

1 CAUTIONS IN USING A REALTIME PARTIALLY EDITED TRANSCRIPT

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

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

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

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1 GABRIELINO-TONGVA TRIBE VS. STEIN, TRIAL DAY 52

2 ROUGH TRIAL TESTIMONY OF MARILYN BARRETT

3 09:58 AM.

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

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

8 MR. FORDYCE: Good morning Your Honor Niall  
9 Fordyce on behalf of Mr. Stein and law offices of Jonathan  
10 Stein.

11 THE COURT: Good morning.

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

14 THE COURT: Okay. Mr. Stein, court started today  
15 at 9:30, it's 10:00 o'clock now.

16 MR. STEIN: And it was my understanding that we  
17 were starting at 10 so I have to apologize for not being  
18 attentive enough yesterday.

19 THE COURT: Okay. We have a new witness today  
20 right.

21 MS. IBARRA: We to.

22 THE COURT: Actually recalling an old witness I  
23 think.

24 MS. IBARRA: Right. Ms. Marilyn Barrett.

25 THE COURT: All right Ms. Barrett come forward.  
26 Welcome back I think?

27 A. Thank you.

28 THE COURT: All right Ms. Barrett you testified

1 some time ago do you understand that you're still under  
2 oath.

3 A. Yes I do.

4 THE COURT: Okay thank you, you may begin.

5 MS. IBARRA: Great, thank you for coming Ms.  
6 Barrett. The last time you were here, did we discuss the  
7 work that you did on behalf of the Gabrielino-Tongva  
8 Tribe.

9 A. Yes we did.

10 Q. And can you just briefly tell us what it is that  
11 you did for the Gabrielino-Tongva Tribe?

12 A. I helped draft and negotiate the documents for the  
13 financing with Libra.

14 Q. Can I call that the Libra deal?

15 A. Yes.

16 Q. And so is it fair to say you represented the  
17 Gabrielino-Tongva Tribe in the Libra deal?

18 A. Yes.

19 Q. Did you represent any other entities in connection  
20 with the Libra deal?

21 A. No.

22 Q. Did you represent any other person in connection  
23 with the Libra deal?

24 A. No.

25 Q. How did your work on the Libra deal terminate?

26 A. I was fired by Mr. Stein before the deal was  
27 signed.

28 Q. And we went through that before, correct?

1 A. Yes we did.

2 Q. Do you have any other recollections that you want  
3 to speak about that firing other than what you've already  
4 said?

5 A. Well I think I described the process when I was  
6 here before, it was -- it was fairly humiliating because he  
7 communicated it to my secretary and to the attorney for  
8 Libra before I was aware of it.

9 Q. Okay. Did he ever actually speak to you after the  
10 termination of your engagement?

11 A. I don't recall that he did immediately, no.

12 THE COURT: Did you ever say to last name you  
13 can't fire me, you're not the Gabrielino-Tongva Tribe? Did  
14 you ever say that?

15 A. I don't recall, Your Honor.

16 Q. BY MS. IBARRA: So was it ever communicated to you  
17 that he would -- that he would fire you on behalf of  
18 anybody else other than the Gabrielino-Tongva Tribe?

19 A. No.

20 Q. I don't know if that question makes sense but  
21 if -- it may not but --?

22 A. I don't think so, I think I did have some  
23 discussions with tribe members but it was just a  
24 complicated issue so it was better for me just to pull  
25 back.

26 Q. Okay. And you weren't representing them at the  
27 time you had those discussions?

28 A. Well it would have been right around that time so.

1 I don't recall I mean it has been a number of years so I  
2 don't recall the precise facts.

3 Q. There's an exhibit -- there should be an exhibit  
4 on the stand it's 1508, it's 1508.

5 MR. FORDYCE: Your Honor may approach and give  
6 this to the witness.

7 THE COURT: Yes.

8 MR. FORDYCE: Thank you.

9 Q. BY MS. IBARRA: Ms. Barrett are you familiar with  
10 this document?

11 A. Yes, I am.

12 Q. Can you describe it?

13 A. It's -- I think this would be a conflict waiver.  
14 Huh. I know there was some discussions with Mr. Stein  
15 about doing some work for his company and I believe the  
16 Saint Monica development company is his wholly owned  
17 company and my understanding was that we would do probably  
18 more routine things that wouldn't really have a connection  
19 with his relationship with the tribe. I don't -- I  
20 remember discussing it, I remember drafting this document.  
21 I don't remember if it was ever signed and I -- my  
22 recollection I never did anything for his company SMDC.

23 Q. Okay. So to the best of your recollection you  
24 never actually did any work --

25 A. No.

26 Q. -- for SMDC?

27 A. No.

28 Q. Was there ever any discussion of you doing any

1 work for SMDC in connection with the Libra agreement?

2 A. I don't recall that.

3 Q. And did you ever do any work for SMDC in  
4 connection with the Libra agreement?

5 A. No. I know the conversation I had with Mr. Stein  
6 which precipitated him firing me was he was demanding to  
7 know who I represented and I responded the tribe.

8 Q. Right. And --.

9 THE COURT: Why would he demand?

10 A. I don't know.

11 THE COURT: To know who you represented? Was  
12 there a question as to what you represented?

13 A. Not in my mind because the discussion had only  
14 been on the Libra transaction.

15 THE COURT: I guess what I'm trying to ask is what  
16 precipitated the comment who do you represent?

17 A. I don't know you'd have to ask Mr. Stein.

18 THE COURT: Well I mean you were a party to the  
19 conversation right?

20 A. My -- at that point in time everything had been  
21 focused on the contract on behalf of the tribe.

22 Q. BY MS. IBARRA: Ms. Barrett can you give us more  
23 details about that specific conversation where he asked you  
24 that? What was the context? Were you speaking  
25 face-to-face or over the phone?

26 A. We were on the phone and with a representative of  
27 Libra, I can't remember if it was their attorney or one of  
28 their internal Libra guys and he was screaming at them --.

1 THE COURT: He being who?

2 A. Mr. Stein was screaming at that gentleman and I  
3 tried to get him to stop and that made Mr. Stein angry.

4 THE COURT: Why was he screaming at the Libra  
5 person?

6 A. That was -- seemed to be a bit of his style of  
7 negotiation was to have these out burst of angry and I  
8 don't remember the precise issue, it would have been one of  
9 the deal issues in the contract.

10 THE COURT: Seems to me to be a little counter  
11 productive?

12 A. Well that was my view and that was why I was  
13 getting him to calm down.

14 Q. BY MS. IBARRA: And did he ask you that as an  
15 aside or in front of the -- or in the same -- sorry. Were  
16 the Libra representatives also involved or overhearing that  
17 conversation between --?

18 A. We were on a conference call I believe.

19 Q. So it was a conference call?

20 A. Yes.

21 Q. So during the conference call he asked you that?

22 A. Yes.

23 THE COURT: So was the point of that, he's  
24 screaming on the telephone at the Libra person you, you ask  
25 him to calm down and then he -- by asking who are you  
26 representing, is he trying to accuse you of maybe siding  
27 with the Libra people as against his interests or the  
28 tribes interests or what --?

1           A.    Well that could be because it was -- I photograph  
2 of the issue would have been had to do with the tribe, not  
3 with his company so it was just part of the deal points. I  
4 mean sometimes in negotiation particularly as had you get  
5 towards the end I've seen people do that, they try to just  
6 [SKRAOEZ] out a little bit more benefit for their client.

7           THE COURT:   So what was trying to be squeezed out,  
8 [WHA\*FLS] the more you were trying to get?

9           A.    I don't remember the particular issue. There was  
10 a lot of different provisions in that agreement, so to  
11 would have been trying to enhance one of the provisions. I  
12 think he was trying to get something more for the tribe but  
13 I also think -- you know there's a certain point at which  
14 you don't go or you risk losing the transaction and that  
15 was my concern.

16          Q.    BY MS. IBARRA:   I don't mean to cut you off if you  
17 want to finish?

18          A.    The deal had been negotiated pretty extensively by  
19 then, I mean I think we were getting towards the end of the  
20 negotiations.

21          Q.    Is this the last conversation you had with Mr.  
22 Stein before he informed your secretary that you were  
23 fired?

24          A.    I believe so, uh-huh.   Yes.

25          THE COURT:   So how did that come about, you hang  
26 up, he says who are you representing anyway and then what  
27 happens?   You hang up, you try to continue with the  
28 negotiation and then --?



1           A.    Yeah the next morn morning, I think it was late  
2 afternoon, the next morning I call the attorney at Morrison  
3 & Foerster who was representing Libra and he told me that  
4 he thought I may have been fired and I should check that  
5 out before we -- because I didn't realize there was any --  
6 I had not been made aware of Mr. Stein's desire to fire me.

7           Q.    BY MS. IBARRA:  And then your secretary informed  
8 you that he left a message?

9           A.    Yes I believe he left a message.

10          THE COURT:  And then did you call or what happened  
11 after that?

12          A.    I don't recall.  I may have called him, I may have  
13 called several of the table members and frankly -- I think  
14 I did, I mean this is all hard to remember that many years  
15 ago but I think I did [KAUFL] a couple of tribal members  
16 and they didn't just want to upset the apple cart which  
17 given it was so close with closing the Libra deal and I  
18 actually agreed with that I think that was the right  
19 choice, there wasn't -- my position wasn't the most  
20 important thing in that transaction so I -- so I think they  
21 didn't want to you know rush in and try to save me and it  
22 didn't make sense too.

23          Q.    BY MS. IBARRA:  And at this point you had met the  
24 tribal council?

25          A.    Yes I had.

26          Q.    A couple of times, several times?

27          A.    Yeah a least several times, I was in some of their  
28 board meetings.

1 Q. And you provided them advice with regards to the  
2 Libra agreement?

3 A. Yes.

4 Q. Did Mr. Stein also provide them advice with  
5 regards to the Libra agreement?

6 A. Yeah he talked about the deal terms.

7 THE COURT: In your presence.

8 A. Yes I believe so.

9 THE COURT: To the tribal council members.

10 A. Yes uh-huh.

11 THE COURT: But you were representing the tribal  
12 members at that time, correct.

13 A. Yes and -- yeah some of the financial terms he  
14 would talk to them about, some of the other terms I would  
15 talk to them about, I don't recall there being a hard and  
16 fast split on any of that.

17 THE COURT: Was there ever a time when Mr. Stein  
18 gave advice and you contradicted the advice and there was a  
19 conflict in terms of who's advice should be --?

20 A. The one thing I do remember -- yeah I think when  
21 the Libra transactions, I think it was more just trying to  
22 not below the deal by making demands that were just too  
23 onerous for Libra to take. I mean at some point a finance  
24 [AOER] can walk away if you get -- if you push too far. So  
25 I think that was something that concerned me. I did -- I  
26 do -- I do remember advising them not to make him the sole  
27 signatory to the [PWA\*RBGT] that was any meeting we were  
28 all there.

1 THE COURT: Huh [SREUPTZ] joinder tribal council  
2 to what?

3 A. He wanted took the sole [S\*EUGT] tree on the bank  
4 account and I advised against that and I told Mr. Stein I  
5 didn't think that was a good idea just before -- I think it  
6 was just good business practice to have several people  
7 responsible for watching over the money. So -- and I had  
8 mentioned that to both, to both the tribe -- the tribal  
9 council and Mr. Stein.

10 THE COURT: What was each of their reactions to  
11 that?

12 A. I think Mr. Stein disagreed, I think the tribal  
13 council -- I don't recall getting a reaction from them.

14 THE COURT: So the tribal council didn't say  
15 anything?

16 A. Not that I recall.

17 THE COURT: To you, and Mr. Stein said?

18 A. That he thought he should have total -- total  
19 control over it.

20 Q. BY MS. IBARRA: Was there another lawyer present  
21 during that conversation besides you and Mr. Stein?

22 A. I don't recall. I don't recall.

23 Q. Do you recall who you suggested should be the  
24 signator if not -- or if there was dual signatures what  
25 your recommendation was?

26 A. Probably someone from the tribal council. I do  
27 think -- I kind of recall that Mr. Stein's [TKERP] was  
28 just the logistics too, and you know that was an issue.

1 Q. Of getting a signature --

2 A. Yeah getting a signature.

3 Q. -- quickly?

4 A. Yeah.

5 MS. IBARRA:

6 Q. I'm going to move on to a different topic. So in  
7 the white notebooks behind you, there is volume two is  
8 Exhibit 625.

9 MR. STEIN: Your Honor may I -- point of  
10 clarification, and don't let me stop you from getting six  
11 25, did we bring Marilyn Barrett back to be a whole new  
12 witness or are we going to simply limit ourselves to the  
13 inquiries which the court set forward which is what she's  
14 been talking about, because if we're going to go into new  
15 topics with Marilyn Barrett then we have to open everything  
16 backup.

17 THE COURT: Objection let's do that. We've got  
18 two hours, right.

19 MS. IBARRA: So this is -- can I give you find it  
20 Ms. Barrett?

21 A. I think I did find it, six 35 [ #\* ] 25.

22 MS. IBARRA: Six 25. This is very short actually?

23 A. Okay.

24 Q. Ms. Barrett do you recognize this document? Oh  
25 has this been previously marked Neli? I think it might  
26 have been with Polanco?

27 THE CLERK: Let me check.

28 Q. BY MS. IBARRA: Do you recognize this document Ms.

1 Barrett?

2 A. Yes I do. Vaguely I recall it.

3 Q. Can you describe it?

4 A. It's a memorandum that I wrote to Senator Polanco  
5 about the lobbying filings submitted by Mr. Stein's company  
6 SMDC.

7 Q. What's the date of this document?

8 A. January 15th, 2007.

9 THE COURT: Wait a minute I don't have six 25 in  
10 my book, I have six 23 and then it jumps to '63 one so do  
11 you have -- for some reason.

12 MS. IBARRA: I have an extra copy.

13 THE COURT: Well for some reason, everything from  
14 six 24 up to '63 one is not in my book.

15 THE CLERK: Are those the original? I think those  
16 are the ones that were given to the jury, that's probably  
17 why you're missing.

18 A. (Indicating.).

19 THE COURT: No that's your copy.

20 MR. STEIN: Well Your Honor just --.

21 THE COURT: Can I have a copy of that if somebody  
22 has one.

23 MR. STEIN: Your Honor we'd like to object to this  
24 document when it's the right time to do so.

25 THE COURT: You're objecting to -- let me look at  
26 it first.

27 MR. STEIN: It's just a litigation document  
28 prepared in a few months after litigation began and what

1 this is going to do is we're going to end up opening up the  
2 other case we're going to need several days of testimony.

3 THE COURT: Well maybe we will maybe we won't. Is  
4 this a new document.

5 MS. IBARRA: Is this [S\*] is it new.

6 THE CLERK: I believe so. I don't have it marked.

7 MR. FORDYCE: I don't think I have this [OERT].

8 MS. IBARRA: Okay Ms. --.

9 THE COURT: Okay well.

10 MR. STEIN: So Your Honor this is so far off of  
11 what we brought Ms. Barrett back for, I would have argued  
12 against her being brought back and this is again just one  
13 more situation where we have a new leg of the Plaintiffs  
14 case being added at the very end of the trial, at the very  
15 same time as the court saying Mr. Stein huh don't have any  
16 time to put on your case in chief because we're already  
17 spending too much time and here we are adding a new leg of  
18 the case that I'd like to bring back three or four  
19 witnesses about this, I'd like to bring back Barbara Garcia  
20 and other people because she's now taking a piece of  
21 litigation paper prepared at the instigation of the  
22 litigation and opening a new leg of her case saying somehow  
23 the FPPC violations that no government agency ever noted  
24 are now an important part of Plaintiffs case. We've never  
25 heard anything about this before.

26 THE COURT: Well no I don't think that -- FPPC  
27 violations have been alleged in this litigation so I don't  
28 think that's new.

1 MS. IBARRA: There's still a breach of contract on  
2 the FPPC contract that's --.

3 MR. STEIN: Your Honor this was a brand new leg of  
4 Plaintiffs case we have not heard any witnesses about FPPC  
5 interactions with Mr. Stein, we have not had -- I'd be  
6 happy to consider it, we would just like three solid days,  
7 two hours a day --

8 THE COURT: Well no.

9 MR. STEIN: -- to bring back rebuttal witnesses if  
10 this document is going to be admitted into evidence.

11 THE COURT: Well that's refused.

12 MS. IBARRA: I have five minutes of evidence.

13 THE COURT: But we'll take up what you need after  
14 we hear what is being presented first, okay.

15 MS. IBARRA: And this is actually in Defendants  
16 exhibit books.

17 THE COURT: Six 25 is in defense books.

18 MR. STEIN: So are about 3400 exhibits for which  
19 we've admitted about 10 percent or sought admission for 10  
20 percent.

21 THE COURT: I don't know what the percentage is  
22 Mr. Stein so I wouldn't say 10 percent is the accurate  
23 number. All right.

24 Q. BY MS. IBARRA: Ms. Barrett did you prepare this  
25 document?

26 A. Yes.

27 Q. And the date on it is?

28 A. January 15th, 2007.

1 Q. And why did you prepare this document?

2 A. I was asked to look at whether he had --.

3 Q. And by he who you mean?

4 A. Whether Mr. Stein had registered as a lobbyist.

5 Q. And what was your.

6 THE COURT: Who asked you to do that?

7 A. I believe the memorandum was to Senator [PO\*EUL],  
8 I think it was at his request. My conclusion was that he  
9 had failed to file forms correctly.

10 Q. BY MS. IBARRA: So can you just briefly -- let's  
11 look at the first page -- well first let me ask you h is  
12 everything in here correct to the best of your  
13 recollection?

14 A. To the best of my recollection.

15 Q. You did research before drafting this?

16 A. Yes I down -- yeah I think I searched the forms  
17 that had been filed, I obtained copies of them and reviewed  
18 them, I'm sure that's what I must have done.

19 Q. And did you look at the regulations that applied  
20 to the forms?

21 A. I believe so.

22 Q. Okay. Can we start with Page 1, the third full  
23 paragraph in the middle of the paragraph, it says Stein did  
24 not enter into a lobbying contract with the tribe and the  
25 tribe never approved one. Stein personally signed form 602  
26 lobby for the tribe. He lists himself as tribal  
27 development officer and the section that asks for title of  
28 the responsible officer signing form 602 on behalf of the



1 client. In other words Stein fraudulently filed form 602  
2 representing that the tribe had authorized him to act as a  
3 lobbyist when he has never been hired or authorize today do  
4 so. Was that your understanding at the time that you --?

5 A. That was my understanding, I'm sure I would have  
6 confirmed that with members of the tribe.

7 Q. And is that still your understanding as you sit  
8 here today?

9 A. Yes.

10 Q. And going to the second --.

11 THE COURT: Did you ever see a resolution that  
12 said anything about that?

13 A. No. No. I -- I can't remember what research we  
14 did, probably looked through whatever resolutions were  
15 available and talked to several members of the tribe to see  
16 if they recalled having approved the filing.

17 Q. BY MS. IBARRA: Looking at Page 2?

18 A. Uh-huh.

19 Q. There's a paragraph numbered two underneath  
20 filings by the tribe and then starting at the second  
21 sentence of that paragraph, this was filed May 9th -- well,  
22 actually let's start at the beginning. Form 635 report of  
23 a lobbyist employer for 11/06 to 3/31/06 is filed reporting  
24 \$5,000 payment to RGP and associates, the report of RJP for  
25 the same period does not report this payment. This was  
26 filed May 9th, 2006 to Richard Eichman a CPA hired by Stein  
27 to prepared the tribes FPPC filings. SMDC is listed as a  
28 lobbyist of the tribe but with no payments made. Eichman

1 has told me that he prepared the forms solely with the  
2 information forwarded to him by Stein and he signed after  
3 Stein accused him of using wrong information. Was this  
4 accurate at the time that you wrote it?

5 A. I'm -- I don't think I would have written that if  
6 that was not what Mr. Eichman had told me and was not I  
7 observed on the filings.

8 Q. Okay. Moving on to Paragraph 4, form 635 report  
9 of lobbyist employer for 7/1/06 through 9/30/06 was filed  
10 on October 11th, 2006. This report payment of 29 '79 seven  
11 to SMDC, 12,000 to R J P and associate, 15,000 to quantum  
12 governmental nation as, 3,000 to capital connection and  
13 5,000 to Apria and company, it also reports a number of  
14 campaign contributions made during this period. This form  
15 six 35 purports to be signed by Martin Alcala a tribal  
16 council man who informed me that Martin has assured you  
17 that he has not signed any of these forms.

18 MR. STEIN: Objection hearsay.

19 MR. FORDYCE: Join.

20 THE COURT: Sustained? It's being offered for the  
21 truth.

22 MS. IBARRA: Mr. Alcala was a tribal council  
23 person and he was a Defendant in this action, so --

24 MR. STEIN: It is being asserted for the truth  
25 number one, Number 2 the court should know.

26 THE COURT: Yeah the problem is he's a defendant  
27 but he's aligned with your side so if you're offering it  
28 for the truth, then it would be hearsay. If you're

1 offering it for some other purpose, that is Ms. Barrett's  
2 legal opinion then that's fine.

3 MR. STEIN: Your Honor you do understand this was  
4 written --

5 MS. IBARRA: But this --.

6 MR. STEIN: Forgive me. You do understand this  
7 was written when Jeffers Mangle Butler Marmaro, the  
8 stationery and she was a partner there? She was -- they  
9 were counsel of record, attorney of record in this case at  
10 that time.

11 THE COURT: Okay.

12 MS. IBARRA: Yes, they were, that's not -- that's  
13 not duped.

14 THE COURT: All right.

15 Q. BY MS. IBARRA: But it is offered for Ms.  
16 Barrett's legal advice to the tribe as to any violations  
17 concerning the FPPC agreement or FPPC violations.

18 MR. FORDYCE: How is that not for the truth.

19 THE COURT: Well it's offered to -- well how is it  
20 not for the truth.

21 MS. IBARRA: Are you offering it to show there was  
22 a violation then it would be for the truth.

23 MR. STEIN: That's exactly what she's offering it  
24 for Your Honor.

25 MR. FORDYCE: I don't hear any other use.

26 MS. IBARRA: Well it's actually just legal advice  
27 as to what -- what occurred with respect to the FPPC  
28 agreement and any FPPC issues and lobbying issues.

1 MR. FORDYCE: Mr. Alcala's statement is not legal  
2 advice.

3 MS. IBARRA: Actually I mean his signature is --  
4 his signature is not an utterance it is a writing.

5 MR. FORDYCE: It most certainly is.

6 THE COURT: Is most certainly is what.

7 MR. FORDYCE: It's an utterance, it is an out of  
8 court statement used tort truth, his signature is an out of  
9 court statement, unless he made it in court and we don't  
10 know about that.

11 MR. STEIN: And once again.

12 MS. IBARRA: He's also.

13 MR. STEIN: Forgive me, his statement says you  
14 informed me.

15 THE COURT: The signature is an out of court  
16 statement.

17 MR. STEIN: I don't want to speak over the court.  
18 It states here, you informed me, so this is Ms. Barrett is  
19 talking to Mr. Polanco, you informed me, that's one layer  
20 of the hearsay that Martin has assured you, so Martin  
21 talked to Polanco, Polanco talked to her and she is now  
22 offering for the truth that Martin did not sign the forms  
23 that actually had his signature.

24 THE COURT: Well 49 question is whether it's being  
25 offered for the truth, that's the question.

26 MS. IBARRA: Another wrinkle here is that Mr.  
27 Alcala is dead, he passed away during these 10 year Old  
28 proceedings.

1 MR. STEIN: It's not an exception to hearsay to be  
2 dead.

3 THE COURT: Well if you're offering it to be true  
4 it's sustained if you're offering it for some other reason  
5 it's overruled but I haven't heard the other reason yet.  
6 Did the tribe do something relying on this or was there  
7 some.

8 MS. IBARRA: Well not only did the tribe do  
9 something, Mr. Stein apparently is -- said the other week  
10 that he wasn't pursuing the FPPC contract any more and he  
11 didn't continue the FCCP.

12 MR. STEIN: What does that have to do with hearsay  
13 analysis.

14 THE COURT: Mr. Stein let me talk.

15 MR. STEIN: Forgive me Your Honor.

16 THE COURT: Mr. Stein has dropped his what, his  
17 claim for.

18 MS. IBARRA: For FPPC contract.

19 THE COURT: The breach of contract on the --.

20 MS. IBARRA: For FPPC but he hasn't dismissed the  
21 claim so it's still --.

22 THE COURT: Well heck do it right now. Is that  
23 what your intention is.

24 MR. STEIN: We actually dismissed it yesterday  
25 afternoon.

26 THE COURT: Well, are you making a motion now.

27 MR. STEIN: We don't have to make a motion, we  
28 entered a dismissal yesterday afternoon.

1 THE COURT: If it's not in the record, you have to  
2 make a motion now.

3 MS. IBARRA: How could you file a dismissal  
4 without serving it on counsel.

5 MR. STEIN: The claim is for -- may I move the  
6 court, the claim is for \$20,000 remaining unpaid under the  
7 FPPC contract were dismissed yesterday to the extent that a  
8 motion is necessary, let me make that motion now.

9 THE COURT: Motion to dismiss, what cause of  
10 action would that be, on the cross-complaint. We don't  
11 have to go through this I suppose unless there's something  
12 else they did.

13 MR. STEIN: That's right. This is according to  
14 the conformed copy the first amended complaint has a second  
15 cause of action for [PWO\*PBG] [PWO\*B] breach of contract,  
16 FPPC contract, and the cross complaint for -- filed in B  
17 C36 three.

18 THE COURT: Mr. Stein I'm asking you are you  
19 [TK\*EUFPBLG] dismissing a certain cause of action on your  
20 cross-complaint, you have a cross-complaint in this case  
21 correct.

22 MR. STEIN: We have both the complaint that has  
23 been to trial and we have [SH\*EP] Lee a cross-complaint.

24 THE COURT: And they both have something related  
25 to the FPPC.

26 MR. STEIN: [THAPLTZ] the point I'm making Your  
27 Honor.

28 THE COURT: So that's what I missed.

1 MS. IBARRA: So my question.

2 MR. STEIN: Forgive me in I can complete it.

3 THE COURT: Go ahead.

4 MR. STEIN: My [PHOEUGS] [PHOEFPGS] would be to  
5 dismiss both the breach of contract cause of action based  
6 on FPPC contract and those were dismissed yesterday, I have  
7 a conformed copy that we were going to handout at 11:00  
8 o'clock when we're finished with Ms. Barrett.

9 MS. IBARRA: I guess my question is why I wasn't  
10 served.

11 MR. FORDYCE: Okay you're hand serves now with the  
12 post office.

13 MS. IBARRA: But you can't serve me without filing  
14 it first.

15 THE COURT: [PHREFT] me see if.

16 MR. STEIN: It was personal service.

17 THE COURT: If you wanted to do that, you should  
18 have done that and let everybody know you had done that  
19 rather than at the last minute now we're doing this stuff.

20 MR. STEIN: Your Honor, forgive me. I was trying  
21 to use Ms. Barrett's time well, allowing her to finish her  
22 work and we had no idea that the court was going to allow  
23 new testimony on FPPC topics that have never been a topic  
24 hear.

25 THE COURT: Well, I wouldn't have allowed it, Mr.  
26 Stein, if you had let us know you were actually going to  
27 dismiss the claims.

28 MR. STEIN: My mistake; my apologies Your Honor.

1 MS. IBARRA: And the proof of service appears to  
2 be incorrect.

3 MR. FORDYCE: No at this just.

4 THE COURT: Well, there's a handwritten.

5 MR. FORDYCE: That's my handwriting Your Honor and  
6 I signed it.

7 MS. IBARRA: But it was filed before it was served  
8 on me and that's technically not -- you're not supposed  
9 file document before you served them.

10 THE COURT: Right. It says March 7th is proof of  
11 service, today being the 7th.

12 MR. FORDYCE: Correct.

13 THE COURT: And the filing stamp says March 6th.

14 MR. FORDYCE: Correct. That's because it was  
15 filed yesterday afternoon and served now.

16 MS. IBARRA: But do you understand that if you  
17 file things, you need to have a correct proof of service.

18 THE COURT: You should have served this before you  
19 filed Mr. Fordyce. Okay it's now served, it looks like.

20 MR. STEIN: And, Your Honor, unless we have more  
21 mistakes we have a status update document that was filed  
22 yesterday afternoon.

23 MS. IBARRA: Can we finish with this witness  
24 before we --

25 THE COURT: Well we -- what has been filed may  
26 impact what this witness is going to testify about so --  
27 well this is your -- I don't know what it is, your trial  
28 status update.



1 MR. STEIN: Which we'd like to discuss after Ms.  
2 Barrett had finished her testimony.

3 THE COURT: Sure.

4 MR. STEIN: But since I already made a mistake not  
5 attending to this, we are absolutely surprised Ms. Barrett  
6 would be testifying on FPPC matters, but that now is  
7 relevant. We have no claim under the FPPC contract.

8 THE COURT: Well, it would have been nice to know  
9 before she got her, but you know --

10 MR. STEIN: Once again, Your Honor, the idea that  
11 Marilyn Barrett would come back for two or three questions  
12 acknowledged by counsel at 12:15 yesterday afternoon and  
13 then counsel would say, oh, by the way, while you're here,  
14 Exhibit 625 and let's get into a piece of litigation paper  
15 on a topic that's never been copied in a trial that is  
16 now --

17 MS. IBARRA: It's actually been covered.

18 MR. STEIN: -- is eight weeks plus Five is a total  
19 of 13 weeks we have not heard anything about that in 13  
20 weeks.

21 THE COURT: That's absolutely false, we've had  
22 this issue multiple times and the three questions assumed  
23 that this cause of action was going to be gone but since it  
24 wasn't and wasn't done until this morning, that's why you  
25 got the questions and then when you don't like the answers  
26 now you want to dismiss the cause of action.

27 MR. STEIN: No I --.

28 THE COURT: Mr. Stein, Mr. Fordyce, this type of

1 activity is just inappropriate.

2 MR. STEIN: Your Honor you're confusing apples and  
3 oranges.

4 THE COURT: No same not confusing apples and  
5 oranges Mr. Stein.

6 MR. STEIN: Forgive me Your Honor.

7 THE COURT: Let me look at this and see what -- so  
8 we can get Ms. Barrett out of here.

9 MR. STEIN: Can we take a five-minute break  
10 because of this confusion.

11 THE COURT: No not until --.

12 MR. STEIN: Because the court I think has a few  
13 facts put in different order and I don't want to disagree  
14 and I don't want to cause tension, I want to cooperate with  
15 the court.

16 THE COURT: Then --

17 MR. STEIN: However there is obviously --

18 THE COURT: Mr. Stein. Let me read please, have a  
19 seat, let me read what it is you're trying to dismiss and  
20 then I can address you.

21 MR. STEIN: And we took five minutes this might be  
22 a good idea.

23 THE COURT: Okay the question I have is if Mr.  
24 Stein is dismissing these causes of action is there any  
25 anything in your claims Ms. Ibarra --

26 MS. IBARRA: I only got a dismissal from crane.

27 MR. FORDYCE: I only have crane.

28 MS. IBARRA: I only have the crane dismissal.

1 THE COURT: This dismisses SMDC, well it says  
2 entire cause of action, I'm assuming that refers to all the  
3 parties, there's nothing here that says it's limited. This  
4 says the Crane Group.

5 MR. STEIN: There should be three documents.

6 THE COURT: Well I have one.

7 MR. FORDYCE: There should be Crane Group, SMDC.

8 THE COURT: There's an SMDC I have that one, Crane  
9 Group.

10 MR. STEIN: And then a trial status update.

11 MR. FORDYCE: Are you sure you don't have two  
12 SMDC's now.

13 MS. IBARRA: I have a Craig crane and I have SMDC.

14 THE COURT: Is there anything outstanding  
15 concerning the FPPC from the Plaintiffs side.

16 MS. IBARRA: So concerning the FPPC from us is  
17 only as to Mr. Stein's damages and that's whether he was  
18 paid, so our allegation is that he was paid for -- he  
19 demanded payment and was paid for amounts under the FPPC,  
20 so then if he's now dropping that, then we need a set off  
21 and I just need the rest of this document for that,  
22 Ms. Marilyn Barrett is here, she can testify to the last  
23 pair gave which goes to that issue and then that's it.

24 THE COURT: So there is something in connection  
25 with your complaint, you're seek to go reimburse  
26 reimbursement.

27 MS. IBARRA: No this actually goes into Mr.  
28 Stein's claims for damages for what he's owed. He [S\*ED]

1 says that he's owed money under the SMDC contract and so  
2 we're saying he was paid for some money under the SMDC  
3 contract, he was also paid for the FPPC contract which he's  
4 now dropping. [SOEUF] want to get in the evidence [PWR]  
5 what he was paid under FPPC, under the FPPC contract.

6 THE COURT: Well do you have a claim to seek  
7 reimbursement for that.

8 MR. STEIN: No she doesn't Your Honor.

9 THE COURT: So you don't -- you're not seeking  
10 reimbursement for this whether it's under the SMDC  
11 agreement or under the FPPC contract.

12 MR. STEIN: We made that clear in July, we made  
13 that very clear in July Your Honor.

14 THE COURT: Well it wasn't entirely clear to me  
15 but if that's the case.

16 MR. FORDYCE: I thought we did.

17 MS. IBARRA: But to the quantum meruit issue as to  
18 what he's entitled to we have to look at everything that  
19 he's been paid, under SMDC, under FPPC, all of these  
20 payments and you know whether -- even if he was not  
21 appropriately paid under FPPC because there was no  
22 contract, he was still paid. So I need to get that --.

23 THE COURT: So that's why I'm asking you, are you  
24 seeking the reimbursement from --.

25 MS. IBARRA: Yes under his FPPC, if he's  
26 dismissing it now, yes and we've always said that it was  
27 not.

28 MR. STEIN: Your Honor it's nowhere in the

1 complaint. Where in the complaint is it, there's no cause  
2 of action for reimbursement for amounts paid, there are  
3 only tort actions and there is a breach of contract under  
4 the SMDC not the FPPC. What is she talking about --.

5 THE COURT: Well I guess that's why I was asking  
6 the charges were made how? Were they made under SMDC or  
7 the FPPC or is it unclear.

8 MS. IBARRA: The charges by Mr. -- by SMDC.

9 THE COURT: For the lobbying.

10 MS. IBARRA: Oh so it's a complaint by SMDC for  
11 violations of the FPPC contract for non [TPAEUPLT] and SMDC  
12 contract for the non payment.

13 THE COURT: I understand and they're dismissing  
14 that so my question is if you're seeking reimbursement for  
15 the amounts paid then where is the cause of action or under  
16 what cause of action are you seeking reimbursement for  
17 those monies paid.

18 MS. IBARRA: Well it goes to his quantum meruit  
19 allegations if he's he have eventually going to get  
20 anything at all from -- that he's entitled to from the  
21 tribe, this is money [TPRA] he got from the tribe.

22 THE COURT: Okay.

23 MS. IBARRA: And that, quantum meruit includes  
24 everything that he got, whether it was -- whatever it was  
25 called.

26 THE COURT: I have see.

27 MS. IBARRA: Whether it was called reimbursement,  
28 whether it was called payment for FPPC, payment for the

1 SMDC, all of that is quantum meruit because that ultimately  
2 went -- it was money that went to SMDC.

3 THE COURT: All right. You still have a quantum  
4 meruit claim.

5 MR. STEIN: Not for FPPC amounts, urged the SMDC  
6 agreement a quantum meruit, we were paid all by \$20,000 on  
7 the FPPC, we've stated in July and again repeated [HRAOEF]  
8 since then, we are waiving the \$20,000, I was I have no  
9 further questions asked that by Ms. Ibarra are you waiving  
10 that, it's a separate contract with a separate cause of  
11 action in both -- in the documents, it's a separate  
12 contract.

13 THE COURT: I have guess the question is you have  
14 a quaint merit claim --.

15 MR. STEIN: What Ms. Barrett says here is that  
16 there was no contract, there was a contract, there was a  
17 resolution, there was payments under the contract, she's  
18 saying there was no such separate contract.

19 THE COURT: And I'm asking you are you seeking  
20 reimbursement for FPPC work in quantum meruit claim.

21 MR. STEIN: No.

22 THE COURT: And your quantum meruit receipts  
23 clearly delineate which receipts are targeted towards SMDC  
24 work and which are targeted towards FPPC right.

25 MR. STEIN: The FPPC payments that were --.

26 THE COURT: Yes or no.

27 MR. STEIN: No. The FPPC payments that were  
28 missed were in September and October of 2006 at the very

1 end.

2 MS. IBARRA: But there's conflicting evidence as  
3 to.

4 THE COURT: All right.

5 MS. IBARRA: There's evidence that he was paid,  
6 Mr. Stein has said that some of it was for FPPC work and  
7 then there's conflicting testimony as people as to whether  
8 it was from SMDC or FPPC.

9 THE COURT: I guess the question is if she has an  
10 opinion and she rendered an opinion, then all these other  
11 facts supporting need independent evidence. In other words  
12 you have can't have in here Martin Alcala told me something  
13 and that.

14 MS. IBARRA: Understood.

15 THE COURT: Should be considered by the Court for  
16 the truth of the matter although experts can rely on  
17 opinion, I don't think she was designated as an expert.

18 MS. IBARRA: She was not.

19 THE COURT: Experts can otherwise rely on hearsay  
20 so.

21 MR. FORDYCE: But Your Honor is correct Ms.  
22 Barrett has not been designated as an expert.

23 MS. IBARRA: That's correct we did not designate  
24 her.

25 THE COURT: So anyway if you have no nonhearsay  
26 purpose for this particular memory I'm going to refuse it,  
27 her opinion though h you can bring out opinions as to  
28 whether they were appropriate or not, you can use it to

1 refresh recollection.

2 MR. STEIN: So it's not -- so Exhibit 6 25 is not  
3 being admitted into evidence.

4 THE COURT: I haven't heard a nonhearsay purpose  
5 yet so -- but her opinions are fine.

6 MR. STEIN: Her oral opinions.

7 THE COURT: Right. Because she's giving advice to  
8 the tribe which apparently Lee they relied on.

9 MR. STEIN: Then we would -- towards that end Your  
10 Honor which would object as to relevance receive because  
11 the advice was given in January of 2007 after this  
12 litigation began so it was not advice that they relied on.

13 THE COURT: Isn't there allegations that somehow  
14 the tribe never pursued [RO\*GS], there's a lot of kind of  
15 post casino activity, why didn't you do that, Polanco never  
16 pew pursued that.

17 MR. STEIN: Sure.

18 THE COURT: And Mr. Stein you're the one who  
19 raised those issues.

20 MR. STEIN: Yes Your Honor.

21 THE COURT: Why didn't Polanco do this, why didn't  
22 the tribe do that, they've had opportunity to do that so  
23 under that theory, nothing should come in post casino.

24 MR. STEIN: I think the court is right, my  
25 apologies, I think the court is right.

26 THE COURT: All right so.

27 MS. IBARRA: And this is actually her opinion  
28 about stuff that happened prior to the litigation and none



1 of this is.

2 MR. FORDYCE: Doesn't mean it's not hearsay.

3 THE COURT: It still sound like you're offering it  
4 for the truth as far as I can tell so I'm going to sustain  
5 the objection concerning that.

6 MR. STEIN: And can we clarify on the record then  
7 Exhibit 6 25 is not being admitted into evidence.

8 THE COURT: I haven't heard any basis so yes at  
9 this point.

10 MR. STEIN: Good.

11 THE COURT: Because it has a lot of hearsay in it  
12 and I haven't -- you haven't articulated a nonhearsay  
13 purpose.

14 MS. IBARRA: Well can I just explore this a little  
15 bit more.

16 Q. So did this -- Ms. Barrett, did this -- did you  
17 prepare this with the purpose of giving advice as to how to  
18 pursue lobbying in the future by the tribe?

19 A. What number is it again.

20 Q. It's six 25.

21 THE COURT: Ms. Ibarra I'm not sure.

22 MR. STEIN: That's --.

23 THE COURT: Lobbying in the future is really  
24 relevant here, if it doesn't impact what happened before,  
25 what they're going to do in the future unless you're  
26 referring somehow to getting tribal [RO\*GS] because there's  
27 been accusations that the tribe didn't pursue it.

28 MS. IBARRA: Right or damage to the reputation to

1 the tribe from prior conduct, I mean this is --.

2 THE COURT: Do you have a claim for that.

3 MR. STEIN: She does not.

4 MS. IBARRA: But the general part --.

5 THE COURT: I'm going to sustain it for now and if  
6 you can come up with a nonhearsay reason before they leaves  
7 then I'll reconsider it.

8 MS. IBARRA: That's all I have for her for now.

9 THE COURT: Then let's move on. All right.

10 THE CLERK: Just for clarification, six 25 is not  
11 in.

12 THE COURT: It's not in. Yes you may begin your  
13 cross.

14 MR. STEIN: Thank you. And Neli we are missing  
15 one of the conformed copies of the SMDC dismissal for our  
16 own records.

17 MR. FORDYCE: Yeah I think an extra one got up  
18 there.

19 MR. STEIN: And once again [SOR] see for confusion  
20 in handing it out we expected to be very organized at 11:00  
21 a.m. when we were going to address these things.

22 THE CLERK: You can just keep them and I'll make  
23 copy of everything that you have.

24 MR. STEIN: Very good.

25 Q. BY MR. STEIN: Can we go to exhibit 1508 and Ms.  
26 Barrett you testified there were -- there was an  
27 attorney-client relationship with SMDC for matters other  
28 than Libra financing, is that your testimony?

1           A.    Well, my recollection, and again this goes back  
2 years, is we did have some discussion about our -- my firm  
3 providing services to your entity too, but not to the  
4 extent of a conflict with the tribe.

5           Q.    This is VanEtten Susamoto & Beckett?

6           A.    Yes.

7           Q.    And it's before you changed to Maguire Woods?

8           A.    Yes.

9           Q.    And it's before you changed to Jeffer Mangles?

10          A.    Yes.

11          Q.    And as Jeffer Mangles you were part of the team  
12 that was attorney of record in this litigation?

13          A.    Yes.

14          Q.    Did it ever occur to you that maybe you shouldn't  
15 have been attorney of record in this litigation against  
16 SMDC having discussions with SMDC about representing them?

17          A.    Well, we had some discussions. I don't recall  
18 having done any representation at all.

19          Q.    Well, no, no. But wouldn't you want to have  
20 signed a conflict waiver before you personally participated  
21 in the litigation against SMDC?

22                MS. IBARRA: Objection misstates her testimony,  
23 she said she never did any work for SMDC.

24          Q.    BY MR. STEIN: You had SMDC's confidential  
25 information from discussions about representing SMDC,  
26 didn't you?

27          A.    Oh I don't recall anything confidential. I mean  
28 you had formed an entity to use as basically your loan out

1 company.

2 Q. Wouldn't you have needed to keep a conflict waiver  
3 exactly like exhibit 1508 to participate in a litigation  
4 against SMDC after discussions about representing SMDC?

5 MS. IBARRA: Objection; relevance. If SMDC had a  
6 reason to disqualify that law firm that expired 10 years  
7 ago.

8 THE COURT: Overruled it's impeachment.

9 Q. BY MR. STEIN: Again you're saying you never  
10 signed this conflict waiver exhibit 1508?

11 A. I don't recall whether it's signed or not.

12 Q. So other sewer [-RPB] saying you didn't sign it  
13 you simply don't recall whether this was signed or [-RPB]?

14 A. No what I have said was I never did anything --  
15 work that I recall at all for SMDC I know where there was  
16 some discussion I understanding was it would be pretty  
17 plain vanilla type stuff or that didn't affect nine tribe.

18 Q. So anything would be plain vanilla and it wouldn't  
19 be the Libra financing transaction?

20 A. No.

21 Q. Can we now did to exhibit 1508?

22 A. Uh-huh.

23 Q. And I'd ask if the court has a copy of that.

24 THE COURT: I do.

25 MR. STEIN: Very good.

26 Q. BY MR. STEIN: So this says the re line is  
27 representation and proposed financing transaction?

28 A. Uh-huh.

1 Q. Dear Jonathan it is our understanding that Saint  
2 Monica development company LLC, SMDC has requested our firm  
3 represent it in connection with the financing transactions  
4 contemplated under the engagement letters entered into by  
5 GT Tribe and SMDC dated March 16th. Would those be the  
6 Libra engagement letters?

7 A. I would assume so.

8 Q. So then this conflict waiver is not about plain  
9 vanilla thing it's about the Libra financing transaction is  
10 that correct?

11 A. It includes -- well I guess that's not what I  
12 recall but -- but it's only subject to the provisions  
13 therein. I don't recall. I don't recall that we did  
14 anything for you because we were still negotiating the  
15 Libra -- the tribal side of the transaction. I don't  
16 recall negotiating anything for your company.

17 Q. Can we go down to point number one on the first  
18 page, last paragraph, it reads we have represented the  
19 tribe since November 2015 -- 2005 and then this is dated  
20 March 15th, 2006. So would it be accurate to say that this  
21 was a conflict waiver because now you were going to  
22 represent SMDC as well as the tribe four months after the  
23 representation with the tribe had begun, is that accurate?

24 A. I'm not sure what you're asking. Again, I don't  
25 recall that we did anything H I do recall that there was  
26 some discussions, but I don't think I had done anything, I  
27 didn't [AOPB] know if that was signed before you fired  
28 me.

1 Q. Forgive me that wasn't any question, let me --  
2 should I read it back or should I just try again.

3 THE COURT: Yeah you can read it back if you want  
4 the same [TP-FS] nonresponsive.

5 (Record read.)?

6 A. I mean based on this, which I don't really  
7 remember, it would appear to be, I don't remember this  
8 document.

9 Q. Okay so -- so then it's accurate to say November  
10 2005 started with the tribe, four months later this  
11 document would indicate a conflict -- seeking to start with  
12 SMDC?

13 A. Uh-huh.

14 Q. On March 15th. Now, do you recall May 20th as the  
15 date of the closing for the Libra transaction?

16 A. That sounds about right but no, I don't remember  
17 the exact date.

18 Q. So this would be March 15th --

19 A. Uh-huh.

20 Q. -- April, May, this would be two months before the  
21 final closing; is that correct?

22 A. If that's the correct date of the final closing,  
23 that would be correct.

24 Q. Would that coincide with a date when you were  
25 seriously in negotiations with Libra?

26 A. Uh-huh.

27 Q. Over the proposed transaction?

28 A. Yes.

1 Q. So then this does seem to indicate that it is  
2 concerning Libra?

3 A. I would think so. I mean to my knowledge, that  
4 was the only transaction -- financial transaction that got  
5 to any substantial completion.

6 Q. Now let's move -- you said you found out you were  
7 fired from your secretary is that correct?

8 A. Well I think I initially from the MoFo lawyer.

9 Q. From the MoFo and then your secretary?

10 A. And then my secretary, yes.

11 Q. Did your secretary say you've been fired by GT  
12 Tribe?

13 A. I don't recall what she said.

14 Q. So you don't recall what your secretary said to  
15 you about being fired?

16 A. Uh-huh yes.

17 Q. So if you have don't recall your secretary [SPRE]  
18 well may have said to you you've been fired by GT Tribe not  
19 you've been fired by SMDC, is that possible?

20 A. I don't recall.

21 Q. You have don't recall, so it certainly is possible  
22 then that your secretary could have said you've been fired  
23 by GT Tribe?

24 A. She could have.

25 Q. And then you said -- you testified that after find  
26 that long out, you actually did talk to tribal council  
27 people?

28 A. I think I did, I can't remember who -- who I

1 talked to.

2 Q. Would Sam Dunlap be one of them?

3 A. I don't recall.

4 Q. Can we go to exhibit 1508 and we would like to  
5 look at the second to last page -- I'm sorry the third to  
6 last page, Page 4 and let me read the phrase that I'm  
7 interesting in, I'll then ask you a question about it,  
8 okay? It's at the top of Page 4, first paragraph, it will  
9 be necessary for you to designate one person as having  
10 authority to advise and instruct us on behalf of all of  
11 you. You have advised us that Sam Dunlap will be the  
12 tribes designee and Jonathan Stein will be SMDC's designee.  
13 Until you otherwise instruct us in writing we will rely on  
14 the advice and instruction of the person designate the as  
15 if the advice and instruction came from each of you  
16 individually. Was the person that you spoke with -- one of  
17 the people that you spoke with on the tribal council Sam  
18 Dunlap?

19 A. I -- I can't say for certain. I don't recall.

20 Q. And when you testified that the tribal council man  
21 that you spoke with didn't want to rock the [PWOETD], were  
22 they actually telling you, yes we decided to terminate you  
23 on behalf of GT Tribe just as SMDC terminated you on behalf  
24 of SMDC?

25 A. I don't recall that exact -- I mean I don't  
26 recall.

27 Q. So you don't recall the conversations?

28 A. No.



1 Q. So those conversations could very well have said  
2 yes we decided to terminate you because we don't want to  
3 rock the boat?

4 A. I think that could have been, I mean that -- I  
5 don't recall who I talked to but I do recall at least  
6 myself thinking it would be better not to rock the boat.

7 THE COURT: Did you ever get anything in writing  
8 that said the tribe terminates you or SMDC terminates you  
9 or anything like that?

10 A. Not that I recall.

11 THE COURT: Neither of them sent anything?

12 A. No.

13 THE COURT: Okay.

14 Q. BY MR. STEIN: And you didn't send an e-mail  
15 saying I've been terminated, don't hold me responsible if  
16 the transaction fails to close?

17 A. I don't recall.

18 Q. Wouldn't a lawyer with your experience, a [TK-FGT]  
19 of your experience in corporate transactions send out some  
20 sort of letter or e-mail saying I've been terminated before  
21 this transaction closed, you know don't blame me if the  
22 transaction doesn't close?

23 A. I don't recall. I don't think I did send out a  
24 letter.

25 THE COURT: So there was no -- there was no  
26 confirmation to either of them, to SMDC, you've terminated  
27 a so-called relationship or same with GT Tribe, we've  
28 terminated our attorney-client relationship, was there --

1 you don't recall anything in writing or e-mail or anything  
2 like that from either one of those?

3 A. It could have been it's just been so many years, I  
4 really [do not|done] recall that.

5 THE COURT: Okay and then the second question is  
6 what about returning the file to somebody, here is GT Tribe  
7 here's your tribe, I'm returning all the tiles to you or  
8 SMDC, we had a relationship?

9 A. I'm sure that -- I would suspect there was  
10 something to that and I would suspect that Mr. Stein got  
11 all the documents from the law firm that was relevant. I  
12 don't have them.

13 THE COURT: Documents for?

14 A. Well if we had -- I mean as far as this  
15 litigation, you probably subpoenaed their documents, I  
16 don't -- I don't have them, I haven't been there for years.

17 THE COURT: I guess what I'm sag is you don't have  
18 any independent recollection of having written a letter to  
19 the tribe, dear tribe I have 15 boxes of documents related  
20 to your file, please come and pick them up or I'm  
21 delivering them to you or if you had a relationship?

22 A. I would suspect that I probably did do something  
23 like that, but I don't remember that kind of detail that  
24 many years ago.

25 THE COURT: Okay. And same thing with --?

26 A. I would suspect that we did do the cleanup.

27 THE COURT: And in terms of a reconsider, you have  
28 a retainer agreement with the tribe? I can't recall.

1 A. Yes.

2 THE COURT: Did you have something in writing with  
3 the tribe?

4 A. We did have an engagement letter with the tribe.

5 MS. IBARRA: I think we've seen a resolution.

6 THE COURT: A resolution but no retainer  
7 agreement.

8 MR. STEIN: [TPHO\*] we have nothing if evidence  
9 regarding that and we asked for discovery of all the  
10 documents, I don't recall seeing that either.

11 MS. IBARRA: We've seen [do not|done] of  
12 resolutions that reference Ms. Barrett as being the  
13 attorney working on the Libra agreement, we've seen  
14 several.

15 THE COURT: But I'm just asking you the retainer  
16 agreement?

17 A. This letter.

18 THE COURT: But then [TKPW-FS] [THREU] a writ of  
19 attachment where all the documents were seized pursuant to  
20 Mr. Stein's request so presumably all documents were within  
21 Mr. Stein's possession but again I'm just asking if there  
22 was a written retainer agreement?

23 A. If letter [R\*E] [TPERZ] 201, the tribe entered  
24 into a legal services agreement dated November 1, 2005 so  
25 it does refer to one.

26 THE COURT: Okay we just haven't seen it yet but  
27 there apparently was?

28 A. No I'm sure there -- I do recall doing one with

1 the tribe.

2 THE COURT: And so did you have a written retainer  
3 agreement with SMDC?

4 A. I know we discussed it. I presume I -- this was  
5 drafted correctly and I don't recall if it was ever signed.

6 THE COURT: So there was -- there was discussion,  
7 you remember discussion about potentially representing SMDC  
8 but you just can't recall if --?

9 A. This is not -- this is not that unusual in the  
10 corporate area because in the corporate area there's a lot  
11 of things that entity's need to have done that is not a  
12 potential conflict to anyone, it's more you know just  
13 making sure their filings get done. I also think he -- I  
14 don't recall for sure but I thought he was using his  
15 corporation for other issues as well, other matters.

16 THE COURT: Okay [PHU] I guess my question is --  
17 you recall that you had a written retainer agreement with  
18 the tribe, we've seen resolutions about that as well as  
19 this reference in this letter.

20 A. Yes.

21 THE COURT: But my question is do you remember  
22 whether you had a similar written agreement with SMDC.

23 A. I don't recall if we ever got it signed. Because  
24 also we were in the throws of the Libra deal at this point  
25 in time and the deal always takes precedent and some things  
26 get pushed behind, I would assume Mr. Stein has a copy of  
27 it if we had a signed discussion.

28 THE COURT: And you just remember discussion

1     abouts potentially?

2             A.     I have do remember discussions, yes.

3             THE COURT:   Representing them?

4             A.     Uh-huh.

5             THE COURT:   And that's what generate [TH-D]  
6     letter?

7             A.     That is correct.

8             THE COURT:   Which is unsigned but there was  
9     discussion about that.

10            A.     Yes.

11            THE COURT:   Okay that's apparently as far as we  
12     got?

13            A.     If we had a signed agreement Mr. Stein would have  
14     it.

15            THE COURT:   You may continue.

16            Q.     BY MR. STEIN:   And again, you were brought back  
17     from Plaintiffs to make the point that SMDC somehow fired  
18     you on behalf of GT Tribe and your testimony has shown that  
19     the circumstances were a lot more convoluted than that.

20            MS. IBARRA:   Objection argumentative.

21            MR. STEIN:   Let me now turn.

22            THE COURT:   Yeah sustained, is that a question Mr.  
23     Stein.

24            MR. STEIN:   I'm just saying let me now turn.

25            THE COURT:   No is that a question, if you have a  
26     question for her if not that statement is stricken.

27            MR. STEIN:   Sure that's fine.

28            THE COURT:   Do you have a question.

1 MR. STEIN: I do but I can make independent of  
2 [STPHA] statement so I don't want to pretend otherwise.

3 THE COURT: So let's strike that statement.

4 MR. STEIN: Thank you Your Honor.

5 Q. BY MR. STEIN: Turning to the circumstances where  
6 you were fired, were you in the Libra budget supposed to  
7 get about \$130,000 in legal fees?

8 A. Yes it's approximately that, I don't remember the  
9 exact number.

10 Q. After you were you were terminated did Mr. Stein  
11 inform you that he had instructed Libra and the GT Tribe  
12 had agreed to set aside \$174,000 in escrow pending final  
13 resolution of your bill?

14 A. I don't recall that.

15 Q. Well then can we go to the -- can we go to the  
16 Libra budget Exhibit 64 four, it's Exhibit E, I'll give you  
17 have the payment number.

18 THE COURT: Mr. Stein did you ask her if she  
19 recalls whether there was some allocation or whether there  
20 was a discussion, I can't -- what was your question.

21 MR. STEIN: I'm not sure Your Honor I could repeat  
22 it.

23 THE COURT: Let's ask the court reporter to read  
24 it back.

25 (Record read.)?

26 A. I do have a vague memory of something -- being  
27 told something like that, however I do know that when Mr.  
28 Stein and a gentleman from Maguire Woods engaged engaged in

1 negotiation so I think Mr. Stein [WAOUZ] hoping not to pay  
2 us or pay us considerably less.

3 Q. But at was put in aside? Escrow by Mr. Stein, why  
4 do you say Mr. Stein didn't want to pay you?

5 A. Well because I know there were some discussion  
6 abouts that.

7 MS. IBARRA: Objection [SABGTS] evidence that they  
8 were set there by Mr. Stein.

9 MR. STEIN: Oh there's factual evidence numerous  
10 times in this case Your Honor we had escrow said assume for  
11 17 Five it was testified by Elizabeth Aronson just a few  
12 days ago.

13 MS. IBARRA: Disputed [AEFD] as to who advocate-d  
14 for that.

15 THE COURT: Sustained, Mr. Stein's statements are  
16 stricken. The question has to do with the attachment I  
17 believe the [TK\*UBT] attachment whether there was money  
18 allocated under the budget, whether there was an escrow as  
19 far as I remember is not in evidence, whether there was a  
20 budget allocation made may be accurate, I suppose we should  
21 look at the budget.

22 MR. STEIN: Let's go to exhibit 577 Your Honor and  
23 madam witness.

24 THE COURT: Well this -- 577 is the budget, I'm  
25 showing it as Talley, do we have the budget.

26 MR. STEIN: No Talley is where the escrow is,  
27 we've been over it several times.

28 THE COURT: Let's look at the budget first.

1 MR. STEIN: Okay Page 9 27.

2 MS. IBARRA: 644, nine 27.

3 MR. STEIN: Exhibit 644 Page 9 27.

4 THE COURT: All right let's start there. Do you  
5 have want to look at transaction costs there, it's in  
6 reference to Marilyn Barrett but I don't know if there's  
7 any other references to you but there's one there.

8 MR. FORDYCE: Your Honor can I get that.

9 THE COURT: Yes.

10 MR. FORDYCE: Thank you.

11 THE COURT: Mr. Stein are you looking at the SMDC  
12 budget.

13 MR. STEIN: I'm trying to find the page so if  
14 you've beat me to it that would be great.

15 THE COURT: Well you're looking at the Talley  
16 report right knew.

17 MR. STEIN: Yeah the Talley report on 59 Five.

18 THE COURT: Right we're had not looking at the  
19 Talley report, you're looking at the Talley report, you  
20 have need to look at.

21 MR. STEIN: I'm sorry Your Honor you're exactly  
22 right.

23 THE COURT: You're looking at the wrong place.

24 MR. STEIN: You're exactly right, I thought  
25 the --.

26 Q. BY MR. STEIN: Okay on Page 9 267 under  
27 transaction costs Marilyn Barrett financing three times  
28 actual for contingency, \$130,000. Can you read that?



1 A. Yes I see that.

2 Q. Do you recall a conversation prior to your  
3 termination with Mr. Stein where you informed him that  
4 three times actual would amount to \$300,000?

5 A. I don't recall it.

6 Q. Do you recall a conversation with Mr. Stein prior  
7 to your [TP\*ERPLGS] where you have said three times actual  
8 walls \$300,000 and Mr. Stein's reply was well there's only  
9 130,000 in the budget?

10 A. I don't recall that.

11 Q. Do you recall a conversation with Mr. Stein prior  
12 to your termination where I set it was three times actual  
13 is 300,000, Mr. Stein said it's 130,000 and your response  
14 was.

15 MS. IBARRA: Asked and answered.

16 THE COURT: Overruled.

17 MR. STEIN: And you responded.

18 THE COURT: Overruled.

19 Q. BY MR. STEIN: And you responded I expect to get  
20 every penny?

21 A. I don't recall that.

22 Q. Do you recall a conversation prior to your  
23 termination with Mr. Stein where you said three times  
24 actual was 300,000 and Mr. Stein said there's 130 in the  
25 budget and you said well I expect to get every penny and  
26 Mr. Stein said we can't pay you that much?

27 A. It appears to me that you're claiming that at the  
28 time I thought we had spent \$100,000 of legal time in the

1 transaction; is that correct?

2 Q. I didn't know I was a witness in the case, I asked  
3 you a question?

4 A. Well I'm just trying to figure out.

5 Q. I move to strike --.

6 THE COURT: She doesn't under the question?

7 A. I'm not sure where the 300,000 comes from.

8 Q. BY MR. STEIN: Three times actual. I asked you if  
9 you recall a conversation where you had informed Mr. Stein  
10 that three times actual billings would be \$300,000?

11 A. Which then assumed --

12 Q. And you said you have don't recall?

13 A. Actual billings were 100,000, is that -- that  
14 would be my interpretation of your comment and I don't  
15 think our fees were up to that level.

16 THE COURT: Up to what level, 130?

17 A. The 100,000 d with that will would be three times,  
18 we were doing this on a contingent fee so we would get a  
19 premium if the matter closed.

20 THE COURT: So the three times referred to the  
21 premium is that what --

22 A. Yeah the three times would be the premium of  
23 actual time spent because if the deal didn't close we would  
24 get paid zero.

25 THE COURT: Okay?

26 A. And I don't -- I would be surprised if our fees  
27 were up to 100,000 at that time but I don't recall for  
28 sure.

1 Q. BY MR. STEIN: And this time?

2 A. I don't recall these conversations.

3 Q. You're referring to -- so I have a question for  
4 you. The time that you just mentioned?

5 A. Uh-huh.

6 Q. That you didn't think the fees were 100,000, it  
7 was when they were '90 -- according to your testimony, over  
8 95 percent of the documentation was completed for this  
9 financing?

10 A. Correct.

11 Q. Okay. So you have don't think that you spent  
12 \$100,000 going through this financing with Libra beginning  
13 November 2005 through May of 2006, six months, major  
14 financing and 95 percent complete, you have don't feel you  
15 had spent 100,000 and thus entitling you to 300,000?

16 A. I don't think so but I don't recall precisely  
17 because I haven't reviewed this -- these documents for you  
18 know -- that's about a decade ago.

19 Q. And do you recall that in that same conversation  
20 when you made clear to Mr. Stein that 300,000 was due, Mr.  
21 Stein made clear that only 130 was in the [PW\*UBLI]?

22 A. You have made clear that you wanted every penny,  
23 Mr. Stein made clear that he wasn't going to pay, he was  
24 not going to recommend that GT Tribe pay every penny, do  
25 you recall stating then I'll kill the deal?

26 A. Mr. Stein you're making this up. One I wouldn't  
27 threaten to kill the deal because then I would get -- just  
28 as a practical basis I would get zero, not even the 130 so

1 that would make no sense and I wouldn't do that. And I  
2 think the 300,000 you're just making up too.

3 Q. And do you recall that in your response to your  
4 threat that you would kill the deal Mr. Stein said then you  
5 will be fired by SMDC and I will [R\*EPLT] recommend that  
6 the tribal council fire you.

7 MS. IBARRA: Objection assumes facts not in  
8 evidence.

9 THE COURT: Sustained.

10 MS. IBARRA: She said it didn't happen.

11 THE COURT: Sustained.

12 MR. STEIN: Can I go to --

13 THE COURT: Well if there was a discussion about  
14 300,000 -- contingency, what is 49 contingency, you said  
15 you were on a contingency so --?

16 A. The contingency I think we agreed it would be  
17 three times actual if it would go through and one of my  
18 reasons if it was up to 300,000 I don't think shall -- I've  
19 negotiated a lot of deals like this and I don't recall  
20 getting up to 100,000 in any transaction I've worked on in  
21 this nature so that would be part of it and I just really  
22 don't -- and I'm confident I have did not threaten to kill  
23 the deal, that would be outrageous and it wouldn't even be  
24 beneficial for me, you know particularly on contingency,  
25 that would be a stupid thing to do as well as inappropriate  
26 thing to do.

27 Q. BY MR. STEIN: Can we now turn to the Talley  
28 report which is exhibit 577. Can I refer you to Page 595

1 please, the profit and loss under transaction costs. Tell  
2 me when you're ready?

3 A. I'm at Page 595.

4 Q. Thank you very much. Under transaction costs, it  
5 says outside counsel 175,806. Is that the amount paid to  
6 your firm, Ms. Barrett?

7 A. I don't recall. I know we got some, and this was  
8 at Maguire Woods, some funds. I don't remember the exact  
9 amount. There were other attorneys involved so this could  
10 include fees paid to them as well.

11 Q. Well yes, there was Judith Shapiro, do you recall  
12 Judith Shapiro?

13 A. No.

14 Q. The Indian lawyer expert?

15 A. I think I do remember the name, there was also Liz  
16 Aronson.

17 Q. Uh-huh. And then the investor group attorneys  
18 would that be MoFo?

19 A. I would assume that would be MoFo and it's fairly  
20 standard to pave the fees for finances.

21 Q. And --.

22 THE COURT: Wait it's fairly standard to pay the  
23 fees?

24 A. For the borrower to end up paying the fees of the  
25 financier, for example banks, you always pay the bank fees,  
26 lawyers fees.

27 Q. BY MR. STEIN: And the Libra placement fee, that  
28 would be the investment banker fee for Libra securities for

1 pulling together a dozen investors?

2 A. Yes I would assume.

3 MS. IBARRA: I'm going to object.

4 MR. STEIN: And wouldn't there be --

5 THE COURT: Hold on. There's an objection.

6 MS. IBARRA: I'm going to object this line of  
7 questioning because there's no evidence this is actually  
8 accurate, we've heard testimony that it's just Quickbooks  
9 accounting, so --

10 THE COURT: There is -- the accuracy of the  
11 numbers in here is in dispute, that is true, but let him  
12 ask his questions.

13 Q. BY MR. STEIN: Then the only thing missing in the  
14 transaction costs would be the fees for your law firm Ms.  
15 Barrett and we heard that there might be in escrow of 17  
16 four, 175,000 set aside for those fees.

17 THE COURT: Wait a minute, Mr. Stein. Did we  
18 talk -- who talked about an escrow.

19 MR. STEIN: Elizabeth Aronson as I recall, forgive  
20 me. As I recall Elizabeth Aronson testified that there was  
21 an escrow for \$175,000 that was paid to Marilyn Barrett.

22 MS. IBARRA: I don't recall her testimony was that  
23 it was that amount. There was testimony about an escrow,  
24 but I don't know that she testified as to a specific  
25 amounts.

26 THE COURT: I don't even remember her testifying  
27 about an escrow, at least not in this last round of  
28 testimony so.

1 MR. STEIN: Mr. Stein also testified to that fact.

2 THE COURT: Maybe she's assuming.

3 MR. STEIN: And Your Honor Mr. Stein also  
4 testified to that fact that an escrow was set up for Ms.  
5 Barrett.

6 THE COURT: And did you produce any evidence of  
7 the escrow, I don't recall any evidence of the [SKPROE]  
8 being opened but.

9 MS. IBARRA: There's --.

10 MR. STEIN: Your Honor it's not our case it's not  
11 part of our case.

12 THE COURT: But it's your claim, it's your claim  
13 that you opened an escrow, recall any evidence of an escrow  
14 being opened.

15 MS. IBARRA: That Mr. Stein opened an escrow, no  
16 but pursuant to the Libra deal there was an escrow of other  
17 photographs that you know for MoFo and for I think there  
18 might have been one as well for Ms. Barrett firm and for  
19 other transaction costs.

20 THE COURT: You mean it was in the agreement that  
21 such a thing be set up.

22 MS. IBARRA: They're called flow if you understand  
23 agreements which are referenced in the Libra agreement and  
24 there are separate documents that are attached.

25 THE COURT: And have we seen those separate  
26 documents.

27 MS. IBARRA: We have seen those other H\* separate  
28 documents by other witnesses, probably by Mr. Stein but

1 other witnesses as well.

2 Q. BY MR. STEIN: So Ms. Barrett in light that there  
3 apparently was an escrow for your fees and in light of a  
4 line entry in the only accounting that anybody did for 17  
5 Five to your firm, does that refresh [KWR\*URBG] your  
6 recollection that there was an escrow set up for payment of  
7 your fees and that escrow paid you \$175,000.

8 MS. IBARRA: Objection as to the amount.

9 THE COURT: Well if she recalls whether it was 17  
10 Five she can testify to that?

11 A. Yeah, I don't recall what the agreement was. We  
12 did enter into an agreement with you but in terms of an  
13 escrow being established, I mean I had been fired, I wasn't  
14 involved with any of this, I don't know if an escrow was at  
15 the time up, I don't know how much was put in it. I do  
16 know that Maguire Woods negotiated a deal with him where we  
17 did take less than what would have been due but still got  
18 some money.

19 Q. And do you recall meetings with Mr. Stein and  
20 Maguire Woods?

21 A. Uh-huh.

22 Q. And Sam Dunlap at -- and the partner from  
23 Virginia?

24 A. [STKPWHRES] headquarters of -- yes?

25 A. Uh-huh.

26 Q. You recall that meeting?

27 A. I have do recall having a meeting back east, yes  
28 and we did get paid something, I don't remember the exact



1 number.

2 Q. And you do recall that the partner from Virginia  
3 headquarters of Maguire Woods was there?

4 A. Yes.

5 Q. And you were there?

6 A. Yes.

7 Q. And Mr. Stein was there for SMDC?

8 A. I don't know. I thought you were there for the  
9 tribe.

10 Q. And Sam Dunlap was there for the tribe, the  
11 designated person for the tribe and SMDC's person, Mr.  
12 Stein was there, do you recall that?

13 A. I recall having a meeting and I think I do recall  
14 Mr. Dunlap be [THR-G] but --.

15 Q. And that meeting was about whether you would get  
16 the money in the escrow that 24 been set aside for your  
17 fees or whether you would get a larger sum, wasn't that  
18 correct?

19 A. I -- I'm pretty sure we were trying to guest the  
20 three times whatever apartment had already been spent, time  
21 billed and I believe the firm agreed to take less than  
22 that. And I'm not sure what the point of this is.

23 MS. IBARRA: Yes relevance receive.

24 Q. BY MR. STEIN: Exhibit 64 four, can we go to Page  
25 9 38.

26 THE COURT: Did you object.

27 MS. IBARRA: Yes I'm going to object on relevancy.

28 THE COURT: Well what is the relevance now? I'm

1 I've seen this before but why are we going over it again it  
2 seems like Old ground but --.

3 MR. STEIN: Good question Your Honor, the idea is  
4 they made their accusation that's Mr. Stein was just an  
5 evil terrible [TKPWAOEUF] that he tried to stiff Marilyn  
6 Barrett and then there was testimony that no there was an  
7 [SKROEF] set aside and meetings with Ms. Barrett and  
8 Maguire Woods in good faith with SMDC, one of the clients,  
9 [S\*PL], GT Tribe the other.

10 THE COURT: [KHRAOEUBD] [\*F] what, client of who.

11 MR. STEIN: Of man [ET] and suit motel oh which  
12 then became the L.A. office of Maguire Woods.

13 THE COURT: I see.

14 MR. STEIN: So once again we're reacting.

15 THE COURT: That's in dispute but okay.

16 MR. STEIN: And this all arises out of the tribes  
17 claims that Mr. Stein was somehow their attorney was he  
18 fired Ms. Barrett.

19 THE COURT: Right. Yes, it does appear that Mr.  
20 Stein fired her but. Yeah okay so continue.

21 Q. BY MR. STEIN: Exhibit 64 four Page 9 38 please?

22 THE COURT: 938 is that what you said.

23 MR. STEIN: 938.

24 MR. STEIN:

25 Q. This is the -- Ms. Barrett do you recognize [-RT]  
26 signatures as the signatures of the tribal council on this  
27 Resolution 96 approving the Libra agreement?

28 A. Are you asking me if I can confirm these are the

1 signatures of the people who signed them? I don't remember  
2 their signatures.

3 Q. Let me accept -- I'll ask you to assume that they  
4 are?

5 A. Yes okay I'll be happy to assume that they are.

6 Q. And this was the resolution -- [TH-FPS] part of  
7 the Libra agreement Exhibit 64 four showing approval by GT  
8 Tribe.

9 THE COURT: Well technically wasn't part of the  
10 Libra agreement, it was something subsequent right? It  
11 wasn't -- I don't believe it was attached to Libra as an  
12 exhibit but I'm not 100 percent sure.

13 MR. STEIN: No it is actually part of the 644  
14 exhibit and it's traditional in a closing document that all  
15 the approval documents be included.

16 THE COURT: Well let's see, there's exhibits but  
17 that's -- I don't think that was one.

18 MS. IBARRA: I don't see it. So it doesn't appear  
19 in the table of contents.

20 THE COURT: Right and we've had this discussion  
21 before which is why we separated all of those other  
22 documents because they technically weren't part of the  
23 Libra agreement.

24 MR. STEIN: This one says Exhibit 4 on it and  
25 let's look at the table of contents and see if there's an  
26 exhibit four. What would the court like --.

27 THE COURT: Then In 2000 it says Exhibit A B CD is  
28 what is says.

1 MR. STEIN: Yes Your Honor.

2 THE COURT: And those are separately marked.

3 MR. STEIN: Yes Your Honor. Would you have like  
4 this as say separate exhibit.

5 THE COURT: Buff anyway h this document although  
6 it's not part of 644 was otherwise marked in our -- in our  
7 exhibits so why don't we just call it what it is. It's in  
8 the 15 something series, 1538 or something like that.

9 MS. IBARRA: And it might be one of Plaintiffs  
10 also.

11 MR. STEIN: Your Honor it has been separately  
12 marked we can do that now if the court wishes.

13 THE COURT: No I already separate lee did it. In  
14 fact [\*EUF] told you to meet and confer with each and make  
15 sure that that exhibit is accurate because you have  
16 documents attached to it that are not suppose Ed to be  
17 attached to it.

18 THE CLERK: What is it Your Honor.

19 THE COURT: It's Resolution 96.

20 THE CLERK: '96.

21 MR. STEIN: Could the court be thinking of the  
22 SMDC resolution approvals.

23 THE COURT: Pardon.

24 MR. STEIN: Could the court be referring to SMDC  
25 resolution approvals.

26 THE COURT: No I'm referring to Resolution 96 is  
27 what I'm re he ferring to. You can ask her questions I  
28 just wanted to be clear it's not part of 644.

1 MR. STEIN: So we will make sure that when we do  
2 all the things that this is a separate exhibit.

3 THE COURT: Well it's already been marked as a  
4 separate exhibit, 1538.

5 MR. STEIN: Yes, Your Honor.

6 THE COURT: But you can still question because it  
7 is in evidence.

8 MR. STEIN: Thank you, Your Honor.

9 Q. BY MR. STEIN: Going to the last whereas clause,  
10 could I ask you to read the last whereas clause on Page  
11 938, Ms. Barrett?

12 A. Whereas on May 6th, May 10th, May 13th, and May  
13 20th, 2006 in lengthy meetins, the tribal council has had  
14 the opportunity to review, discuss, and consider Exhibit A  
15 with outside counsel Marilyn Barrett, tribal general  
16 counsel Rae Lamothe, and assistant tribal general counsel  
17 Elizabeth Aronson and obtained their advice.

18 Q. Do you recall -- is that accurate based on your  
19 recollections of the transaction?

20 A. I don't recall what day I got fired, do you?

21 Q. No, I don't but I believe it would be around May  
22 13th, May 14th, May 15th?

23 A. I do recall having discussions with the tribe  
24 about different parts of the deal and I would suspect the  
25 tribe also received counsel from Rae Lamothe although she  
26 wasn't involved in the actual transaction and Elizabeth  
27 Aronson but certainly I think as things were developing in  
28 the transaction we did from time to time inform the tribe

1 of what was going on.

2 Q. So it's your understanding that the [HRAURDZ] for  
3 the tribe giving them advice on the transaction would  
4 include yourself, Rae Lamothe and Liz Aronson is that  
5 correct?

6 A. Yeah. I don't recall exactly when Liz Aronson  
7 became involved but she did at some point in time.

8 Q. So then without referring to the dates you believe  
9 that this whereas clause is accurate?

10 A. Yes I think it's probably accurate.

11 Q. And would the signatures of the tribal council  
12 people also indicate to you that it would be accurate?

13 A. Well assuming that they all -- that these are all  
14 their signatures, yes.

15 Q. Is Jonathan Stein listed as an attorney for GT  
16 Tribe here.

17 MS. IBARRA: For clarity Your Honor, this also  
18 appears exhibit 49.

19 MR. STEIN: I'm sorry there's a question pending.

20 THE COURT: Hold on for clarity.

21 MS. IBARRA: It's Plaintiff's Exhibit 49 is the  
22 same as this one, this appears to be a much better copy,  
23 the Plaintiffs copy is not -- it seemed to be Xerox of  
24 Xerox.

25 THE COURT: Neli you found it.

26 THE CLERK: I'm still looking?

27 A. In the whereas before the one that you had me read  
28 there is a reference to yourself but not in the whereas

1 where that lists me, Rae Lamothe and Elizabeth Aronson.

2 Q. BY MR. STEIN: So this would indicate that Mr.  
3 Stein may have negotiated as any financial person would  
4 negotiate a financing document but the legal advice  
5 actually came from the three lawyers, Marilyn Barrett, Rae  
6 Lamothe, Elizabeth Aronson, not Jonathan Stein; is that  
7 correct?

8 A. Well that is what this -- in the whereas that you  
9 had me read, it does list myself, Rae Lamothe and Elizabeth  
10 Aronson as counsel.

11 Q. Page 9 40 -- and it doesn't -- forgive me, [TPOPL]  
12 up question, and it does not list Jonathan Stein a counsel  
13 for GT Tribe?

14 A. That is correct.

15 Q. And on page -- this is what you said was accurate?

16 A. I'm saying that's what this read.

17 Q. No you said that it was accurate earlier?

18 A. No.

19 MS. IBARRA: Objection the document speaks for  
20 itself?

21 A. I said --.

22 MR. STEIN: No your testimony was.

23 THE COURT: Hold on there's an objection,  
24 overruled you may ask your question or have her answer your  
25 prior question.

26 Q. BY MR. STEIN: Your testimony was that this  
27 was --.

28 THE COURT: Was your testimony.

1 Q. BY MR. STEIN: Was your testimony that this  
2 whereas clause was accurate?

3 A. I think my testimony was that this whereas clause  
4 does lift me Rae Lamothe and Elizabeth Aronson as counsel.

5 Q. Page 940, please, the whereas clause at the top,  
6 can you read that whereas clause?

7 A. Whereas the tribal council after being fully  
8 advised as to comport and obligation that arise pursuant to  
9 the development funding agreement and after each voting  
10 member the tribal council has had the opportunity to review  
11 the agreement attached here to and discuss the same with  
12 Marilyn Barrett, Rae Lamothe and Elizabeth Aronson prior to  
13 voting, considers it to be in the best interest of the  
14 tribe to execute the development funding agreement that is  
15 attached here to as Exhibit A.

16 Q. So is it your understanding that tribal council  
17 was fully advised as to the comport and obligations from  
18 the development funding agreement that that's part of the  
19 whereas clause?

20 A. That is stated to be in -- the whereas clause does  
21 state that.

22 Q. And does it show Marilyn Barrett, Rae Lamothe and  
23 Elizabeth Aronson being those people with whom they  
24 discussed whether it was in the best interest of the tribe?

25 A. That is what the whereas clause states, I would  
26 like to add that since I had been fired I would not have  
27 been participating -- I would not have participated in any  
28 final discussions with the final terms of the deal so I do



1 recall discussing terms with them as we were proceeding but  
2 I would not have been present at the final discussion and  
3 usually what you find, you do have a final discussion  
4 before they [SKPH\*EUT] to the deal of all the terms.

5 Q. But --?

6 A. Because I had been fired and I would not -- and  
7 all the terms weren't negotiated at that time.

8 Q. Very good point and in the whereas clause it uses  
9 a phrase prior to voting, would that shall the right  
10 Fridays to describe your role even when trunk dated?

11 A. At some point -- certainly there was discussions  
12 with the tribal council prior to their voting but.

13 Q. Thank you.

14 A. But generally you would have a discussion with the  
15 final terms entered into right before the signing and I was  
16 not involved in that.

17 THE COURT: Are the lawyers usually present for  
18 the signs or are they not?

19 A. Often they are because with -- in fact lawyers  
20 often -- this isn't required, this is more a matter of  
21 practice is you want a certain number of wet signatures and  
22 so the lawyers set the documents up so that it can be  
23 really quick, almost an assembly line to get them signed  
24 and even things like you always have people sign-in blue  
25 ink rather than black because once it's Xeroxed you can't  
26 tell an original from a copy so there's just things likes  
27 that that's usually set up.

28 Q. Or that can be handled by non lawyers too, or

1     paralegals?

2             A.     It could be.  Yes uh-huh.

3             Q.     Okay.  Or somebody like -- do you remember Sammy  
4     Lai?

5             A.     Yes, uh-huh.  Yeah, it doesn't have to be lawyers,  
6     but there is a procedure because in a deal like this  
7     there's lots of documents, lot of signatures and you try to  
8     lay them out so it can go pretty quickly and --.

9             Q.     And if we can move back to the questioning.  The  
10    advice does not include Jonathan Stein here.  Why is Mr.  
11    Stein not included here?  Is it because he's not the  
12    lawyer?

13            A.     I would have no idea, I don't think I had anything  
14    to do with this document, in drafting it.

15            Q.     Well it says that they discussed -- that tribal  
16    council discussed the Libra agreement with Marilyn Barrett  
17    Rae Lamothe and Elizabeth Aronson, it doesn't say that they  
18    did that with Jonathan Stein?

19            A.     Uh-huh.

20            MS. IBARRA:  Objection she said she didn't draft  
21    it.

22            MR. STEIN:  Doesn't it --.

23            THE COURT:  Wait a minute, what's the objection.

24            MS. IBARRA:  She said she didn't draft it, I  
25    don't.

26            THE COURT:  That's true but overruled, you may  
27    ask?

28            A.     What date was the agreement signed.

1 MS. IBARRA: We had a stipulation yesterday that  
2 it was May 20th?

3 A. Then -- then you know this document is somewhat  
4 inaccurate because I would not have been at a May 20th  
5 meeting. I may have been at May 6th, May 10th, I don't  
6 recall the exact progression of things but if I was fired  
7 but I was definitely fired before this was signed so I  
8 would not have been at the May 20th for certain, maybe not  
9 the others.

10 MR. STEIN: Thank you no further questions.

11 THE COURT: All right any redirect.

12 MS. IBARRA: Your Honor can I revisit the memo on  
13 the basis that we do have in our answer an affirmative  
14 defense of a set off for any damages as a result of  
15 Plaintiffs conduct, wrongful for fraudulent conduct so it  
16 would just go to that basis because we could get a set off  
17 to any payments that were made to Mr. Stein for work that  
18 he did under the FPPC contractor just under lobbying  
19 activities.

20 MR. STEIN: Your Honor there's no  
21 cross-examination on that so if we're doing redirect then  
22 why would we go back and open direct testimony.

23 THE COURT: No I told them if they came up with a  
24 theory. Let's take a 10-minute break and come back.

25 MR. STEIN: Thank you Your Honor.

26 THE COURT: You have may step down, 10 minutes.

27 (Break taken.) 11:34 AM to sometime time.

28 THE COURT: [PWHRA\*B] versus Stein, BC361307. My

1 clerk was telling me that '96 -- Resolution 96 which we had  
2 re beat-d Lee referred to during the trial has probably  
3 been marked as another number and is 1500 series. It  
4 should be because it's not appropriately attached to  
5 Exhibit 6 44. We've had this discussion where we're going  
6 to tear apart that exhibit because there's things attached  
7 to it which are not actually part of the agreement.

8 MS. IBARRA: Yes.

9 THE COURT: I don't know how we've been referring  
10 to Resolution 96 otherwise.

11 MR. FORDYCE: By Bates [TPHURB] I think Your Honor  
12 as part of 644.

13 THE COURT: Yeah and it shouldn't be because it's  
14 not included as part of -- it's not part of the original  
15 document so --.

16 MS. IBARRA: It's identical to our exhibit 49 I  
17 don't know if it's been marked.

18 THE COURT: Is it in evidence.

19 THE CLERK: 49.

20 THE COURT: Exhibit 49.

21 MR. STEIN: See I don't know if it is identical  
22 Your Honor.

23 MS. IBARRA: It's just a worst copy of the same  
24 document.

25 MR. STEIN: So what I prefer to do is happened  
26 this will the wave we handled the SMDC agreement and I  
27 believe the court gave the instruction about Libra as well  
28 and any other agreements and we just failed to give it a

1 number and identify [HRAOEUPBLG] toe give it a number now  
2 [PWAUDZ] we have an exhibit in evidence with this material  
3 in it, to the extent it is incorrect I would like a new  
4 number and I don't want to bring in another exhibit with  
5 new things attached to it. So would it be 15 578.

6 THE COURT: With the we may have topping through  
7 the Libra agreement and remove more than that but we can  
8 give it another number.

9 THE CLERK: 15 52 Your Honor.

10 THE COURT: We can call it 15 52.

11 MR. STEIN: We've discussed that number.

12 THE CLERK: 15 55 I'm sorry.

13 MR. STEIN: I believe we've [AOUFLS]-d that number  
14 as well.

15 THE CLERK: 15 55? .

16 MR. STEIN: Let me just double check Your Honor.

17 THE COURT: So counsel my instruction to you is as  
18 it concerns the [SAO\*EBG] [SAO\*ELG] as it concerns the  
19 Libra agreement as it concerns any agreement in this case  
20 we need to go through and make sure that the exhibits are  
21 self contained, there's nothing attached to these  
22 agreements that weren't originally attached because that  
23 appears to be the way some of these books are put together  
24 and some of the exhibits, for example the SMDC agreement  
25 had exhibits attached to it that were not part of the  
26 original agreement which is why we had to separate them,  
27 the same [THAEUPBG] [PHRAOEUTZ] to the Libra agreement and  
28 any other agreements. We have need to separate those that

1 don't belong as part of that agreement. So you need to do  
2 that before the matter is submitted to the court.

3 MR. STEIN: [WES].

4 THE COURT: We're going to try to do that now  
5 during testimony bull if that can't be done.

6 MR. STEIN: Exhibit 15 56.

7 THE COURT: It will have to be done later.

8 THE CLERK: 15 56.

9 MR. STEIN: 15 56 [WROB] open.

10 THE COURT: What was 15 55.

11 MR. STEIN: [A\*EURPBZ] marijuana [KA\*BGZ].

12 Actually no Five [#\*] 15 55 could be used.

13 THE CLERK: I believe it's 15 55 Your Honor.

14 THE COURT: 15 55 will be Resolution 96.

15 MR. STEIN: Thank you Your Honor and the court has  
16 previously instructed on this.

17 THE COURT: Right so you need to do that all these  
18 agreements and all the others if their others.

19 MS. IBARRA: So the only thing that I have for  
20 redirect is just to finish off the January 15th memo if I  
21 can.

22 THE COURT: Well let's talk about why you think it  
23 should be admitted.

24 MS. IBARRA: I think it goes to the set off  
25 damages, which is an affirmative defense that the tribe has  
26 and the set off damages is for the fact in each cause of  
27 action asserted therein is barred in whole or in part  
28 because Defendants are entitled to set off damages which

1 they have occurred as a result of Plaintiffs wrongful of or  
2 negligent acts is one of them. We also have separate  
3 affirmative defense for fraud in the inducement and the  
4 fraud in the performance of the contract.

5 THE COURT: Okay that might make it relevant, but  
6 how do you get over the hearsay problem, in other words it  
7 may be relevant that you know Ms. Barrett advised that  
8 there were problems with it but you want the court to  
9 accept the memo -- it a- PERS to the court that you want  
10 the court to accept it for the truth of the content and  
11 that's the problem.

12 MS. IBARRA: So then maybe we just use it to  
13 having reflected her recollection about this.

14 THE COURT: Sure you can refresh her recollection  
15 but it can't come into evidence.

16 MS. IBARRA: Okay. So we've used it to reflect  
17 her recollection and I could just ask her her opinion about  
18 whether Mr. Stein had a valid contract and whether on that  
19 basis she thinks that he got paid for work that he wasn't  
20 entitled to get paid for.

21 MR. STEIN: Your Honor there's nothing that Ms.  
22 Barrett has testified to about showing any knowledge about  
23 whether the contracts valid and seize not an expert that  
24 can talk about whether contracts are valid or not.

25 THE COURT: Sustained, did you develop -- I mean  
26 did you designate her as an expert on this.

27 MR. FORDYCE: They did not.

28 MS. IBARRA: Then In 2000 she's an factual expert

1 whether Mr. Stein got payment he wasn't entitled to.

2 MR. STEIN: A factual expert.

3 MS. IBARRA: A factual expert just somebody  
4 reviewing the documents when they were --.

5 MR. STEIN: That's not been her testimony, her  
6 testimony was she couldn't recollection and she got fired  
7 in May of 2006, this is January 2007.

8 THE COURT: Yeah, I'm going to sustain the  
9 objection.

10 MR. STEIN: Very good Your Honor.

11 MS. IBARRA: So then that's all I have for Ms.  
12 Barrett.

13 THE COURT: All right anything for Ms. Aronson I  
14 mean I'm sorry Ms. Aronson, Ms. Barrett we had Ms. Aronson  
15 yesterday.

16 MS. IBARRA: We had a lot of lawyers.

17 THE COURT: It doesn't appear that way, so thank  
18 you Ms. Barrett for appearing again, you are excused.

19 MR. STEIN: Thank you again Ms. Barrett. And Your  
20 Honor after the witness leaves if we have a few minutes  
21 we'd like to discuss the three filings made.

22 THE COURT: Okay sure let's talk about it. We  
23 have time to do that.

24 MS. IBARRA: Thank you for coming?

25 A. Thank you.

26 MR. STEIN: Thank you again.

27 MS. GOAD: Not meeting you.

28 THE COURT: All right I have them. Which one did



1 you want to talk about first.

2 MR. STEIN: Well the --.

3 THE COURT: Perhaps let's do the trial status  
4 update first, you've already gone through --.

5 MR. STEIN: Well let me refer to the status update  
6 but actually in order probably make more sense to do the  
7 request for dismissal first, what they are is just an  
8 attempt to --.

9 THE COURT: Maybe by you want to talk about the  
10 update so let's talk about the update.

11 MR. STEIN: Very good.

12 THE COURT: We've already had Aronson and Barrett  
13 so your first two bullet points are I don't think you need  
14 anything further from them. Margolis, I think we finished  
15 with Margolis, correct or is there something -- did you  
16 have further cross on him.

17 MR. STEIN: If we're finished with Margolis I'd be  
18 happy my --.

19 THE COURT: Has he rebutted mills yes.

20 MS. IBARRA: He hasn't rebutted, that's the only  
21 thing he needs to do is re [PWUTD] mills.

22 THE COURT: And how much time is that, let's try  
23 to get a sense of time, so this would be a Margolis mills  
24 rebuttal.

25 MS. IBARRA: Yes so he's supposed to be here  
26 tomorrow.

27 THE COURT: And can you give me a sense of an hour  
28 maybe.

1 MS. IBARRA: I think an hour but then I don't  
2 know -- no I think two hours.

3 THE COURT: No I mean just for your portion.

4 MS. IBARRA: Yes just for my portion Mr. Mills was  
5 here for three days.

6 THE COURT: Was it three full days.

7 MR. STEIN: No, it wasn't three full taser.

8 THE COURT: I don't know if it was three full  
9 [TKAEUFTZ].

10 MR. STEIN: Two days from Mr. Mills included all  
11 the direct, cross-examine, redirect, he came back for a  
12 third day for redirect but the court stopped that after  
13 five minutes because of miss [TEUBGS] of counsel.

14 THE COURT: So there was only five minutes of  
15 them.

16 MR. STEIN: Yes.

17 THE COURT: So you have rebuttal -- how many  
18 hours, let's find out how long mills testified for.

19 MR. STEIN: About three hours Your Honor.

20 MS. IBARRA: No in total.

21 MR. STEIN: Because once again we started late  
22 both days Madam Court Reporter.

23 (Discussion held off the record.).

24 THE COURT: All right well it looks like there was  
25 at least five hours of direct and it looks like it was  
26 maybe two hours of cross so I'm going to allow the two  
27 hours for rebuttal of Margolis and he's going to have to  
28 probably come back again.

1 MS. IBARRA: Right. But looking at this adjusted  
2 trial schedule, I mean we have Margolis and then we have  
3 all of these witnesses that we've had before.

4 THE COURT: Well we won't have -- maybe won't need  
5 all of them, some of them are quantum meruit.

6 MR. STEIN: Yes they're the only reason for coming  
7 back.

8 MS. IBARRA: But Steven Johnson a whole day or  
9 Steven Johnson and Jonathan Stein.

10 THE COURT: He [TK\*U] didn't say a whole day he  
11 said He's [KO\*LG] calling on that day.

12 MR. STEIN: Yes Your Honor and we have an  
13 amendment in the schedule we had planned both of them would  
14 start and finish on that day.

15 THE COURT: Both of they will be-g [TKPWAR] and  
16 Johnson.

17 MR. STEIN: That's correct and we would condense  
18 them to finish them in one day would be the hope.

19 THE COURT: Okay that sounds reasonable. If  
20 they're going to be quick.

21 MS. IBARRA: How is crane going to do quantum  
22 meruit, is he coming in.

23 MR. STEIN: No the -- Mr. Stein is going to do  
24 cranes quantum meruit, he only did his own quantum meruit,  
25 Mr. Stein will be adding his because I supervise his work  
26 so I know the content of it.

27 MS. IBARRA: And then the last --.

28 THE COURT: Do you do the billing for him.

1 MR. STEIN: No quantum meruit is not part of  
2 billing.

3 THE COURT: Okay, I mean what proof are you  
4 putting in of -- okay.

5 MR. STEIN: The various topics that he had, I'd be  
6 confirming his testimony of the things that he did for GT  
7 Tribe to earn the money that he had, so you have the  
8 contract action separately you have the quantum meruit  
9 action if for some reason the contract is not in force.

10 THE COURT: No I understand what quantum meruit is  
11 I'm just asking what are you adding I guess to it if --.

12 MR. STEIN: The court was circumstance um respect  
13 in admitting his own description of his work for the tribe  
14 so I would be filling out the description that he did.

15 THE COURT: You're corroborating what he did.

16 MR. STEIN: Corroborating.

17 THE COURT: All right.

18 MS. IBARRA: So if there's no written -- if  
19 there's no written -- if there's no documents then it's  
20 just testimony it doesn't sound like it should be that  
21 long.

22 THE COURT: Right.

23 MS. IBARRA: That's my only thing is maybe we can  
24 shorten this somehow.

25 THE COURT: Okay so let's first talk about  
26 Margolis. You have two hours in rebuttal.

27 MS. IBARRA: Okay. I don't know whether there  
28 will be any clean up after that but we can do a little bit

1 of clean if if there needs to be.

2 MR. STEIN: No no no. Your Honor forgive me.

3 THE COURT: Yes.

4 MR. STEIN: Is the [KOEURT] finished I didn't mean  
5 to interrupt.

6 THE COURT: No no no go ahead.

7 MR. STEIN: Forgive me and once again we're just  
8 cooperating we're just talking through ideas and waiting  
9 for the [courts|court's] final decisions but in that -- in  
10 that spirit Mr. Margolis -- I tried to cross-examine Mr.  
11 Margolis and whenever I ran into an area of rebuttal of Mr.  
12 Margolis' rebuttal from Mr. Mills I was stopped from  
13 questioning so the idea I think was that Ms. Ibarra would  
14 have whatever time she would have with Mr. Margolis to --  
15 as a rebuttal witness to Mr. Mills.

16 THE COURT: Oh I see what you're saying.

17 MR. STEIN: And then I would need to cross-examine  
18 him as a rebuttal witness to Mr. Mills and then she would  
19 have a chance to redirect.

20 THE COURT: Oh I see what you're saying he is  
21 being called in her registered nurse he rebuttal case which  
22 means yes you would have the right to cross. Yes I think  
23 that's accurate.

24 MS. IBARRA: Right.

25 THE COURT: So in other words he's finished with  
26 his direct, you're now calling him in your rebuttal case.

27 MS. IBARRA: Yes, I am calling him until I  
28 rebuttal case.

1 THE COURT: So you would have the chance to cross.  
2 And how much time do you need for the cross, about an hour  
3 maybe.

4 MR. STEIN: An hour would be sufficient. Thank  
5 you.

6 THE COURT: All right cross is an hour. And then  
7 you have redirect, probably half an hour but that is still  
8 a substantial amount of time, he may be here a couple days.

9 MR. STEIN: Well could we have him back on Friday  
10 because we already have set up Steven Johnson and Barbara  
11 Garcia on Thursday.

12 MS. IBARRA: I will ask him, he's definitely  
13 coming in tomorrow, he set aside tomorrow so I'll ask him  
14 to come back on Friday.

15 THE COURT: Okay we'll see if we can do that then.  
16 You have both [TKPWAR] and Johnson on Thursday.

17 MR. STEIN: Yes just -- and we have the notebook  
18 that we turned into the court with Five short documents and  
19 one long document on and there may be one or two more but  
20 just the quantum meruit, it's all just about quantum  
21 meruit.

22 THE COURT: Okay I don't think you marked those  
23 yet in your big binders you have them in the black binder  
24 right.

25 MR. STEIN: Only in the black binder that's exact  
26 [RAO\*E] night.

27 THE COURT: And you've turned those over to the  
28 plaintiff right.

1 MR. STEIN: She has those before we gave her a  
2 binder.

3 MS. IBARRA: Well not a binder but they were  
4 e-mailed to me, I have them.

5 THE COURT: All right well in order to get through  
6 those two, we have to have maybe half an hour of you know  
7 direct, half an hour, 20 minutes of cross in order to get  
8 through two witnesses in two hours, in other words the  
9 quantum meruit for those two is going to have to be short.

10 MR. STEIN: Well then let's start with Barbara  
11 Garcia and then Steven Johnson I'll ask if He's available  
12 on Friday and then maybe Mr. Margolis can come back Monday  
13 of next week.

14 THE COURT: No.

15 MS. IBARRA: It's real quick.

16 THE COURT: Well Barbara Garcia is just across the  
17 way, right, so why doesn't she wait until we're through  
18 with marked she's just across, meaning across the plaza  
19 with supervisor Solis right.

20 MR. STEIN: Yes that's correct and she's not  
21 available on Fridays, it's mandatory staff meetings day.

22 THE COURT: So we can bring her on Monday then.

23 MR. STEIN: [TKWRAF] I can ask her about that.

24 THE COURT: Okay so why don't we just go  
25 through -- let's finish with Margolis, let's just go  
26 through and niche fish with Margolis and you arrange for  
27 the other two to appear whatever, you may have to call  
28 Johnson first, I don't know but we need to get done with

1 Margolis he's been back here I don't know how many times.

2 MR. STEIN: Absolutely. The only problem is  
3 Steven Johnson will be out of town on sales meet eggs next  
4 woke so we would want him on Friday.

5 THE COURT: Steven Johnson on Friday and he  
6 already indicated Thursday better so I think what we're  
7 having is a situation where again our case is being --.

8 THE COURT: Well wait a minute. You know what  
9 let's talk about this schedule tomorrow, let's talk about  
10 this schedule tomorrow, okay? I'm not ready to talk about  
11 it now because I have things I need to do too.

12 MS. IBARRA: Sure. Just one thing to flag for the  
13 Court is this last paragraph here intends to bring an  
14 indemnity action against Virginia Carmelo, Edgar Perez,  
15 Shirley Machado, Adam Loya.

16 THE COURT: No thaws all being tried now.

17 MS. IBARRA: They're not parties to this action so  
18 they were dismissed from a trial.

19 MR. STEIN: Your Honor if that is.

20 MS. IBARRA: Five years ago so --.

21 MR. STEIN: That's why I put it in.

22 THE COURT: Well if it's being tried if they're  
23 still in the action it's all being tried now.

24 MS. IBARRA: They're not in the action.

25 THE COURT: Well if hair not in the action then  
26 they're not in the action but if they are in the action  
27 we'll it's in the trial now.

28 MR. STEIN: Well Your Honor we'll need to bring



1 them Bacarat witnesses next week.

2 THE COURT: If they're in the action. Is there a  
3 dismissal.

4 MS. IBARRA: There's a dismissal, yeah from their  
5 prior trial, yes.

6 THE COURT: When you say their prior trial the  
7 meaning it's already been adjudicated?

8 MS. IBARRA: Yes. The individual defendants.

9 THE COURT: Oh, from the other action filed.

10 MS. IBARRA: This is what Ms. Aronson kept talking  
11 about and Virginia Carmelo and all of them, from the bench  
12 trial, Your Honor.

13 MR. STEIN: Your Honor, that's completely wrong.

14 THE COURT: Well then you show guys are going to  
15 have show me why that's wrong, right?

16 MR. STEIN: May I introduce to the court.

17 THE COURT: Introduce what?

18 MR. STEIN: I can show you later, I can show you  
19 later Your Honor.

20 THE COURT: I mean there hasn't been any evidence  
21 of the indemnity as far as I can tell.

22 MR. STEIN: That's why we would have to put on a  
23 whole new leg of the trial, that's what I wanted to bring  
24 to the court's attention.

25 THE COURT: Well, we'll see if they're still  
26 parties.

27 MS. IBARRA: We went through jury instructions and  
28 all this stuff.

1 THE COURT: Pardon?

2 MS. IBARRA: We went through jury instructions and  
3 all this stuff because we thought we were going to do that  
4 as well and that never came up so.

5 THE COURT: Are they parties or are they not.

6 MS. IBARRA: They are not parties.

7 MR. STEIN: They are parties.

8 THE COURT: Okay.

9 MR. STEIN: Once again there was a trial of SMDC's  
10 claims against individuals not against GT Tribe, no --  
11 there was no trial of claims by GT Tribe against SMDC, so  
12 there would be no reason to try an indemnity or dismiss an  
13 indemnity action since there was no trial of GT Tribe's  
14 claims against SMDC, there will be no reason to try the  
15 SMDC indemnity for the claims.

16 THE COURT: Okay. Let me ask you this: Carmelo  
17 testified, Perez testified?

18 MS. IBARRA: Yes.

19 THE COURT: Machado testified?

20 MS. IBARRA: Yes.

21 THE COURT: Loya?

22 MS. IBARRA: Loya did. Machado did not testify.

23 THE COURT: Aronson testified, Polanco testified.  
24 There's no reason to bring these people back. Even if they  
25 are still in the case they've already testified so there's  
26 no reason to bring them back.

27 MR. STEIN: Well we just brought Marilyn Barrett  
28 back for new testimony, we're bringing Mr. Margolis back

1 and a number of others. I'd like it bring them back for  
2 idemnity testimony.

3 THE COURT: No.

4 MR. IBARRA: They came back voluntarily.

5 MR. STEIN: Thank you Your Honor. Your Honor our  
6 only purpose was to bring it up for discussion.

7 THE COURT: Right. If they are part of the action  
8 then you need to make that crystal clear, you can put that  
9 in writing to the court and we'll see if they're still  
10 parties but my recollection is they've already been  
11 disposed of by the trial in another action and they were  
12 found not responsibility I think is what happened from what  
13 I recall.

14 MS. IBARRA: Yes.

15 THE COURT: But if I think that they're somehow in  
16 this, A, then you're going to have to put that in writing  
17 and show me that.

18 MS. IBARRA: And I would ask for legal argument  
19 too.

20 MR. STEIN: And Your Honor I will put that in  
21 writing and that's why we filed the status update so that  
22 the court has a writing already and we will --.

23 THE COURT: No no no I have want to see the  
24 complaint, a reference to the docket, all the proceedings  
25 with them.

26 MR. STEIN: Sure.

27 THE COURT: And any disposition for them.

28 MR. STEIN: Sure and there's been no disposition

1 at all of the cross-complaint because again we had a trial  
2 of SMDC claims.

3 THE COURT: Right. So put it in writing Mr.  
4 Stein.

5 MR. STEIN: Thank you very much Your Honor.

6 THE COURT: Thank you. 10 tomorrow.

7 MR. FORDYCE: Thank you Your Honor.

8 MS. IBARRA: 10 tomorrow. 12:04 PM.

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