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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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ROUGH DRAFT – UNCERTIFIED

1 GABRIELINO–TONGVA TRIBE VS. STEIN

2 TESTIMONY OF KENNETH SULZER

3

4 MR. STEIN: And she's very, very sorry about

5 that but we'd like to take Ken Sulzer first.

6 THE COURT: Okay.

7 THE COURT: Please right there, face the clerk

8 to my right.

9 THE CLERK: * * state, so help you God * *.

10 A. Yes, I do.

11 THE CLERK: Thank you sir you may have a seat

12 to your right.

13 THE COURT: Hello.

14 MR. KATZ: Good afternoon Your Honor my name is

15 Steven Katz I'm counsel for the witness may I sit in the

16 jury box.

17 THE COURT: Part.

18 MR. KATZ: (Ditto).

19 THE COURT: Sure give the clerk to the right.

20 THE CLERK: And sir state your first and last

21 name Ford.

22 MR. KATZ: Mine.

23 THE COURT: No I?

24 A. Kenneth, middle initial D., last name

25 S-u-l-z-e-r.

26 THE CLERK: And first name is spelled?

27 A. K-e-n-n-e-t-h.

28 THE CLERK: Thank you.

1 Q. BY MR. STEIN: Mr. Sulzer thank you very much
2 for coming today. Let me start with your credentials
3 but instead of starting from the present let's start
4 early and work to up the present.

5 MS. IBARRA: Objection relevance he's not a
6 expert so.

7 THE COURT: Overruled.

8 Q. BY MR. STEIN: And Mr. Sulzer your schooling?

9 A. I graduated from Occidental College in 1982 h
10 Harvard Law School in 1985.

11 Q. And it isn't relevant across the halld there
12 from had you?

13 A. President of the United States Barry, Barack
14 Obama.

15 THE COURT: Barry?

16 MS. IBARRA: That's very interesting.

17 THE COURT: It truly is I recall but

18 interesting.

19 MS. IBARRA: Very interesting.

20 Q. BY MR. STEIN: Now you said your law school

21 was?

22 A. Harvard law.

23 Q. And after you graduated from the law school

24 your firm?

25 A. I worked at Seyfarth Shaw from 1985 until April

26 of 2012.

27 Q. So that's 15 plus 12 is 27 years?

28 A. 26 and a half.

1 Q. And which firm did you go to after Seyfarth

2 Shaw?

3 A. I moved to Proscauer Rose.

4 Q. The New York firm?

5 A. Correct.

6 Q. And what is your current firm?

7 A. My current firm, I am the managing partner at

8 Castangie Brooks Smith and Proffit.

9 Q. And how many lawyers in that firm?

10 A. In our firm about 200, there are about 10 in

11 Los Angeles focusing on labor and employment law as a

12 boutique specialty firm.

13 Q. And your time -- most of your time you've been

14 a litigator?

15 A. Management labor lawyer and principal
16 employment litigator the last 20 years focus you go
17 principally on class action litigation, principally wage
18 and hour.

19 Q. And you've also taken time out to serve bar
20 association's?

21 A. I have I'm the immediate past president of the
22 federal bar association, Los Angeles chapter.

23 Q. And you've also worked for the electoral
24 college?

25 A. I was appointed for the electoral college and
26 got to vote for my friend, president Obama.

27 Q. And right now -- and you work in politics?

28 A. I'm currently the chairman of USA Pack, united

1 for responder American which is the congressional
2 leadership pack fro Congressman Alan Schiff.

3 Q. Congressman Schiff in Burbank.

4 A. Yes.

5 Q. And was SMDC a client of yours?

6 A. While I was as Seyfarth right.

7 Q. I should say a client of Seyfarth forgive me.

8 And if I could turn first to the SMDC agreement that's

9 exhibit 569 and we'll just -- can you tell me how you

10 first began working on the assignment and the agreement

11 that became exhibit 569?

12 A. I believe at some point you contacted me and

13 told me a little bit about what your project was about.

14 And just for the record, I understand I'm testifying
15 under a waiver of the attorney-client privilege?

16 MR. STEIN: Yes Your Honor if I may take a
17 moment to make sure that SMDC and Stein and anybody else
18 that worked with Seyfarth Shaw is waiving the
19 attorney-client privilege that he may testify me.

20 A. And Mr. Stein has represented that he has
21 authority for any of his clients.

22 MR. STEIN: Yes.

23 A. To waive.

24 MS. IBARRA: Limited to waiver.

25 THE COURT: Limited to this matter. If he has
26 other matters I think that privilege would still apply
27 but in terms of this matter, I find it to be waived.

28 MS. IBARRA: If terms of everything having to

1 do with the SMDC agreement.

2 THE COURT: Yes?

3 A. Yes thank you Your Honor.

4 THE COURT: I just wanted to -- how did you

5 meet Mr. Stein?

6 A. Through a mutual friend who is now judge John

7 Doyle.

8 THE COURT: Judge John Doyle, he introduced

9 you?

10 A. At some point he did. Not -- I don't recall

11 the exact context, may have it something to do with our

12 alma mater, common alma mater.

13 THE COURT: Okay thank you please continue.

14 Q. BY MR. STEIN: And the SMDC agreement, who at
15 Seyfarth Shaw worked on the SMDC agreement?

16 A. I asked my partner Thomas Larry Watts who goes
17 by Larry to work with SMDC on the agreement.

18 Q. And did you work on the agreement as well?

19 A. I -- in an oversight role I did, I was aware of
20 generally speaking what was going on with the agreement,
21 Larry was the principle lawyer on it?

22 A. And was Mr. Stein an involved client?

23 A. Mr. Stein was an involved client, that is true.

24 Q. And how many drafts to your knowledge knowledge
25 did the SMDC agreement go through?

26 A. To my recollection, it was a long time ago, it
27 wasn't through several drafts and I do recall you be
28 [TPH-G] our office on multiple occasions meeting with

1 Larry, sometimes with Larry and I discussing the
2 project.

3 Q. And what would be the average length of one of
4 these meetings?

5 A. They were all more than an hour I'm sure. Well
6 I'm not sure, positive 15 years later, but they were
7 somewhat lengthy as I recall.

8 Q. And was Larry primarily doing the work or were
9 you primarily doing the work?

10 A. Larry.

11 Q. And would you come and go from the meeting?

12 A. Yes.

13 Q. As the demands of being a partner [SA*EU] at

14 Seyfarth Shaw?

15 A. Correct.

16 Q. And I'd like to refer to you to Paragraph 2 E

17 of the agreement, it's in the notebook there and it

18 would be about 10 pages in, I'll give you have the exact

19 page?

20 A. Page 5?

21 Q. Well at the bottom there's a P O L number?

22 A. Yes 219 is what I have.

23 Q. And rather than going through each and every

24 thing we'll just get down to it. Can you read paragraph

25 two E?

26 A. Could you want at the to read allow.

27 Q. Please.

28 A. Not an attorney-client relationship is the

1 title. The parties acknowledge that no attorney-client
2 relationship has ever existed between the Tongva and
3 either Stein or the law firm of Arter & Hadden LLP and
4 that this agreement shall not form such an
5 attorney-client relationship. The Tongva acknowledge
6 that they shall enjoy none of the advantages of such a
7 relationship, including the attorney-client privilege in
8 litigation. The Tongva agree to hire one or more law
9 firms to do all legal work required, necessary or
10 visible to complete the economic development tasks or
11 the scope of work.

12 Q. So was it your understanding that one of the
13 subject matters of the SMDC agreement was to set forward
14 that both parties would agree that there would be no
15 attorney-client relationship for the work under this
16 agreement?

17 A. Yes.

18 Q. And I'd like to turn to Paragraph 14?

19 A. First let me turn to Paragraph 13, you were
20 copied in the notice provision of this agreement?

21 A. Correct.

22 Q. Or I should say Seyfarth Shaw was copied?

23 A. Correct.

24 Q. And then Paragraph 14 could you read Paragraph
25 14?

26 A. Title is entire agreement, it says T C entire
27 agreement underlined. It says this agreement contains

28 the entire agreement of the parties relating to this

8

1 subject matter, and the parties agree that this
2 agreement supersedes all prior written or oral
3 agreements, representations and warranties relating to
4 the subject matter here of. No modifications of this
5 agreement shall be valid unless made in writing and
6 signed by the parties here to.

7 Q. And so what was the purpose of Paragraph 14?

8 A. It's an integration clause which says this is
9 the entire agreement, there aren't any side agreements
10 that relate to this subject matter.

11 Q. And that if there was any additional agreement
12 what kind of agreement would it be?

13 A. It would have to be in writing and signed by
14 both of the parties, the parties to the agreement,
15 excuse me.

16 Q. Interpreting Paragraph 14 and Paragraph 2 E
17 together, what was the net effect of requiring that the
18 subject matter not be amended without writing and
19 including in the subject matter having no
20 attorney-client relationship?

21 A. It would probably be a legal conclusion but
22 would suggest that if an attorney-client relationship
23 were to be created subsequent to this agreement it would
24 need to be in writing.

25 Q. And that was because of Paragraph 14?

26 A. Well that's -- that's what the agreement

27 subjects as it's written, yes.

28 Q. Turn to Paragraph 3 D if you can.

9

1 THE COURT: 3-D.

2 MR. STEIN: 3-D and whoever gets to the page

3 first might want to call it out. So Page 2 20?

4 A. I believe so.

5 Q. Could you read Page 2 20 Paragraph 3 D please?

6 A. It says no fiduciary relationship, the

7 relationship between the parties shall be solely

8 contractual and neither party or its officers directors

9 or managers, including Stein shall be deemed the

10 fiduciary of the other.

11 Q. Would this indicate that as Stein became an
12 officer of GT Tribe that GT Tribe was waiving its right
13 to have fiduciary duties?

14 A. I'm sorry I'm not sure I understand your
15 question.

16 Q. Does this mean that if Stein becomes a nominal
17 officer of GT Tribe that GT Tribe would not have the
18 benefit of fiduciary duties from Stein.

19 MS. IBARRA: Objection calls for a legal
20 conclusion.

21 MR. STEIN: To your understanding of how.

22 THE COURT: Okay overruled.

23 MR. STEIN: This agreement was written?

24 A. It would say if you were nominally an officer
25 it would suggest there wouldn't be a fiduciary

26 relationship created.

27 Q. And let me go back to the back end of the

28 agreement u? All capitals is Paragraph 19, limitation

10

1 of liability, can I ask you to read that?

2 A. Limitation of liability, notwithstanding

3 anything else in this agreement or otherwise neither

4 Tongva nor developer will be liable with respect to any

5 subject matter this agreement under any contract,

6 negligence, strict liability or other legal or equitable

7 theory or any incidental special, exemplary or

8 consequential damages. Developer shall only be liable

9 for willful miss conduct or gross negligence in

10 connection with any services rendered under this

11 agreement.

12 Q. And it says in this agreement or otherwise, was

13 that an attempt to reach beyond the agreement?

14 A. I don't -- I don't know the answer to that, I

15 assume it just meant to be inclusive with respect to the

16 representations.

17 Q. And it impacted the entire subject matter of

18 the agreement?

19 A. It appears to suggest that, yes.

20 Q. So is the idea that both of parties were

21 agreeing to this all capital standard of conduct

22 regardless of any other rights or legal or equitable

23 theory that they might have?

24 A. Do you want to repeat the question I'm sorry.

25 Q. Let me let the court reporter repeat the

26 question.

27 THE COURT: Okay yeah.

28 (Record read.)?

11

1 A. I believe so.

2 Q. BY MR. STEIN: And to your knowledge -- to your

3 knowledge Larry what the, Mr. Stein and yourself worked

4 through this agreement is that correct?

5 A. As a general, Mr. Stein and Mr. Watts worked

6 through it a lot, I worked through it some.

7 Q. I see. And Mr. Watt provided the agreement and

8 some very standardized approval resolutions for this

9 agreement?

10 A. I believe that is correct.

11 THE COURT: Well do you know for sure whether
12 he was the one who provided the --?

13 A. If there are resolution -- I haven't seen the
14 resolutions and I can't remember if there were
15 resolutions that were prepared by Seyfarth they would
16 have been prepared by Mr. Watts.

17 THE COURT: Right but the question is do you
18 know whether he did or not but since huh didn't Dove the
19 preparing my question is do you know whether or not Mr.
20 Watt did it or Mr. Stein did it or something in between?

21 A. It's my best recollection that Mr. Stein and
22 Mr. Watts worked on them together, that's my best
23 recollection.

24 THE COURT: And the SMDC agreement, was it Mr.

25 Stein and Mr. Watts?

26 A. Yes, that I'm fairly certain of, adds certain

27 as I can be after 15 years, Mr. Stein and Mr. Watts, I

28 don't know if anyone at Seyfarth may have worked on it

12

1 but certainly Mr. Watts did work on that with respect to

2 the resolutions I don't have an independent recollection

3 of them but I don't have any reason to doubt that if

4 they're in evidence, it looks like they were from

5 Seyfarth that Mr. Watts and Mr. Stein prepared them and

6 I don't know relatively speaking who took the lead on

7 those.

8 THE COURT: That's sort of the issue is do we
9 know who was the person who prepared you know the main
10 terms of any of those agreements.

11 A. It was Seyfarth work Mr. Watts would have
12 been -- would have been directly involved.

13 THE COURT: Well what I'm saying is who would
14 have -- who would have presented the -- done the draft,
15 the first draft, who does the first draft?

16 A. Mr. Watts.

17 THE COURT: Okay so that would have not come
18 from Mr. Stein? You don't know?

19 A. I'm speculation--g, I doubt t the way we
20 generally worked is we would get some direction from the
21 client and do the first drafts and then there would be
22 markups, discussions, et cetera, with an active client
23 as Mr. Stein as SMDC was excuse me.

24 THE COURT: So direction from client and then
25 your belief is that then -- was he an associate at the
26 time?

27 A. No he's a senior partner, he's in his late '70s
28 now, he was a senior partner, one of the heads of our

13

1 commercial litigation group.

2 Q. BY MR. STEIN: And so I would say Mr. Watts is
3 a very experienced corporate lawyer?

4 A. He is -- he had worked for corporate firms by
5 practice essay litigator but when he grew up you did
6 both and he was familiar with some aspects, I don't know

7 exactly which but some of the gaming industry from work
8 at his prior firm through one of his partners, he was
9 technically a litigator though had he did work generally
10 for me and others on contracts and complicated legal
11 contracts.

12 Q. And in 2001, 15 year as, he have would be
13 almost '70 years old?

14 A. That's correct.

15 Q. And therefore, quite senior in his practice?

16 A. That is true.

17 Q. Now I'd like to turn to -- that was 2001 that
18 this was written, we [TPHOEU] go to 2006 a dispute
19 [PWRABGZ] out and Mr. Stein comes back to you. What was
20 your understand of the nature of the dispute?

21 A. It's whatever you told me it was, that -- my --
22 and I have a -- some recollection, it is far from

23 perfect but you had come to me and said remember that
24 development agreement, there's an issue going on, I may
25 need your help on, are you interested in talking to me
26 about that. I said okay and generally speaking SMDC had
27 worked for four or five years on the project that was
28 described in the development agreement, had obtained

14

1 funding or a funding source and that source had begun to
2 pay some money and there was some problem with respect
3 to SMDC getting paid what it should have been paid under
4 the development agreement. That's -- and I'm sure we
5 discussed other things I just don't remember them.

6 Q. And so I'm going to show you three exhibits,

7 let me ask you to review them all to save time, 57 two
8 is a demand letter, October 5, 53 is a second demand
9 letter, October 23, and 575 is a third demand letter,
10 final demand letter, November 2nd which was the date
11 litigation broke out?

12 A. I'm familiar with those three documents.

13 Q. Very good. Turning to the first document,
14 October 5, you were dealing with Jim McShane at
15 Sheppard, Mullin?

16 A. I believe so.

17 Q. And what was your relationship with Mr. McShane
18 during this very disputatious time?

19 A. Very cordial, next to friendly, we had many
20 friends in common and I had a great deal of respect for
21 the law firm and a number of people there knew me, knew
22 our firm, Seyfarth. So it was -- it was very cord I

23 can't tell, very supplied, very civil and that's -- that
24 was the way I wanted it as well.

25 Q. And is that also what Mr. Stein had instructed
26 you?

27 A. I believe that's correct.

28 THE COURT: To --?

15

1 A. Our goal was to resolve this dispute and -- and
2 for SMDC to begin payments or at least some part of
3 those payments at some point soon to resolve the dispute
4 over the agreement because as I understood it the
5 payments had stopped completely.

6 Q. And so in your first letter, if I can go down

7 to --

8 A. ?

9 A. I don't know if it was my letter, I believe my

10 partner, Jeff long was the lead litigator in the matter.

11 Q. And that Mr. longs signature to your knowledge?

12 A. To my knowledge, it is.

13 Q. And I notice you sent a copy to Libra

14 Securities?

15 A. Jeff did I noticed that, yes.

16 THE COURT: Which exhibit are we looking at if

17 you can give us a number.

18 MR. FORDYCE: I believe it's 57 two.

19 MR. STEIN: 57 two.

20 Q. BY MR. STEIN: And can you read the paragraph

21 beginning absent a satisfactory?

22 A. Absent a satisfactory global resolution,
23 developer shall promptly seek enforcement of all its
24 rights and remedies under the development agreement
25 [TPH*LT] in the proper forum against all necessary
26 parties. Because such a course of action may negatively
27 impact the ultimate end towards which the parties have
28 been working these past Five and one and a half years

16

1 which would not be in anyone's best interest, and we are
2 hopeful that the parties can reach a mutually acceptable
3 resolution of this dispute.

4 Q. And what was your understanding of what was

5 meant by a mutually acceptable resolution?

6 A. That we would reach should type of compromise
7 resolution. That some payments would come to SMDC that
8 had stopped and maybe they wouldn't be exactly what they
9 were owed under the contract, maybe some agreement could
10 be -- common ground could be found.

11 Q. Ask was Mr. Stein behind that strategy?

12 A. Yes.

13 Q. Ask were you in agreement with that strategy?

14 A. I was as was Jeff.

15 Q. And let me ask you, three demand letters that
16 seems like a lot?

17 A. The -- it was a little more than one would
18 usually do in a commercial dispute, our goal and
19 certainly my goal was not to be in litigation and so we
20 made I would say some extra efforts not to be in

21 court.

22 Q. And did those?

23 A. And say here's your final warning and when it

24 didn't work we kind of gave another final warning

25 because that was not what we wanted to have happen and

26 as people who work in this industry know, it's often not

27 the best business solution to be in litigation and that

28 was -- that was the discussion that's we had had, so

17

1 yes.

2 Q. And then did you have the chance to express

3 these sentiments to Mr. McShane over the phone?

4 A. I believe so.

5 Q. And what was the tenor of the phone calls ?

6 A. The tenor was the same, it was very civil,

7 can't we figure something out here, this is putting

8 everyone in a difficult position, both a business

9 position, professional position.

10 THE COURT: Well what was his position, your

11 position is we want SMDC to get paid and his response

12 was?

13 A. He got -- you know let's try to figure

14 something out, I've got to work with my client that's

15 the best I remember.

16 THE COURT: He never gave you any specific as

17 to --?

18 A. I don't remember if he gave anything specific,

19 we didn't make any progress there, there was a open line

20 of communication for the time I was involved and that
21 was the tone of it. The door was always open to a
22 discussion of some type of you know payment, compromise
23 of some sort that would get this group back together and
24 go forward with the project which was in everyone's
25 interest.

26 Q. BY MR. STEIN: And was Mr. Stein open to
27 compromise especially on money topics?

28 A. Yes.

18

1 Q. So exhibit 57 three we're now moving forward to
2 October 23 and this is a settlement communication.

3 THE COURT: This is Exhibit 5 '70 --.

4 MR. STEIN: 57 three.

5 Q. BY MR. STEIN: And can you read the paragraph

6 on the second page, the paragraph SMDC has asked us?

7 A. SMDC has asked us to delay filing the complaint

8 while we attempt to reach a resolution of the disputes

9 set forth under the complaint. We hope a professional

10 mediation may be undertaken in sufficient time, prior to

11 the upcoming tribal member meeting on November 18, to

12 allow the parties to implement a mediated solution in a

13 manner beneficial to tribal members and progress on the

14 casino project. SMDC has asked us to delay filing

15 because of the reported overwhelming response tribal

16 members who seek a tribal member meeting and support Mr.

17 Stein's re-appointment of his former position with

18 the tribe.

19 Q. Did he have a chance to -- again Geoffrey Long

20 sent that letter?

21 A. He did.

22 Q. And he was a younger --?

23 A. He was either a June or partner or a senior

24 associate at the time, he would be right in that group

25 but he was an experienced litigator.

26 Q. And did you have a chance to express these

27 sentiments to Mr. McShane over the phone?

28 A. I don't recall specifically. I would have, had

19

1 we talked we had -- I believe we had multiple

2 conversations where they were relative to these letters.

3 I can't tell for sure you know eight years later, 10

4 years later.

5 THE COURT: And his response McShane?

6 A. Was cordial, but we really didn't get anywhere.

7 THE COURT: So you were trying -- had he didn't

8 offer anything in particular?

9 A. Not that I -- not that I recall. Not that I

10 recall. We didn't make a lot of progress at that point.

11 THE COURT: Okay.

12 A. And again, my role Your Honor was principally

13 as a communicator of the positions and diplomat if you

14 will.

15 Q. So you say the McShane phone call got nowhere

16 but it was cordial?

17 A. Yes.

18 Q. And then exhibit 575.

19 THE COURT: That was 57 three, you're now going
20 to 575.

21 MR. STEIN: That was 575 and now we're going to
22 575.

23 Q. BY MR. STEIN: And now we're dated November 2nd
24 which is the date litigation broke out and this letter
25 is written by Geoffrey Long and at this point it is a
26 strict demand letter?

27 A. It is what it is. It is a demand letter. The
28 prior letter was sort of your last, final notice with

1 the complaint attached if we don't do it this thing is

2 going to get filed and then we wanted to give another
3 final, final to try -- to try to avoid court litigation.

4 THE COURT: So the prior one had a complaint
5 attached or this one had a complaint attached?

6 A. The prior one had a complaint attached and you
7 know with the obvious point of emphasizing the
8 seriousness of the potential for litigation but our hope
9 that wouldn't happen and rather than filing we sent
10 another final notice, you know, further effort.

11 Q. BY MR. STEIN: And that final notice invited a
12 response in writing?

13 A. You'll have to help me on that one.

14 Q. Can you read the last paragraph please?

15 A. Oh invited a response to writing.

16 Q. My apology, invite-d a response to writing, let
17 me get that?

18 A. Yes.

19 Q. And so the idea is the parties should keep
20 communicating, not suing each other but rather final
21 demand and a response in writing?

22 A. Right we said please respond immediately
23 because we were going to pass when we thought we would
24 file and that was the situation I think both sides
25 understood we were in. We needed to respond quickly on
26 both sides.

27 Q. And in fact, they -- let's -- Niall can I get
28 the number for their initial complaint and our -- and

1 the SMDC initial complaint. So 55 Five is their
2 complaint.

3 MR. FORDYCE: Correct.

4 MR. STEIN: Well while he's finding that, let's
5 just focus on their initial complaint and Niall I'll ask
6 you to keep looking, I'm sorry I didn't tell you earlier
7 my fault.

8 THE COURT: That's all right.

9 MR. STEIN: And so their complaint was filed on
10 November 2nd?

11 A. That's what it says.

12 Q. And then our complaint was filed the same day?

13 A. You'll have to tell me that but I don't -- I
14 don't have any reason to doubt that but I'm sure someone
15 will show me that exhibit with the --.

16 Q. Sure and --?

17 A. I just don't remember.

18 Q. In the SMDC --.

19 THE COURT: I couldn't have the attorney
20 representing Mr. Stein when the complaint was filed?

21 A. The complaint was filed representing SMDC.

22 THE COURT: SMDC?

23 A. I don't remember -- it was Seyfarth principally
24 Geoffrey Long and law offices of Jonathan Stein were
25 co-counsel at all times in this litigation.

26 Q. BY MR. STEIN: And here it is exhibit 689 and
27 it says Seyfarth is attorney and Stein is co-counsel.
28 Now why was Stein co-counsel on the complaint.

1 THE COURT: Did they have yet.

2 MR. FORDYCE: I don't think so.

3 MS. IBARRA: This is new Your Honor.

4 THE COURT: This is L.A. super I don't court
5 right.

6 MR. STEIN: Right.

7 MS. IBARRA: You can take judicial notice.

8 THE COURT: I can take judicial notice that it
9 was also filed on that.

10 MR. STEIN: What was the exhibit number.

11 MR. FORDYCE: 689.

12 MR. STEIN: 689 thank you very much SMDC
13 compliant.

14 Q. And why was Stein co-counsel?

15 A. One of the reasons I asked him to be because I

16 had my own concerns that if the litigation proceeded

17 that SMDC would not be able to pay Seyfarth and we would
18 need an exit strategy as a law firm representing them
19 and so while it doesn't guarantee anything, it's a
20 little easier when a defendant is represented by
21 co-counsel for one of the co-counsel to exit the
22 litigation and I had asked Mr. Stein because I had a --
23 I was concerned about payment, given my understanding of
24 the financial situation with SMDC and with the deal.

25 Q. And in fact SMDC was paid fine us \$2,000 for
26 its efforts with GT Tribe was that your understanding?

27 A. Yes SMDC got -- I'm not sure I understand the
28 question, SMDC got paid some money but it stopped. I

1 don't remember the exact amounts.

2 Q. And the amount of money that was paid was
3 actually less than the expenses that SMDC had forwarded
4 for the casino project, was that your understanding?

5 A. I don't know the answer to that but I do know
6 there were substantial fees from my firm. I don't know
7 the exact numbers. I don't doubt what you say.

8 THE COURT: Meaning that SMDC owed your firm
9 fees is that what you're saying or?

10 A. SMDC paid some fees, they owed some fees that
11 were not paid and I can't give you the exact numbers but
12 it's -- so the answer to your question is --.

13 THE COURT: I thought counsel was asking you a
14 give question but maybe -- were you asking a different
15 question.

16 MR. STEIN: Once again if SMDC had very little
17 money and he was working for a very expensive firm, the
18 idea of having an exit strategy would certainly make
19 sense up front?

20 A. Yes.

21 THE COURT: So you saw a lot of fees were owed
22 and you saw well --?

23 A. Not I understood the financial situation of my
24 own client, I understood the dispute and that if it
25 headed into litigation very little good would come from
26 this to my client and I was concerned for my partners
27 and my firm that if we were going to do this and
28 potentially not get paid for some of our fees that we

1 have had an exit strategy to it and one of those things
2 was having Mr. Stein's -- have law offices of Jonathan
3 Stein be co-counsel because in my experience if you
4 withdraw and it would ever be [con|could not] [TEFTD] or
5 there was any issue there, it's much easier to withdraw
6 when there's an existing law firm that's co-counsel,
7 that was my thinking at the time, knowing the financial
8 situation of my own client.

9 Q. In the complaint --.

10 THE COURT: Can I ask you, St. Monica
11 development was an LLC and who were the members of the
12 LLC?

13 A. I'm sure one of them was Mr. Stein.

14 THE COURT: Right?

15 A. I don't recall the others.

16 THE COURT: I mean you have put it together,

17 right, the deal?

18 A. I didn't, Mr. Watts.

19 THE COURT: I see?

20 A. And the formation of St. Monica development

21 LLC, I don't know that we put together the LLC, I don't

22 know, I don't know the answer to that I'm sorry Your

23 Honor.

24 THE COURT: Okay?

25 A. Mr. Watts might know.

26 THE COURT: That's fine.

27 Q. BY MR. STEIN: And in the complaint, one of the

28 parties complained against is Libra securities?

1 A. Correct.

2 Q. Exam why was Libra in the complaint?

3 A. In the vernacular, they had funded some monies
4 that went to the tribe, some of the payments due to SMDC
5 were made, they stopped on the auspices that we wanted
6 to put everything together to deal with the 2,000,000
7 and change that had already been paid and if Libra was
8 going to give more funding, I believe they you know they
9 would consider another 18,000,000, considered it, if
10 they funded that SMDC would be paid out of that
11 additional funding.

12 Q. And --?

13 A. Because of the dispute with the tribe it was

14 clear that wasn't going to happen if Libra funded. So
15 in order to just sort of have a mechanism to resolve the
16 dispute without the money just disappear.

17 THE COURT: I guess my question which one of
18 those causes of action was against Libra? In other
19 words?

20 A. I want to say negligence and fraudulent
21 conveyance maybe.

22 MR. STEIN: Does the court want to scroll
23 through.

24 THE COURT: I'm just wondering what was the
25 causes of action against Libra, what was the causes of
26 action against Sheppard?

27 A. The complaint will speak for itself.

28 THE COURT: I understand?

1 A. The Sheppard involved Mr. McShane having done
2 work for I believe Mr. Stein or one of the entities and
3 having a bunch of discussions that -- our information
4 was that in fact happened and they were kind of on both
5 sides of this.

6 THE COURT: So are you saying there was an
7 attorney-client relationship between shepherd and Mr.
8 Stein, did you sue him for legal malpractice or?

9 A. I believe -- I believe that is right, it was
10 looked at closely by -- very closely by Seyfarth given
11 the relationships between the firms.

12 THE COURT: What was the cause of action
13 against --?

14 A. I'll have to look at the complaint.

15 THE COURT: Well it's in your book there so --.

16 MR. STEIN: The cause of action would be Page

17 43 -- Page 28 of the complaint?

18 A. What's the exhibit number.

19 Q. It's 689, so let me get you another notebook.

20 THE COURT: I'm just trying to figure out is

21 cause of action is Libra and shepherd, one I can think

22 of is legal malpractice I guess for shepherd but I don't

23 know, and Libra, you said that was negligence against

24 Libra?

25 A. My best recollection is if you want to read the

26 complaint -- I think it's negligence and fraudulent

27 conveyance against Libra, if it was -- you know.

28 THE COURT: Well we can take a look?

1 A. Monies are going when someone they know who is
2 supposed to get paid isn't getting paid that was the --
3 and the other point --.

4 THE COURT: So the contention was Libra should
5 have paid Mr. Stein directly?

6 A. Or should have made some arrangements so that
7 weren't giving you know money that should have gone to
8 SMDC, it's SMDC.

9 THE COURT: Yes SMDC?

10 A. SMDC shouldn't shouldn't --.

11 THE COURT: I'm assuming --?

12 A. It's like you know this person you know I'm

13 trying to think of a good example, owes this person
14 money and you're part of a business deal between the
15 three of us it's like buying I house and squeezing the
16 real estate broker out the money and say had you know
17 even though had you got me the deal h we're going to
18 just pay the whole thing over to the own [SKPERZ]
19 they're going off to Brazil and if you do that it crow
20 [KWRAEUTS] a problem, heavily practical problems. The
21 other reason to do it for the way things we felt with
22 supposed to be resolved with the court, we were going to
23 need court intervention on this and everyone who's got
24 stake in the game on this, is in the lawsuit, the money
25 is not going to disappear and if SMDC is supposed to get
26 paid which I think should have of course, that it
27 wouldn't be gone completely. And that's -- that's
28 why -- and if there was more funding it wouldn't be

1 funded and be gone and have it be difficult. And so I
2 believe the next thing -- my recollection was there was
3 some type of writ that went to say okay court tell us --
4 look at all this stuff and tell us where this money is
5 supposed to go and that was the purpose for doing that,
6 again you know unfortunately the efforts to try to make
7 a compromise did not -- did not work at that time.

8 THE COURT: And the Sheppard claim -- let me --
9 if you can just look at the causes of action and who's
10 alleged in each of them?

11 A. Oh down here.

12 THE COURT: Well Libra and Sheppard?

13 A. Yeah I'm just -- it's listed, it's just -- I'm
14 looking through the causes of action. Sheppard was one
15 for negligence.

16 THE COURT: Okay.

17 A. And fraudulent conveyance as well and --.

18 Q. BY MR. STEIN: And Mr. Sulzer is it your
19 understanding that seven \$25,000.

20 THE COURT: Mr..

21 MR. STEIN: Of the Libra money.

22 THE COURT: Mr. Stein are you listening. Hold
23 on I want him to find -- first answer the questions the
24 causes of action of Libra and Sheppard I just want to
25 know?

26 A. I've got six fraudulent conveyance and.

27 THE COURT: Negligence?

28 A. Seven, negligence. I'm not seeing any

29

1 others --.

2 THE COURT: Those are both against Sheppard and

3 Libra?

4 A. Correct. And then interference with

5 contractual relations is just Libra.

6 THE COURT: Okay?

7 A. There's obviously some other defendants other

8 than that as well and negligent interference is also

9 against Libra and I don't --.

10 THE COURT: You don't see any?

11 A. I think that's it, I'm not used to being a
12 witness as you know.

13 THE COURT: I know it's difficult when you're
14 an attorney or a judge to be a witness. You have don't
15 see any more do you?

16 A. No, I do not.

17 THE COURT: All right thank you Mr. Stein go
18 ahead.

19 MR. STEIN: Thank you.

20 Q. BY MR. STEIN: And can you tell me what the
21 relationship with Libra was like?

22 A. My recollection -- I had less interaction with
23 them but it was -- it was cordial as well.

24 Q. And did you express the settlements -- the
25 sentiments that you expressed to Mr. McShane to Libra?

26 A. Yeah I believe so. It would have been less

27 interaction with Libra than with Sheppard but yes our
28 effort was try to work everything out and keep the money

30

1 flowing. But not get cut out of the deal and -- yeah.

2 Q. Very good. And there was in fact a settlement
3 with Libra after a short month?

4 A. I'm told there was, I don't have an independent
5 recollection but I believe that's correct.

6 Q. No further questions.

7 THE COURT: All right cross-examination.

8 MS. IBARRA: Yes just. I have just some brief
9 questions.

10 Q. First thank you for coming in. Do you recall

11 what year you began working on the SMDC agreement?

12 A. My guess is it would have been around 2001. A

13 guess -- my best estimate right now knowing the dates it

14 could -- remind me when the SMDC agreement was signed.

15 Q. It was signed in 2001?

16 A. But what month.

17 Q. March, but I will --?

18 A. It's possible that we were working on it in

19 2000 calendar year.

20 Q. Okay. So I will show you a document that

21 should refresh your recollection. So the blue binder,

22 sorry you have a lot of binders there.

23 THE COURT: Go ahead and put it there?

24 A. You sure.

25 THE COURT: Yeah that way if you need it you

26 can refer to it.

27 MR. FORDYCE: Counsel what exhibit number.

28 MS. IBARRA: Exhibit 6 which has been

31

1 previously marked.

2 Q. I'll give you a minute to review it and see if

3 you recall it. So sir do you recall that you testified

4 that you thought that Mr. -- is it Mr. Watt did the

5 first draft, does this make your change your testimony

6 at all?

7 A. No.

8 Q. Can I ask you to read the second paragraph of

9 this letter?

10 A. Yeah. I'm the owner of 99 percent of St.
11 Monica my mother owns one percent. I believe that based
12 upon the advice to date that counsel and LLC may serve
13 our purposes of if you recall enforceability better that
14 the employment agreement that I originally instructed
15 counsel to produce.

16 Q. Okay. And can you read the paragraph after
17 that?

18 A. It says this agreement still needs further
19 review by Ken and Lee who are only receiving it with
20 this mailing, I understand that the Tongva are in the
21 process of selecting their counsel and so should allow
22 its counsel to begin its review with this draft.

23 Q. Is Ken -- does Ken refer to you?

24 A. My assumption is it does.

25 Q. So why don't we backup?

26 A. Because I'd be addressed, this is early on in

27 the process, I don't recall this independently.

28 Q. Other than that, okay. ?

32

1 A. I mean I don't recall independently this letter

2 either but.

3 Q. I see.

4 A. It's 16 years ago.

5 Q. Right. So but do you have any reason to doubt

6 that this wasn't referring to the SMDC agreement?

7 A. Here's the only -- it could be but I don't

8 know. It talks about there was an employment agreement

9 that is referred to in the letter. I don't necessarily
10 remember that.

11 Q. Okay.

12 A. And I really don't have good recollection of
13 here. I do know that when we were doing a -- I would
14 not try to do a development agreement, me personally,
15 that I'm certain of. I might do an employment agreement
16 but this was going into a development agreement so it
17 would have been one of my partners. My -- that was
18 generally how things operated at Seyfarth, the partners
19 that brought the business into the firm did that and
20 others did the substantive work in their area of
21 knowledge.

22 Q. Yes?

23 A. Okay.

24 Q. So are any of your partners addressed in this

25 letter?

26 A. No.

27 Q. So is it possible that your partners -- this is

28 very early, this is in April of 2000, almost a year

33

1 before the agreement is actually executed, so is this

2 possible before you brought in Mr. Watt?

3 A. I don't know the answer to that. It is not

4 unusual for the relationship partner to receive

5 correspondence, substantive correspondence and that it

6 be passed on that the name of the relationship partner

7 be the addressee. So I can't tell you the answer to

8 that.

9 Q. And it's just been a long time so you don't
10 remember, that's fine?

11 A. I don't. It's entirely possible Mr. Watts was
12 involved at the time, it's entirely [PABL] this is the
13 first, I just don't remember.

14 Q. Okay. So Mr. Stein went over various
15 provisions of the SMDC agreement that disclaim
16 attorney-client relationship correct and fiduciary
17 duties, right, you went over that in exhibit 569.

18 THE COURT: Is that correct you need to ask?

19 A. Yeah this question, yes.

20 Q. BY MS. IBARRA: Okay so my question is if -- I
21 mean as a lawyer, you know that despite the [TPHABGT]
22 that those provisions exist in a contract, if a lawyer
23 actually provides legal services, you do develop an

24 attorney-client relationship and you do develop

25 fiduciary duties is that your understanding.

26 MR. STEIN: Objection misstates the law.

27 MR. FORDYCE: (Ditto).

28 THE COURT: Overruled.

34

1 Q. BY MS. IBARRA: Is that your understanding?

2 A. Do you want to have repeat it.

3 Q. Sure. So understanding that you went through

4 those provisions in the SMDC agreement that we just

5 described, you do understand as a practicing lawyer that

6 if a lawyer provides legal services and the services are

7 accepted that it's possible to develop an

8 attorney-client relationship and to owe fiduciary

9 duties?

10 A. I have mean it would depend on the context, in
11 this particular context we say no we're definitely not
12 an attorney-client relationship, we have some business
13 relationship before and we want to clarify, it wasn't an
14 attorney-client relationship, and we don't have an
15 attorney-client relationship going forward even though
16 we're going to be working together very closely we want
17 that understood, then the answer to your question would
18 be no.

19 Q. Despite the --?

20 A. That's my -- that's my opinion as to you know
21 whether you could form -- in this situation whether you
22 could form an attorney-client relationship with Mr.
23 Stein if you were the signatory of that agreement and

24 try to say orally Mr. Stein said I was a lawyer, I think

25 it would be problematic to try to establish that.

26 Q. What about outside of the context of the

27 relationship described in the agreement?

28 A. It would depend on the context, I mean if it's

35

1 relating to the subject matter of the agreement, it's as

2 of testified about, if you said I'm going to represent

3 you know you in your dispute with your ex-wife, maybe

4 that would be different but with the integration clause

5 reflects the subject matter of this deal and so that's

6 the import of it. And again these people all know each

7 other, had business relationships and it's very
8 important that things be clear in writing what these
9 relationships are and that to change them they should be
10 done in writing and that I think is the best practice
11 and particularly where people are in differing rolls and
12 they're you know conflicting factions of a tribe and
13 conversations going on that it be very clear if there is
14 an attorney-client relationship or not.

15 Q. So if there was no attorney-client relationship
16 you would think that that would be important that that
17 be clarified over and over again in case there's no
18 ambiguity that arises during the course of the
19 relationship?

20 A. I'm not sure I understand your question.

21 Q. In the event that my ambiguity arises whether
22 about whether there is an attorney-client relationship,

23 do you think that it's important for the fact that there
24 is no attorney-client relationship to be restated
25 between the parties?

26 A. To be restated, it would depend on the context.

27 THE COURT: Well let me ask you this, if
28 somebody said you're my client, for example if I said --

36

1 wrote you a letter and said you're my lawyer and you
2 don't respond back at all and you're silent, what does
3 that indicate?

4 A. Probably worthwhile clarifying but I'm not --
5 it's unclear, I mean it's just unclear whether you -- I

6 mean do you have to respond to everybody who says

7 something you don't agree with, no you probably want.

8 THE COURT: Well if you say it --?

9 A. You'd probably want to respond to that.

10 THE COURT: You'd probably want to say you owe

11 me, you owe me some money?

12 A. Yeah. Well I wish it worked that way.

13 THE COURT: But my point is just if somebody

14 sent you a letter saying you're my attorney, you would

15 respond and say no you're not, right or no, I'm not, I'm

16 not your attorney, wouldn't that be a natural response

17 if in fact you --?

18 A. Or you'd refer them to the agreement or refer

19 them to the relationship, if you didn't -- sometimes

20 somebody says something wrong like say a lawyer on the

21 other side or whatever but you want to have a

22 relationship with them, you will say got your e-mail,
23 just want to make sure you're aware of the terms of the
24 agreement, et cetera et cetera, you may not say I'm not
25 your lawyer don't you ever say that again, you might not
26 do that but you would refer them to the agreement in
27 some way that might be a method but I don't know if
28 that's a specific method and again there are people that

37

1 know each other in the development agreement that's
2 where you want to make it clear what the agreements are
3 between the parties and refer back to that that's the
4 best answer I can give you.

5 THE COURT: I'm just curious, would you do
6 that, I guess if -- let's suppose you have the
7 development agreement and it says there's not an
8 attorney-client relationship but somebody writes you and
9 says you are my attorney?

10 A. I mean it would depend, I would probably say
11 something, it depends how I -- it just depends on the
12 context as to how I would say it.

13 THE COURT: So you would say something, you
14 just -- what is the something you have would say?

15 A. I mean hypothetically, like I said at the
16 depends.

17 THE COURT: Just like I gave it to you,
18 approximate if somebody wrote to you and said you are my
19 attorney, what would you say?

20 A. If it was -- in it was judge king telling me

21 that, F BA in a private conversation I would be much
22 more at this point low Matt I can and maybe say I'm not
23 your attorney but with the bar association's a little
24 different than that.

25 THE COURT: Let's say it's a none lawyer, says
26 you're my attorney, writes to you and says that?

27 A. I would probably respond but.

28 THE COURT: And say?

38

1 A. Depending on the context.

2 THE COURT: And what would you say?

3 A. Probably would depend on the confession it it

4 was.

5 THE COURT: If that's what you would?

6 A. If it was my next-door neighbor [SEDZ] you're
7 my lawyer and I really [TKOUPBT] want to be my lawyer.

8 THE COURT: Right?

9 A. You know I might go along with them for a day.

10 THE COURT: Let's say you really don't want to
11 be your lawyer and you're clear because you signed an
12 SMDC agreement that says we're not in an attorney-client
13 relationship, [HETS] say you're really clear and that
14 somebody who is part of that contract later writes to
15 you and said you are my attorney, would you just let it
16 go or would you say something and if so what would you
17 say?

18 A. Hard to say, I don't know if this happened in
19 this case or not but I -- obviously in a vacuum you
20 would want to clarify and depending how clearly had you

21 clarify would depend on the context of the business

22 relationship, who's asking you the question.

23 THE COURT: Well it's just the client, it's

24 just the client making the statement or the complaint or

25 the supposed client, let's put it that way, the supposed

26 client?

27 A. Lots of complaint make wrong statements.

28 THE COURT: Correct.

39

1 MR. STEIN: And when you tell them they're

2 wrong and when you do it is the talent of our job but I

3 understand I'm not did I go agreeing with you.

4 THE COURT: Because in your mind he's not the
5 client is the point but that's okay in you don't have an
6 answer that's fine I understand?

7 A. But you would in a vacuum to answer your
8 hypothetical, you would want to clarify but how you do
9 that, when would be context actual, that's my answer.

10 THE COURT: So what would -- let me ask you
11 this what circumstances would you write and did I say
12 avow the relationship, under what circumstances?

13 A. Like a plaintiff that I -- a wage and hour.

14 THE COURT: Under the scenario I gave you, was
15 there some other factual scenario under these these --
16 under this situation would prompt you to respond in
17 writing, is the fact that you wrote in writing a reason
18 for to you respond back in writing.

19 MR. STEIN: Your Honor that he wrote to a third

20 party not to Mr. Stein.

21 THE COURT: Well this is a hypothetical.

22 MR. STEIN: Oh got it.

23 THE COURT: So?

24 A. Again in a vacuum, yes.

25 THE COURT: So if somebody wrote to you in
26 writing and said you're my lawyer, ideally you would
27 want to respond back in writing and say no, I'm not.

28 A. In a vacuum, I can't answer you that. In a

40

1 vacuum that would probably be the best practice, would

2 it be required, I don't know the answer to that. I'm

3 not a -- I'm a wage and hour class action lawyer I'm not
4 that person, but that's as far as I could go, but the
5 practical in the best practice in a vacuum the answer is
6 yes.

7 Q. BY MS. IBARRA: So I was going to ask along
8 that same line of questioning but the court kind of
9 covered it separate except for one part what about if
10 the person who thinks you're the client -- or you're the
11 lawyer is very un sophisticated, does that change how
12 you would react to a person calling you the lawyer.

13 MR. STEIN: Objection incomplete hypothetical.

14 MR. FORDYCE: Join.

15 THE COURT: Overruled?

16 A. It depends on the context, I don't know the
17 context that we're talking to I'm really not trying to
18 be difficult but there are kind of -- as I'm sitting

19 here I think of more, you may have multiple clients and
20 may have a third party in there one of them says they're
21 you know one of the individual Defendants for a client
22 says you know you're my lawyer, the first thing might
23 not be no I'm not, the first thing you would tell my
24 corporate employee by the way your ply [WHRAOE] who's my
25 main contact at that time thinks I'm your lawyer how
26 would you like to deal with this and at that point I
27 would argue for me it would be my clients problem, it's
28 mine from an ethical standpoint but as a practical

41

1 business problem it's my clients problem so how approach

2 that would be different, so I don't know the context
3 we're talking about.

4 THE COURT: Well you just have to accept the
5 hypothetical?

6 A. Okay I'm I'll try 123450 it's not
7 necessarily a situation.

8 THE COURT: That's what I'm saying you just
9 have to accept the limited facts that I'm showing you
10 and give your statement on that, it's not dependent on
11 whether it's a corporate situation or whatever it's just
12 whatever facts we give you but that's fine.

13 Q. BY MS. IBARRA: So I guess I'll just move
14 along, just to make sure that I understood your
15 testimony about the resolution and the SMDC agreement,
16 to the best of your recollection, Mr. Stein and Mr. Watt
17 worked on both the SMDC agreement and the resolution

18 together?

19 A. That's my best recollection. Again with
20 respect to the resolutions it's less clear than the SMDC
21 agreement.

22 Q. Did you say resolutions, multiple?

23 A. I did but I don't know whether there are
24 multiple or not.

25 Q. So -- okay. Because there's one adopting
26 resolution, resolution 10 which was attached to the
27 [SA0*G] which is exhibit 569 of the white binders, do
28 you know if Seyfarth Shaw drafted any other resolutions?

1 A. I don't.

2 Q. And you just -- I mean if you don't know I'm

3 [-P] going to ask you any more?

4 A. As I sit here --

5 Q. You no idea?

6 A. -- again I don't have access to the files

7 either so I don't know.

8 Q. So I'll just move along. Do you recall whose

9 idea it was to sue Libra?

10 A. [WHROFS] idea it was?

11 Q. Yes.

12 A. No.

13 Q. So did you ever wonder if -- so Libra had no

14 obligation to make any further payments under the 21

15 million dollars that they had [PROPLSD]. So did you

16 think that suing them would make it more difficult that

17 there would be more investor money to pay Mr. Stein in

18 the future?

19 A. I didn't have that opinion one way or the other

20 about that, I don't -- I don't --

21 Q. But your goal was to make sure that he got

22 paid?

23 A. Correct.

24 Q. And if the Libra money wasn't available what

25 money available to pay Mr. Stein?

26 A. If the Libra money wasn't available.

27 Q. (Ditto)?

28 A. There was some -- there was 2,000,000

1 [SPH-RBGS] sir, as I remember, and I'm I'm wrong please
2 let me negotiate, there was 2,000,000 or something that
3 got paid, Mr. Stein do the [TKPW-RBG] excuse me, SMDC
4 got some of the money they were owed from that money,
5 theoretically some of that money was still around to
6 fill out some of the rest of the payments, that was part
7 part of it, and if again hypothetically because there
8 was no obligation h there was more funding, SMDC would
9 have a right to some piece of that.

10 Q. Right.

11 A. That was why -- that was why Libra was named in
12 the complaint, also so that it would be as a practical
13 Matt tore get everyone together to do an attachment so
14 that whatever was there could be resolved by the Court
15 and not by people taking the money and doing whatever
16 they wanted. That was the reason.

17 Q. Were you aware that there was a budget that had
18 been approved by Libra that specified how much money Mr.
19 Stein would get out of the original tronch but there was
20 no budgets I didn't tell for the further tronches?

21 A. I don't remember that.

22 Q. So you don't remember that?

23 A. I don't.

24 Q. Let me just make sure I've covered everything.

25 I think that's it, thank you.

26 THE COURT: Any redirect.

27 MR. STEIN: Yes. Let me show you in blue

28 binder exhibits 55 and 56. Are you ready? And have you

1 turned to which exhibit?

2 A. 55.

3 Q. Okay. 55 is an e-mail from Sam Dunlap, are you

4 familiar with Sam Dunlap?

5 A. I am.

6 Q. And it's addressed to the tribal council?

7 A. That's what it lacks like, if that's -- oh yes

8 sorry.

9 MS. IBARRA: I'm going to object because it

10 lacks foundation, his name is not on here.

11 THE COURT: Who.

12 MS. IBARRA: Mr. Sulzer.

13 MR. STEIN: We're going to talk about.

14 THE COURT: No his isn't.

15 Q. BY MR. STEIN: And then Mr. Stein, you see is

16 copied on it?

17 A. That's what it purports to do, yes.

18 Q. In the hypothetical that you said before you
19 were talking about a letter directly to you, how about a
20 letter where you're copied but it's to somebody else and
21 it mentions that you're an attorney, in that -- in that
22 situation, would you feel the need to respond if you're
23 only copied on a letter that mentions you're an attorney
24 when you're not.

25 THE COURT: Mentions our an attorney or an
26 attorney for the tribe.

27 MR. STEIN: An attorney for the GT Tribe?

28 A. Where does it say that.

1 MR. STEIN: It says it offhanded Lee in the
2 third paragraph?

3 A. Perhaps attorneys like Stein are the true
4 empowerment of our tribe, perhaps we as his clients,
5 okay I see what you're saying.

6 Q. Right. ?

7 A. Hard to say.

8 Q. And is it your understanding that on August 4th
9 Mr. Stein was owed \$100,000 that he wasn't paid, that
10 SMDC was owed \$100,000 if wasn't paid?

11 A. If someone tells me that's the truth that would
12 make some sense to me based on fact that SMDC walls
13 supposed to get some money and it stopped at some point.
14 I don't know the exact dates, I don't know the exact

15 numbers but pair enough.

16 Q. So taking the hypothetical, if the letters not
17 addressed to you, you're in a highly explosive situation
18 and you're owed 100 grand, would you go out of your way
19 and say oh Mr., I ain't your attorney?

20 A. Probably -- it wasn't it would depend on
21 context, probably not in this context reading this, this
22 is a [RAPBT] by Dunlap and I don't -- there would not be
23 an obligation to respond to this I don't believe. I'm
24 not an ethics lawyer burr it would be a perfect reason
25 to do nothing given what was going on at the time, he's
26 not address [T-G] to you saying you're the attorney,
27 he's not saying when, he's not -- you know I mean this
28 is the first [AOEUFR] seen this but it's say [RAPBT] by

1 Sam and it's not to you -- it's not to you so I don't
2 think there's any obligation to do anything.

3 Q. And exhibit 56 is a letter from Sam Dunlap to,
4 it's an e-mail from Sam Dunlap to senator Polanco, are
5 you familiar with Richard Polanco?

6 A. I am.

7 Q. And Mr. Stein is copied on it, it's not to Mr.
8 Stein and it says my question is similar issues with
9 attorneys i.e. Jonathan Stein?

10 A. Right.

11 Q. Do you feel that under the hypothetical with
12 these facts?

13 A. Okay.

14 Q. That it would be necessary to answer this

15 e-mail on which Mr. Stein was copied?

16 A. Let me read it first.

17 THE COURT: Okay go ahead. Why don't you read
18 it out loud my question?

19 A. Yeah, my question is that in your experience as
20 a state law make [SKPER] politician did any other let
21 the record reflect-d tribal officials like myself that
22 you may have interacted with have similar issues with
23 there are attorneys i.e. Jonathan Stein? Or does the
24 Gabrielino-Tongva just happen to be in a unique
25 situation.

26 THE COURT: That's the second e-mail right,
27 it's the second e-mail?

28 A. Again it's a [RAPBT] by Sam, it's the same day,

1 right? Is it the same day.

2 MR. FORDYCE: I believe we can stipulate it is
3 the dates.

4 MR. STEIN: Same day.

5 THE COURT: Okay. Same day?

6 A. Again, I don't know what the conversations were
7 amongst people, there may be something out there that
8 said Sam, Sam is a jerk.

9 THE COURT: Let's say he's a jerk, I'll give
10 you that, say he is?

11 A. Or Sam is delusional he doesn't know what he
12 was saying I think that would probably cover it. We
13 get -- you know you're a judge, you're a politician, you

14 get stuff all the time, do you have to respond to it

15 all? No. It depends on what had been gone on before.

16 THE COURT: That's true?

17 A. If somebody said Sam has no idea what he's

18 doing, don't listen to him, you know behalf blah, blah

19 then I don't think you need to respond to this when

20 you're a cc and everybody on here kind of knows what the

21 dispute is and that -- but again, this is limited

22 context for me.

23 MR. STEIN:

24 Q. And one last question in closing or one like

25 line of questions, you mentioned that by naming Libra,

26 when it came time to seek a writ of attachment all the

27 parties are already in the lawsuit, could you explain

28 what you meant by that?

1 A. Again, my -- again my limited understanding as
2 a labor lawyer would be that if you got everybody,
3 parties in the case, it would be much easier to do
4 things leak a writ of attachment or -- get everybody in
5 the same lawsuit and the judge gets to decide what
6 happens not somebody decides they're going to take the
7 money and go to Brazil, it's that the judge has control
8 over the assets, the judge gets to say no Mr. Stein you
9 don't get any money or SMDC you have don't get any money
10 or tribe you need to give Stein some money or Libra, if
11 you're going to fund and be a part of this deal then you
12 have to give a billion dollars you've got to give SMDC a

13 piece of this. Those sorts of things we wanted the
14 judge to have all this stuff in front of her or him and
15 try to resolve the dispute that way and we also believed
16 that that would -- that will be tried and tried and
17 tried, that that would prompt people to come together
18 and discuss a resolution, compromise with everybody.
19 That obviously apparently did not happen since I'm here
20 testifying 10 years later but that was the intent there,
21 my understanding of it. And again I was -- you know the
22 lawyer, had a lawyer working with me, Mr. Stein was a
23 client, also co-counsel but that was my inn tint.

24 MR. STEIN: I don't have any further questions.

25 THE COURT: Any recross or anything further I
26 should ask.

27 MS. IBARRA: Just one question. (Ditto).

28 Q. Mr. Sulzer there was an attachment in this case

1 in this action, correct?

2 A. I -- I believe this there was though I cannot

3 testify to it for sure.

4 Q. Okay. Was your firm -- you do not recall then

5 if your firm was representing -- was still involved in

6 the action at that time?

7 A. I do not personally recall, I'll bet if I

8 looked second [TKPA0EUL] I could tell you, if I had to

9 guess my guess is Jeff long probably did it if we did it

10 but it would be --

11 Q. Is there a stipulation that there was an

12 attachment while this action was still pending.

13 MR. STEIN: It's section -- Exhibit 78 Five and

14 78 six.

15 MS. IBARRA: In the white binders.

16 THE COURT: 78 Five and 78 six.

17 MR. STEIN: I don't see the relevance.

18 MS. IBARRA: While we look for those [PWAU] my

19 questions really brief. So is it your understanding

20 that Libra was ever attached?

21 A. I don't know.

22 Q. [S0*] okay so then --?

23 A. I don't know it's really the dollars.

24 Q. So 78 Five in the white notebook next to you.

25 MR. STEIN: It's actually 78 six, there's

26 Geoffrey Long of Seyfarth Shaw.

27 THE COURT: There was two of them, I don't know

28 if they were both issued with -- well actually there was

50

1 quite a few, 784 through 78 seven?

2 A. I don't have it.

3 THE COURT: It's in the binder behind you.

4 MS. IBARRA: It's up here actually, I don't

5 know if you can see it up in the -- so it's up here.

6 Q. So does it look like Libra was attached?

7 A. I'll have to put me to it.

8 Q. Oh I'm sorry. So see application is by SMDC

9 and against the property of Defendant Gabrielino-Tongva

10 Tribe?

11 A. This one has the tribe, it looks like.

12 Q. Right?

13 A. For eight 12,000.

14 Q. So there's no attachment against Libra that you

15 can see?

16 A. At that point, no.

17 Q. And your firm is still involved?

18 A. Don't know the answer to that.

19 Q. Oh it's by Geoffrey Long?

20 A. Oh I'm sorry I'm looking at a different one.

21 THE COURT: Which exhibit is this one?

22 A. Sorry I'm looking at 78 six the first page.

23 MS. IBARRA: Oh 78 six?

24 A. I'm sorry.

25 MR. STEIN: Your Honor the first page would be

26 the writ issued by the Court, the right of attached

27 order of course comes before a [REUT].

28

THE COURT: The application.

51

1 MS. IBARRA: You're much more experienced at

2 writs than I am?

3 A. This is March 21st, this one's for the tribe.

4 Q. Right we don't have any for tribe we don't have

5 any for Libra?

6 A. And it looks like we probably -- well I can't

7 tell, I don't know if the record reflects when Seyfarth

8 withdrew.

9 Q. Oh it would have been after this, correct

10 [-FRPL] well after -- after Mr. long, if Mr. long signed

11 it, I think that's -- that's probably correct.

12 Q. My only point is there's no evidence of a writ
13 against Libra that's all, so I'll just leave it at that,
14 thank you.

15 THE COURT: Anything further.

16 MR. STEIN: Shakes.

17 THE COURT: Okay thank you you may step down.

18 *****.

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