOT GET TO FINISH
14 HIS ANSWER.

15 THE COURT: WELL IT'S LENGTHY AND IT'S GOING ON
16 AND ON SO LET'S -- WHAT IS YOUR OBJECTION.

17 MS. IBARRA: OBJECTION AS TO HEARSAY ABOUT WHAT
18 RAE WAS TRYING TO DO WITH THE SMDC AGREEMENT.

19 MR. FORDYCE: HE HASN'T REFERENCED AN OUT OF COURT
20 STATEMENT MADE BY MS. LAMOTHE.

21 THE COURT: I THOUGHT HE WAS REFERRING TO HER
22 TESTIMONY HERE BUT --?

23 A. NO NO SO LET ME -- CAN I RESTATE THAT YOUR HONOR.

24 THE COURT: YES YOU CAN RESTATE IT, GO AHEAD?

25 A. AND IT'S A FAIR POINT. I HAD -- THIS WAS
26 IMPORTANT TO ME BECAUSE IT REFLECTED THE DISCUSSIONS I HAD
27 WITH RAE LAMOTHE, BASED ON THOSE DISCUSSIONS IT WAS MY
28 UNDERSTANDING THAT SHE WANTED TO COME GET ON TOP OF THE

1 SMDC AGREEMENT SAYING HEY THIS IS A BIG, IMPORTANT
2 AGREEMENT, I WANT TO MAKE SOME -- IF I FIND STUFF TO
3 CHANGE, AND I SAID SURE GO AHEAD THIS SOUNDS GREAT. THIS
4 AMENDMENT AND MODIFICATION WAS A RESULT OF HER LONG TIME
5 REVIEW AND SAID HEY DO YOU MIND IF WE AMEND IT AND I SAID
6 ON BEHALF OF SMDC I'M FINE WITH IT YOU'RE THE TRIBAL
7 GENERAL COUNSEL.

8 THE COURT: SO I UNDERSTAND, THE OBJECTION IS HER
9 STATEMENTS ARE HEARSAY, THEY'RE NOT BEING OFFERED FOR THE
10 TRUTH THAT IN FACT SHE WANTED TO GET ON TOP OF IT, THAT IN
11 FACT SHE WAS SHE WAS GOING TO HAVE REVIEW T THAT IN FACT
12 SHE WAS GOING TO ADVISE THEM, ALL OF THAT, IT IS NOT FOR
13 THE TRUTH OF THAT, IT'S OFFERED TO SHOW THAT HE ALLEGEDLY
14 HAD THIS DISCUSSION WITH HER AND THAT HE WAS RELYING ON
15 THAT, THAT'S THE ONLY PURPOSE BUT ALL THOSE OTHER
16 STATEMENTS CANNOT BE ACCEPTED FOR THE TRUTH OF THE MATTER
17 SO.

18 A. RIGHT.

19 Q. BY MR. FORDYCE: MR. STEIN ANY REASON AT THE TIME
20 OF THIS RESOLUTION FOR TO YOU BELIEVE THAT THIS WHEREAS
21 CLAUSE WAS INACCURATE?

22 A. NO. I I REVIEWED IT WITH RAE AND SHE ASSURED ME
23 IT WAS ACCURATE, IT'S SIGNED BY THE TRIBAL COUNCIL, I SAW
24 THEM READ IT AND THEY USUALLY TOOK THEIR RESOLUTIONS VERY
25 SERIOUSLY.

26 Q. YOU RELIED ON MS. LAMOTHE'S ASSURANCES?

27 A. YES, I DID RELY ON HER ASSURANCES AS WELL.

28 Q. NEXT WHEREAS CLAUSE PLEASE, THE TRIBAL COUNCIL

1 FINDS?

2 A. WHEREAS THE TRIBAL COUNCIL FINDS IT IS IN THE BEST
3 INTEREST OF THE TRIBE TO MAKE THE AMENDMENTS AND
4 MODIFICATIONS OF THE EXITING AGREEMENT SET FORTH IN THE
5 MODIFICATION ATTACHED HERE TO AS EXHIBIT A.

6 Q. THIS ONE IS PRETTY STRAIGHTFORWARD BUT WHAT IS THE
7 BELIEVE OF THIS PURPOSE OF THIS WHEREAS CLAUSE?

8 A. IT WAS ASSURING ME THAT THE TRIBAL COUNCIL WAS
9 ACTING ACCORDING TO THEIR OWN DUTIES TO THE GT TRIBE, THE
10 UNINCORPORATED ASSOCIATION.

11 Q. OKAY THERE'S JUST A FEW THEREFORES, AND THEN WE'LL
12 GET TO THE EXHIBIT A WHICH IS ACTUALLY EXHIBIT 15 47 BUT
13 LET'S JUST FINISH THIS UP. ON THE GOT ONLY OF THE FIRST
14 PAGE OF RESOLUTION 37 PLEASE READ THE THERE FOR IT BE IT
15 RESOLVED CLAUSE INTO THE RECORD?

16 A. THERE FOR BE IT RESOLVED THAT THE DEVELOPMENT
17 AGREEMENT ADOPTED BY THIS COUNCIL IN RESOLUTION NUMBER 10
18 AND REAFFIRMED AND RATIFIED IN RESOLUTION 17 HEREBY BE
19 AMENDED AND MODIFIED AND THAT THE MODIFICATION ATTACHED
20 HERE TO AS EXHIBIT A HERE TO BE AND HEREBY BY ADOPTED
21 APPROVED AND GREAT AS AN ACTION OF AND ON BEHALF OF THIS
22 TRIBAL COUNCIL AND THE TRIBE.

23 Q. WHAT WAS YOUR UNDERSTANDING OF THIS THEREFORE
24 CLAUSE AT THE TIME?

25 A. WELL, IN MY MIND THERE WAS A GIGANTIC DIFFERENCE
26 BETWEEN AN OFFICIAL ACTION OF THE TRIBAL COUNCIL IN WRITING
27 AND MERELY SAYING OH, SURE, WE AGREE. AND WHAT THIS SAYS
28 IS THAT THE SAME DEVELOPMENT AGREEMENT ADOPTED IN

1 RESOLUTION 10, THEY'RE TELLING ME IT WAS ADOPTED THEN AND
2 IT WAS RATIFIED IN RESOLUTION 17, THEY'RE TELLING ME IT WAS
3 RATIFIED, THAT IT WOULD BE FURTHER AMENDED IN HERE, A FULL
4 YEAR LATER WITH THE MODIFICATION AND THAT -- THAT
5 MODIFICATION AGREEMENT WAS BEING ADOPTED APPROVED AND
6 AGREED AS AN ACTION OF THE TRIBAL COUNCIL AS AN OFFICIAL
7 ACTION OF THE TRIBAL COUNCIL, AN OFFICIAL ACTION OF THE
8 ORGANIZATION.

9 Q. BETWEEN THE DATE OF THIS RESOLUTION AND THE FILING
10 OF THIS LAWSUIT WAS THERE ANYTHING TO MAKE YOU BELIEVE THAT
11 THERE WAS NICK ANYTHING INACCURATE IN THIS THEREFORE
12 CLAUSE?

13 A. NO AND I LISTENED TO ALL THE TESTIMONY AND IT'S
14 STILL ACCURATE, YOU HAVE CAN'T GET OUT OF A WRITTEN
15 AGREEMENT BUT SAYING YOU'RE DID YOU MEAN, YOU CAN'T SAY I'M
16 DID YOU MEAN AND I DIDN'T READ AND I DIDN'T DO ANY JOB, IF
17 YOU REMEMBER SIGN AN AGREEMENT YOU'RE STUCK WITH IT
18 ESSENTIALLY WHEN YOU'RE REPRESENTED BY INDEPENDENT COUNSEL.

19 Q. WHY WAS THIS IMPORTANT TO SMDC?

20 A. BECAUSE IT IF THEY DIDN'T SIGN THIS I WOULD HAVE
21 WRAPPED UP MY WORK, LET THEM HAVE THE TRIBAL RECORDS, RE
22 GONE TO MY LAW PRACTICE FULL TIME INSTEAD OF PART TIME AND
23 WASHED MY HANDS OF THEM BECAUSE I WOULD HAVE JUST CUT MY
24 LOSSES FROM ACCRUING 25,000 SAY MONTH THAT WOULD NEVER GET
25 PAID BECAUSE HAD YOU COULDN'T ENFORCE AN AGREEMENT AGAINST
26 THEM BECAUSE THEY MIGHT SAY EXACTLY WHAT THEY'RE SAYING
27 HERE, OH WE'RE STUPID, WE'RE TOO STUPID TO HAVE UNDERSTOOD
28 PLAIN ENGLISH LANGUAGE EVEN WHEN EXPLAINED BY OUR LAWYER.

1 Q. SO YOU WOULD HAVE METAPHORICALLY TAKEN YOUR BALL
2 AND GONE HOME?

3 A. YES.

4 Q. LET'S MOVE IT TO THE NEXT CLAUSE BE IT RESOLVED
5 FURTHER THAT THE DEVELOPMENT AGREEMENT?

6 A. BE IT RESOLVED FURTHER THAT THE DEVELOPMENT
7 AGREEMENT AS AMENDED AND MODIFIED BY THE MODIFICATION BE
8 AND HEREBY IS DECLARED TO BE EFFECTIVE, VALID, AND BINDING
9 OBLIGATION OF THE TRIBE AND TRIBAL COUNCIL AND TRIBAL
10 SECRETARY SAM DUNLAP IS AUTHORIZED TO EXECUTE THE
11 MODIFICATION IN THE FORM SET FORTH AS EXHIBIT A.

12 Q. WHAT IS YOUR UNDERSTANDING AT THE TIME AS TO THE
13 PURPOSE?

14 A. THIS IS SAYING -- THIS IS SAYING THAT THE
15 DEVELOPMENT AGREEMENT WITH THE MODIFICATION WAS AN
16 EFFECTIVE VALID AND BINDING OBLIGATION OF THE TRIBE AND THE
17 TRIBAL COUNCIL, THIS WAS THE OFFICIAL GOVERNING BODY TAKING
18 AN OFFICIAL ACTION SAYING THAT IT IS AN EFFECTIVE VALID AND
19 BINDING OBLIGATION OF THE TRIBE AND THAT I COULD RELY UPON
20 IT IN GOING FORWARD AND WITH THE KNOWLEDGE THAT I WOULD GET
21 THE BENEFIT OF MY AGREEMENT.

22 Q. AT THE TIME OF THIS RESOLUTION TO THE TIME THE
23 LAWSUIT WAS FILED, IS THERE ANYTHING BY WHICH YOU BELIEVED
24 THIS WAS INACCURATE?

25 A. NO.

26 Q. WHY WAS THIS IMPORTANT TO SMDC?

27 A. IT WAS IMPORTANT TO SMDC BECAUSE IT TOLD SMDC THAT
28 IF THEY GOT INVESTOR MONEY THAT THEY WOULD COLLECT 25,000 A

1 MONTH FOR EVERY MONTH BETWEEN -- IT WAS MAY 2006 WHEN WE
2 GOT IT, IT WAS MARCH 2001 WHEN I STARTED, THAT WOULD BE
3 FIVE -- THAT WOULD BE FIVE YEARS OR 60 MONTHS PLUS AT
4 25,000 A MONTH.

5 Q. WERE YOU EVER PAID THE 25,000 A MONTH?

6 A. I WAS PAID SOME OF IT WHICH INDICATED PART
7 PERFORMANCE ON BOTH SIDES BUT NOT ALL OF IT.

8 THE COURT: HOW MUCH WERE YOU PAID?

9 A. IT WAS SET FORTH IN THE TALLEY REPORT, IF I COULD
10 REFER TO THAT.

11 MR. FORDYCE: I BELIEVE THAT'S 57 SEVEN, SO IS
12 THAT EXHIBIT --.

13 THE COURT: OKAY?

14 A. BUT AS I RECOLLECT, I WAS PAID LESS MONEY THAN --.

15 THE COURT: I'M JUST ASKING HOW MUCH IF YOU KNOW?

16 A. IT'S A COUPLE HUNDRED THOUSAND WHICH WAS LESS THAN
17 THE MONEY I PUT INTO THE TRIBE SO I ACTUALLY --.

18 THE COURT: HOW MUCH -- DOES THE COUNSEL HAVE A
19 STIPULATION AS TO HOW MUCH WAS PAID OR IS THERE --.

20 MS. IBARRA: WE HAVEN'T STIPULATED TO.

21 MR. FORDYCE: WE HAVEN'T STIPULATED TO IT BUT I
22 DON'T THINK THAT'S AN --.

23 MS. IBARRA: BECAUSE THERE'S A DISPUTE AS TO
24 WHETHER THERE WAS MONEY PAID OUTSIDE --.

25 THE COURT: THE TALLEY.

26 MS. IBARRA: THERE'S NO DISPUTE THAT THE TALLEY
27 REFLECTS SOME OF THE MONEY PAID, THERE'S A DISPUTE ABOUT
28 WHETHER THERE WAS ADDITIONAL MONEY PAID.

1 THE COURT: OH I SEE, I GUESS WE'RE TRYING TO FIND
2 OUT HOW MUCH PER THE TALLEY REPORT AT A MINIMUM.

3 MS. IBARRA: YES THERE'S A AMOUNT REFLECTED ON
4 TALLEY REPORT.

5 A. THERE WOULD BE NO DISPUTE ON THIS OTHER ISSUE.
6 THERE WOULD BE NO DISPUTE ON THIS OTHER ISSUE.

7 MR. FORDYCE: LET'S SEE. YOUR HONOR THIS IS
8 EXHIBIT?

9 A. 57 SEVEN.

10 MR. FORDYCE: 57 SEVEN.

11 THE COURT: WELL I'M JUST TRYING TO FIGURE OUT HOW
12 MUCH THE TALLEY REPORT SAYS WAS PAID BECAUSE THAT'S WHAT
13 MR. STEIN WAS SAYING HE WAS PAID, RIGHT.

14 MS. IBARRA: YES.

15 THE COURT: AND I UNDERSTAND THERE'S A DISPUTE AS
16 TO WHETHER MORE THAN WAS PAID MR. STEIN IS SAYING AT A
17 MINIMUM I WAS PAID THIS AMOUNT?

18 A. THE PAYMENT CHECKS ARE LISTED HERE AND I COULD PUT
19 THEM ON THE BUTCHER BLOCK.

20 THE COURT: NO THAT'S OKAY, MAYBE EVERYBODY CAN
21 JUST TALLY THEM UP AND WE CAN COME UP WITH A NUMBER.

22 MR. FORDYCE: TALLY THE TALLEY REPORT.

23 THE COURT: THERE YOU GO.

24 MR. FORDYCE: I'M NEVER ONE TO MISS A PUN.

25 THE COURT: I THOUGHT EVERYBODY WOULD KNOW WHAT
26 THE TALLEY REPORT SAID ABOUT MR. STEIN'S PAYMENTS.

27 MS. IBARRA: I THINK IT'S 250.

28 THE COURT: 250 SOUNDS ABOUT RIGHT BUT IT'S BEEN A

1 WHILE. WHY DON'T WE CONTINUE AND THEN MAYBE.

2 MR. FORDYCE: THAT'S FINE YOUR HONOR.

3 THE COURT: MAYBE WE CAN LOOK AT IT LATER AND YOU
4 CAN REPORT BACK TO ME HOW MUCH IS NOTED THERE.

5 Q. BY MR. FORDYCE: MR. STEIN --?

6 A. I HAVE 130,000 FOR THE MONTHLY FEE.

7 MS. IBARRA: WHAT PAGE, WHAT BATES NUMBER ON THE
8 TALLEY REPORT?

9 A. THAT'S PAGE 6 14 ON THE TALLEY REPORT, EXHIBIT 57
10 SEVEN SHOWS THE PAYMENT CHECKS.

11 MR. FORDYCE: THIS WE GO, IT'S THE LAST PAGE OF
12 THE EXHIBIT FOR --.

13 THE COURT: CAN I ASK THAT YOU ALL DO THIS
14 CALCULATION OVER LUNCH AND THEN --.

15 MR. FORDYCE: THAT'S FINE YOUR HONOR ABSOLUTELY.

16 THE COURT: AND THEN YOU CAN COME BACK AND TELL
17 ME, THANK YOU.

18 MR. FORDYCE: ON MONDAY.

19 THE COURT: YEAH RIGHT, YOU CAN TELL ME ON MONDAY.

20 MR. FORDYCE: KEEP YOU IN SUSPENSE OVER THE
21 WEEKEND.

22 Q. BY MR. FORDYCE: OKAY MR. STEIN, THAT WAS THE --?

23 A. IF I CAN ANSWER THE COURT'S QUESTION.

24 Q. OH SURE PLEASE I DIDN'T MEAN TO CUT YOU OFF?

25 A. AS AN ESTIMATE, THE TOTAL PAYMENTS PHOTOGRAPHER
26 FOR REIMBURSEMENTS OF MY EXPENSES PLUS THE TOTAL PAYMENTS
27 FOR MY MONTHLY FEE TOGETHER WERE LESS MONEY THAN THE
28 EXPENSES THAT I HAD SPENT AND THAT WERE NOT REIMBURSED AND

1 THE EXPENSES I SPENT THAT WERE NOT REIMBURSED WERE OVER
2 260,000 AND I WAS PAID ABOUT 130,000 SO I LOST \$130,000
3 PLUS.

4 THE COURT: YOUR MONTHLY?

5 A. FIVE YEARS OF LABOR.

6 THE COURT: WHICH YOU'RE CHARACTERIZING AS THE
7 MONTHLY RIGHT?

8 A. RIGHT.

9 THE COURT: SO YOU HAVE SOME -- YOU WERE
10 REIMBURSED SOME EXPENSES BUT THERE'S AN OUTSTANDING -- YOUR
11 CLAIM IS THERE'S AN OUTSTANDING UN REIMBURSED EXPENSES
12 POLLUTION YOUR MONTHLY.

13 A. YES. BUFF I THINK THE COURT MISSED THE KEY POINT
14 I WAS TRYING TO MAKE. IF YOU TAKE.

15 THE COURT: OH ALL RIGHT?

16 A. IF YOU TAKE ALL THE MONEY THAT I PUT OUT, I WAS
17 PAID A TOTAL MONEY BACK THAT WAS LESS. SO I SPENT FIVE
18 YEARS WORKING AND GETTING PAID NOTHING, NOTHING. IN FIVE
19 YEARS OF WORK AVERAGING 75 HOURS A MONTH.

20 THE COURT: OKAY BUT WHAT I'M SAYING IS -- YOU'RE
21 NOT ANSWERING THE QUESTION. YOU DID GET SOME MONEY BACK.

22 A. YES.

23 THE COURT: THE MONEY HAD YOU GOT WAS
24 REIMBURSEMENT FOR EXPENSES, RIGHT?

25 A. AND -- AND 130,000 OF MONTHLY FEES.

26 THE COURT: AND OKAY AND 130,000. SO YOU GOT BACK
27 SOME REIMBURSEMENTS FOR EXPENSES PLUS 130 K IN FEES?

28 A. MONTHLY -- MONTHLY --.

1 THE COURT: IN MONTHLY FEES.

2 A. FEES AND --.

3 THE COURT: THERE'S SOME UN REIMBURSED EXPENSE
4 EXPENSES STILL OUTSTANDING.

5 A. OF ABOUT 260,000.

6 THE COURT: OKAY 26 ZERO OUTSTANDING?

7 A. AND THUS, THE RESULT.

8 MS. IBARRA: YOUR HONOR THIS IS PART OF THE
9 QUANTUM MERIUT THING.

10 THE COURT: I KNOW BUT I'M ASKING HIM KNOW NOW
11 WHAT HIS CLAIM IS.

12 MS. IBARRA: IT'S FINE, IT'S DISPUTED BUT THAT'S
13 FINE.

14 THE COURT: ? HE HE HAS TO PROVE IT LATER IF IT'S
15 NOT ALLOWED THEN IT WON'T MEAN ANYTHING RIGHT SO?

16 A. YOUR HONOR THIS HAS NOTHING DO DID WITH QUANTUM
17 MERUIT THIS IS UNDER THE CONTRACT THIS WAS A QUANTUM
18 MERUIT.

19 MS. IBARRA: WELL IT HAS?

20 A. FORGIVE ME.

21 THE COURT: DON'T INTERRUPT?

22 A. I'M IN THE MIDDLE AVENUE IS HE TENSE.

23 THE COURT: MR. STEIN PLEASE DON'T.

24 MR. FORDYCE: THANK YOU YOUR HONOR.

25 THE COURT: DON'T RAISE YOUR POINT, I WAS ABOUT TO
26 TELL MS. IBARRA TO PLEASE LET YOU FINISH BECAUSE I DIDN'T
27 HEAR WHAT YOU'RE SAYING ABOUT BUT DON'T RAISE YOUR VOICE AT
28 HER BECAUSE IT RAISES THE TENSION IN THE COURTROOM

1 UNNECESSARILY. OKAY MS. IBARRA MUCH PLEASE HIM FINISH
2 BECAUSE I I CAN'T HEAR WHAT I'M SAYING?

3 A. AND IN FACT SHE KNOWS DARN WELL WHAT SHE'S DOING
4 SHE'S JUST TRYING TO KEEP YOU FROM UNDERSTANDING.

5 THE COURT: MR. STEIN PLEASE JUST ANSWER THE
6 QUESTION. ALL RIGHT 260,000 IN UN REIMBURSED FEES ARE
7 OUTSTANDING IS WHAT YOU'RE CLAIMING?

8 A. NO. 260,000 IN EXPENSES, MONEY OUT OF MY POCKET.

9 THE COURT: IN EXPENSES, OKAY, IN EXPENSES. AND
10 THEN?

11 A. TWO POINT --.

12 THE COURT: FOR FEES?

13 A. 2.7 MILLION IN FEES.

14 THE COURT: AND THAT'S PURSUANT TO THE MONTHLY
15 RIGHT?

16 A. RIGHT.

17 THE COURT: THE 25,000 PER MONTH?

18 A. RIGHT.

19 THE COURT: ALL RIGHT I THINK I'M GETTING IT. AND
20 I UNDERSTAND THAT'S DISPUTED.

21 MS. IBARRA: YES, IT IS.

22 THE COURT: IT'S STILL AN ISSUE OUT THERE, I'M
23 JUST ASKING HIM WHAT HIS CLAIM IS AT THIS POINT.

24 MS. IBARRA: GOT IT.

25 A. AND YOUR HONOR I WANT TO MAKE ANOTHER -- THAT'S
26 DUE UNDER THE CONTRACT, THAT'S SIMPLE BREACH OF CONTRACT
27 HAVE NOTHING DO DO WITH QUANTUM MERUIT WHICH COUNSEL VERY
28 WELL KNOWS BUT HOPES THE COURT WILL GET CONFUSED.

1 THE COURT: ALL RIGHT THANK YOU.

2 Q. BY MR. FORDYCE: MR. STEIN ANYTHING BETWEEN THE
3 SIGNING OF THIS AGREEMENT AND WHEN THE LAWSUIT WAS FILED
4 THAT WOULD HAVE LED YOU TO BELIEVE THERE THERE WAS ANY
5 INACCURACY IN THIS BE IT RESOLVED PROVISION?

6 A. NO.

7 Q. LET'S MOVE TO THE NEXT BE IT FURTHER RESOLVED IT'S
8 A INTENTION OF THE TRIBAL COUNCIL?

9 A. BE IT FURTHER RESOLVED THAT IT'S THE INTENTION OF
10 THE TRIBAL COUNSEL TO BIND THE TRIBE AND ANY SUCCESSOR OR
11 RELATED ENTITY THAT MAY ACHIEVE FEDERAL RECOGNITION AS AN
12 INDIAN TRIBE AND/OR ENTER INTO A TRIBAL STATE GAMING
13 COMPACT TO THE DEVELOPMENT AGREEMENT AS AMENDED AND
14 MODIFICATION BY THE MODIFICATION AS EXECUTE AND SO AMENDED
15 AND MODIFIED.

16 Q. WHAT IS YOUR UNDERSTANDING AS TO THE PURPOSE OF
17 THIS CLAUSE?

18 A. THIS WAS AGAIN TO MAKE SURE THAT IT'S CLEAR AS A
19 BELL THAT THE TRIBAL COUNCIL BY SIGNING THIS DOCUMENT
20 INTENDED TO BIND THEMSELVES TO THE SMDC AGREEMENT AND THE
21 MODIFICATION ADOPTED THAT NIGHT, IT WAS ONE MORE
22 APPROVAL -- AT THIS POINT IT WAS ABOUT THE FOURTH OR FIFTH
23 APPROVAL OF THE AGREEMENT AND THIS SAID HEY LISTEN WHATEVER
24 ELSE IS IT GOING ON, THAT'S WHAT WE'RE TRYING TO ACCOMPLISH
25 AND WHAT THAT MEANS IS THAT IF THEY COME BACK LATER AND SAY
26 OH IT'S NOT A BINDING AGREEMENT OR OH WE'RE NOT BOUND BY
27 THAT AGREEMENT, THEY'RE NOT FOLLOWING THEIR INTENTION AS
28 STATED HERE, THEY'RE LYING AND THE LAWYER THAT'S

1 REPRESENTING THEM IS TELLING THEM TO LIE.

2 MS. IBARRA: OBJECTION ARGUMENTATIVE?

3 A. BECAUSE THEIR INTENTION WAS.

4 THE COURT: IT'S ARGUMENTATIVE, MR. STEIN PLEASE.

5 Q. BY MR. FORDYCE: MR. STEIN.

6 THE COURT: THERE'S NO NEED.

7 MR. FORDYCE: SORRY YOUR HONOR.

8 THE COURT: MR. STEIN, I UNDERSTAND HOW YOU FEEL
9 ABOUT THE CASE, BUT SOMETIMES YOUR ACCUSATIONS AND YOUR
10 TONE GET IN THE WAY?

11 A. YOU'RE RIGHT.

12 THE COURT: PLEASE TRY TO?

13 A. YOU'RE RIGHT.

14 THE COURT: I UNDERSTAND HOW FAR YOU MIGHT FEEL
15 BUT YOU'VE GOT TO KEEP THE FEELINGS OUT OF IT. ALL RIGHT.

16 MR. FORDYCE: YOUR HONOR -- SORRY I WAS GOING TO
17 ASK YOUR HONOR A QUESTION.

18 Q. MR. STEIN WHY WAS THIS IMPORTANT?

19 A. THIS IS IMPORTANT BECAUSE IT BOUND THEM TO THE
20 INTENTION OF HAVING THE AGREEMENT.

21 Q. LET'S MOVE IT TO THE NEXT CLAUSE, BE IT FURTHER
22 RESOLVED THAT THE TRIBAL SECRETARY?

23 A. BE IT FURTHER RESOLVED THAT THE TRIBAL SECRETARY
24 BE AUTHORIZED AND EMPOWERED TO CERTIFY THESE RESOLUTIONS
25 AND DELIVER SUCH COPIES OF RESOLUTIONS SO CERTIFIED TO SUCH
26 PERSONS OR ENTITIES AS MAY BE NECESSARY OR APPROPRIATE.

27 Q. AT THE TIME DID YOU KNOW WHO THE TRIBAL SECRETARY
28 WAS?

1 A. SAM DUNLAP .

2 Q. AND TO YOUR UNDERSTANDING AT THE TIME DID MR.
3 DUNLAP ACTUALLY AUTHORIZE AS OUTLINED IN THIS RESOLVED
4 PROVISION?

5 A. YES HE SIGNED IT AS SECRETARY AND HE THEN -- WE
6 HAD COPIES AND COPIES WERE PUT -- PUT IN THE VARIOUS
7 NOTEBOOKS THAT WE HAD ABOUT 100 WHITE NOTEBOOKS OF
8 RESOLUTIONS LIKE THIS ADOPTED IN WRITING.

9 Q. BEFORE THIS LAWSUIT WAS FILED DID YOU HAVE ANY
10 REASON TO BELIEVE THAT MR. DUNLAP HAD IN ANY WAY NOT
11 AUTHORIZED AS PER THIS RESOLVED CLAUSE?

12 A. NO.

13 Q. LET'S MOVE ON TO THE NEXT, BE IT FURTHER RESOLVED
14 THAT THE OFFICERS OF THE TRIBAL COUNCIL BE?

15 A. (DITTO) AND THEY HEREBY ARE AUTHORIZED AND
16 EMPOWERED TO DO OR CAUSE TO BE DONE SUCH OTHER FURTHER ACTS
17 AS MAY BE DEEMED NECESSARY OR APPROPRIATE TO CARRY OUST THE
18 PURPOSES AND INTEND OF FOR GOING RESOLUTIONS.

19 Q. IS THIS SIMILAR TO THE FINAL PROVISIONS IN MOST OF
20 THE RESOLUTIONS WE'VE LOOKED AT?

21 A. YES.

22 Q. AND WHAT'S THE PURPOSE OF IT?

23 A. THE PURPOSE IS TO -- IT'S A GOING FORWARD PROMISE
24 THAT YOU WILL DO ANYTHING THAT NEEDS TO BE DONE TO SHOW
25 THAT THE AGREEMENT IS VALID AND BINDING. SO FOR EXAMPLE IF
26 YOU WERE IN THE CASE IT'S A PROMISE THAT YOU WILL TESTIFY
27 YES, IT WAS VALID AND BINDING, THEY WERE SIGNING THEIR
28 AGREEMENT IN WRITING THAT THEY WOULD PROMISE TO DEFEND THE

1 AGREEMENT AND TO SAY IT WAS VALID AND BINDING. TO SEE THEM
2 COME UP HERE TODAY.

3 MS. IBARRA: ARGUMENTATIVE.

4 A. AND SAY IT'S NOT.

5 THE COURT: MR. STEIN.

6 A. IS A VIOLATION OF THAT PROMISE.

7 THE COURT: YOUR TESTIMONY IS STRICKEN, THAT
8 ANSWER IS STRICKEN. AGAIN MR. STEIN PLEASE LEAVE THE
9 EMOTION OUT OF IT AND THE ARGUMENTS, I WANT TO HEAR
10 FACTS.

11 A. THOSE WERE FACTS YOUR HONOR.

12 THE COURT: WELL THERE'S YOUR OPINION AND YOUR
13 ARGUMENTS, YOU CAN SAVE THAT FORECLOSING BUT RIGHT NOW I
14 NEED TO HEAR THE FACTS AND I HERE A LOT OF EMOTION COMING
15 OUT OF YOU INSTEAD OF FACTS, JUST LEAVE THAT PART OUT?

16 A. SURE.

17 THE COURT: ALL RIGHT.

18 Q. BY MR. FORDYCE: MR. STEIN AT ANY POINT DURING
19 YOUR TENURE WITH THE TRIBE, ANY REASON TO BELIEVE THAT THE
20 TRIBAL COUNCIL WERE NOT AUTHORIZED OR EMPOWERED AS PER THIS
21 RESOLUTION?

22 A. NO.

23 Q. OR THIS CLAUSE RATHER? OKAY. LET'S LOOK AT THE
24 SIGNATURE BLOCK, CAN YOU IDENTIFY THE SIGNATURES THERE?

25 A. THE CERTIFICATION?

26 Q. CORRECT. YES THE CERTIFICATION, MY APOLOGIES.

27 A. TO READ IT OR.

28 Q. JUST, DO YOU RECOGNIZE THE SIGNATURES?

1 A. YEAH, MARTIN ALCALA, SHIRLEY MACHADO, SAM DUNLAP
2 AND EDGAR PEREZ.

3 Q. DO YOU HAVE PERSONAL KNOWLEDGE AS TO WHETHER THESE
4 INDIVIDUALS DID ACTUALLY SIGN THIS DOCUMENT?

5 A. YES I WAS THERE.

6 Q. AND IT APPEARS TO BE FOUR OF THE SIX, CORRECT?

7 A. YES.

8 Q. IS THAT ENOUGH -- TO YOUR KNOWLEDGE, WAS THAT
9 ENOUGH TO ADOPT THIS RESOLUTION?

10 A. GIVEN HOW -- GIVEN MY KNOWLEDGE OF HOW THE TRIBAL
11 COUNCIL OPERATED AND HOW GT TRIBE OPERATED, YES, A SIMPLE
12 MAJORITY WAS ENOUGH.

13 Q. AND THE LAST PAGE OF THIS RESOLUTION, CAN YOU
14 IDENTIFY WHAT THIS PAGE IS?

15 A. THAT'S THE CERTIFICATION BY THE SECRETARY THAT
16 THOSE -- THAT THE PEOPLE THAT SIGNED IT WERE IN FACT THE
17 TRIBAL COUNCIL.

18 Q. AT ANY POINT BETWEEN THE DATE OF THIS RESOLUTION
19 AND NOW, ANY REASON TO BELIEVE THAT MR. DUNLAP DID NOT IN
20 FACT SIGN AS THE TRIBAL SECRETARY?

21 A. NO.

22 Q. YOUR HONOR CAN WE HAVE TWO MINUTES PLEASE.

23 THE COURT: SURE.

24 MR. FORDYCE: THANK YOU.

25 (BREAK TAKEN.) 11:12 AM TO 11:15 AM.

26 Q. BY MR. FORDYCE: PICKING BACKUP AND JUST FOR
27 PLAINTIFFS COUNSEL, WE'RE JUST MOVING ON TO WHAT'S NOW
28 EXHIBIT 15 47 WHICH IS BATES '05 14. AND MR. STEIN JUST

1 FOR THE RESOLUTIONS THAT WE'VE SEEN, IS THERE ANYTHING THAT
2 MAKES YOU BELIEVE THAT ANYTHING IN THESE RESOLUTIONS MADE
3 YOU THE TRIBES ATTORNEY?

4 A. NO, NO.

5 Q. WAS THERE ANY SORT OF WRITING AT ANY TIME DURING
6 YOUR TENURE WITH THE TRIBE THAT IDENTIFIED YOU AS THEIR
7 ATTORNEY TO WHICH YOU AGREED?

8 A. NOTHING. NOTHING, THERE WAS NO ACTION OF THE
9 TRIBAL COUNCIL AS A BODY, THERE WAS NO WRITING, THERE WAS
10 NO ADOPTION, THERE WAS NO RESOLUTION, THERE WAS NO VOTE ON
11 THEIR PART. AND ON MY PART THERE WAS CERTAINLY NO
12 AGREEMENT TO DO THE EXACT SAME WORK THAT RAE LAMOTHE WAS
13 DOING, SHE WAS DOING THAT WORK, I WAS SMDC. FINALLY, THERE
14 WAS NO ATTORNEY-CLIENT CONFLICT WAIVER, IT WOULD HAVE BEEN
15 A GIGANTIC CONFLICT TO BE HEAD OF SMDC THAT WOULD BE PAID
16 BY THE TRIBE AS A VENDOR AND THE ATTORNEY FOR THE TRIBE,
17 THAT WOULD BE A GIANT CONFLICT THAT WOULD REQUIRE A
18 CONFLICT WAIVER.

19 Q. YOU ACTUALLY ANTICIPATED MY NEXT QUESTION WHICH
20 WAS GOING TO BE WOULD THERE HAVE BEEN ANY CONSEQUENCES HAD
21 YOU BECOME THE TRIBES ATTORNEY?

22 A. YEAH.

23 Q. AND --?

24 A. FIRST OF ALL I WOULD HAVE NEVER DONE IT, I WOULD
25 HAVE NEVER DONE IT, IF YOU'RE THE DEVELOPER AND YOU'RE A
26 VENDOR, YOU DON'T WANT TO BE THE ATTORNEY, THAT'S WHY ALL
27 THOSE PROVISIONS SAYING THAT STEIN IS NOT YOUR ATTORNEY,
28 THAT'S WHY THEY'RE ALL IN THE SMDC AGREEMENT.

1 Q. HOW MANY DEVELOPMENT DEALS HAVE YOU BEEN A PART
2 OF, APPROXIMATELY?

3 A. ABOUT 10.

4 THE COURT: AS OF THE TIME OF THE SMDC AGREEMENT?

5 A. YEAH.

6 Q. BY MR. FORDYCE: IN ANY OF THOSE DEVELOPMENT
7 AGREEMENTS WERE YOU EVER CONSTRUED AS THE ATTORNEY FOR
8 THE -- I SUPPOSE IT WOULD BE BUILDER?

9 A. NO.

10 Q. WERE YOU CAREFUL IN THOSE SITUATIONS TO MAKE SURE
11 YOU WERE NOT IDENTIFIED AS ATTORNEY?

12 A. WE DID THE SAME SORT OF APPROACH BUT A MUCH MUCH
13 MORE LIMITED APPROACH, I TALKED ABOUT THE DIFFERENCE
14 BETWEEN A 45 CALIBER OFFICERS HANDGUN AND A TANK, THIS IS
15 THE TANK VERSION WHEN I WAS A DEVELOPER OF REAL ESTATE FOR
16 35 LIMITED PARTNERS WE USED THE HANDGUN VERSION.

17 Q. OKAY. SO MOVING ON TO EXHIBIT 15 47 THIS IS AS I
18 SAID BATES '05 14, PLEASE IDENTIFY THIS DOCUMENT?

19 A. THIS WAS THE AMENDMENT AND MODIFICATION AGREEMENT
20 THAT WAS EXHIBIT A TO RESOLUTION 37 AND IT WAS APPROVED BY
21 RESOLUTION 37.

22 Q. AND FOR THE RECORD I'D JUST DRAW THE ATTENTION TO
23 THE LOWER LEFT-HAND CORNER WHICH ACTUALLY DOES STATE
24 EXHIBIT A TO RESOLUTION 37.

25 THE COURT: YES I SEE THAT.

26 Q. BY MR. FORDYCE: AND MR. STEIN HAVE YOU SEEN THE
27 DOCUMENT BEFORE?

28 A. YES.

1 Q. DO YOU HAVE PERSONAL KNOWLEDGE OF THE CONTENTS OF
2 THE DOCUMENT?

3 A. YES.

4 Q. ALL RIGHT. LET'S SEE IF WE CAN GET THROUGH THIS A
5 LITTLE MORE QUICKLY, THERE'S A FIRST WHEREAS CLAUSE ON
6 MARCH 14 THAT CONSISTENT WITH THE OTHER WHEREAS CLAUSES
7 THAT WE'VE SEEN.

8 THE COURT: IT'S MARCH 4TH?

9 A. YEAH IT DISCUSSES RESOLUTION 10 ALMOST VERBATIM AS
10 THE COUNCIL RESOLUTION.

11 Q. AND SAME RESPONSES AS I'VE ASKED YOU ABOUT ON THE
12 PREVIOUS RESOLUTIONS, ANYTHING TO SUGGEST THAT THIS WAS
13 INACCURATE?

14 A. NO, NO.

15 Q. AND IT'S AN IMPORTANT CLAUSE?

16 A. YES IT'S IMPORTANT FOR THE SAME REASON AS THE
17 RESOLUTIONS WHEREAS CLAUSE IS IMPORTANT.

18 Q. NEXT WHEREAS CLAUSE ON MARCH 20 -- MARCH 2001,
19 TRIBAL SECRETARY MAYOR AGO IS THIS THE SAME AS?

20 A. YES IT SHOULD BE ALMOST WORD FOR WORD WITH THE
21 RESOLUTION AND IT IS IMPORTANT FOR THE SAME REASONS AS THE
22 RESOLUTION.

23 Q. AND IT'S YOUR BELIEF THAT IT'S ACCURATE?

24 A. YES.

25 Q. THE NEXT WHEREAS CLAUSE APRIL 17, 2001, THE TRIBAL
26 COUNCIL APPROVED, IS THIS WHAT WE'VE SEEN BEFORE?

27 A. YES IT'S THE SAME WHEREAS CLAUSE REGARDING
28 RESOLUTION 17 WHICH WAS THE SECOND APPROVAL OF THE SMDC

1 AGREEMENT.

2 Q. YOU BELIEVE IT'S ACCURATE?

3 A. YES.

4 Q. AND IT'S IMPORTANT?

5 A. YES FOR THE SAME REASONS THAT SMDC WOULD NOT HAVE
6 CONTINUED WORKING ABSENT THESE APPROVED.

7 Q. NEXT WHEREAS CLAUSE ADOPTING RAE LAMOTHE AS TRIBAL
8 GENERAL COUNSEL HAVE WE SEEN THIS BEFORE?

9 A. YES. AND THAT WAS PUT IN AGAIN BY RAE NOT BY
10 ME.

11 Q. AND DO YOU BELIEVE IT'S ACCURATE?

12 A. YES.

13 Q. AND IT'S IMPORTANT?

14 A. YES FOR THE SAME REASONS.

15 Q. NEXT WHEREAS HAVE WE SEEN THIS BEFORE?

16 A. YES THIS IS THE RAE LAMOTHE OPINING TO THE TRIBAL
17 COUNCIL AND SINCE SHE WROTE IT I ASSUMED IT HAPPENED BUT I
18 DIDN'T KNOW, I DON'T KNOW IT DID.

19 Q. DO YOU BELIEVE IT'S ACCURATE?

20 A. YES.

21 Q. AND IT'S IMPORTANT.

22 MS. IBARRA: I'M SORRY CAN YOU JUST?

23 A. IT'S IMPORTANT TO SHOW.

24 MS. IBARRA: WHICH ONE.

25 MR. FORDYCE: THE LAST WHEREAS CLAUSE ON THE FIRST
26 PAGE OF THE AMENDMENT?

27 A. IT'S IMPORTANT TO SHOW THIS THIS INDEPENDENT
28 COUNSEL ADVISING THEM.

1 Q. AND YOU BELIEVE THEY DID?

2 A. YES DID I H YES, I BELIEVE SO.

3 Q. AND NEXT PAGE THERE'S ANOTHER WHEREAS CLAUSE THE
4 TRIBAL GENERAL COUNSEL DESIRES HAVE WE SEEN THIS BEFORE?

5 A. YES.

6 Q. DO YOU BELIEVE IT'S ACCURATE?

7 A. YES.

8 Q. AND IT'S IMPORTANT?

9 A. IT'S IMPORTANT BECAUSE IT SAYS THAT THEIR
10 INDEPENDENT COUNSEL WANTED THE AGREEMENT MODIFIED, IT WAS
11 HER IDEA NOT SMDC'S IDEA AND THAT BOTH THE TRIBAL COUNCIL
12 AND THE DEVELOPER AGREED WITH HER IDEA.

13 Q. OKAY. AND WE HAVE A NOW THEREFORE, PURSUANT TO
14 SECTION 14 OF THE AGREEMENT?

15 A. NOW THEREFORE, PURSUANT TO SECTION 14 OF THE
16 AGREEMENT AND IN CONSIDERATION OF THE PREMISES AND PROMISES
17 COVENANTS AGREEMENTS AND ACKNOWLEDGEMENTS CONTAINED IN THIS
18 AGREEMENT, THE TONGVA AND DEVELOPER AGREE TO THE FOLLOWING
19 MODIFICATIONS OF THE FOLLOWING SECTIONS OF THE AGREEMENT.

20 Q. AND I HATE TO MAKE EVERYONE JUMP AROUND BUT I
21 WOULD LIKE TO DRAW YOUR ATTENTION TO BATES 0492 OF THE
22 AGREEMENT WHICH ACTUALLY CONTAINS SECTION 14.

23 MS. IBARRA: 0492 OF THE SAME EXHIBIT.

24 MR. FORDYCE: THIS IS ACTUALLY 569 WE SEPARATED
25 THEM OUT.

26 THE COURT: THIS IS ACTUALLY THE SMDC AGREEMENT.

27 MR. FORDYCE: EXACTLY YOUR HONOR THAT IS CORRECT.

28 THE COURT: OKAY. YES AND IT'S SECTION --.

1 MR. FORDYCE: IT IS SECTION 14 WHICH IS ON 0492
2 WHICH IS MOST OF THE WAY TO THE END.

3 THE COURT: ALL RIGHT.

4 MR. FORDYCE: IT WOULD BE THE --.

5 THE COURT: YES, I AM THERE, THANK YOU.

6 Q. BY MR. FORDYCE: OKAY MR. STEIN DO YOU HAVE
7 SECTION 14 IN FRONT OF YOU?

8 A. YES.

9 Q. CAN YOU READ IT FOR THE RECORD PLEASE?

10 A. OKAY SO THE ORIGINAL SMDC AGREEMENT READ THIS
11 AGREEMENT CONTAINS THE ENTIRE AGREEMENT OF THE PARTIES
12 RELATING TO THIS SUBJECT MATTER AND THE PARTIES AGREE THAT
13 THIS AGREEMENT SUPERSEDES ALL PRIOR WRITTEN OR ORAL
14 AGREEMENTS, REPRESENTATIONS AND WARRANTIES RELATING TO THE
15 SUBJECT MATTER HERE ON. NO MODIFICATION OF THIS AGREEMENT
16 SHALL BE VALID UNLESS MADE IN WRITING AND SIGNED BY THE
17 PARTIES HERE TO.

18 Q. AND BEFORE WE MOVE BACK TO THE AMENDMENT, DRAWING
19 YOUR ATTENTION TO THAT LAST LINE, NO MODIFICATION OF THIS
20 AGREEMENT SHALL BE VALID UNLESS MADE IN WRITING AND SIGNED
21 BY THE PARTIES, IS IT YOUR BELIEF THAT THIS WAS VALID AND
22 BINDING DURING THE TENURE OF THE AGREEMENT.

23 THE COURT: WHEN YOU SAY THIS, WHAT ARE YOU
24 REFERRING INFORM.

25 MR. FORDYCE: I'M SORRY YOUR HONOR.

26 THE COURT: WE'RE LOOKING AT KIND OF TWO
27 DOCUMENTS.

28 MR. FORDYCE: THAT'S FINE, THE PROVISION -- THE

1 SECTION 14 OF THE ORIGINAL SMDC AGREEMENT REQUIRING THAT
2 ANY MODIFICATION OF THE AGREEMENT BE IN WRITING AND SIGNED
3 BY THE PARTIES.

4 THE COURT: YOU'RE ASKING HIM IF HE --.

5 MR. FORDYCE: IF IT IS HIS BELIEF THAT DURING THE
6 TENURE OF THE AGREEMENT IT WAS VALID.

7 A. YES WE NEVER MODIFIED THIS AGREEMENT EXCEPT IN
8 VERY OFFICIAL WAYS.

9 Q. BY MR. FORDYCE: AND MAKING EVERYONE JUMP AROUND
10 AGAIN GOING BACK TO BATES '05 15 IN EXHIBIT 15 47, JUST AS
11 FOUNDATION, IS WHAT WE'RE LOOKING AT IN EXHIBIT 15 47 AN
12 EXAMPLE OF A WRITTEN MODIFICATION PURSUANT TO SECTION 14 OF
13 THE ORIGINAL AGREEMENT?

14 A. NOW THEREFORE, PURSUANT TO SECTION 14 OF THE
15 AGREEMENT WAS MEANT TO SAY THAT WE WERE FOLLOWING THAT
16 SECTION BY ADOPTING A MODIFICATION IN WRITING, SO IT'S A
17 REFERENCE BACK TO SHOW THAT WE'RE FOLLOWING THE AGREEMENT
18 AND TO SHOW THAT THE TRIBAL COUNCIL -- THEIR TRIBAL GENERAL
19 COUNSEL RAE LAMOTHE AND SMDC WERE ALL FOLLOWING THE
20 ORIGINAL AGREEMENT, SECTION 14 BECAUSE OTHERWISE THAT WOULD
21 NOT HAVE -- IF IT WASN'T IN WRITING, THEN IT WOULDN'T HAVE
22 MEANT ANYTHING.

23 Q. SO LET'S MOVE RELATIVELY QUICKLY THROUGH THESE, DO
24 YOU SEE ONE PARENT SCOPE OF WORK NOT IN SCOPE OF WORK?

25 A. YES.

26 Q. WHAT IS THE PURPOSE OF THIS CLAUSE?

27 A. WELL THE ORIGINAL LANGUAGE OF SMDC HAD A COUPLE
28 BLANKS FOR WHICH FEDERAL PROVISION THERE WAS AND WHICH

1 FEDERAL REGULATION THERE WAS, SO RAE LAMOTHE DID THE
2 RESEARCH, SHE MAY NOT REMEMBER IT NOW, BUT SHE DID THE
3 RESEARCH TO FILL IN THE BLANKS AND SO THIS IS THE SAME
4 LANGUAGE WITH 25 CFR 502 POINT 15, 25 USCS'S '87 OR 2711
5 AND 25 CFR'S 531.1 AND 533.1, ALL THOSE BLANKS WERE FILLED
6 IN BASED ON RAE LAMOTHE'S RESEARCH INTO HER REGULATIONS
7 UNDER IGRA.

8 Q. AT THE TIME DID YOU UNDERSTAND THE IMPORTANCE?

9 A. YES I THOUGHT RAE WAS BEING VERY THOROUGH IN
10 SAYING HEY I WANT THIS -- I WANT THE GAPS FILLED, THE
11 BLANKS FILLED IN.

12 Q. MOVING ON -- IS IT YOUR BELIEF AT THE TIME THAT
13 THIS WAS AN ACCURATE PROVISION?

14 A. YES YES. I REVIEWED THOSE SAME PROVISIONS WITH
15 RAE. WHAT WE WERE SAYING IS THAT IT WASN'T A MANAGEMENT
16 AGREEMENT, THAT'S ALL YOU HAD TO SAY AND I THOUGHT THAT WAS
17 QUITE HELPFUL TO HAVE IT FILLED OUT.

18 Q. I BELIEVE IT WAS MS. LAMOTHE'S TERM BELT AND
19 SUSPENDERS?

20 A. THAT'S RIGHT.

21 Q. MOVING ON TO E, TERM OF SERVICE, WHAT'S THE
22 PURPOSE HERE?

23 A. IT WAS TO DELETE A SENTENCE THAT WAS NO LONGER
24 NEEDED.

25 Q. OKAY.

26 A. IN OTHER WORDS, ONCE YOU FILL-IN THE SECTION ABOVE
27 UNDER ONE C2 THERE WAS NO REASON FOR ONE E ANY MORE.

28 Q. NUMBER 3 IS RESPONSIBILITY OF DEVELOPER, TELL ME

1 WHAT THIS IS?

2 A. THAT ALSO HAD BLANKS AND IT WAS TO THE SAME
3 EFFECT, THE ONLY THING YOU HAVE TO DO IN THE DEVELOPMENT
4 AGREEMENT TO AVOID THE INDIAN GAMING REGULATORY ACT IS
5 SIMPLY STATE IT'S NOT A MANAGEMENT CONTRACT AND GET
6 ACKNOWLEDGMENTS FROM THE TRIBE THAT YES IT'S NOT A
7 MANAGEMENT CONTRACT. SINCE THERE WAS NO CASINO OPEN, THERE
8 WAS NOTHING TO MANAGE SO IT WOULD BE OBVIOUS BUT RAE BEING
9 VERY THOROUGH FOUND THE EXACT PROVISIONS TO BE MENTIONED SO
10 RESPONSIBILITY OF DEVELOPER IN SECTION 3 E FOLLOWS ONE C TO
11 THE SAME EFFECT.

12 Q. THIS WAS AN IMPORTANT PROVISION FOR SMDC AND YOU?

13 A. NO, IT WAS NOT REALLY BECAUSE THERE WAS NO CASINO
14 TO MANAGE BUT IT WAS -- RAE WANTED TO DO A GOOD JOB AND I
15 WAS MORE THAN HAPPY TO COOPERATE.

16 Q. MEASURE TWICE AND CUT ONCE, RIGHT. OKAY
17 COMPENSATION IS FOUR, SO THAT GOES ON BATES '05 16 PLEASE
18 EXPLAIN THIS MODIFICATION.

19 THE COURT: WAIT A MINUTE, YOU SKIPPED OVER THE
20 COMPENSATION PART.

21 MR. FORDYCE: NO YOUR HONOR THAT'S ACTUALLY WHAT
22 I'M GETTING TO.

23 THE COURT: OKAY.

24 MR. FORDYCE: THE BOTTOM OF '05 15 ONTO '05 16 THE
25 COMPENSATION REIMBURSEMENT OF EXPENSES.

26 THE COURT: I SEE, THROUGH.

27 MR. FORDYCE: YOU GOT IT.

28 Q. SO MR. STEIN WHAT IS HAPPENING HERE?

1 A. THIS WAS SOMETHING THAT THE TRIBAL COUNCIL WANTED
2 THAT RAE PUT IN THERE AT THEIR INSISTENCE, THEY ALSO SAID
3 WHEN THEY SIGNED THIS THIS WAS LIKE A BIG DEAL TO THEM AND
4 IT SHOULD HAVE BEEN, WELL WHAT THEY SAID IS LISTEN YOU'RE
5 DOING ALL THESE EXPENSES, YOU'RE PAYING MONEY OUT OF YOUR
6 OWN POCKET BUT YOU'RE ALSO ACCRUING MONEY THAT WOULD
7 OTHERWISE BE AVAILABLE FOR THE CASINO PROJECT WE WANT YOU
8 TO COME BACK TO US IF YOU SPEND MORE THAN \$10,000 IN A
9 MONTH.

10 MS. IBARRA: OBJECTION THAT IT'S HEARSAY?

11 A. AND -- THEY SAID --.

12 THE COURT: WHAT DO YOU MEAN, THAT THEY -- OKAY.
13 I UNDERSTOOD THAT TO MEAN HE'S -- HE'S JUST INTERPRETING
14 THE PROVISION NOT THAT THEY ACTUALLY SAID THAT BUT MR.
15 STEIN MAYBE YOU COULD CLARIFY.

16 MS. IBARRA: I THINK --?

17 A. THIS PROVISION WAS PUT IN BECAUSE THEY SAID THAT
18 TO ME AND TO RAE AND IT WAS -- AND --.

19 THE COURT: WELL LET LET'S BACK UP. THEY MEANING
20 WHO SAID TO -- YOU OVERHEARD, DID YOU OVERHEAR OR?

21 A. NO I.

22 THE COURT: I MEAN HOW DO YOU KNOW THAT THE TRIBAL
23 COUNCIL SAID THAT TO ANYBODY?

24 A. BECAUSE THEY ADDRESSED IT STRAIGHT TO ME.

25 THE COURT: OKAY?

26 A. AND THEY WERE VERY ADAMANT ABOUT IT, I MEAN THEY
27 DIDN'T STICK THEIR FINGER IN MY FACE BUT FIGURATIVELY THEY
28 DID.

1 THE COURT: OKAY WHO, WHO WAS THE PERSON THAT THEY
2 -- YOU'RE SAYING THEY, WHO SAID THAT?

3 A. SAM DUNLAP, VIRGINIA CARMELO, EDGAR PEREZ, MARTIN
4 ALCALA; NOT CINDY ALVITRI, SHE WAS NEVER THERE; AND I'M
5 MISSING SOMEBODY, SHIRLEY MACHADO.

6 THE COURT: SHOWS PEOPLE TOLD YOU THAT -- GO AHEAD
7 AND STAY YOUR STATEMENT, I JUST WANTED TO FIND OUT WHO TOLD
8 YOU THAT?

9 A. YEAH.

10 THE COURT: BUT IT IS ADMISSIBLE IF THESE FOLKS
11 MADE THE STATEMENT SO --?

12 A. WELL THEY'VE SIGNED -- THEY'VE SIGNED THAT -- THEY
13 SIGNED THE PROVISION.

14 THE COURT: I UNDERSTAND THEY SIGNED THIS
15 AMENDMENT BUT YOU SAID THAT THEY MADE A STATEMENT TO YOU SO
16 I'M TRYING TO GET THE STATEMENT.

17 MR. FORDYCE: TO BE METICULOUS FOR THE RECORD THEY
18 SIGNED THE RESOLUTION THAT ADOPTED THIS AMENDMENT.

19 THE COURT: OKAY THANK YOU.

20 MR. FORDYCE: THANK YOU YOUR HONOR I JUST WANTED
21 TO BE CLEAR.

22 THE COURT: OKAY THANK YOU SO REPEAT WHAT THE
23 STATEMENT WAS THAT THEY MADE TO YOU?

24 A. THEY EACH IN THEIR OWN WAYS THEY VOICED THE SAME
25 CONCERN WHICH WAS THAT SMDC NOT SPEND SO MUCH MONEY THAT IT
26 ABSORBED TOO MUCH OF INVESTOR FUNDS BECAUSE THEY KNEW THAT
27 SOME OF MY EXPENDITURES WERE LIKE TAKING PEOPLE TO DINNER,
28 YOU HAVE KNOW GOING TO SACRAMENTO, THEY DIDN'T WANT TO SAY

1 WERE YOU TRAVELING FIRST CLASS, OF COURSE I WASN'T BUT
2 THEIR CONCERN WAS DON'T SPEND TOO MUCH MONEY AND THEY CAME
3 UP WITH WHAT WAS A VERY GENEROUS FIGURE, VERY EASY FIGURE
4 TO DEAL WITH, 10,000 PER MONTH.

5 THE COURT: OKAY SO THEY EACH MENTIONED TO YOU
6 SEPARATELY OR WAS THIS AT A MEETING?

7 A. THIS WAS AT THE MEETING FACE-TO-FACE AND THEY --.

8 THE COURT: OKAY AND THEY --?

9 A. THEY EXPRESSED TO ME THAT THEY HAD SPOKEN TO RAE
10 AND AMONGST THEMSELVES ABOUT IT, THIS AND OTHER TERMS IN
11 HERE AND THAT'S WHAT THEY WANTED AND I WANTED TO SHOW THEM
12 SURE, THAT'S FINE WITH ME.

13 MS. IBARRA: SO HEARSAY AS TO WHAT THEY SAID TO
14 RAE.

15 THE COURT: WELL IF HE HEARD IT THEN IT'S NOT
16 HEARSAY BECAUSE YOUR CLIENT IS SAYING IT IN HIS PRESENCE SO
17 IS THAT WHAT HAPPENED? IF NOT?

18 A. NO THEY -- THEY INFORMED ME -- THEY MADE
19 STATEMENTS TO ME, TO MY FACE.

20 THE COURT: YES?

21 A. THAT THEY HAD CONSULTED WITH RAE ABOUT THIS AND
22 THEY TALKED TO EACH OTHER ABOUT THIS AND IT WAS VERY
23 IMPORTANT TO THEM.

24 THE COURT: OKAY OVERRULED?

25 A. IT WAS THEIR WAY OF SAYING IT'S IMPORTANT AND
26 WE'RE FOCUSED ON IT AND --.

27 THE COURT: OKAY SO OVERRULED AND IF THE TESTIMONY
28 IS THAT THE INDIVIDUAL TRIBAL MEMBERS TOLD HIM THAT.

1 Q. BY MR. FORDYCE: NOW MR. STEIN YOU AT THE TIME
2 BELIEVED THAT THE INDIVIDUAL TRIBAL COUNCIL MEMBERS YOU'VE
3 IDENTIFIED DID IN FACT SPEAK WITH MS. LAMOTHE ON THIS
4 ISSUE?

5 A. THEY STATED THAT TO ME AS RAE LAMOTHE ALSO STATED
6 THAT TO ME.

7 Q. LET'S MOVE ON TO J WHICH IS ON PAGE '05 16 AND
8 IT'S DEVELOPER ENTITLED TO APPRAISED AMOUNT, CAN YOU PLEASE
9 EXPLAIN THIS MODIFICATION?

10 A. THE MATHEMATICS FOR HOW MUCH MONEY SMDC WOULD GET
11 OUT OF THE SLOT MACHINES WERE WRONG IN THE SMDC AGREEMENT
12 AS ADOPTED. RAE CAUGHT THE MISTAKE AND SO SHE -- SHE FIXED
13 THE MISTAKE IN CONSULTATION WITH ME AND WE SIMPLY RESTATED
14 THE LANGUAGE WITHOUT THE MISTAKE.

15 Q. IS THIS PRACTICING LAW?

16 A. ON THE PART OF RAE LAMOTHE IT WAS YES, I WAS
17 WORKING FOR SMDC AND I WAS CONCERNED THAT SMDC GET THE
18 RIGHT A MONEY, NO MORE NO LESS.

19 Q. SO I'M NOT GOING TO USE THE WORD ADVERSE BUT YOU
20 WERE ON THE OTHER SIDE OF THE -- THE OTHER SIDE OF THE
21 DISCUSSION OF THE WORK?

22 A. OH ADVERSE IS THE RIGHT WORD, WE WERE ABSOLUTELY
23 ADD VERTICALS, I WOULD BE SUCKING THE MONEY OUT OF THAT
24 CASINO AND THEY WOULD BE SCREAMING BLOODY MURDER THAT I WAS
25 GETTING WAY TOO MUCH THERE WAS A BILLION DOLLARS EVERY YEAR
26 ESTIMATED FOR A CASINO LIKE THAT AND I WAS GOING TO HAVE
27 GET A BIG CHUNK OF IT AFTER ALL MY WORK WAS DONE.

28 Q. UNDERSTOOD. TO YOUR KNOWLEDGE WERE BOTH SIDES

1 SMDC AND THE TRIBE TO YOUR KNOWLEDGE SATISFIED WITH THE
2 REVISED LANGUAGE IN SECTION J HERE?

3 A. THE TRIBAL COUNCIL EXPRESSED SATISFACTION WITH T
4 THEY SAID THAT'S FINE.

5 THE COURT: WHEN YOU SAY SATISFACTION, WITH THE
6 MODIFICATION OR THE CORRECTION AS YOU SAY.

7 A. YES.

8 THE COURT: THAT'S HERE.

9 Q. BY MR. FORDYCE: MOVING ON TO SIX THE
10 REPRESENTATIONS AND WARRANTIES, JUST TO BE -- GO THROUGH
11 QUICKLY, WHAT'S THE PURPOSE HERE?

12 A. THE PURPOSE HERE IS SOMETHING THAT MANY AGREEMENTS
13 PUT, WHEN YOU MODIFY AN AGREEMENT YOU GO BACK TO THE
14 REPRESENTATION AND WARRANTIES AND YOU BRING THEM FORWARD
15 FROM THE MARCH 2001 TO THE CURRENT DATE IS JANUARY 2002.
16 AND SO THIS WAS THAT SAME EFFORT TO DO THAT.

17 Q. SO IS THIS CLARIFICATION THAT WHAT'S CONTAINED AS
18 FAR AS REPRESENTATION AND WARRANTIES IN THE ORIGINAL SMDC
19 AGREEMENT ARE CARRYING THROUGH TO THE DATE THIS AMENDMENT?

20 A. RIGHT. AND THEY'RE IMPORTANT BECAUSE THOSE
21 REPRESENTATION AND WARRANTIES ARE THE OPPOSITE OF MUCH OF
22 WHAT THEY'RE SAYING TODAY.

23 Q. DID SMDC AT THE TIME DURING THE DURATION OF THIS
24 AGREEMENT RELY ON THE REPRESENTATIONS OF THE WARRANTIES IN
25 THE ORIGINAL SMDC AGREEMENT AND AS ADOPTED BY THIS
26 AMENDMENT?

27 A. YES. WE -- I WOULD HAVE TAKEN MY BASKETBALL AND
28 GONE HOME, I WOULD NOT HAVE WORKED ANY FURTHER IF WE DID

1 NOT HAVE ALL THE PROVISIONS IN HERE THAT WERE IMPORTANT TO
2 SMDC AND REPRESENTATION AND WARRANTIES BRINGING THEM
3 FORWARD, HAVING THEM STATED ANEW AND SHOW THAT A SECOND
4 TIME A YEAR LATER THAT THEY AGREE THAT THEY'RE STILL
5 CORRECT WAS VERY IMPORTANT BECAUSE THAT'S WHAT I RELIED ON
6 SO THAT WHEN THERE WAS MONEY THAT I WOULD ACTUALLY GET PAID
7 AND NOT END UP IN A LAWSUIT EXACTLY LIKE THIS ONE.

8 Q. AND TO BE ABSOLUTELY CLEAR, ON THE DATE OF THIS
9 RESOLUTION, WAS SMDC PERFORMING?

10 A. YES. SMDC HAD PUT IN MARCH, APRIL, MAY, JUNE,
11 JULY, AUGUST, SEPTEMBER, OCTOBER, NOVEMBER, DECEMBER,
12 JANUARY, 10 MONTHS OF PERFORMANCE PUSHING FORWARD THE
13 CASINO PROJECT.

14 Q. \$250,000?

15 A. \$250,000, YES.

16 Q. MOVE TO BATES '05 17, SECTION 7, TRIBAL AUTHORITY
17 LIMITED WAIVER OF SOVEREIGN IMMUNITY PLEASE EXPLAIN THIS?

18 A. IT WAS A POINT THAT WAS MORE IMPORTANT TO RAE
19 ACCORDING TO HER DISCUSSIONS WITH ME, THAT THAN IT WAS TO
20 ME.

21 MS. IBARRA: IS THAT HEARSAY?

22 A. NO, IT'S NOT IT'S THE --.

23 MR. FORDYCE: WELL I'LL -- YOUR HONOR.

24 THE COURT: YES COUNSEL.

25 MR. FORDYCE: THANK YOU.

26 THE COURT: OKAY THERE'S A HEARSAY OBJECTION.

27 MR. FORDYCE: OH SURE SURE, AGAIN IT'S NOT BEING
28 USED FOR THE?

1 A. NO IT CAN BE USED FOR THE TRUTH.

2 THE COURT: WAIT WAIT WAIT, MR. STEIN I'M NOT
3 ASKING YOU, YOU'RE THE WITNESS TODAY, YOU'VE THE WITNESS
4 TODAY.

5 MR. FORDYCE: WELL NOW I NEED TO HEAR MR. STEIN'S
6 ANSWER AGAIN, CAN I HAVE THAT READ BACK.

7 THE COURT: WELL THEN IT'S HEARSAY THEN UNLESS YOU
8 CAN TELL ME. LET'S READ THE QUESTION BACK.

9 MR. FORDYCE: YEAH CAN I JUST HEAR IT BACK?

10 A. CAN I --.

11 THE COURT: HOLD ON LET'S HEAR THE QUESTION.

12 (RECORD READ.).

13 THE COURT: OKAY WELL LET'S START OVER.

14 A. YOUR HONOR MAY I SAY SOMETHING ON BEHALF OF SMDC.

15 THE COURT: WELL NOW YOU'RE THE WITNESS SO --

16 A. MAY I.

17 THE COURT: WHAT IS IT THAT YOU WANT TO SAY?

18 A. RAE LAMOTHE IS TRIBAL GENERAL COUNSEL THESE ARE
19 ADMISSIONS OF A PARTY OPPONENT, THESE ARE ADMISSIONS
20 AGAINST INTEREST OF A PARTY OPPONENT, SHE MAY HAVE
21 TESTIFIED CAME PURSUANT TO --.

22 THE COURT: SHE MEANING LAMOTHE?

23 A. LAMOTHE WAS TRIBAL GENERAL COUNSEL ANYTHING SHE
24 SAID TO ME WERE ADMISSIONS BY WHAT IS TODAY A PARTY
25 OPPONENT AND THAT'S AN EXCEPTION TO HEARSAY.

26 MS. IBARRA: OKAY BUT IT'S -- HER TESTIMONY
27 YESTERDAY SPECIFICALLY WAS THAT SHE DIDN'T RECALL THIS?

28 A. THAT'S NOT TRUE.

1 MS. IBARRA: AND SHE --

2 A. THAT'S NOT TRUE.

3 MR. STEIN: THAT'S NOT HEARSAY.

4 THE COURT: THAT'S A DIFFERENT ISSUE THOUGH?

5 A. THAT'S NOT TRUE.

6 THE COURT: ALL RIGHT SO I'M GOING TO OVERRULE THE
7 OBJECTION ANYWAY SO WHETHER IT'S FOR THE TRUTH IS
8 IRRELEVANT ANYWAY. WE'RE REALLY LOOKING AT THE EFFECT IT
9 HAD ON MR. STEIN.

10 MS. IBARRA: OKAY LET'S MOVE ON.

11 THE COURT: GO AHEAD.

12 Q. BY MR. FORDYCE: AND MR. STEIN WHAT WAS THE
13 PURPOSE OF THIS PROVISION?

14 A. ACCORDING TO RAY'S RESEARCH AND THIS IS A POINT
15 THAT SHE WAS HUNG UP ON, THAT WHEN YOU WEIGH SOVEREIGN
16 IMMUNITY IT HAS TO BE WHAT'S CALLED A KNOWING AND EXPLICIT
17 WAIVER AND YOU HAVE TO KNOW THAT YOU'RE WAIVING IT AND YOU
18 HAVE TO SAY YES I'M WAIVING IT SO THAT'S WHAT THIS
19 PROVISION DOES. WELL WHEN YOU HAVE A MODIFICATION, THAT'S
20 A NEW AGREEMENT, SO YOU NEED A NEW KNOWING AND EXPLICIT
21 WAIVER AND SO SHE WANTED TO PUT -- TO CHANGE SECTION 7 TO
22 SAY THAT THE THEY WERE AFFIRMING THEIR FIRST WAIVER IN
23 SECTION 7 OF THE SMDC AGREEMENT AND REPEATING THE WAIVER ON
24 JANUARY 27TH AND IT IS HEREBY APPLIED TO THE AGREEMENT AND
25 THESE MODIFICATIONS. SO THIS ANGELS ON THE HEAD OF A PIN
26 TYPE ISSUES OF THE NEW AGREEMENT ARE YOU WAIVING YOUR
27 SOVEREIGN IMMUNITY FOR THE MODIFICATION AGREEMENT, THIS
28 THREE PAGES, THE ANSWER IS YES, IT'S DONE RIGHT THERE.

1 Q. AND WAS THIS IMPORTANT TO SMDC AS WELL?

2 A. IT WAS IMPORTANT TO SMDC TO MAKE -- AS PART OF
3 HAVING A VALID AND BINDING OBLIGATION BUT MY OWN VIEWS OF
4 TRIBAL SOVEREIGNTY WAIVERS IS YOU DIDN'T REALLY NEED IT,
5 RAE LAMOTHE BEING NEWER TO THE FIELD AND BEING QUITE A
6 DETAILED ORIENTED LAWYER ONE SAID IT WAS A GOOD IDEA AND I
7 WAS HAPPY TO COOPERATE.

8 Q. MOVING TO SECTION 8, CONTINUATION OF OBLIGATIONS,
9 PLEASE EXPLAIN THIS IMPACTED OCCASION?

10 A. THIS WAS ALONG THE SAME EXACT LINES AND THAT WAS
11 WHILE ASSURANCE THEM THE SMDC AGREEMENT WAS NOT A
12 MANAGEMENT CONTRACT, THIS WAIVER, THIS AMENDMENT, THIS
13 THREE-PAGE AMENDMENT ALSO WAS NOT A MANAGEMENT CONTRACT AND
14 IT WAS COMMITTING THE TRIBAL COUNCIL TO THAT POSITION.

15 MS. IBARRA: WHERE ARE WE I'M SORRY.

16 MR. FORDYCE: OH THIS IS THE MIDDLE OF '05 17
17 CONTINUATION OF OBLIGATIONS.

18 Q. WAS THIS AN IMPORTANT PROVISION FOR SMDC?

19 A. NO, IT WASN'T IMPORTANT BECAUSE THERE WAS NO
20 CASINO TO HAVE A MANAGEMENT CONTRACT ABOUT BUT RAE WANTED
21 TO SEE IT DONE THIS WAY AND AGAIN IT MATCHED WHAT WAS BEING
22 DONE IN SECTION 7. THIS MODIFICATION IS A NEW AGREEMENT BY
23 THE TRIBAL COUNCIL, YOU SHOULD HAVE -- MAKE SURE THAT UNDER
24 THE IGRA, IT'S NOT A MANAGEMENT CONTRACT TOO.

25 Q. WHEN YOU SAY IGRA PLEASE EXPLAIN IT FOR THE
26 RECORD?

27 A. INDIAN GAMING REGULATORY ACT.

28 Q. THANK YOU. 13, NOTICES, ON THE SAME PAGE, JUST

1 DRAW YOUR ATTENTION TO MS. RAE LAMOTHE TRIBAL GENERAL
2 COUNSEL?

3 A. YEAH.

4 Q. WHAT IS YOUR UNDERSTANDING OF THE PURPOSE OF THIS
5 NOTICE MODIFICATION?

6 A. WELL SINCE YOU READ AN AGREEMENT AND ITS
7 MODIFICATIONS TO TOGETHER, THE NOTICE PROVISION OF THE
8 SECTION 13 DID NOT HAVE RAE LAMOTHE IN THERE SO WE HAD TO
9 ADD IT HERE SO THAT THE -- WHEN YOU READ THE AGREEMENT AND
10 THE MODIFICATION TOGETHER SHE WOULD BE GETTING A NOTICE
11 UNDER SECTION 13 TO ANYTHING THAT HAPPENED AND IT ALSO
12 SHOWS THAT SHE HAD HER OWN LAW OFFICE, SHE WAS NOT PART OF
13 THE LAW OFFICES OF JONATHAN STEIN.

14 Q. TO YOUR UNDERSTANDING DURING THE TENURE OF THIS
15 AGREEMENT, THE DURATION, DID MS. LAMOTHE AT LEAST FROM THIS
16 DAY FORWARD RECEIVE NOTICES PER THIS MODIFICATION?

17 A. YES SHE DID UNTIL -- UNTIL ELIZABETH ARONSON TOOK
18 OVER HER RESPONSIBILITIES AFTER SHE LEFT.

19 Q. CORRECT, I SHOULD HAVE POINTED THAT OUT -- MOVING
20 ON.

21 THE COURT: WHEN DID ARONSON COME OFF AND WHAT
22 WERE THE CIRCUMSTANCES UNDER WHICH ARONSON CAME ON?

23 A. SEVERAL MONTHS BEFORE RAE LAMOTHE LEFT WE WERE
24 NEGOTIATING THE LIBRA AGREEMENT, ELIZABETH ARONSON CAME ON
25 AS AN ASSISTANT BECAUSE RAE SAID SHE WOULD BE LEAVING SOON.
26 SO RAE TRAINED LIZ ARONSON AND LIZ AND RAE BOTH HAD
27 INTERACTIONS ARE MARILYN BARRETT WHO WAS HIRED BY THE
28 TRIBAL GENERAL COUNSEL ON THE ONE HAND AND SMDC ON THE

1 OTHER. AFTER RAE LEFT, LIZ ARONSON WAS STILL ASSISTANT --
2 WAS BASICALLY ACTING TRIBAL GENERAL COUNSEL AND VERY
3 QUICKLY YOU KNOW BUTTED HEADS WITH ME.

4 THE COURT: ARONSON?

5 A. ARONSON, YEAH. AND WHEN I SAID SHE'S GOT TO GO OR
6 I'VE GOT TO GO, THE TRIBAL COUNCIL SAID WE LIKE HER, WE
7 DON'T LIKE YOU AND TERMINATED ME.

8 THE COURT: ARE YOU TALKING ABOUT ARONSON.

9 A. YES.

10 Q. BY MR. FORDYCE: MOVING ON TO THE NEXT PAGE 0518
11 THERE'S SECTION 23, LEGAL ADVICE, MR. STEIN PLEASE EXPLAIN
12 THIS MODIFICATION?

13 A. 23, LEGAL ADVICE, THIS ADDED TO SECTION 23 OF THE
14 AGREEMENT THAT THE TONGVA FURTHER ACKNOWLEDGE THAT TRIBAL
15 GENERAL COUNSEL RAE LAMOTHE HAS REVIEWED THE AGREEMENT AND
16 FOUND THAT IT'S VALID BINDING AND ENFORCEABLE OBLIGATION OF
17 THE TRIBAL COUNCIL AND THE TRIBE, IN ADDITION TRIBAL
18 GENERAL COUNSEL HAS DRAFTED THIS MODIFICATION AGREEMENT AND
19 WITH THESE CHANGES RECOMMENDED THAT THE AGREEMENT AS
20 MODIFIED BE ADOPTED, RATIFIED AND APPROVED BY THE TRIBAL
21 COUNCIL ON BEHALF OF THE TRIBE.

22 Q. WHAT WAS THE POINT HERE?

23 A. THE POINT WAS THAT THE SMDC AGREEMENT, SHE WASN'T
24 GENERAL COUNSEL FOR THAT. THIS ADDED THAT SHE -- BY
25 JANUARY 2002, THEY WERE APPROVING THE AGREEMENT, THEY WERE
26 MODIFYING THE AGREEMENT, THEY WERE RATIFYING THE AGREEMENT
27 WITH THE TRIBAL GENERAL COUNSEL AVAILABLE AND IT SAYS THAT
28 SHE DID CERTAIN THINGS. IN OTHER WORDS IT WOULDN'T BE

1 HEARSAY, IT WOULD BE -- SHE'S SAYING THAT SHE DID THEM AND
2 THAT IS THAT SHE REVIEWED THE AGREEMENT AND THAT SHE IS AS
3 TRIBAL GENERAL COUNSEL FOUND THE AGREEMENT VALID BINDING
4 AND ENFORCEABLE AND THEN IT ALSO SAYS THAT SHE DRAFTED
5 THESE WORDS, NOT SMDC, IT WAS THE TRIBE THAT DRAFTED THEM,
6 NOT SMDC AND THAT THE INDEPENDENT LAWYER, THE TRIBAL
7 GENERAL COUNSEL RECOMMENDED THE AGREEMENT AS MODIFIED BE
8 ADOPTED, MEANING THAT THEY AGREE TO T RAT NEED, MEANING
9 THAT THEY RATIFY THE -- ALL THE TERMS OF THE SMDC AGREEMENT
10 INCLUDING THE TERMS THAT WERE NOT TOUCHED AND INCLUDING THE
11 ATTORNEY -- NO ATTORNEY-CLIENT RELATIONSHIP CLAUSES AND
12 THAT THEY APPROVE THEM WHICH THEY DID BY THIS RESOLUTION.

13 Q. WAS THIS IMPORTANT TO YOU AND SMDC?

14 A. IT WAS ABSOLUTELY FUNDAMENTAL, IT PREVENTED THEM
15 FROM DOING EXACTLY WHAT THEY'RE DOING IN THIS LAWSUIT.

16 Q. OKAY. MOVING ON TO THE WHEREFORE AND THE
17 SIGNATURE BLOCK, THERE ARE SIGNATURES FOR MR. DUNLAP'S, MR.
18 STEIN, YOU HAVE BOTH SIGNED THIS DOCUMENT, CORRECT?

19 A. THAT'S CORRECT.

20 Q. THERE'S NO SIGNATURE -- THERE'S A SIGNATURE BLOCK
21 BUT THERE IS NO SIGNATURE BY MS. LAMOTHE CORRECT?

22 A. CORRECT.

23 Q. DO YOU BELIEVE MS. LAMOTHE SIGNED THIS?

24 A. I BELIEVE SHE SIGNED OTHER VERSIONS OF THE SAME
25 THING.

26 Q. AND DRAW YOUR ATTENTION JUST QUICKLY TO THE VERY
27 TIPPY TOP OF THE DOCUMENT?

28 A. I SHOULD SAY OTHER COPIES NOT THE VERSION, OTHER

1 COPIES.

2 Q. DRAWING YOUR ATTENTION TO THE VERY TOP OF THE
3 DOCUMENT THAT SAYS E-MAIL RLAMOTHE@NETFIB.COM, BOY THAT'S
4 AN OLD ONE. DO YOU BELIEVE THIS MIGHT HAVE BEEN THE ACTUAL
5 SIGNATURE PAGE THAT WAS SENT TO YOU AND MR. DUNLAP FROM MS.
6 LAMOTHE TO SIGN?

7 A. YES BUT I THINK THAT THAT'S NOT AN INDICATION OF
8 IT BECAUSE I THINK THAT THAT'S JUST AN INDICATION OF THE
9 NOTICES. IF YOU LOOK AT THE NOTICES WHERE THEY END ON THE
10 RANGE.

11 MS. IBARRA: WHERE ARE WE MS. LAMOTHE HAD THESE
12 HEADERS THAT KIND OF CUT THEM OFF AND I BELIEVE THAT'S JUST
13 A CONTINUATION OF THE NOTICE PROVISION.

14 Q. BY MR. FORDYCE: THAT'S JUST FINE I WAS JUST
15 WONDERING IF YOU KNEW WHETHER THIS DOCUMENT.

16 THE COURT: PAGE 4 IS WHAT YOU'RE REFERRING TO?

17 A. YEAH PAGE 4, PHONE FAX E-MAIL.

18 MS. IBARRA: I SEE.

19 MR. FORDYCE: HE I SEE WHAT YOU MEAN, MY APOLOGIES
20 YOU'RE ABSOLUTELY RIGHT.

21 Q. ALL RIGHT MOVING ON TO THE NEGLIGENCE -- WHAT IS
22 NOW THE NEXT EXHIBIT, THIS IS BATES 0520, RESOLUTION 46 AND
23 IT IS NOW EXHIBIT 15 48 DOES YOUR HONOR HAVE A COPY.

24 THE COURT: NO NELI IS GOING TO FIND, 1548.

25 THE CLERK: HOW MANY PAGES IS IT.

26 MR. FORDYCE: IT IS ONE TWO THREE.

27 MS. IBARRA: THREE PAGES.

28 MR. FORDYCE: YEAH.

1 THE CLERK: (INDICATING.).

2 THE COURT: THANK YOU.

3 MR. FORDYCE: ARE WE ALL THERE.

4 THE COURT: I HAVE IT.

5 MR. FORDYCE: GREAT MR. STEIN ARE YOU THERE?

6 A. YES, SIR.

7 Q. OKAY. PLEASE DESCRIBE THE EXHIBIT 1548.

8 MS. IBARRA: OKAY I HAVE 520, YOU SAID 1548.

9 MR. FORDYCE: IT'S EXHIBIT 15 48 ON BATES 0520,
10 SORRY I COULD HAVE BEEN MORE CLEAR.

11 MS. IBARRA: GOT IT?

12 A. THIS WAS ANOTHER RESOLUTION ADOPTED BY THE TRIBAL
13 COUNCIL IN MY PRESENCE BUT THIS ONE NOW WAS ONE YEAR AND
14 NINE MONTHS LATER, SO ONE YEAR AND NINE MONTHS HAVE PASSED,
15 25,000 A MONTH FOR SMDC HAS PASSED AND RAE LAMOTHE HAS BEEN
16 COUNSEL, TRIBAL GENERAL COUNSEL FOR ONE YEAR AND NINE
17 MONTHS LONGER AND CIRCUMSTANCES HAD CHANGED AS WELL.

18 Q. I'M GOING TO FOLLOW UP ON THAT, I JUST WANT TO GO
19 BACK AND TOUCH VERY QUICKLY, I HAVE REALIZED I FORGOT
20 SOMETHING, MR. STEIN WITH EXHIBIT 15 47 WHICH IS AMENDMENT
21 AND MODIFICATION FROM JANUARY 27TH, 2002, DO YOU KNOW WHO
22 DRAFTED THIS DOCUMENT?

23 A. AS IT STATES IN SECTION 23, IT WAS DRAFTED BY
24 TRIBAL GENERAL COUNSEL RAE LAMOTHE, THAT'S STATED RIGHT IN
25 THE LEGAL ADVICE PROVISION.

26 Q. AND THAT COMPORTS WITH YOUR UNDERSTANDING?

27 A. YES.

28 Q. IS THERE ANYTHING AS YOU SIT HERE TODAY THAT MAKES

1 YOU BELIEVE OTHERWISE?

2 A. NO.

3 Q. I THINK YOU GOT SQUEAKED OVER YOUR ANSWER?

4 A. NO.

5 Q. OKAY THANK YOU. GOING BACK TO WHERE WE WERE, SO
6 YOU HAVE PERSONAL KNOWLEDGE OF THIS DOCUMENT RESOLUTION 46
7 EXHIBIT 15 48?

8 A. YES.

9 Q. YOU'VE SEEN THIS BEFORE?

10 A. YES.

11 Q. LET'S MOVE THROUGH THE FIRST FOUR WHEREAS CLAUSES
12 VERY QUICKLY. THESE ARE THE MARCH 4TH, 2001, RESO 10,
13 MARCH 4TH, 2001, MARY AGUILERA; APRIL 17, 2001, RESO 15 --
14 SORRY, 17. LET'S JUST DO THOSE THREE. HAVE WE SEEN THESE
15 BEFORE?

16 A. THIS IS VERY SIMILARLY WORDED BUT IT'S ONE YEAR
17 AND NINE MONTHS LATER AND WHAT THEY'RE SAYING ONE YEAR AND
18 NINE MONTHS LATER WITH THEIR TRIBAL GENERAL COUNSEL IS THAT
19 RESOLUTION 10 WAS ACTUALLY A VALID APPROVAL OF THE SMDC
20 AGREEMENT, THEY'RE SAYING THAT MARY AGUILERA SIGNED IT ON
21 THEIR BEHALF TO CREATE A VALID BINDING AND DULY ADOPTED
22 OBLIGATION, AND THEN THAT IS -- THAT WAS IN MARCH OF 2001,
23 THEY'RE SAYING THAT SIX WEEKS LATER THAT THE RESOLUTION 17
24 APPROVED AND RATIFIED ALL THE PRIOR ACTIONS INCLUDING
25 RESOLUTION 10 SO THEY'RE SAYING THAT AGAIN, HERE IT IS ONE
26 YEAR AND NINE MONTHS AFTER THE LAST TIME THEY SAID IT IN
27 RESOLUTION 37 AND THEN THEY -- AND THEN THEY SAY THAT --
28 THEY CONFIRM THAT IT'S SMDC AGREEMENT IS VALID BINDING AND

1 DULY ADOPTED BY THOSE ACTIONS.

2 Q. AT ANY POINT BETWEEN THE ORIGINAL SMDC
3 AGREEMENT -- OR I'M SORRY THE ORIGINAL RESOLUTION 10 WHICH
4 WE'VE LOOKED AT WHICH WAS EXHIBIT 154 TWO AND THE DATE OF
5 THIS RESOLUTION 46 SEPTEMBER 28, 2003, DID ANY MEMBER OF
6 THE TRIBAL COUNCIL EVER TELL YOU THAT THEY DID NOT IN FACT
7 WANT TO CONTINUE TO ADOPT RESOLUTION 10?

8 A. NO, NO. THEY WERE MORE ENTHUSIASTIC THAN EVER
9 OVER THE SMDC WORK BECAUSE WE ACTUALLY WERE BEGINNING TO
10 GET INVESTORS PROPOSING DEALS.

11 Q. LET'S MOVE ON TO -- AND AGAIN THE SAME QUESTION
12 WITH REFERENCE TO RESOLUTION NUMBER 17, THE TRIBAL COUNCIL
13 POSITIONS, ANYONE EVER COMMUNICATE TO YOU THEY DIDN'T WANT
14 TO MAINTAIN THAT PROVISION?

15 A. NO, NO. THEY WERE GETTING ALL THEIR EXPENSES
16 COVERED BY SMDC, EVERY DIME WAS PAID BY SMDC OTHER THAN
17 AMOUNTS THAT WERE EXPENDED VERY EARLY IN THE RELATIONSHIP
18 BY SAM DUNLAP, THEY WERE GETTING FREE LABOR FROM MR. STEIN
19 FOR 25,000 A MONTH THAT WAS ACCRUING THAT THEY WOULDN'T
20 HAVE TO PAY UNLESS THE INVESTOR WAS -- THE INVESTMENT WAS
21 SUCCESSFUL AND IF IT WAS SUCCESSFUL IN THIS MODIFICATION
22 THEY WERE GETTING MR. STEIN'S AGREEMENT TO NOT TAKE ALL OF
23 HIS MONEY OUT OF THE FIRST TRONCH OF INVESTMENT FUNDS.

24 Q. AND LET'S BE ABSOLUTELY CLEAR SMDC -- WAS SMDC
25 WORKING ON DEVELOPING THE CASINO AND FEDERAL RECOGNITION IN
26 THE 21 MONTHS BETWEEN EXHIBIT 15 47 AND EXHIBIT 15 48?

27 A. YES. SMDC WORKED AN AVERAGE OF 75 HOURS A MONTH
28 OVER THE FIVE YEARS.

1 Q. LET'S LOOK AT THE FOURTH WHEREAS CLAUSE ON 0520
2 AND AGAIN JUST TO BE METICULOUSLY CLEAR, THIS WAS THE
3 WHEREAS CLAUSE THAN?

4 A. WHEREAS.

5 Q. YES CORRECT JANUARY 27, 2002.

6 MS. IBARRA: WHERE ARE WE.

7 MR. FORDYCE: MIDDLE OF THE PAGE ACTUALLY CAN YOU
8 READ THAT FOR THE RECORD?

9 A. WHEREAS OBJECT JANUARY 27, 2002, THE TRIBAL
10 COUNCIL APPROVED RESOLUTION 37, APPROVAL OF AMENDMENTS TO
11 THE DEVELOPMENT AGREEMENT BETWEEN TRIBE AND SAINT MONDAY
12 DEVELOPMENT COMPANY WHICH AMENDED APPROVED AND RATIFIED THE
13 SMDC AGREEMENT AND AFFIRMED THE SMDC AGREEMENT AS AMENDED,
14 WAS VALID BINDING AND DULY ADOPTED OBLIGATIONS OF THE
15 TRIBAL COUNCIL AND THE TRIBE.

16 THE COURT: IT SAYS ADD AMENDED AS VALID
17 BINDING.

18 A. YES.

19 MR. FORDYCE: THANK YOU YOUR HONOR. AND THAT IS
20 REFERRING TO EXHIBIT 1546 WHICH IS RESOLUTION 37, CORRECT?

21 A. RIGHT.

22 Q. AND ANY REASON TO BELIEVE THAT AT THIS TIME THE
23 TRIBAL COUNCIL DID NOT APPROVE IN FACT RESOLUTION 37?

24 A. NO THIS WAS THEIR STATEMENT THAT EVEN IF THERE WAS
25 A SIGNATURE MISSING, THAT THEY HAD DONE THAT AND THEY WERE
26 NOW SIGNING, INCLUDING RAE LAMOTHE WAS SIGNING THAT THAT
27 HAD HAPPENED.

28 Q. SO TWO BELTS AND TWO SUSPENDERS AT THIS POINT.

1 ALL RIGHT LET'S GO TO THE NEXT WHEREAS CLAUSE.

2 THE COURT: WHEN YOU SAY RAE LAMOTHE.

3 MR. FORDYCE: SO SORRY.

4 THE COURT: DID RAE LAMOTHE SIGN THIS.

5 MR. FORDYCE: LET'S TAKE A LOOK?

6 A. THE SIGNATURE --.

7 THE COURT: I DON'T SEE ANY RAE LAMOTHE?

8 A. THE RAE LAMOTHE SIGNATURES AND THE AMENDMENT AND
9 MODIFICATION AGREEMENTS WHICH THAT'S THE EXACT SAME WHEREAS
10 CLAUSE IN IT.

11 THE COURT: I MISUNDERSTOOD I THOUGHT YOU WERE
12 TESTIFYING.

13 A. NO.

14 THE COURT: THAT RAE LAMOTHE SIGNED RESOLUTION
15 NUMBER 46?

16 A. NO SHE SIGNED THE -- WHEN I SAY RESOLUTION 46
17 ATTACHED AS EXHIBIT A WAS THE AMENDMENT AND MODIFICATION
18 AGREEMENT WHICH SHE DID SIGN.

19 THE COURT: OKAY.

20 A. AND WHICH HAS THE EXACT SAME RESOLUTIONS. I
21 DIDN'T SPEAK AND IT WELL ENOUGH.

22 MR. FORDYCE: AND YOUR HONOR WE WILL GET TO THAT.
23 THIS IS A LESS CLEAR, BECAUSE, NOT TO JUMP AROUND TOO MUCH,
24 1549 DOESN'T HAVE THE CONVENIENCE OF ACTUALLY SAYING
25 EXHIBIT A TO RESO 46, BUT I THINK YOUR HONOR WILL SEE THAT
26 AMENDMENT AND MODIFICATION IS IN FACT THE MODIFICATION TO
27 RESOLUTION 46 AND THE AMENDMENT AND MODIFICATION WAS SIGNED
28 BY RAE LAMOTHE?

1 A. IT ACTUALLY DOES SAY THE EXHIBIT A.

2 MR. FORDYCE: OH IT DOES.

3 MS. IBARRA: IT DOES.

4 MR. FORDYCE: MY APOLOGIES SO IT WILL BE BECOME
5 CLEAR, CLEAR AS.

6 MS. IBARRA: MUD?

7 A. SO IT WAS ALL CORRECT SO.

8 Q. BY MR. FORDYCE: SO 0520 THERE IS THE FIFTH
9 WHEREAS CLAUSE WHICH STANDARDS WHEREAS CLAUSE THE TRIBE IS
10 SATISFIED WITH THE AGREEMENT, PLEASE READ THAT FOR THE
11 RECORD?

12 A. WHEREAS THE TRIBE IS SATISFIED WITH THE AGREEMENT
13 AND BY THIS RESOLUTION SEEKS TO APPROVE AND RATIFY IT ONCE
14 AGAIN AND TO RECOGNIZE OVER 28 MONTHS OF SATISFACTORY
15 PERFORMANCE OF THE ECONOMIC DEVELOPMENT TASK BY DEVELOPER.

16 Q. WHAT IS THE PURPOSE OF THIS WHEREAS?

17 A. THE PURPOSE WAS TO COMMIT THE TRIBAL COUNCIL TO
18 SAY YEAH YOU WORKED FOR THOSE 28 MONTHS AND YOUR
19 PERFORMANCE WAS SATISFACTORY AND THAT PUT 28 MONTHS AT
20 25,000 A MONTH ASIDE AND SAID OKAY WE'RE -- WE'RE SATISFIED
21 WITH THAT PERFORMANCE AND THIS PUT THEM ON RECORD SIGNED IN
22 WRITING THAT 28 MONTHS AT 25,000 A MONTH WAS SATISFACTORILY
23 RENDERED UNDER THE CONTRACT.

24 Q. DID YOU DISCUSS THIS PROVISION WITH MS. LAMOTHE?

25 A. YES, I DID.

26 Q. WERE YOU DISCUSSING THIS ON BEHALF OF SMDC?

27 A. ABSOLUTELY. I WAS QUITE FORCEFUL TO TELL MS.
28 LAMOTHE THAT I WANTED TO MAKE SURE THAT THAT WAS IN THERE.

1 Q. WERE YOU ADVERSE TO THE TRIBES POSITION?

2 A. YES. I WAS TRYING TO NAIL THEM DOWN THAT THEY
3 OWED ME \$725,000 NO MATTER WHAT JUST SO THAT WE WOULD NOT
4 BE IN EXACTLY THE POSITION WE ARE HERE TODAY WITH THIS
5 LAWSUIT.

6 MS. IBARRA: ARGUMENTATIVE.

7 THE COURT: WELL IT'S NOT ARGUMENTATIVE BUT MR.
8 STEIN YOU KEEP POINTING AT PLAINTIFFS COUNSEL WHILE YOU'RE
9 TESTIFYING.

10 MS. IBARRA: THAT'S ARGUMENTATIVE.

11 THE COURT: YEAH PLEASE WE WANT TO KEEP IT?

12 A. YEP.

13 THE COURT: AS FRIENDLY AS POSSIBLE AND I BELIEVE
14 SO AND AGAIN --.

15 THE COURT: THAT KIND OF THING REALLY MAKES PEOPLE
16 FEEL A LITTLE BIT HOSTILE SO PLEASE DON'T POINT.

17 MR. FORDYCE: AND AGAIN IT LIKELY GOES TO WITHOUT
18 SAYING BUT THIS WAS IMPORTANT FOR SMDC?

19 A. VERY IMPORTANT.

20 Q. THE NEXT WHEREAS PLEASE?

21 A. WHEREAS AS A RESULT OF DEVELOPER'S COMPETENT
22 PERFORMANCE OF THE ECONOMIC DEVELOPMENT TASKS THE TRIBE IS
23 NEGOTIATING WITH TWO INVESTMENT GROUPS FOR INITIAL
24 INVESTMENT OF OVER \$1,000,000 OF INVESTMENT MONEY AS
25 DEFINED IN THE AGREEMENT TO HELP THE TRIBE SUCCESSFULLY
26 COMPLETE THE RECOGNITION PROCESS.

27 Q. PLEASE EXPLAIN THIS?

28 A. THERE WERE TWO INVESTMENT GROUPS THAT I LOCATED,

1 THAT SMDC HAD LOCATED AND THAT SMDC WAS -- HAD HELPED USHER
2 INTO THE TRIBE TO NEGOTIATE INVESTMENT MONEY.

3 Q. AND WHO WERE THE TWO GROUPS?

4 A. I DON'T RECALL.

5 Q. DO YOU HAVE AN UNDERSTANDING AT THE TIME WHAT WAS
6 MEANT BY COMPETENT PERFORMANCE?

7 A. THIS WAS THE ACKNOWLEDGMENT OF GT TRIBE THAT SMDC
8 HAD COMPETENTLY PERFORMED DEVELOPMENT TASKS.

9 Q. WAS IT A GUARANTEE OF SUCCESS?

10 A. NO THERE WAS NO GUARANTEE OF SUCCESS IN THE SMDC
11 AGREEMENT IT WAS JUST A QUESTION OF DID YOU TRY.

12 Q. DID YOU EVER GUARANTEED SUCCESS OF ANY CONTRACT
13 THAT YOU'VE EVER ENTERED INTO IN ANY CONTEXT?

14 A. NO NONE.

15 Q. AND THIS WAS -- IS THERE ANY REASON AS YOU SIT
16 HERE TODAY TO BELIEVE THAT THERE'S ANYTHING INACCURATE IN
17 EITHER OF THE LAST TWO WHEREAS CLAUSES THAT YOU READ?

18 A. NO.

19 Q. LET'S MOVE NOT ZERO TO THE NEXT LAST ON THE
20 PAYMENT WHEREAS UNDER THE AGREEMENT DEVELOPER?

21 A. (DITTO) DEVELOPER IS DUE TO BE PAID 25,000 PER
22 MONTH FROM FEBRUARY 1, 2001 THROUGH THE PRESENT FOR A TOTAL
23 OF APPROXIMATELY \$725,000 TO DATE FROM THE INVESTMENT MONEY
24 AND THIS WOULD TAKE UP A LARGE PORTION OF THE INVESTMENT
25 MONEY THAT EACH INVESTMENT GROUP HAD INVESTING WITH THE
26 TRIBE.

27 Q. PLEASE EXPLAIN THIS PROVISION?

28 A. WELL THE BASIC PROBLEM IS LIKE ALL INVESTORS AND

1 LIKE THE LIBRA AGREEMENT LATER THEY WANT TO GIVE YOU HAVE A
2 LITTLE MONEY AND HAVE ABSOLUTELY NO OBLIGATION TO GIVE YOU
3 ANY MORE AND THEN THEY SEE WHAT YOU DO WITH THE MONEY THAT
4 THEY GIVE YOU. AND THEN THE -- IN THIS CASE BECAUSE SMDC
5 WAS OWED 725,000, WHAT THEY SAID WAS LISTEN IF YOU -- WE'LL
6 ACKNOWLEDGE THE DEBT, WE'LL AGREE THAT YOU'RE ABSOLUTELY
7 OWED THIS, WE'LL SIGN WHATEVER LANGUAGE MAKES IT CLEAR AS A
8 BELL THAT WE CAN NEVER DISAGREE THAT YOU'RE OWED 725,000,
9 BUT WE WANT YOU IN RETURN TO DEFER SOME OF THAT OUT OF THE
10 FIRST MILLION DOLLARS THAT WE GET SO THAT THEY GIVE US A
11 MILLION DOLLARS YOU DON'T JUST TAKE \$725,000 AND THEN TRY
12 TO GET FEDERAL RECOGNITION OR A CASINO WITH \$275,000 THAT'S
13 LEFT.

14 Q. WITH THAT IN MIND PLEASE TURN TO PAGE '05 21
15 THAT'S THE NEXT EXHIBIT IN THE EXHIBIT, THE TOP WHEREAS
16 CLAUSE PLEASE READ THAT?

17 A. WHEREAS THE TRIBAL COUNCIL AS REQUESTED THAT
18 DEVELOPER DEFER PAYMENT OF MOST OF MONTHLY AMOUNTS WHICH
19 ACCRUED IN THE LAST 28 MONTHS TO ALLOW THE INVESTMENT MONEY
20 TO BE USED FOR OTHER PURPOSES.

21 Q. IS THIS WHAT YOU JUST DESCRIBED?

22 A. YES.

23 Q. WERE YOU HAPPY ABOUT THIS AT THE TIME?

24 A. NO I WASN'T BUT I AGREED WITH THE TRIBAL COUNCIL
25 AND WITH RAE LAMOTHE THAT IF I EXERCISED THE FULL EXTENT OF
26 MY CONTRACT RIGHTS THAT WOULD KIND OF DEFEAT THE PURPOSE OF
27 THE INVESTMENT SO I WAS WILLING TO AGREE TO THE DEFERRAL
28 STATED IN THE AMENDMENT AND MODIFICATION AGREEMENT.

1 Q. SO SMDC IN EFFECT TOOK A RISK?

2 A. YEAH BUT SMDC GOT SOMETHING CONCRETE WHICH WAS
3 THAT THEY ACKNOWLEDGED THE DEBT ONCE AGAIN AND THEY
4 ACKNOWLEDGED 28 MONTHS OF PERFORMANCE AND THEY ACKNOWLEDGED
5 THAT AT A MINIMUM THEY OWED SMDC \$725,000.

6 Q. SO THESE TWO WHEREAS CLAUSES LAST ON PAGE 0520 AND
7 FIRST ON FIRST ON '05 21 WERE THEY IMPORTANT TO SMDC?

8 A. THEY WERE VITAL, I WOULD NOT HAVE WAIVED THAT
9 RIGHT AND IF THE INVESTMENT MONEY CAME IN I WOULD HAVE
10 TAKEN \$725,000 IF I DID NOT GET THEIR AGREEMENT TO NEVER DO
11 WHAT THEY'RE DOING TODAY.

12 Q. AT THE POINT?

13 A. EXCUSE ME.

14 Q. OF THIS RESOLUTION, 2003 -- I'M NOT SEEING THE
15 DATE -- AT THE TIME OF SEPTEMBER 28, 2003, HAD ANYONE FROM
16 THE TRIBAL COUNCIL EVER COMPLAINED TO YOU ABOUT SMDC'S
17 WORK?

18 A. NO.

19 Q. HAD ANYONE COMPLAINED TO YOU ABOUT THE \$25,000
20 MONTHLY FEE?

21 A. NO.

22 Q. MOVE TO THE NEXT WHEREAS CLAUSE ON PAGE '05 21,
23 WHEREAS DEVELOPER WISHES?

24 A. WHEREAS DEVELOPER WISHES TO MODIFY THE AGREEMENT
25 TO PROVIDE THAT ONE H THE TERM CLASS THREE BE REPLACED BY
26 THE TERMS CLASS TWO OR THREE TO TAKE INTO ACCOUNT THE
27 POSSIBILITY THAT THE TRIBE MAY ENTER INTO A GAMING COMPACT
28 TO ALLOW CLASS TWO GAMING DEVICES BUT NOT CLASS THREE

1 GAMING DEVICES, ET CETERA.

2 Q. WHAT'S THE PURPOSE OF THIS CLAUSE?

3 A. ONE OF THE THINGS THAT I WANTED TO GET IN THE SMDC
4 AGREEMENT WAS AN EXPANSION OF ITS RIGHTS BECAUSE OF CERTAIN
5 TECHNOLOGICAL CHANGES THAT WERE OCCURRED, THEY WERE CALLED
6 OKLAHOMA SLOT MACHINES AND WHAT THEY WERE -- WHAT WAS
7 HAPPENING IS OKLAHOMA IS FULL OF ALL THE TRIBES WHO SUFFER
8 GENOCIDES AND WERE FORCIBLY REMOVED FROM THEIR TRIBAL HOME
9 LANDS TO THE STATE OF OKLAHOMA WHICH WAS ORIGINALLY CALLED
10 THE OKLAHOMA INDIAN TERRITORY. SO WHAT HAPPENED IS SOME
11 VERY SMART PEOPLE INCLUDING SOME PEOPLE THAT I MET AND WERE
12 VERY FRIENDLY WITH, CONVINCED REGULATORS TO TAKE NOT
13 EXTREMELY ADVANCED COMPUTER DRIVEN SLOT MACHINE AND
14 QUALIFIED IT AS A CLASS TWO GAMING DEVICE WHICH WAS
15 BASICALLY BINGO, CLASS TWO IS BASICALLY BINGO LIKE YOU HAVE
16 WHEN LITTLE OLD LADIES GO TO YOU KNOW THE OLD INDIAN
17 PARLORS AND PLAYED BINGO FOR STAKES LIKE 25 CENTS OR A
18 DOLLAR. THIS WAS FULL ON SLOT MACHINE GAMBLING THAT WAS
19 HARD TO DIFFERENTIATE FROM CLASS THREE BUT HAD BEEN
20 ACCEPTED AS REGULATORS AS A COMPUTERIZED FAST MOVING, I
21 MEAN MOVING IN THE BLINK OF AN EYE BINGO GAME SUCH THAT YOU
22 PLAYED BINGO EVER TWO SECONDS INSTEAD OF EVERY TWO HOURS.

23 Q. WHY DID SMDC WANT TO MODIFY THE AGREEMENT IN THIS
24 MANNER?

25 A. BECAUSE ONE OF THE THINGS THAT SMDC DID WAS SAID
26 WHY DON'T WE AS A STATE RECOGNIZED TRIBE CLAIM THAT WE'RE
27 ALLOWED TO DO CLASS TWO GAMING BUT NOT CLASS THREE AND
28 APPROACH THE STATE GOVERNMENT UNDERSTATE LAW TO ALLOW US TO

1 DO AN INFERIOR TYPE OF GAMING THAT NO ONE ELSE DID, THE
2 CLASS TWO GAMING THAT NONE OF THE FEDERALLY RECOGNIZED
3 TRIBES NEEDED TO DO IN CALIFORNIA THEY ALL DID CLASS THREE
4 AND EVERYBODY KNEW THAT CLASS THREE SLOT MACHINES WERE
5 BETTER THAN OKLAHOMA CLASS TWO SLOT MACHINES, NO MATTER
6 HIGHWAY SOPHISTICATED IT WAS, IT WASN'T AS FUN, SO THE IDEA
7 WAS DEVELOPED BY SMDC THAT LET'S SHOOT FOR CLASS TWO
8 MACHINES USING THESE COMPUTER CHAMPIONSHIPS, THE SAME AS
9 THE OKLAHOMA CLASS TWO MACHINES. AND THE THING IS THE SMDC
10 AGREEMENT DID NOT COVER CLASS TWO, THEY ONLY COVERED CLASS
11 THREE, SO WE EXPANDED THAT TO COVER CLASS TWO IN CASE THIS
12 IDEA WORKED.

13 Q. I THINK I UNDERSTAND THAT. LET'S MOVE TO THE NEXT
14 WHEREAS CLAUSE AND I KNOW WE'RE JUST PAST 12 IF WE JUST
15 FINISH THE WHEREAS CLAUSES AT LEAST IT'S A LOGICAL CUT OFF
16 POINT AS THE THEREFORES THAT'S GOING TO LOOK WEIRD IN THE
17 RECORD.

18 THE COURT: THAT SOUNDS FINE.

19 MR. FORDYCE: THE NEXT WHEREAS CLAUSE MR. STEIN?

20 A. WHEREAS TRIBAL GENERAL COUNSEL HAVING REVIEWED THE
21 SMDC AGREEMENT AS AMENDED AND HAVING REVIEWED THIS 2003
22 AMENDMENT HAS OPINED TO THE TRIBAL COUNCIL THAT LITTLE I,
23 THE AGREEMENT AS PREVIOUSLY AMENDED IS VALID, BINDING AND
24 ENFORCEABLE OBLIGATION OF THE TRIBAL COUNCIL AND THE TRIBE
25 AS WRITTEN, AND TWO LITTLE I AFTER APPROVAL AND ADOPTION BY
26 THE TRIBAL COUNCIL THIS 2003 AMENDMENT WILL BE AN VALID,
27 BINDING AND ENFORCEABLE OBLIGATION AMENDMENT TO THE
28 AGREEMENT AND LITTLE THREE, AFTER ADOPTION OF THIS

1 AMENDMENT, 2003 AMENDMENT, THE AGREEMENT AS AMENDED BY THIS
2 2003 AMENDMENT WOULD ALSO BE VALID, BINDING AND ENFORCEABLE
3 IN ACCORDANCE WITH ITS TERMS.

4 Q. WE'VE SEEN SIMILAR CLAUSES, CORRECT?

5 A. YES. THIS WAS THE TRIBAL GENERAL COUNSEL PUTTING
6 IN WRITING FOR EVERYBODY TO SIGN INCLUDING HERSELF THAT
7 THIS -- THAT SHE'D ACTUALLY GIVEN THAT OPINION TO HER
8 CLIENTS.

9 Q. DURING THE DURATION OF THE SMDC AGREEMENT WAS
10 THERE ANYTHING THAT LED YOU TO BELIEVE THIS WHEREAS CLAUSE
11 WAS INACCURATE?

12 A. NO.

13 Q. AS YOU SIT HERE TODAY ANYTHING TO MAKE YOU BELIEVE
14 IT'S INACCURATE?

15 A. NO.

16 Q. WHY WAS IT IMPORTANT?

17 A. IT WAS IMPORTANT BECAUSE IT SHOWED THAT THEIR
18 INDEPENDENT COUNSEL REVIEWED BOTH THE SMDC AGREEMENT AND
19 THIS AGREEMENT AND OPINED TO HER CLIENTS, THE TRIBAL
20 COUNCIL THAT IT'S VALID, BINDING AND ENFORCEABLE
21 OBLIGATION, THE SMDC AGREEMENT, BEFORE THE AMENDMENT, THAT
22 THE AMENDMENT WAS VALID, BINDING AND ENFORCEABLE AND WHEN
23 YOU PUT THE TWO TOGETHER, THE SMDC AGREEMENT AS AMENDED IN
24 2003, THAT THE WHOLE THING WAS VALID, BINDING AND
25 ENFORCEABLE. IT WAS ALL INTENDED TO AVOID EXACTLY WHAT THE
26 LAWSUIT.

27 THE COURT: MR. STEIN?

28 A. THAT'S BEING BROUGHT.

1 THE COURT: MR. STEIN AGAIN IF I SEE IT ONE MORE
2 TIME YOUR TESTIMONY WITH CEASE OKAY?

3 A. YEP.

4 THE COURT: SHE KEEP POINTING TO PLAINTIFFS
5 COUNSEL AND SHE'S NOT DOING ANYTHING TO YOU, SHE'S NOT
6 ASKING HAD YOU QUESTIONS, SHE'S HAD NOT LOOKING AT YOU, WE
7 DON'T NEED TO ANTAGONIZE?

8 A. YOUR HONOR IT'S EXACTLY RIGHT, IT'S VERY HARD TO
9 SEE EXACTLY WHAT THEY AGREED TO DO AND SEE THEM DOING
10 EXACTLY WHAT THEY AGREED THEY WOULD NEVER DO, THAT'S WHAT'S
11 DIFFICULT AND IT ALL COMES DOWN TO THIS COUNSEL BECAUSE
12 SHE'S THE SIXTH COUNSEL SINCE EVERY OTHER ONE HAS GIVEN UP.

13 MR. FORDYCE: MR. STEIN?

14 A. IN THE FACE OF THIS STUFF.

15 MR. FORDYCE: MR. STEIN.

16 A. SO IT WAS SO GALLING TO ME THAT I'M HAVING TROUBLE
17 CONTROLLING MYSELF AND I HAVE IMPACT APOLOGIZE FOR ME
18 BECAUSE IN ME ENTIRE LIFE I'VE NEVER BEEN THIS GALLED BY
19 THE CONDUCT.

20 MR. FORDYCE: MR. STEIN.

21 A. OF INTELLIGENT PERSON OF THEIR OWN FRIDAY WILLING.

22 MR. FORDYCE: MR. STEIN?

23 A. AS MS. IBARRA IS TRYING TO DO THIS WITH THIS CASE.

24 MR. FORDYCE: JONATHAN, LET'S FINISH THE LAST TWO
25 WHEREAS CLAUSES AND LET'S BE DONE FOR THE DAY, OKAY?

26 A. AND MS. GOAD.

27 MR. FORDYCE: PLEASE READ THE NEXT WHEREAS CLAUSE?

28 A. WHEREIN THE TRIBAL COUNSEL AND DEVELOPER MUTUALLY

1 DESIRE TO MAKE THE FOLLOWING AMENDMENTS AND MODIFICATIONS
2 TO THE EXISTING AGREEMENT.

3 Q. WHY IS THIS IMPORTANT?

4 A. IT SETS UP THAT BECAUSE OF ALL THESE THINGS THEY
5 WANT TO MAKE THE EXACT AMENDMENTS IN THE AGREEMENT.

6 Q. DID YOU NEGOTIATE THIS WITH MS. LAMOTHE?

7 A. YES.

8 Q. ON WHOSE BEHALF?

9 A. ON BEHALF OF SMDC, IT WAS ACTUALLY WRITTEN BY MS.
10 LAMOTHE SO SHE NEGOTIATED WITH IT WITH ME.

11 Q. ANYTHING TO BELIEVE THIS IS NOT ACCURATE AS YOU
12 SIT HERE TODAY?

13 A. NO.

14 Q. NEXT WHEREAS CLAUSE, PLEASE?

15 A. WHEREAS THE TRIBAL COUNCIL FIND IT TO BE IN THE
16 BEST INTEREST OF THE TRIBE TO MAKE THE AMENDMENTS AND
17 MODIFICATIONS TO THE EXISTING AGREEMENT SET FORTH IN THE
18 AMENDMENT AND MODIFICATION AGREEMENT DATED AS OF AUGUST
19 10TH, 2003 AND ATTACHED HERETO AS EXHIBIT A.

20 Q. FAIRLY SELF-EXPLANATORY. PLEASE BRIEFLY EXPLAIN
21 THIS?

22 A. THE IDEA IS THE TRIBAL COUNCIL WAS GOING TO TAKE
23 AN OFFICIAL ACTION ON BEHALF OF THE TRIBE, THAT IT WAS
24 STATING YES WE'RE DOING THIS FOR THE BEST INTEREST OF THE
25 TRIBE, NOT BECAUSE THEY WERE DOING ANYBODY ANY FAVORS OR
26 DOING IT FOR THE BEST INTEREST OF THE TRIBE AND THAT THE --
27 THEY WERE GOING TO ADOPT THOSE -- THE AMENDMENT AND
28 MODIFICATION ATTACHED AS EXHIBIT A.

1 Q. ANY REASON AT THE TIME YOU ENTERED INTO THIS
2 AMENDMENT TO THINK THIS WAS INACCURATE?

3 A. NO.

4 Q. AS YOU SIT HERE NOW IS IT INACCURATE?

5 A. NO.

6 Q. WHO DRAFTED THIS AGREEMENT TO YOUR KNOWLEDGE?

7 A. AS STATED IN THE CLAUSES, RAE LAMOTHE.

8 Q. OKAY THIS WAS A GOOD PLACE TO STOP.

9 THE COURT: OKAY THANK YOU.

10 MR. FORDYCE: THANK YOU YOUR HONOR.

11 THE COURT: JUST A REMINDER MR. STEIN?

12 A. THE COURT IS EXACTLY RIGHT.

13 THE COURT: NO MORE POINTING OKAY, LET'S HAVE A
14 BETTER DAY ON MONDAY AND WE'LL TRY TO FINISH UP?

15 A. YEP.

16 THE COURT: THANK YOU?

17 A. THANK YOU AGAIN YOUR HONOR.

18 MR. FORDYCE: THANK YOU YOUR HONOR.

19 (DISCUSSION HELD OFF THE RECORD.).

20 THE COURT: I JUST WANT TO MAKE SURE WHAT ON
21 MONDAY WE'RE DOING BEFORE I ASK THE -- EXCUSE THE COURT
22 REPORTER, IT'S PAST 12 SO LET'S TRY TO BE QUICK.

23 MR. FORDYCE: MY APOLOGIZE.

24 THE COURT: IS MR. STEIN FINISHED OFFER DO YOU
25 HAVE SOMEBODY ELSE.

26 MR. FORDYCE: WE'LL TRY TO FINISH MR. STEIN.

27 MR. STEIN: IT WILL PROBABLY BE MONDAY AND
28 TUESDAY, IF I CAN ADDRESS THE COURT'S CONCERN BY THE WAY, I

1 IS A FEBRUARY 1 TWO THREE FOUR, FOUR BEING AS A RESULT AS
2 POSSIBLE DEPOSITIONS BY TALKING WITH -- WE WENT IN EX PARTE
3 TO AVOID THE CONFLICT AND WE WERE SUCCESSFUL IN THE EX
4 PARTE, THOSE DEPOSITIONS ARE NOW MOVED TO A DATE THAT WE
5 HOPE THE PROCEEDINGS WILL BE OVER HERE.

6 THE COURT: THANK YOU FOR DOING THAT.

7 MR. STEIN: THE COURT'S BEEN VERY GENEROUS AND
8 GRACIOUS WITH US.

9 THE COURT: SO ARE YOU TESTIFYING -- CONTINUING
10 THE TESTIMONY ON MONDAY.

11 MR. FORDYCE: YES YOUR HONOR ABSOLUTELY.

12 THE COURT: SO WE EXPECT.

13 MR. FORDYCE: AND WE WILL TRY AND RIP THROUGH IT
14 AS QUICKLY AS WE CAN.

15 MR. STEIN: WELL THERE ARE 27 DOCUMENTS THAT WERE
16 ON DIRECT SO OBVIOUSLY ON CROSS WE HAVE TO ADDRESS THEM.

17 MR. FORDYCE: SOME OF THEM WILL BE VERY QUICK.

18 THE COURT: ALL RIGHT THAT'S FINE SO WE'LL SPEND
19 ALL OF MONDAY ON MR. STEIN.

20 MR. FORDYCE: OH YES.

21 MS. IBARRA: ALL OF MONDAY AND PROBABLY TUESDAY.

22 MR. FORDYCE: YES, I WILL ANTICIPATE.

23 THE COURT: THANK YOU I'LL GO OFF THE RECORD NOW.

24 12:12 PM.

25

26

27

28