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3 EIGHTH JUDICIAL DISTRICT COURT
4 CIVIL/CRIMINAL DIVISION
5 CLARK COUNTY, NEVADA

[Signature]
CLERK OF THE COURT

6 TED R. BURKE, et al,
7 Plaintiffs,
8 vs.

CASE NO. A-558629
DEPT. NO. XIII

9
10 LARRY L. HAHN, et al,
11 HAHN'S WORLD OF SURPLUS, INC.,
12 Defendants.

13 BEFORE THE HONORABLE MARK R. DENTON, DISTRICT COURT JUDGE
14 WEDNESDAY, JULY 30, 2008

15 PARTIAL TRANSCRIPT RE: EVIDENTIARY HEARING

16 TESTIMONY OF TALON STRINGHAM;
17 DIRECT AND REDIRECT EXAMINATION OF LARRY HAHN

18 APPEARANCES:

19 For the Plaintiffs: NEIL J. BELLER, ESQ.

20 For the Defendants: M. NELSON SEGEL, ESQ.

21 For Kokoweef, Inc.: PATRICK C. CLARY, ESQ.
22 CURTIS CANNON, ESQ.

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CLERK OF THE COURT

24 RECORDED BY: Cynthia Georgilas, Court Recorder

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1 LAS VEGAS, NEVADA

WEDNESDAY, JULY 30, 2008

2 **PROCEEDINGS**

3 (PROCEEDINGS BEGAN AT 9:17:15 A.M.)

4 THE COURT: Good morning. Please be seated. All right, the Court calls
5 the case of Burke et al versus Hahn et al. Please state appearances.

6 MR. BELLER: Neil Beller on behalf of the plaintiffs, Your Honor. There are
7 a number of them here. One of them is at counsel table, if the Court doesn't mind.
8 She is a paralegal. Short of that, I'll be happy to have her sit behind the bar, if you
9 will.

10 THE COURT: If she's a party she can sit at the table.

11 MR. CLARY: I think we should identify the plaintiffs that are here.

12 THE COURT: Would you please identify the parties who are present?

13 MR. BELLER: Sure. Michael and Laurie Kehoe, Ted Burke, Richard --
14 Michael Randolph and Richard (confers with Ms. Kehoe) -- and that's it, Your Honor.

15 MR. SEGEL: Who's the last one? Michael Randolph and who?

16 MR. CLARY: I see one extra person. Is there a witness that's here?

17 MR. SEGEL: Who's the lady?

18 MR. RANDOLPH: Lydia Randolph.

19 MR. BELLER: I don't know that gentleman.

20 MS. RANDOLPH: I'm his wife. Michael --

21 MR. RANDOLPH: Michael Randolph and Lydia Randolph.

22 MR. BELLER: Okay. I apologize.

23 MR. CLARY: Is that everybody?

24 MR. BELLER: Yes.

1 MR. CLARY: Okay. Patrick Clary appearing on behalf of the movant,
2 Kokoweef, Inc., which is designated as a so-called nominal defendant, whatever
3 that means.

4 MR. CANNON: Curtis Cannon appearing for the plaintiffs -- or excuse me,
5 for the defendants.

6 THE CLERK: I'm sorry, counsel, your name?

7 MR. CANNON: Curtis Cannon appearing for and on behalf of Kokoweef.

8 MR. SEGEL: And Nelson Segel on behalf of defendant Larry Hahn and
9 Hahn's World of Surplus. Also present is Larry Hahn, and Chris Hahn is the
10 representative of Hahn Surplus.

11 THE COURT: All right. This is the time set for the evidentiary hearing
12 relative to the motion to require and set security and I've allotted two hours for this
13 hearing. So at this time, Mr. Clary, as you represent the moving party, correct?

14 MR. CLARY: That's correct, Your Honor.

15 THE COURT: I would ask, do you wish to make a brief opening statement?

16 MR. CLARY: Well, very briefly, Your Honor. We have limited time, so I don't
17 want to take up time with a lengthy opening statement.

18 OPENING STATEMENT

19 BY MR. CLARY:

20 The operative provision of Section 41.520 of the Nevada Revised Statutes
21 under which this action, this so-called derivative action was brought and specifically
22 with respect to the motion that's before the Court this morning, is that we are
23 required I believe as I read the statute, to prove under subsection 3, paragraph (a)
24 "that there is no reasonable possibility that the prosecution of the cause of action

1 alleged in the complaint against the moving party will benefit the corporation or
2 its securities holders," quote, unquote.

3 We intend to prove, as I indicated in chambers, by not an over-
4 whelming bit of evidence but by sufficient evidence through the witnesses and
5 exhibits that we will submit that that is precisely the case, and that basically to
6 translate that into additional words, that the allegations in the complaint and the
7 specific facts that -- alleged facts that would support the complaint that have been
8 made, to the extent they've been made known to me and to my co-counsel, are not
9 sufficient to meet that requirement -- or that we will meet that requirement because
10 those facts do not rise to the level of presenting a *prima facie* case to the Court
11 under the complaint.

12 So having said that, then the only other thing we have to prove to
13 Your Honor is that -- what that amount of that bond should be if we meet that
14 burden. So that's what we believe we are prepared to do this morning. We're
15 going to go forward with it and call initially at least two witnesses to cover those
16 matters, and we're prepared to proceed.

17 THE COURT: All right. Mr. Segel, did you wish to -- are you going to be
18 adducing any evidence today?

19 MR. SEGEL: Your Honor, at this stage I'm going to reserve. I'll probably
20 have Mr. Clary present the evidence for the motion. It's his motion. Obviously
21 we would join to the extent that we could, but I'll probably reserve. I may have
22 some questions of witnesses at the end --

23 THE COURT: Okay.

24 MR. SEGEL: -- but I'm going to let Mr. Clary carry the burden today.

1 THE COURT: Mr. Beller.

2 MR. BELLER: Yes, Your Honor, I'll be brief.

3 OPENING STATEMENT

4 BY MR. BELLER:

5 Your Honor, we previously briefed to the Court the issue of, quote, "the
6 nominal defendant," which Mr. Clary keeps referring to as a misnomer. We don't
7 believe that it is. Secondly, recognizing that my testimony and outline is not
8 evidence and because of the limited amount of time, I'll defer to our expert, Talon
9 Stringham, to present the evidence to the Court.

10 THE COURT: Okay. All right, Mr. Clary, you may call your first witness.

11 MR. CLARY: Okay. We call Reta L. Van Da Walker.

12 [Direct examination of Reta L. Van Da Walker
13 by Mr. Clary; previously transcribed]

14 THE COURT: Cross?

15 MR. BELLER: Your Honor, what I would prefer to do is after Mr. Stringham
16 testifies, if I have time, I would like to then cross the witness, if that's agreeable.

17 MR. CLARY: That's fine with me, Your Honor.

18 THE COURT: All right. Very well. You may stand down.

19 MR. CLARY: Appreciate the efforts toward efficiency here.

20 THE COURT: Call your next witness.

21 MR. CLARY: Call Mr. Hahn.

22 MR. BELLER: Your Honor, approximately 50 minutes have transpired.

23 THE COURT: All right.

24 MR. BELLER: I think we started at 9:20.

1 LARRY HAHN

2 Having been called as a witness and being first duly sworn, testified as follows:

3 THE CLERK: Please state your name and spell it for the record.

4 THE WITNESS: Larry Hahn, H-a-h-n.

5 THE CLERK: Thank you.

6 DIRECT EXAMINATION OF LARRY HAHN

7 BY MR. CLARY:

8 Q What is your occupation -- What's your address?

9 A My home address is 6040 Monte Cristo Way, Las Vegas, Nevada.

10 Q What is your occupation?

11 A Business owner of Hahn's World of Surplus.

12 Q Are you a director and a stockholder of that company?

13 A I am.

14 Q And who's the -- who are the officers?

15 A My wife, Christina, is president and treasurer. My daughter, Leslie,
16 is vice-president and secretary.

17 Q And you're one of the defendants in this case, and the corporation
18 you just testified to is one of the defendants in this case as well, right?

19 A Correct.

20 Q Now, what positions with E.I.N. and Kokoweef have you held?

21 A President and treasurer since 1984 --

22 Q All right.

23 A -- with E.I.N. and also with Kokoweef.

24 Q Just very briefly, tell me what the business of E.I.N. and Kokoweef

1 has been and the history?

2 A We're in pursuit of an underground river and a cavern, which of course
3 includes the river, and the possibility of having a lot of values in it; gold, preferably.
4 And we've been doing this since 1984, and the on-going thing has been since
5 1935.

6 Q And when did Ted Burke become a stockholder of E.I.N.?

7 A 1991.

8 Q And did he later become an officer/director?

9 A Yes.

10 Q And an officer/director of Kokoweef, when was that?

11 A About 2005, I believe.

12 Q Okay. Now, you heard the testimony of Reta Van Da Walker today?

13 A Yes.

14 Q Is the testimony that she gave consistent with your understanding of
15 what occurred?

16 A Absolutely.

17 Q Now, after engaging Reta to assemble organized accounting records,
18 did you receive a demand from Mr. Beller, representing Mr. Burke and others, for
19 records to do an audit of E.I.N. and Kokoweef?

20 A I did.

21 Q Were those records provided to Mr. Beller?

22 A They were.

23 Q Was the audit ever performed?

24 A Not to my knowledge.

1 Q The lawsuit was filed on March 7, 2008, right?

2 A Correct.

3 Q Okay. Now, you've read the complaint, have you not?

4 A I have.

5 Q The complaint talks about alleged breaches of fiduciary duties by you,
6 is that correct?

7 A They do.

8 Q And specifically there are references in other documentation, including
9 the first affidavit of Mr. Stringham that I believe Mr. Beller has here today, about your
10 having diverted and misappropriated funds of E.I.N. and Kokoweef. Is that -- is that
11 what is alleged?

12 A That's what is alleged.

13 Q Has that ever happened?

14 A Never.

15 Q Now, there's allegations of use of corporate funds for personal
16 purposes, for purposes of Hahn's World of Surplus, Inc., the defendant, and did
17 that ever happen?

18 A Never.

19 Q Was there ever any use of corporate funds under your -- How long
20 have you been president of -- How long were you president of E.I.N. when it was
21 in existence and how long have you been president of Kokoweef?

22 A E.I.N. was in inception in 1984 until 2006, is when we completed the
23 transfer.

24 Q And during that period of time has there been any use of corporate

1 funds via the corporation for any purposes other than for proper corporate
2 expenses?

3 A None.

4 Q Now, there's evidence that there were checks written by these
5 corporations to Hahn's World of Surplus, Inc., is that correct?

6 A That's true.

7 Q What were those used for?

8 A Because of our limited amount of funds, I would supply clothing,
9 etcetera, supplies, tools, anything I could buy that we needed. Many times I could
10 not afford to buy them through Kokoweef or through E.I.N. because we didn't have
11 the money in the bank for it, so we just accumulated them over the years. And
12 when we started to bring money in after we found the ore body and the air flow,
13 then I paid back the store at cost.

14 Q Now, were there individuals that were -- that did work for Kokoweef
15 at the mine site?

16 A True.

17 Q What was the nature of these people's contributions?

18 A These are all volunteers. Number one is Larry Butler, who does work
19 and drills and does whatever needs to be done. He's been there about thirteen
20 years. Joan Latz (phonetic) has been there about eighteen years. She lives on
21 premise. She cooks for everybody, the investors that show up, and generally
22 takes care of the camp. And then there's two -- another couple that has been living
23 there for about nine years and they are there 24/7. His name is Randy Stenburg
24 (phonetic) and his wife, Bernice. She works at the MGM five days a week.

1 Q Okay. And is Mr. Burke aware of these things?

2 A Totally aware of everything.

3 Q And you testified that Hahn's World of Surplus, Inc. did on various
4 occasions advance funds on behalf of Kokoweef, right?

5 A If I needed a thousand dollars or five hundred dollars, whatever it
6 may be, my wife would advance me and I would pay her back whenever possible.

7 Q I'm going to hand you what has been marked for identification as
8 Kokoweef's Exhibit 6. (Having omitted 4 and 5, I realize). I'd ask you if you can
9 identify this document. This is Exhibit 6. Is this a balance sheet of Kokoweef as
10 of December 31, 2007?

11 A To the best of my knowledge.

12 Q Who prepared this, do you know?

13 A I believe Reta Van Da Walker.

14 Q And this lists under liabilities Hahn Surplus as a creditor, or owed a
15 debt of forty-one thousand, three hundred and fifty-four dollars and forty-two cents
16 as of this date. Is that correct?

17 A Correct.

18 Q Is this the amount that was owed as of this date for advances made
19 by Hahn's that you've testi--

20 A Well, parts and clothing and what have you.

21 Q Okay. Now, when items were bought by Hahn's Surplus, I'll call it for
22 a short version, for Kokoweef, did you obtain those items -- on what basis did you
23 obtain those items?

24 A At the lowest cost I could get them.

1 Q Including discounts that might have been available to Hahn's?

2 A Whatever was available.

3 Q And you passed those discounts on to Kokoweef?

4 A Correct.

5 Q And the accounts payable that's reflected on Exhibit 6, does that
6 reflect purchase of such items at the actual cost?

7 A I'm sure it does.

8 Q Okay. Now, you've read in the complaint there's an allegation about --
9 and in other places about your having turned down some great investment that was
10 going to be made at Kokoweef. Is that true?

11 A That's true.

12 Q I'm handing you what has been marked for identification as Exhibit 7
13 and ask you if you'd tell us what that is?

14 A This was handed to me by Mr. Zubris (phonetic) who's the president
15 of Mine Gold, in the spring of 2007. I was requested by Ted Burke to join me --
16 join him in a presentation, someone that might invest with us, so I agreed and I
17 went to him. We spent about an hour and a half there watching a slide show of his
18 operation in Honduras. And at the end all I could see was someone who was trying
19 to get out of Honduras. So I thanked him on the way out and he handed me this
20 agreement, proposed structure between Mine Gold and Kokoweef, which I said I
21 would look over and talk --

22 Q And did you do that later?

23 A Yes. And I talked it over --

24 Q And did you -- What was your reaction to this proposed agreement?

1 A Well, I would be giving away the company.

2 Q So you just rejected it out of hand?

3 A Rejected it totally. I mean, after talking with a couple of our --

4 Q For the reasons stated.

5 MR. CLARY: Offer Exhibit 7, Your Honor.

6 THE WITNESS: -- a couple of our Board members.

7 MR. BELLER: Your Honor, it's hearsay. But again, for the purposes --

8 THE COURT: I'll admit it for the purpose of the hearing.

9 MR. BELLER: I understand.

10 BY MR. CLARY:

11 Q Now, there's also some allegations about the sales of unregistered

12 securities by these companies that are part of the complaint, is that correct?

13 A Yes.

14 Q And they're alleging securities violations, right?

15 A Correct.

16 Q When E.I.N. was formed, did you have an attorney?

17 A No.

18 Q During the course of -- after E.I.N. was formed, did any governmental

19 securities regulatory authority ever contact you regarding E.I.N.?

20 A Yes, in 19--

21 Q When was that?

22 A 1989.

23 Q And who was that?

24 A The Nevada SEC Regulatory Commission.

1 Q The Nevada Securities Division --
2 A Yes.
3 Q -- was an investigator?
4 A Apparently, I think.
5 Q And what did you do? Did you engage an attorney?
6 A We engaged an attorney, yes. Martha Ashcraft.
7 Q Okay. And was any action ever taken by the State of Nevada?
8 A None whatsoever.
9 Q And what was your advice from Ms. Ashcraft, if any?
10 MR. BELLER: Objection, hearsay, Your Honor.
11 THE COURT: Well, he can state his understanding of what he was --
12 BY MR. CLARY:
13 Q What was your understanding? Did Martha Ashcraft tell you there
14 was anything that you had done wrong or anything you should do to correct what
15 you were doing?
16 MR. BELLER: Objection, hearsay, Your Honor.
17 THE COURT: Overruled.
18 THE WITNESS: No, she did not.
19 BY MR. CLARY:
20 Q Now, in approximately 2003 did you consult with an attorney?
21 A Yes.
22 Q Who was that?
23 A Well, I originally talked to you and to Mr. Roberts.
24 Q Or Joe Dempsey?

1 A Joe Dempsey. I'm sorry. Yeah, Joe Dempsey.

2 Q Is it Dempsey, Roberts & Smith?

3 A Dempsey, Roberts. Right.

4 Q How did you get in touch with Dempsey, Roberts & Smith?

5 A Through Ted Burke.

6 Q And how did that happen?

7 A Ted Burke is the president of Nevada -- of Prepaid Legal, and he

8 apparently was using Mr. Dempsey as one of their attorneys.

9 Q Okay. Now, I'm going to hand you what has been marked for

10 identification as Exhibit 8. And you consulted with me about securities law, did

11 you not?

12 A I did.

13 Q And I've been your corporate securities attorney pretty much since

14 then, is that true?

15 A The only one.

16 Q What is Exhibit 8?

17 A It's an agreement that should be signed by any new investors coming

18 into Kokoweef, Incorporated.

19 Q And is it your understanding that this is intended to comply with the

20 securities law?

21 A Correct.

22 Q Now, do you know of any securities law violations that have been --

23 And has this agreement been used by -- with respect -- substantially in this form

24 with every new investor that has been brought into Kokoweef since its formation?

1 A Well, I have anyone that's new that comes into it sign one of these.

2 Q Okay. Do you know of any securities law violations that have been
3 committed by Kokoweef since its formation?

4 A None that I know of.

5 Q Okay. Now finally, Mr. Hahn, we're here today asking the Court to
6 post a -- to require the plaintiffs to post a bond to cover expenses that are going to
7 be incurred because this lawsuit was wrongfully brought for the reasons stated in
8 the statute I quoted, right?

9 A Correct.

10 Q Do you understand that; that's why we're here?

11 A I understand that.

12 Q Can you tell me how much has been incurred to date for attorney's
13 fees by my law firm for Kokoweef?

14 A Between thirty-five and fifty thousand, with the on-going billing yet
15 to come.

16 Q Now, you've also been required to hire Mr. Segel, have you not, to
17 represent you individually and Hahn Surplus, is that correct?

18 A Correct.

19 Q And is it correct that the Board of Directors of Kokoweef has adopted
20 a resolution pursuant to the Articles of Incorporation and the By-Laws indemnifying
21 you against the cost of this lawsuit?

22 A They have.

23 Q And what has been incurred to date with respect to attorney's fees
24 by Mr. Segel?

1 A Eleven thousand cash, plus on-going billing, which is about twenty-five
2 thousand.

3 Q So about twenty-five thousand. And this is just the beginning of the
4 lawsuit, right?

5 A Right. Correct.

6 Q If the bond is posted, it's going to have to be considerably in excess
7 of that, right?

8 A I would think so.

9 Q Do you have any estimate as to what this is going to cost?

10 MR. BELLER: Your Honor, that's total speculation.

11 MR. CLARY: I don't think it's speculation.

12 THE COURT: He's just giving his understanding. I'll allow it.

13 THE WITNESS: I think between two hundred and two hundred and fifty
14 thousand. That's my --

15 MR. CLARY: All right. I have no further questions.

16 THE COURT: All right. Cross-examination?

17 MR. BELLER: Your Honor, my same --

18 MR. CLARY: Oh, offer Exhibit 7. I'm sorry.

19 MR. BELLER: The same objection. I assume the same --

20 THE COURT: Right. For purposes of the hearing I'll allow it.

21 MR. BELLER: Okay, I understand. Your Honor, again, it's approximately --

22 THE COURT: Was that -- That's Exhibit 8, I think you mean, right?

23 MR. BELLER: Yes, it is, Your Honor.

24 MR. CLARY: And how much time do I have left?

1 THE COURT: Mr. Clary, I think you mean Exhibit 8, because Exhibit 7 was
2 already admitted. I'll admit 8.

3 MR. BELLER: I believe we started at 9:20, Your Honor, approximately.

4 THE COURT: Right, we did.

5 MR. SEGEL: We concur, Your Honor.

6 MR. CLARY: Okay. Well, I've got -- I think I've got five minutes left for
7 rebuttal.

8 THE COURT: All right. Well, you know, and again, I set two -- As we
9 discussed in chambers, I set two hours. I mean, it's not -- if we need a little bit
10 more time, I'll figure out some way to accommodate. I want both parties to have
11 the opportunity to be heard. But I was -- my emphasis is on the need to focus
12 on the issue here and that's the security aspect, okay. So I mean, if we go a little
13 past two hours or something like that, I've got another item at 11:30, I'll have to
14 figure out when I could, you know, hear a little bit more if need be. But again,
15 the two hours is what's been allocated, and so -- but I want each side to have
16 an opportunity to present your points on this precise issue that's before the Court.

17 Now, that being said, Mr. Beller, did you have cross-examination
18 at this time?

19 MR. BELLER: Your Honor, again, recognizing what the Court said --

20 THE COURT: Yeah.

21 MR. BELLER: -- I'd just as soon reserve.

22 THE COURT: Very well.

23 MR. BELLER: I don't know how long Mr. Stringham is going to be on, and
24 then I would --

1 THE COURT: All right. Very well. You may stand down, sir.

2 Did you have anything else at this time, Mr. Clary?

3 MR. CLARY: No, Your Honor.

4 THE COURT: Okay. Mr. Beller, you may call your first witness.

5 MR. BELLER: Okay, thank you, Your Honor. Your Honor, I think --

6 Well, go ahead, Talon.

7 TALON STRINGHAM

8 Having been called as a witness and being first duly sworn, testified as follows:

9 THE CLERK: Please be seated.

10 MR. BELLER: Your Honor, before we get started --

11 THE COURT: Hold on a second. Let her establish --

12 MR. BELLER: I'm sorry.

13 THE CLERK: Please state your name and spell it for the record.

14 THE WITNESS: It's Talon Carl Stringham. That's T-a-l-o-n C-a-r-l

15 S-t-r-i-n-g-h-a-m.

16 THE CLERK: H-a-n?

17 THE WITNESS: H-a-m.

18 THE CLERK: Thank you.

19 THE COURT: Okay. Mr. Beller, you had something you wanted to say
20 before --

21 MR. BELLER: Yes, Your Honor. I apologize. Before we get started, we filed
22 Mr. Talon's original affidavit, as well as the supplemental affidavit. Counsel has
23 courtesy copies of both, as does the Court. So if appropriate, if I may, since he has
24 that book in front of him, I would have questions to him but I assume at the end of

1 that I will offer both affidavits to the Court, if that's agreeable.

2 MR. CLARY: Well, Your Honor, I'm going to object to the affidavits going into
3 evidence. This is an evidentiary hearing and the evidence Your Honor considers
4 is whatever is presented here, and that's the way it should be.

5 THE COURT: Well, it hasn't been offered yet. Let me hear the evidence
6 adduced orally and then I'll see whether or not it would be proper to --

7 MR. CLARY: Very good.

8 MR. SEGEL: That's fine.

9 THE COURT: Okay.

10 MR. BELLER: And the affidavit has exhibits attached to it, Your Honor.
11 But that being said --

12 DIRECT EXAMINATION OF TALON STRINGHAM

13 BY MR. BELLER:

14 Q Talon, if I may, first of all can you relate to the Court what your
15 background is, if you would, please? And could you point in your original affidavit
16 and/or the supplemental affidavit where that would be? And I invite you to look at
17 Exhibit A to the original affidavit, Talon.

18 A Okay. Exhibit A is a copy of my C.V. I am a Certified Public
19 Accountant, an A.B.V., which is Accredited in Business Valuation. I'm a C.F.E.,
20 which is a Certified Fraud Examiner. I'm a C.C.E., which is a Certified Computer
21 Examiner. And an A.S.A., which is an Accredited Senior Appraiser, and I hold
22 that designation in Business Valuation. I've been working in the litigation forensic
23 accounting arena for about eight years now. I have a degree in Accounting from
24 Utah State University. I also have a Master's of Accounting from Utah State as well.

1 MR. SEGEL: Mr. Beller, do you have a book for Mr. Clary, an exhibit book
2 for Mr. Clary, or did you just bring one for the defendants?

3 MR. BELLER: I'm sorry, Nelson?

4 MR. SEGEL: Do you have an exhibit book for Mr. Clary? You gave me an
5 exhibit book. Does Mr. Clary have an exhibit book as well?

6 MR. CLARY: I don't have one.

7 MR. BELLER: I thought you could share, but -- it's okay. Well, let me do
8 this. This is the second affidavit. You have that?

9 MR. CLARY: I have that, yeah. I don't need that.

10 MR. BELLER: You don't have the first one?

11 MR. CLARY: I don't have it with me.

12 MR. SEGEL: Here. Mr. Clary can use mine. I do have my copy with me.

13 MR. BELLER: Okay. Do you have what you need, counsel?

14 MR. CLARY: Well, what exhibit are you referring to?

15 MR. BELLER: I'm doing his C.V. It's not an exhibit. It is attached to the first
16 affidavit, Mr. Clary.

17 MR. CLARY: Okay, I have that now. Thank you.

18 MR. BELLER: Okay.

19 BY MR. BELLER:

20 Q I'm sorry, Talon. Have you completed your background as it relates
21 to your C.V.?

22 A I think I've said what I intended to say, yes.

23 Q Okay, thank you. Now, insofar as this particular matter, and as
24 you testify, Talon, if you would please take into consideration the comments of

1 Ms. Van Da Walker as it relates to what she has said, but I'm going to ask you to
2 comment upon that, recognizing you just got those exhibits and you may have not
3 had a chance to review them. But I'd like you to go into your report and then I'll
4 come back to your other comments, okay?

5 A Okay.

6 Q Okay. Now, that being said, as it relates to this particular case and
7 this particular assignment, what exactly were you asked to do?

8 A I was contacted by Ted Burke in April or May of this year and asked
9 to basically take a look at the books that he had and look at them forensically to
10 determine if there was any indication of misdealing or fraud.

11 Q Okay. And what to date have you had an opportunity to review?

12 A I was provided with some bank statements for both E.I.N. and
13 Kokoweef. I was provided with some copies of cancelled checks that went along
14 with those bank statements. I was provided with some receipts. And I was provided
15 with -- later I was provided with a copy of QuickBooks that I understand that Ms.
16 Van Da Walker prepared. And then it looks like I just got a whole bunch more
17 receipts today.

18 Q Well, forgetting -- I don't want to mix apples and oranges, Talon, and
19 again, recognizing you just got that, what I'd like you to do, please, is focus in on
20 what you had and then we'll go from there. And I assume it's fair to say, is it not,
21 Talon, that originally you were given some books and records from Mr. Burke, who
22 had received documents from Ms. Van Da Walker, which were subsequently then
23 supplemented, if you will, by copies of the QuickBooks on disk, correct?

24 A Yes. I received the bank statements, the cancelled checks when I first

1 met with Mr. Burke. And then from that essentially I prepared the first affidavit.
2 Later I was provided some more receipts and the QuickBooks and from that I
3 prepared the second affidavit.

4 Q Now, insofar as the QuickBooks, that was a disk that you printed off,
5 correct?

6 A It was a disk that had the QuickBooks file on it, yes.

7 Q Okay. And did you have an opportunity, Talon, to compare what you
8 initially got from the defendants and what you subsequently got on disk?

9 A Yes.

10 Q And did it appear to be substantially the same?

11 A I had a lot more with the QuickBooks.

12 Q That I understand, but were there any major discrepancies?

13 A Not that I recall off-hand.

14 Q Okay. Now, insofar as your background, and just briefly again, how
15 many times have you been qualified, if any, as an expert to testify insofar as a
16 forensic certified public accountant?

17 A Three or four.

18 Q Okay. In what state?

19 A Utah.

20 Q Okay. And you are licensed in the state of Utah?

21 A I'm licensed in Utah and I'm licensed in Idaho. I have reciprocity
22 pending in Nevada.

23 Q Now -- and you've testified how many times, approximately?

24 A The same number, three or four.

1 MR. BELLER: Your Honor, again, we have designated Mr. Stringham as
2 an expert, but at least for the purposes of this hearing I would move to qualify him
3 as an expert as well.

4 THE COURT: Response?

5 MR. CLARY: I'm not going to -- At a trial I would object, at this hearing I do
6 not.

7 THE COURT: All right. For purposes of this hearing, he's deemed qualified.

8 MR. BELLER: Thank you, Your Honor.

9 THE COURT: Okay.

10 MR. CLARY: We'll see how qualified he is.

11 BY MR. BELLER:

12 Q Just briefly, Talon, based upon what you heard in terms of -- and with
13 all due respect to Ms. Van Da Walker, how do you compare an enrolled agent to
14 the qualifications that you have proffered to the Court?

15 MR. CLARY: Your Honor, I object to that. I didn't even try to qualify her as
16 an expert. I mean, she testified to events that occurred. I don't see where that's
17 relevant here at all.

18 MR. BELLER: I will withdraw the question and I'll move on, Your Honor.

19 THE COURT: All right.

20 BY MR. BELLER:

21 Q Okay. Now, have you also, Talon, reviewed the affidavits of other
22 people in this action, such as Michael Kehoe, Ted Burke, and the affidavit of Ms.
23 Van Da Walker?

24 A Yes.

1 Q And it's fair to say you've reviewed the electronic QuickBooks, the files
2 of both E.I.N. and Kokoweef, correct?

3 A Yes.

4 Q And is it fair to say you have reviewed the substantive pleadings in this
5 matter in terms of the complaint, etcetera?

6 A I reviewed the complaint. I don't know that I've seen all the pleadings,
7 but.

8 Q Okay. Now, insofar as the documents, is it fair to say that in order
9 for you to do a complete forensic analysis you would need substantially more things
10 that are outlined in both the original and subsequent affidavit of yours?

11 A Yes.

12 Q And is that enumerated in both the first and second affidavit?

13 A Yeah, Exhibit C, I believe --

14 Q Okay.

15 A -- to both affidavits.

16 Q And it's your understanding you can't get any of those additional
17 documents because discovery has not commenced and at this juncture you were
18 only able to do what you did based upon what you were provided?

19 A That's correct.

20 Q Now let's go to, Talon, to your first affidavit. And again, I would like
21 you to please, Talon, to take into consideration again what Ms. Van Da Walker said.
22 But that being said, let's go to, if you would, please, your first affidavit as it relates to
23 paragraph 9. And do you have your first affidavit in front of you?

24 A I do.

1 Q Okay. Now, can you please -- and what I'm going to try and do, Talon,
2 unless there are objections, I'm going to ask you to look at certain paragraphs and
3 then comment if you would both on your testimony and affidavit, as well as the
4 exhibits that may or may not be behind the appropriate paragraph. Okay?

5 A Okay.

6 Q Now, insofar as paragraph 9 is concerned, could you relate to the
7 Court the substance of that, please?

8 A Paragraph 9 relates back to Schedule 1 of that affidavit. Basically
9 it's a summary of checks that I have copies of that were written from Kokoweef to
10 Explorations of Nevada or E.I.N. basically from the period of May '06 to August '07.
11 That number was twenty-three thousand, two hundred and fifty dollars. And part of
12 the import of this is the fact that I understood that E.I.N. should have been a closed
13 corporation as of the first of September, 2006. And so there was eight thousand,
14 two hundred and fifty dollars that went to that corporation after it was supposedly
15 closed.

16 Q Now, when you say closed, and there have been some subsequent
17 documents but I believe in your report you reference documents that you have seen,
18 how are you defining for the Court closed, Talon?

19 A Well, I mean, when a company terminates its operations, which I
20 understood that E.I.N. was supposed to have terminated or basically wrapped up
21 and everything was transferred over to Kokoweef, you would expect a winding up
22 of that corporation and the books and records would ultimately be completed, be
23 finished. There wouldn't be any more entries or transactions for that corporation.

24 Q And have you had an opportunity to review the closing agreement,

1 and what significance does what you say have to do with the closing agreement?

2 A Well, as I understand it, the closing agreement basically was
3 supposed to wind up operations for E.I.N. and then Kokoweef was to take its place.

4 MR. CLARY: Objection, Your Honor. The closing agreement doesn't say
5 anything about that. The document speaks for itself.

6 THE COURT: He's stating his understanding of it. I'll allow it. Go ahead.

7 THE WITNESS: As I understood it, E.I.N. should have been wrapped up
8 at that point.

9 MR. BELLER: If the Court overrules the objection, you can complete your
10 testimony fully, Talon.

11 MR. CLARY: I thought he just did.

12 THE COURT: I think that's what he did.

13 THE WITNESS: I'm fine.

14 MR. BELLER: That's fine.

15 BY MR. BELLER:

16 Q Now, let me ask you this, Talon. Referring again to paragraph 9,
17 as well as paragraph 10, and could you take a moment to read paragraph 10 of
18 the first affidavit to yourself, please? If you're familiar with it, let's move on.

19 A Okay.

20 Q Now, insofar as paragraph 10 is concerned, what significance is
21 paragraph 10 and approximately the forty thousand dollars that you found, and
22 are there any exhibits in your first affidavit which basically exemplify what you're
23 testifying to?

24 A Yes. Paragraph 10 relates to Schedules 2 and 3.

1 Q Okay, let's just take a moment, if you would, please. Schedule 2 and 3,
2 and this is attached to, again, your original affidavit.

3 MR. BELLER: And that's 1 of 1, Your Honor, of the original affidavit. Does
4 the Court have the original?

5 THE COURT: I'm looking. What day was it filed? Oh, I have it here. Okay.

6 BY MR. BELLER:

7 Q Okay. Now, so what you're doing, Talon, let's go again to Schedule 1
8 of your first affidavit. Again, could you comment on the significance of that?

9 A I believe we're on Schedule 2, right?

10 Q I'm sorry?

11 A We're on Schedule 2, not 1. Is that correct? We were talking about
12 paragraph 10 and --

13 Q Schedules 2 and 3. I'm sorry.

14 A Schedules 2 and 3.

15 Q That's correct.

16 A Yeah, okay. Schedule 2 is a summary of checks that I was given that
17 were --

18 MR. BELLER: Excuse me, Your Honor. Could I just -- I know counsel has
19 a little bit of a hearing problem, but if I could please -- They're talking and I'm having
20 difficulty hearing, so maybe Mr. Clary can just switch seats.

21 MR. CLARY: How does that relate to my hearing problem?

22 MR. BELLER: Well, because --

23 MR. SEGEL: The problem, Your Honor, is --

24 THE COURT: I think it's --

1 MR. CLARY: It's his hearing problem.

2 THE COURT: No.

3 MR. SEGEL: The problem is Mr. Clary doesn't have a copy of Schedule 2.
4 So we're going to work on that, Your Honor. Here.

5 THE COURT: The point is, I think Mr. Beller is saying that he's being
6 distracted by --

7 MR. CLARY: I didn't mean to do that.

8 MR. SEGEL: I've provided Mr. Clary with my copy of Exhibit 1, which I
9 brought with me, so we now have it. Even though we only have one exhibit book,
10 we now have -- each have the document to review.

11 MR. CLARY: Thank you. I was trying to speak under my breath. I'm sorry.

12 MR. BELLER: Okay, thank you.

13 BY MR. BELLER:

14 Q Go ahead, Talon, please. Sorry.

15 A Okay. Schedule 2 is a summary of checks that I received that were
16 E.I.N. checks that were paid to Hahn's World of Surplus. And over the period from
17 April of 2003 to June of 2006 there was twenty-six thousand dollars roughly that
18 went in that direction. Schedule 3 is the same thing but for Kokoweef checks,
19 so Kokoweef checks were paid to Hahn's World of Surplus. Between January '07
20 and August '07 there was fourteen thousand dollars. Taking into consideration
21 Mr. Hahn's testimony and Mr. -- or Ms. Van Da Walker's testimony --

22 Q Of now?

23 A Of now. You know, they have indicated that there may be some valid
24 reason that, you know, those checks were actually made. The problem --

1 MR. CLARY: I object to his characterization of the testimony. She didn't say
2 they may be, that they are valid.

3 THE COURT: Well, he's entitled to give his understanding and interpretation
4 of the testimony.

5 MR. CLARY: Well, she just testified. You think he could remember it better.

6 THE COURT: All right.

7 THE WITNESS: At any rate, the --

8 BY MR. BELLER:

9 Q Well, Talon, excuse me. Please don't get distracted. Focus on the
10 question and answer the last question. Do you want me to repeat it?

11 A Yeah.

12 Q Okay. You were talking about basically the -- what it appears to be,
13 taking into consideration the testimony of two of the defendant's witnesses. But
14 go ahead, please.

15 A Okay. As I said, there may be some legitimate reasons for the fact that
16 these checks were paid to Hahn's Surplus. The problem is that I have been asked
17 to look for indicators of fraud and this is an indicator of fraud. Obviously there could
18 be some legitimate -- we could speculate all day long as to why, but you know, from
19 a red flag standpoint as a certified fraud examiner, this is a red flag.

20 Q And can you -- Why is it a red flag, taking into consideration E.I.N.,
21 Kokoweef, Hahn Surplus? Why is that a red flag, or is that the reason it is a red
22 flag?

23 A Well, it's the fact that you have Larry Hahn, who is president and
24 treasurer of E.I.N. and Kokoweef who is supposedly using that entity to conduct

1 business with an entity he controls solely. Again, there could be a myriad of
2 reasons, but it's an indication of fraud because of the fact that there may be a
3 conflict of interest there.

4 Q Okay. Now, what is the -- again, the significance of what you just
5 stated, Talon?

6 A Well, I mean, basically the checks show that forty thousand dollars
7 went out of these companies into Hahn's World of Surplus.

8 Q Insofar as the testimony and taking into consideration that they may
9 be valid, they may not be valid --

10 MR. CLARY: Objection, that's not the testimony.

11 THE COURT: Well --

12 MR. CLARY: I mean, this is smoke. Your Honor, I'm trying to clear the
13 smoke away a little bit here.

14 THE COURT: Just because somebody testifies to something doesn't mean
15 that it has to be deemed credible. I think that's what counsel is indicating is that
16 there's been testimony to this effect. The Court may or may not accept it. He's
17 entitled to probe the witness relative to his understanding of it.

18 MR. CLARY: Very well.

19 MR. BELLER: Thank you, Your Honor.

20 BY MR. BELLER:

21 Q Can you comment please then, Talon, about the documentation or
22 lack thereof which you were given subject to your opinion?

23 A At the time that this was prepared I had checks, and that's basically
24 what this was prepared off of. I had no other supporting documentation to

1 substantiate or, you know, discredit or whatever you want to call it, whether or not
2 there was a legitimate reason or not for these checks going to Hahn's World of
3 Surplus. As I've indicated, there may be a legitimate reason for that to occur, but I
4 haven't yet seen documentation or had a chance to at least examine documentation
5 to that effect.

6 Q Let me ask you this, Talon. When you have entities that may be
7 controlled, commonly controlled, if you will, does more or less care need to be given
8 because of the appearance potentially of a conflict or impropriety?

9 MR. CLARY: If that's not a leading question, I never heard one.

10 THE COURT: Sustained.

11 BY MR. BELLER:

12 Q Insofar as what you were able to observe, Talon, between the books
13 and records of E.I.N. and Kokoweef, what is your professional opinion as to what
14 you observed in terms of the care that was being taken to maintain the books and
15 records of E.I.N. and Kokoweef?

16 MR. CLARY: Objection.

17 THE COURT: I'll allow it.

18 THE WITNESS: Well, there's certainly a large number of transactions
19 between the related entities, and the documentation that I have seen is lacking.

20 BY MR. BELLER:

21 Q And what do you mean by lacking, Talon?

22 A Well, I would just expect to see more, more documentation showing
23 or substantiating the reason for the expense and, you know, approval for the
24 expense.

1 Q Now, let's go to paragraph 11 and 13, again of the original affidavit.

2 And could you describe briefly the nature of paragraph 11 and 12, Talon?

3 A Well, 11, 12 and 13 are all kind of inter-related. They refer back to
4 Schedules 4 and 5.

5 Q And can we go to then 4 and 5, and what do Schedules 4 and 5 of
6 the original affidavit show, Talon?

7 A Schedule 4 is a summary of checks that were made payable to
8 someone other than Hahn's World of Surplus, but then if you look at the back of
9 the check it was actually deposited into Hahn's World of Surplus accounts.

10 Q Now, what do you mean by that, just to make sure I understand?

11 A Well, for example, the check, if you look at line 1, the check number
12 4260 was written out to Skip Wynea (phonetic) -- I guess that's how you say it --
13 for ninety dollars. But if you look at the back of the check, that check was actually
14 deposited into Hahn's World of Surplus' account.

15 Q Now, please to continue to comment on 11, 12 and 13 and make
16 reference to the schedules, if you would, please.

17 A Okay. If you look at the total on page 7 of Schedule 4, there was
18 approximately fifty-three thousand dollars that went into Hahn's World of Surplus
19 accounts that was written to other individuals or to cash during the period from
20 January '03 through roughly October of 2006.

21 Schedule 5 is the same thing but for Kokoweef, so it's Kokoweef
22 checks that were written out to someone other than Hahn's World of Surplus but
23 then ultimately ended up in Hahn's World of Surplus' account. And there was
24 eighty-seven hundred dollars roughly between October '06 and October '07.

1 Q Okay. And again, the significance of checks being written to an
2 individual and then deposited in a controlled entity of Mr. Hahn, from your
3 professional opinion is what, Talon?

4 A Again, it's another indication, it's another red flag. Typically you would
5 expect that those checks would go into those individuals' accounts.

6 Q And is it fair to say that all of the -- you examined all of the backs of
7 those checks?

8 A Yes.

9 Q And all of them were deposited into Hahn's Surplus?

10 A Yes. And again, there may be legitimate reasons for that, but it's an
11 indication of -- or a red flag.

12 Q For fraud?

13 A Correct.

14 Q Now, insofar as paragraph 14, any comment?

15 A Paragraph 14 relates to affidavits that I reviewed of Mike Randolph,
16 Ted Burke. From what I gather --

17 MR. CLARY: Your Honor, I'm going to object. He's testifying from those
18 affidavits.

19 MR. BELLER: I'll move on on that, Your Honor.

20 MR. CLARY: We've got hearsay upon hearsay here.

21 THE COURT: Yeah, he's withdrawing that.

22 MR. BELLER: I'll move on on that.

23 BY MR. BELLER:

24 Q What I'd like to do, Talon, my questions just focus on dollars, okay.

1 Now, is there anything, Talon, that you have testified to and based upon what you
2 heard from Ms. Van Da Walker that would give you pause to think or re-think what
3 you have said, or would you need additional documentation to further opine?

4 A Well, I mean, I sat here and listened to what she said. Certainly
5 I would need more documentation in order to verify some of her statements.
6 One thing that kind of jumped out at me from her testimony was the fact that she
7 basically said that she summarized some of the receipts and kind of balanced the
8 deposits together before she made the entry into QuickBooks, which was -- which
9 you could do that; it's not preferable. You know, the preference is to have every
10 individual receipt, every individual deposit allocated and put into your accounting
11 system.

12 Q Okay. Let's go to -- Does that complete your testimony and exhibit
13 testimony of your first affidavit?

14 A Yes, substantially.

15 MR. BELLER: Okay. Your Honor, again, I would move for the first affidavit
16 and exhibit into evidence, which is basically what Mr. Stringham has testified to.

17 MR. CLARY: I object. His testimony speaks for itself. I'm not going to --
18 I'm certainly not going to consent.

19 THE COURT: The testimony -- You've adduced the testimony. It's in the
20 record. It's been filed.

21 MR. BELLER: Okay. The only thing that I would ask for -- I understand --
22 is there were attached exhibits reflecting what he has testified to.

23 THE COURT: They're attached to it in the record as well, aren't they?

24 MR. BELLER: That's fine, yes. But for the purposes of this hearing, that's

1 all I'm saying.

2 THE COURT: Well, I mean, they're already in the record. I mean --

3 MR. BELLER: Then that's fine, Your Honor.

4 THE COURT: -- so I don't know that it needs to be offered as an exhibit.

5 MR. BELLER: I'll move on, Your Honor.

6 BY MR. BELLER:

7 Q Mr. Stringham, looking at your second affidavit, if you will, and
8 recognizing what Ms. Van Da Walker has said, and let's focus in on paragraph 9,
9 what comments do you have on paragraph 9 as you opined before Ms. Van Da
10 Walker testified? And then we'll come back.

11 A Based on the documentation that was provided to me, I found mine
12 receipts or receipts that were provided that were not recorded into QuickBooks.

13 Q Of which company?

14 A Of E.I.N. And I also found entries in the QuickBooks for which I did
15 not have receipts. I understand based on her testimony that --

16 Q Let's -- Talon, if I may, let's --

17 MR. CLARY: Well, let him finish his testimony.

18 THE COURT: Was he -- He was in the process of giving an answer.

19 Were you finished with your answer?

20 BY MR. BELLER:

21 Q Go ahead, Talon. I'm sorry.

22 A Okay. Just based on what Ms. Walker said -- or Van Da Walker said,
23 you know, I guess I would -- Basically what she said is that she skipped some
24 receipts, balanced them together when she put them into the QuickBooks, so I guess

1 it's kind of to be expected based on what she did.

2 Q Well, does that complete your answer for the moment?

3 A Yeah.

4 Q Okay. Again Talon, what I'd like you to do, please, is focus in on your
5 report.

6 A Okay.

7 Q And then I'm going to come back after you've completed your
8 testimony for comments.

9 A Sorry.

10 Q Don't please co-mingle the two, okay?

11 A Okay.

12 Q Okay. Now let's go back to your report and let's go back to paragraph
13 9 if you would, please.

14 A Okay.

15 Q Go ahead.

16 A So I commented on 'A' and 'B'.

17 Q Well, I don't think you did on 'B'. Are those reflected in any schedules,
18 Talon, that you have here?

19 A Yeah, 'A' and 'B' are essentially covered by Exhibit G.

20 Q Now, when you say Exhibit G, just so --

21 A It's Exhibit G to my second affidavit.

22 Q Let me finish before you start --

23 A Sorry.

24 Q -- because the Court Reporter will get mad at me, and she's a very

1 nice lady. So if Exhibit G is in your second affidavit --

2 MR. BELLER: And I apologize to the Court, Your Honor. I didn't have these
3 tabbed where they jump out at one.

4 BY MR. BELLER:

5 Q But can you go to, Talon, your Exhibit G and explain to the Court --
6 And Exhibit G, again, is attached to your affidavit, correct, Talon?

7 A Yes.

8 Q Okay. Now, going to --

9 MR. BELLER: Did the Court find Exhibit G?

10 THE COURT: No.

11 MR. CLARY: Your Honor, with respect to Exhibit G, I -- We haven't had any
12 testimony as to where this exhibit came from, who prepared it.

13 THE COURT: I assume that's where he's going, but I think he first --

14 MR. CLARY: Well, I don't hear him going that way, so I'm going to object to
15 his testifying to anything with Exhibit G without laying the proper foundation for it.

16 THE COURT: Well, what is it that you're referring to?

17 MR. BELLER: Okay. Well, I would represent to the Court, Your Honor, but
18 I can ask certainly Mr. --

19 THE COURT: No, I just need to know what item is it because it's not marked
20 as an exhibit here. I just don't know what it is you're looking at.

21 MR. BELLER: Your Honor --

22 THE COURT: How far down is it in this pile? Maybe that way I can find it.
23 If you'd at least tell me what it is.

24 MR. BELLER: It's the second affidavit, Your Honor, and --

1 THE COURT: All right. It's the second affidavit. Exhibit G to that, right?

2 MR. BELLER: Yes, Your Honor.

3 THE COURT: Yeah, but I don't know what it is. There's a whole bunch of
4 stuff.

5 THE WITNESS: Your Honor, it kind of looks like this.

6 THE COURT: Oh, I see, you marked them up at the top.

7 MR. BELLER: Yes. Each --

8 THE COURT: I just saw Exhibit K, so now I'll keep going this way and
9 hopefully I'll come up with Exhibit G somewhere. Here's Exhibit C, Exhibit D.
10 In the meantime, why don't you just tell me what it purports to be so I know what
11 I'm looking for.

12 MR. BELLER: Okay. Each one of them are separated with a separate page.

13 THE COURT: Can you just tell me what Exhibit G purports to be so I can --

14 MR. BELLER: Okay. Go ahead, Talon. I will.

15 THE COURT: No, you tell me.

16 MR. BELLER: Oh, yes.

17 THE COURT: What am I looking for?

18 MR. BELLER: You're looking -- If I may approach?

19 THE COURT: Is it this thing here?

20 MR. SEGEL: Something like that, Your Honor.

21 MR. BELLER: Yes, Your Honor.

22 THE COURT: Okay, I found it. Go ahead.

23 MR. BELLER: And I think the page right in front of it should have Exhibit G,
24 does it not?

1 THE COURT: Right, I have found it. I bracketed it. I found 'H' and then I
2 worked back from that. There we go. Go ahead.

3 MR. BELLER: Okay. I apologize, Your Honor.

4 BY MR. BELLER:

5 Q What exactly is Exhibit G, Talon?

6 A Exhibit G is a summary of a comparison that I did between the receipts
7 that I had available to me and the QuickBooks records that were prepared, to try to
8 match those up.

9 Q And what did you find as a result of -- And again, are we talking
10 insofar as 9A and B as E.I.N. or are we talking Kokoweef? And please when you're
11 testifying, distinguish between the two. But go ahead.

12 A Exhibit G relates to E.I.N.

13 Q Okay.

14 A If you look on the side, the left-hand side up at the top column it says
15 "Match" and then there's some numbers below that. If we found a match then we
16 basically matched the receipt up with the QuickBooks. So we have, for example,
17 on number one, the dark -- the darker highlighted section is for the receipts, the
18 lighter highlighted section is for the QuickBooks. We found a match between a
19 receipt and the corresponding entry in QuickBooks.

20 So the first page and a half shows the matches until you get down
21 to match number thirty-four, and then from there you'll see that there is no match
22 numbers and that's essentially because we found no match. So we have entries in
23 the QuickBooks for which we don't have receipts. We also have receipts for which
24 we don't have an entry in the QuickBooks.

1 Q Now, insofar as, again, 'A' and 'B', and going back to 'A', is it fair to
2 say that approximately ninety-six thousand dollars was not recorded in the E.I.N.
3 QuickBooks for the period of December of '04 through September of '05?

4 A I did not find them in there.

5 Q So is that -- okay, so my statement is correct?

6 A Yes.

7 Q Okay. And insofar as B, approximately two hundred and twenty-one
8 thousand dollars are recorded in the QuickBooks, E.I.N., which are not supported
9 by mine receipts for the period 12 of '04 through September of '05?

10 A That's correct.

11 Q Now, would you go on, please, to page 4 of your affidavit, paragraph 9,
12 if you would, please, and continue on with the expenses?

13 A Paragraph C relates to E.I.N.'s QuickBooks. We went through those
14 QuickBooks and basically categorized the expenses on the face of those, what the
15 entry was in QuickBooks and just tried to determine whether or not they appeared
16 to be personal in nature or not.

17 Q Now, is that -- is there an exhibit reflecting that, Talon?

18 A Yes, there is.

19 Q What exhibit is that?

20 A Exhibit H reflects subparagraph C.

21 Q And so is it fair to say that 'H' then shows approximately what, fifty-six
22 thousand dollars of what?

23 A Expenses. It shows approximately fifty-six thousand dollars of
24 expenses that appear on their face, again, to be personal in nature. Again, this

1 goes back to the indications of red -- or red flags of fraud.

2 Q Okay. Let's go to paragraph D. Again, same paragraph. A comment
3 on that if you would, please?

4 A This is the same type of analysis but for Kokoweef. It's reflected in
5 Exhibit I, which is a summary of the analysis that I did on the Kokoweef QuickBooks.
6 Checks or expenses that appeared to be personal in nature between -- It would be --
7 I think it's mis-stated in the affidavit, but it should be roughly August of '06 through
8 October of '07; roughly.

9 Q And we're dealing now with both E.I.N. as well as Kokoweef?

10 A Exhibit H relates to E.I.N. Exhibit I relates to Kokoweef.

11 Q And again, your analysis of those exhibits, you did what? What did
12 you look at, what made you determine or opine why you are, Mr. Stringham?

13 A Well, just an analysis or looking at the payee of the transaction. For
14 example, cash, Chris Hahn, Fry's Electronics, Greg Hahn -- I'm referring to Exhibit I
15 -- Hahn's Surplus. Again, there may -- going back to their testimony, there might
16 be valid reasons for this, but on their face, as a certified fraud examiner in my
17 experience they're an indication or a red flag of fraud.

18 Q Now, as it relates to your analysis, looking at the books and records
19 and recognizing what you opined, what was the state of at least the books and
20 records, the QuickBooks that you saw, to determine whether or not there could be
21 fraud or there wasn't fraud, etcetera? What was the state of the books?

22 A Well, I certainly haven't seen everything that I would liked to have
23 seen, and going back to the exhibit that we just talked about, Exhibit G, we had a
24 situation where we don't have supporting documentation for all of the transactions

1 that are in QuickBooks. We also have receipts for which we find no corresponding
2 entry in the QuickBooks.

3 Q And that holds true for E.I.N. as well as Kokoweef?

4 A I'm not sure that we did the same analysis for Kokoweef because of
5 the fact that we didn't have any receipts for that period.

6 Q Well, if you didn't have any receipts and they purportedly gave you
7 the QuickBooks, doesn't that speak for itself?

8 MR. CLARY: Objection.

9 MR. SEGEL: Objection, Your Honor.

10 THE COURT: Sustained.

11 BY MR. BELLER:

12 Q Well, what did you -- As a result of not getting the receipts or having
13 documentation, what were you able to conclude?

14 A Well, I can't perform that type of analysis without the supporting
15 documentation.

16 Q Okay. Now, based upon, again, Ms. Van Da Walker's testimony,
17 and recognizing when she testified, do you have any comments in terms of what
18 she testified to and your report so far?

19 A Well, based on what she testified, I wouldn't expect to see all of the
20 receipts in QuickBooks. Again, that's not preferable. You would prefer to have
21 everything in QuickBooks so that you have a complete set of books. Secondly,
22 I guess the fact that whether or not these expenses were personal in nature or not,
23 I haven't seen any evidence that definitively says one way or another whether or
24 not they were personal or not. You know, it's hard to say.

1 Q Now, moving on with paragraph 12, any comment on that if you would,
2 please?

3 A I think we've already talked about this. This is actually a little bit more
4 in depth to subparagraph A, I believe. It refers to Exhibit G, and basically I think
5 we've covered that.

6 Q Okay. What about 13, the same?

7 A Yes.

8 Q Any further comment on paragraph 17, Talon, your paragraph 17?

9 A Seventeen and eighteen I think we've talked about. They refer to
10 Exhibits H and I, which we've covered. Those were the list of personal or those
11 that appeared to be personal expenses.

12 Q Let's go to paragraph 20 if you would, please.

13 A Okay. In this situation we found discrepancies between the
14 QuickBooks and the cancelled checks. The check, if you look at the face of it --

15 Q What exhibit are you referring to?

16 A Exhibit J.

17 Q Okay. Just take a moment, if you would. What is Exhibit J, Talon?

18 A The first page of Exhibit J is a check register that we received from
19 Kokoweef. It appears to be printed off from the QuickBooks records. The second
20 page is -- the second two pages are checks and so forth, the same sorts of things.
21 But if you look at the second page we have a check from Kokoweef, Inc. written out
22 to cash. It's check number 1030 for a hundred dollars. The memo says resistivity
23 lines, gas. If you look at --

24 MR. SEGEL: Your Honor, just for clarification, my document says check

1 number 1032.

2 MR. BELLER: That's correct.

3 MR. SEGEL: He testified 1030, so I'm not sure it's --

4 BY MR. BELLER:

5 Q Talon, is it --

6 A Yeah, 1032. If I said something else, my mistake.

7 Q Go ahead, Talon.

8 A If you look on the first page, which is the check register, and go down
9 about a little over half there's a check number 1032 and the payee says Greg Hahn
10 for casual labor, one hundred dollars. So the amount matches but the payees don't
11 match, so there's a discrepancy between the QuickBooks and the actual check.

12 Q And the signatory on the -- is Larry Hahn, correct?

13 A On the check, yes. And the remaining part of Exhibit J is additional
14 examples of that same thing.

15 Q When you say additional examples, just -- we have time, so just give
16 the Court if you will, please, a little bit more information.

17 A Well, additional examples of where the payee does not match the
18 check register. So if we look at the next example, you have check 1041 written out
19 to cash, two hundred and three dollars, sixty-five cents. If you look back at the first
20 page in the check register, you go down three-quarters of the way to find check
21 number 1041, it shows Rebel Oil for fuel. So Exhibit J is additional examples of
22 the discrepancies between the check register and the actual checks themselves.

23 Q Let me ask you this, Talon. Although the amounts are not a lot, what
24 is the significance of what you have seen from a forensic accountant?

1 A Well, if you want a complete set of books you need to record the
2 checks as they occurred. And when you see a check for cash and then it shows
3 up something different in the actual QuickBooks, that kind of raises a red flag as to
4 why that's the case. You know, is this a cover-up type thing.

5 Q Okay. Let's go to -- in terms of paragraph 22, Talon, and again,
6 please contain your testimony to the accounting issues, not the legal issues if you
7 would, please. But as it relates to Kokoweef and the keys, what were you able to
8 determine?

9 MR. CLARY: Well, 22 merely quotes from the reorganization agreement,
10 so I don't know what he could conclude from that.

11 THE COURT: Let me look at it. Paragraph 22 of the second affidavit?

12 MR. BELLER: Yes, Your Honor.

13 MR. SEGEL: Page 7, Your Honor.

14 THE COURT: What's your question, counsel?

15 MR. BELLER: From an accounting point of view, what were you able to
16 ascertain from Exhibit K? Accounting point of view.

17 MR. CLARY: Well, that's a different question. I don't object to that one.

18 THE COURT: Go ahead.

19 THE WITNESS: Well, if you look at the last sentence of that it says that the
20 company will be dissolved. I understood that E.I.N. was to be dissolved, it was to
21 be wrapped up.

22 BY MR. BELLER:

23 Q And what is the significance?

24 A From an accounting point of view you would expect that the books

1 would be wrapped up, completed; no more transactions would be going through.

2 They're -- I mean, it's basically done.

3 Q And so what is the significance of Exhibit K then, Talon?

4 A Well, it's just basically showing my understanding that E.I.N. should
5 have been wrapped up and Kokoweef was going to take its place, from an
6 accounting perspective.

7 Q Now, insofar -- and that was to be effective when, from what you read,
8 Talon?

9 A My understanding, based on what I've seen, it would be roughly the
10 end of August, first part of September 2006.

11 Q Okay. Now, let's go to -- and the significance of this, and so take it
12 a little bit slowly and carefully. There's apparently a 2.5 million dollar potential IRS
13 issue, is there not?

14 A Based on what I've seen, yes.

15 Q Now, can you go through it with exhibit and slowly and carefully,
16 please, Talon?

17 A I'll do my best. It refers --

18 MR. CLARY: What -- I don't know what he's referring to?

19 THE COURT: I don't know either.

20 MR. BELLER: Your Honor -- Okay.

21 THE COURT: What are you referring to?

22 BY MR. BELLER:

23 Q Talon, what are you looking at?

24 A Okay. Paragraphs 24 --

1 THE COURT: Of the second affidavit?

2 THE WITNESS: Yes, 24, 25, and they relate back to Exhibit L.

3 BY MR. BELLER:

4 Q Okay. Let's go Talon, please, to Exhibit L. Now, let me ask you this,
5 Talon. What is Exhibit L?

6 A Exhibit L is a summary of the journal entries that were made at the
7 time of the transfer that took -- basically removed the assets from the books of
8 E.I.N. and put them onto the books of Kokoweef.

9 Q Now, when was that to have been done?

10 A According to the QuickBooks, that entry was made on September 1st,
11 2006.

12 Q QuickBooks of which company?

13 A Both, because they're -- it's reflected on both sets of books. There's
14 the removal of the assets on E.I.N.'s books. The same day there's the booking or
15 putting the assets onto the books of Kokoweef.

16 Q Is it just assets or assets and liabilities?

17 A Assets and liabilities.

18 Q Okay. So --

19 A And capital. Equity.

20 Q So what exactly does Exhibit L then show, Talon?

21 A Well, it shows -- When you do a journal entry such as this, the
22 amounts should match. So --

23 Q Now, when you say -- excuse me. When you say a journal entry,
24 a journal entry is effectively just on the journal of both entities, correct?

1 A It's an accounting term of art, so to speak. Maybe I should be clearer,
2 but it's basically where you put the assets or liabilities, make adjustments. It's
3 basically recording the transaction on the books of the company.

4 Q On both companies?

5 A That's correct.

6 Q Okay. So based upon Exhibit L, this appears to be a reorganization of
7 E.I.N. into Kokoweef journal entries. So is it fair to say that this reflects the journal
8 entry of both E.I.N. as well as Kokoweef?

9 A Yes.

10 Q Okay. Now, based upon Exhibit L, what were you able to ascertain?

11 A Well, if you look at the balance column, which is the second column
12 from the right, if it balanced or set to zero then it appears that the transfer was done
13 correctly. So you have the -- For example, if you look at the very first one, A.R.,
14 Kokoweef and Explorations of Nevada, you have equipment costs -- you have the
15 A.R. that was taken off the books of E.I.N. for twelve thousand, three hundred and
16 fifty, put on the books of Kokoweef for twelve thousand, three hundred and fifty.
17 That transaction balances; it was done correctly. And there was a number of
18 transactions that were actually done correctly.

19 Q A.R. is Accounts Receivable?

20 A Yes.

21 Q Okay. Go ahead with your comments.

22 A We also found some items that were not transferred over to -- or we
23 found one item that was not transferred over to Kokoweef, so it still shows up on the
24 books of E.I.N. That's the loan payable to Simhouser (phonetic). And then we also

1 found transactions where the amounts differed, so it came off the books -- came off
2 of E.I.N.'s books at one amount, went onto Kokoweef's books at a different amount.

3 Q Now, are you referring now, Talon, to your affidavit, 24A, B as you're
4 opining?

5 A Yeah, and Exhibit L. It's kind of outlined at the bottom of Exhibit L.

6 Q Okay. So go on, please, but cover everything that is in your affidavit
7 rather than --

8 A Okay. One of the things that we also found was that the -- one of the
9 accounts that needed to be closed out was the Retained Earnings Account for E.I.N.

10 Q Now, again, as you are testifying, please, brevity is better than long-
11 windedness, but explain what you just said is?

12 A Okay. So in order to close the books of E.I.N. you would need to
13 remove or adjust out and take the balance in the Retained Earnings Account to
14 zero. And so there was a gain recorded on E.I.N.'s books to close that balance
15 out to zero. And when they booked the retained earnings onto Kokoweef's books,
16 instead of booking it as losses that have occurred in the past, they booked it as
17 an asset. The reason this is a tax issue is the fact that the retained earnings have
18 losses in it because it was an accumulative total of the losses that E.I.N. had
19 accumulated over the years by expensing receipts, incurring the losses they booked
20 -- that ultimately get closed out to retained earnings.

21 Now, when they put the assets and liabilities on the books of Kokoweef,
22 the other side of that transaction was to book this asset called Exploration and
23 Development. And basically when you book an asset you can typically later write --
24 offset that asset against income and take a deduction for tax purposes. So there's

1 a potential here based on the transaction that they could take the expense through
2 the years on E.I.N.'s books. Now they've got an asset and they can take deductions
3 against income for tax purposes later on which is basically a result of the same
4 expenses. So there's a potential for tax fraud there.

5 Q And basically from what you have seen and what you have reviewed,
6 what is the net effect? What dollar amount are we talking about?

7 MR. SEGEL: Objection, Your Honor. I'm not sure of the foundation of what
8 he's talking about. He says there's a potential, but I'm not sure what he's actually
9 said and how he can come up with a conclusion.

10 THE COURT: I think he's already stated 2.5 million.

11 MR. BELLER: I'll move on. He has.

12 BY MR. BELLER:

13 Q Let me ask you this, Talon, based upon Exhibit 24, do you feel you
14 have completed the explanation as it relates to 24A through F on this particular
15 transaction?

16 A I know it's a complicated subject and I hope I've explained it so that
17 the Court understands it. I can't think of anything else to say.

18 Q Fair comment. And is it fair to say you were able to ascertain what
19 you have testified to just on Exhibit L?

20 A Well, yeah. Exhibit L is a summary from the QuickBooks, so it came
21 from the QuickBooks.

22 Q I'm sorry?

23 A It came from the QuickBooks.

24 Q Okay. So but --

1 A Exhibit L is a summary of the QuickBooks, and what I explained was
2 based on Exhibit L.

3 Q Okay, which is the summary of the underlying transactions?

4 A Correct.

5 Q Okay. Insofar as the reorganization, and again, from what you have
6 reviewed and recognizing the time frame and also the Court's comments, as it relates
7 to the reorganization of E.I.N. into Kokoweef and the liquidation, and directing your
8 attention to Exhibit M, any comments if you would, please? M as in Mary.

9 A Exhibit M --

10 MR. CLARY: M or N?

11 BY MR. BELLER:

12 Q M as in Mary.

13 A M as in Mary. Okay. This is just basically a -- the numbers on my
14 copy are cut off, or the dates on my copy are cut off, but I believe that should be
15 November 1st through November 30th of 2007. If you look at the check, the check
16 actually has 2007 on it. But this is a bank statement for Explorations, Inc. of Nevada,
17 and it just shows that the corporation still had a bank account as of November 2007.

18 Q After it was supposedly what?

19 A Closed, or the operation should have been wrapped up by that point.

20 Q Because of Kokoweef being the successor corporation?

21 A Correct.

22 Q Now, let me ask you this, Talon. In terms of -- and I don't know if you
23 received or if it was part of the QuickBooks, but typically do you know what E.I.N.
24 and/or Kokoweef was capitalized for and what the issued and outstanding shares

1 were of either corporation? And if you don't know, that's fine.

2 A I remember seeing something to the effect of seventy-five million
3 shares authorized.

4 Q Which company?

5 A I don't recall.

6 Q Okay. Now --

7 A But, I mean, as far as the issued and outstanding shares, I haven't
8 seen anything.

9 Q Would that necessarily be part of, from a forensic point of view if you
10 were looking at the QuickBooks, if you will, of E.I.N. and/or Kokoweef, would you
11 necessarily see in terms of the capital received, the number of shares that have been
12 issued in terms of the QuickBooks? Is that something that you would necessarily
13 see?

14 A Not necessarily, but you could certainly keep track of that information
15 in QuickBooks.

16 Q Was any of that in the QuickBooks that you saw for either company?

17 A For E.I.N., no. For Kokoweef there was some amounts received but
18 there was no indication as to the number of shares issued for such.

19 Q Okay. Now, does that --

20 MR. SEGEL: Your Honor, just -- I need some clarification from the Court.
21 Mr. Beller has gone about five minutes beyond his time. If we're given ten more
22 minutes, we're at 11:30.

23 THE COURT: It's now 11:20. Mr. Beller, how much more time do you have?

24 MR. BELLER: I can be done in ten minutes, Your Honor.

1 THE COURT: All right. Let's take a ten minute recess. That will give me a
2 chance to check my calendar and see what additional time I may be able to accord
3 in this case. Clearly the defendants have to have an opportunity to cross-examine.
4 Okay, so we'll take a recess until 11:30. I'll check and see what the status is of
5 the 11:30 item on my calendar. I received word that that item may be continued.
6 If that's the case, we may have a little bit more time than I thought we would.

7 MR. BELLER: Okay.

8 MR. SEGEL: Thank you, Your Honor.

9 MR. CANNON: Thank you, Your Honor.

10 THE COURT: Okay. We'll be back at 11:30.

11 (Court recessed from 11:21:45 a.m. until 11:34:30 a.m.)

12 THE COURT: All right, we're back on the record. Before we proceed, it's
13 my understanding that the item --

14 COURT RECORDER: Judge, we're -- Okay, I'm sorry.

15 THE COURT: I'm my understanding that the item that was on calendar at
16 11:30 is going to be continued to Monday, August 4th, so I've got some additional
17 time here. If we're not done by noon, I'll be asking you what you are envisioning for
18 time and I will then determine whether to just go through the noon hour or identify
19 a time when we can come back.

20 MR. SEGEL: I think Mr. Beller needs another ten minutes -- (inaudible).
21 If it's only ten minutes, we can probably finish up in the fourteen minutes left, or
22 fifteen minutes left.

23 THE COURT: Yeah. Okay.

24 MR. BELLER: I didn't hear what he said.

1 THE COURT: He said you said -- He said that you had said ten minutes,
2 and so he figured with that --

3 MR. SEGEL: That leaves fifteen or eighteen minutes to finish our side,
4 which will be equal time.

5 THE COURT: Okay, go ahead then.

6 MR. BELLER: Well, if the Court has time, I have not crossed --

7 THE COURT: Oh, I know.

8 MR. BELLER: So, I mean --

9 THE COURT: Let's go ahead and use the time now for --

10 MR. BELLER: Fair comment.

11 DIRECT EXAMINATION (Continued)

12 BY MR. BELLER:

13 Q Talon, going back to where I think we left off, in going back to Exhibit O,
14 what is the significance of Exhibit O, Talon?

15 A Exhibit O is a summary that I put together of E.I.N.'s equity accounts
16 as contained in their -- in their QuickBooks or in E.I.N.'s QuickBooks.

17 Q Do you need water?

18 A I've got some, actually.

19 Q Okay.

20 A I should drink some, though. Thanks for reminding me.

21 Q Okay, go ahead, Talon.

22 A The -- As you can see in the contributing capital section, basically
23 what we have recorded here are deposits and general journal entries with no
24 corresponding identification as to who those deposits came from. We have no

1 indication of the shareholders that presumably received shares as a result of those
2 deposits and so forth. We also have down at the bottom of the first page and
3 continuing on to the second page a section called Investment Return where it
4 appears that funds were flowing out of E.I.N. to -- presumably to shareholders who
5 were getting a return of their investments.

6 Q Meaning a dividend?

7 A Well, I'm not sure that it's necessarily a dividend, but it appears that
8 money is going back to shareholders and it's labeled Investment Return. What's
9 not clear is what the authorization was for making those disbursements.

10 Q Now, is this -- Is Exhibit O, is that for E.I.N. or E.I.N. and Kokoweef?

11 A It's for E.I.N. And there's a similar exhibit for Kokoweef, it's Exhibit P.
12 Basically the same thing. And I apologize that this is so hard to read, but --

13 Q Well, it's small but it's not hard to read.

14 A Okay, it's small. That's correct.

15 Q I mean, but go ahead.

16 A But this is the same thing for Kokoweef. Again we see journal entries
17 recording the amounts that came over from E.I.N. We also see some indication of
18 individuals that received or that paid in funds, and it looks like there's notations as
19 to the amounts that they contributed. What there isn't an indication of is the shares
20 that they received as a result of those deposits. And again, you have the same
21 Investment Return account where it appears that the money was flowing out to
22 certain stockholders or certain investors.

23 Q Let me ask you this, Talon. And again, this came from the QuickBooks?

24 A That's correct.

1 Q Okay. In terms of the par value and/or what E.I.N. and/or Kokoweef
2 was selling the stock for -- in other words, if the par value is a penny and as time
3 went on it became a dollar and then five dollars and ten dollars --

4 MR. CLARY: Objection. What became a dollar or five dollars?

5 MR. BELLER: May I finish my question?

6 MR. CLARY: Well, the question doesn't make sense.

7 THE COURT: Well, let him finish the question. Maybe it will tie up.

8 BY MR. BELLER:

9 Q Was there anything in what you looked at in 'O' and 'P' which would
10 reflect the selling price to the individual for the stock that he/she obtained?

11 MR. CLARY: Well, he --

12 THE COURT: Do you want to rephrase, counsel, to make it --

13 MR. BELLER: Sure.

14 BY MR. BELLER:

15 Q In terms of 'O' or 'P', was there anything in the QuickBooks which
16 would -- you could ascertain what the price per share was?

17 A No.

18 Q And would that necessarily, Talon, be a part of a QuickBook
19 transaction?

20 A Not necessarily, but it should be kept track of somewhere. QuickBooks
21 is as good a place as any to keep track of that. But again, it should be kept track of
22 somewhere, and I have not seen where that's been kept track of.

23 Q Now, you also make mention of the fact that monies went out in terms
24 of this last category in both 'O' and 'P', if you will, to Investment Return. There are

1 dollar amounts, but again, is this the only record that you were able to see as to what
2 the individual got back, and did you -- were you able to ascertain from the books,
3 was either E.I.N. or Kokoweef buying the stock back? I mean, was there anything
4 to ascertain what an investment return is?

5 MR. CLARY: Well, that's a compound question. I couldn't answer it if I was
6 the witness.

7 THE COURT: Sustained.

8 BY MR. BELLER:

9 Q In terms of investment return, anything to reflect what it was?

10 A Not in the QuickBooks, no.

11 Q And what would you expect to have seen?

12 A Well, I'm not sure that I would expect to necessarily see something
13 in QuickBooks, although you would expect that there should be some sort of
14 authorization for these funds being returned. A lot of times that would be noted
15 in the memo field of the transaction.

16 Q In terms of from Exhibit O and P, what were you then -- again, from
17 a forensic point of view what does that tell you, if anything, Talon?

18 A Well, we don't -- excuse me -- We don't have any indication as to what
19 -- who owns what shares, how many they own, how much they paid for those shares.
20 We also have an indication that some shareholders but not all are receiving returns
21 or getting their money back somehow. It's just another indication that there's some
22 fishy things going on.

23 MR. BELLER: Court's indulgence. I pass the witness, Your Honor.

24 THE COURT: Cross-examination?

1 MR. CLARY: Your Honor, I'm going to reserve cross-examination of this
2 witness until the cross-examination of my witnesses is completed.

3 MR. SEGEL: His time is up though, so.

4 MR. BELLER: Well, I -- you know, in light of -- if I may comment, Your Honor.
5 In light of the testimony of the defendants and in light of the testimony of Mr.
6 Stringham and the exhibits and the documents, I mean, this could go on and I've
7 certainly been before the Court enough times, I mean, I can go on for two days on
8 this. I think we're here for a very limited purpose in terms of is there enough here
9 on either side.

10 THE COURT: I understand that. The question is should -- is it fair for Mr.
11 Clary to require you to cross-examine his witness? You reserved cross-examination
12 pending your examination of this witness and I allowed that. Is it fair then for him
13 to also at this time come forth and say go ahead and cross-examine his witnesses
14 before he cross-examines yours?

15 MR. SEGEL: Your Honor, I think the important issue --

16 MR. BELLER: And all I was -- I'm sorry, Nelson.

17 MR. SEGEL: I apologize. I think the important issue, Your Honor, is if we're
18 going to finish at noon today, we'll proceed in a certain manner. If this Court intends
19 to give us more time, then we're going to have to do it differently. I'd like to get it
20 done.

21 THE COURT: I'm going to go into the noon hour. Let's get this thing wrapped
22 up. Okay?

23 MR. SEGEL: All right.

24 MR. BELLER: Okay. And I was only going to suggest -- I understand the

1 Court's comments -- I believe, knowing this Court and what has been presented,
2 the Court can basically conclude what it's going to conclude based upon what it has
3 heard, and I'm willing if they're willing to submit everything the Court has heard for
4 a decision.

5 MR. CLARY: All right. Now, is he -- is counsel saying --

6 MR. BELLER: Subject to talking to --

7 MR. CLARY: -- and I'd ask this to counsel through the Court. Is he saying
8 he's going to waive cross-examining my witnesses?

9 MR. SEGEL: He has to, because of the time.

10 MR. BELLER: I didn't say that. I said if -- if -- I'll make my self clear.
11 Subject to asking my clients for ten seconds. I'm saying I believe enough has been
12 presented by both sides for the Court to make a decision because --

13 THE COURT: All right. You -- When you reserved your cross-examination,
14 my recollection of it was that you were going to -- you did so with the -- pending your
15 examination of your own witness. That's now taken place, okay.

16 MR. BELLER: Right.

17 THE COURT: And there was no objection to you reserving your cross, but
18 now I think, counsel, before he examines your witness -- if you hadn't reserved it
19 he would have heard the cross before hearing from your witness, so I think it's fair
20 that this witness would stand down for a moment and that the plaintiff's -- or the
21 defendant's witnesses who were called would take the stand. You can cross-
22 examine them briefly and then Mr. Clary will cross-examine your witness. Okay?

23 MR. BELLER: That's fine. And my only thing I was suggesting to the Court
24 and counsel, I am prepared to have this submitted, subject to talking to my clients,

1 as is. In other words, I think the Court, in my opinion, has enough, maybe, to render
2 a decision. That's all I'm suggesting, Your Honor.

3 MR. CLARY: I'll tell you what, Your Honor. I'll ask him one question on
4 cross-examination, and if that's the end of the hearing it's okay with me.

5 MR. BELLER: Well, I'd like to consult with my clients --

6 THE COURT: Okay, do.

7 MR. BELLER: -- on what I just offered to the Court.

8 THE COURT: I'll be -- How long is it going to take you to do that?

9 MR. BELLER: Three seconds.

10 THE COURT: Okay.

11 (Mr. Beller consults with this clients)

12 THE COURT: All right. Mr. Beller?

13 MR. BELLER: I'm sorry. The clients would prefer to proceed with cross.

14 So if Mr. Stringham would then step down, I'll cross.

15 MR. CLARY: All right. Now we've got to take -- now we've got to cross the
16 rubicon and determine whether we're going to have more time than just 'til one
17 o'clock.

18 THE COURT: Why?

19 MR. CLARY: Because if he's going to do an extensive cross-examination --

20 THE COURT: Well, I don't -- I don't see that it has to be an extensive cross,
21 okay. I think you can cross -- I think you ought to be able to do it briefly, as far as
22 I'm concerned. Okay.

23 MR. CLARY: Well, I just -- If he's still cross-examining my witnesses and
24 it's one o'clock, at that point then I'm going to ask Your Honor to give us some

1 more time.

2 THE COURT: All right. But I think that you should be done with cross --
3 It seems to me you could be done in twenty minutes with both of these witnesses.

4 MR. BELLER: And that's fine.

5 THE COURT: Okay.

6 MR. BELLER: I'm willing to go twenty and twenty, and if that's --

7 MR. SEGEL: Well, we still need fifteen on top of that.

8 THE COURT: (Speaking to the Mr. Stringham) If you'll go over there, please.

9 And then I think Ms. -- Would Ms. Van Da Walker be the first one?

10 MR. BELLER: Yes, Your Honor.

11 THE COURT: Okay.

12 MR. CLARY: Obviously on the cross-examination, I would be completely not
13 doing my job as an attorney if I didn't anticipate there was going to have to be some
14 re-direct as a result of the cross.

15 THE COURT: Well, let's see where it goes.

16 [Cross-examination of Reta Van Da Walker followed by
17 cross-examination of Larry Hahn by Mr. Beller; previously transcribed]

18 THE COURT: Do you have any redirect?

19 MR. CLARY: A couple questions real quick, Your Honor.

20 THE COURT: You may stand down, sir. Thank you.

21 MR. CLARY: Pardon me?

22 THE COURT: I'm telling the witness he can stand down.

23 MR. SEGEL: No, he has a couple questions.

24 MR. CLARY: I have a couple questions on redirect.

1 THE COURT: Oh, I'm sorry, I thought you said you didn't. I misunder--

2 MR. CLARY: No, just a couple.

3 THE COURT: Okay.

4 REDIRECT EXAMINATION OF LARRY HAHN

5 BY MR. CLARY:

6 Q You had testified that E.I.N. is not viable. Was E.I.N. formally
7 dissolved?

8 A I believe in November of 2007, mainly because when we sent --

9 Q Well, I'm not asking why --

10 A Okay.

11 Q -- but it was done, right?

12 A Yes.

13 Q And it was done by the filing of a certificate of dissolution --

14 A Correct.

15 Q -- with the Secretary of State in accordance with the law, is that right?

16 A Correct.

17 Q Okay. Now, with respect to the shares that were authorized to be
18 issued to Mr. Burke and other directors pursuant to the minutes that you testified
19 Mr. Burke prepared, has that authorization for those shares been rescinded by the
20 Board of Directors subsequently?

21 A It has.

22 MR. CLARY: Okay. No further questions.

23 THE COURT: Does that cause you to have any recross in the scope of that?

24 MR. BELLER: No, Your Honor.

1 THE COURT: All right. You may stand down, sir. Thank you.

2 Now, at this time the expert -- You may stand down.

3 MR. HAHN: Thank you.

4 THE COURT: Okay. At this time the plaintiff's witness will retake the stand,
5 the one who previously testified, and will be subject to cross-examination by the
6 defendants. Okay.

7 (Speaking to Mr. Stringham) You realize you're still under oath, sir?

8 MR. STRINGHAM: Yes.

9 THE COURT: All right, Mr. Clary. You said you had one question, so.

10 MR. CLARY: I'm working on it right now.

11 THE COURT: I won't hold you to that. That was based on --

12 MR. CLARY: I just eliminated three questions while you were talking, Your
13 Honor.

14 CROSS-EXAMINATION OF TALON STRINGHAM

15 BY MR. CLARY:

16 Q You testified that there was a possibility of tax fraud in connection with
17 the reorganization or there was the possibility that it could occur?

18 A Yes.

19 Q Do you have any evidence that any such tax fraud has occurred?

20 A I have not been provided with the tax returns.

21 Q That's a yes or no question.

22 MR. BELLER: Excuse me, Your Honor. He's not allowing him to complete
23 his answer. He's being argumentative.

24 THE COURT: You're going to have an opportunity for redirect. He's asking

1 him what he deems to be a yes or no question. He can do that. But please clarify
2 that, if that's your intention. If you're asking for a yes or no, you should clarify that
3 in your question if that's what you're seeking.

4 BY MR. CLARY:

5 Q I'm asking you yes or no, do you have any evidence that you've come
6 across in your examination of the records of these companies, E.I.N. and Kokoweef,
7 that there has been any tax fraud committed by either of them?

8 A No.

9 Q Now, isn't it true that the transaction that's covered by the exhibit that's
10 in evidence, the Agreement and Plan of Reorganization and the Closing Agreement
11 was -- is -- purports to be under Section 368 of the Internal Revenue Code; is that
12 correct?

13 A I'm not sure what you're referring to.

14 Q Well, let me put it another way then. Do you understand -- do you
15 understand the transaction that took place, the exchange of assets for voting
16 shares? Have you ever encountered that type of transaction before in your work?

17 A Yes.

18 Q And are you familiar with --

19 A I generally understand the transaction.

20 Q Are you familiar with Section 368 of the Internal Revenue Code?

21 A I can't quote it.

22 Q All right. Do you understand that this transaction was to be a tax-free
23 transaction?

24 A I remember seeing something to that effect.

1 Q So there could be no tax fraud insofar as if it was a tax-free transaction
2 there's no taxable consequence, isn't that correct?

3 A Well, the transaction as I understand it was intended to be a tax-free
4 transaction, but it depends upon how the tax returns are filed.

5 Q And those -- You've heard testimony that those tax returns haven't
6 been filed yet?

7 A I've heard that, yeah.

8 Q So there could have been no tax fraud committed; right?

9 A Assuming they haven't been filed.

10 Q The tax fraud wouldn't occur until the tax returns are filed, would it?

11 A That's correct.

12 Q Okay. Now, having said that, you also said something with respect
13 to the stock records or with respect to the stock transactions which you hadn't --
14 I believe you stated you hadn't seen all the records -- that fishy things were going
15 on or you suspected that fishy things were going on. Did you use those words?

16 A I remember using the word fishy, yes.

17 Q What were you talking about?

18 A Well, I mean, again, it's just perhaps bad nomenclature, but it's kind of
19 a red flag that you've got a problem.

20 Q So, but everything that you've looked at had just raised red flags.
21 That's all that's happened, isn't that true?

22 A Well, we're hired by courts. My firm has been hired as special masters
23 to provide courts with indications of fraud, and that's what I've done in this case as
24 well.

1 Q And you've seen some red flags?

2 A Yes.

3 Q And you've heard the explanations that were given in the testimony

4 of the witnesses I called, right?

5 A I've heard some explanations. Yes.

6 Q And you have no reason to believe that those explanations are not

7 correct, do you?

8 A I don't have any evidence one way or another.

9 Q So you haven't been supplied with the information to prove that there

10 is some fraud beyond the red flags, is that right?

11 A Well, the documentation that has been provided to me, I think as I

12 alluded to in my affidavit, is very lacking and I have requested or made requests

13 through the affidavit for additional documentation --

14 Q So have you --

15 A -- that I would need to use in order to make that determination one way

16 or another.

17 Q Did you hear the testimony a few moments ago -- a few minutes ago

18 that documents were given, three binders of documents were turned over in my

19 office back before this lawsuit was started?

20 A I heard that testimony, yes.

21 Q Did you ever see three red binders of documents?

22 A Yes. Again, my --

23 Q Were they provided to you?

24 A Yes.

1 MR. BELLER: Excuse me, Your Honor. He's not allowing --

2 THE WITNESS: But --

3 MR. BELLER: Excuse me, Talon.

4 THE COURT: Let him finish his answer each time you pose a question.

5 Do you want to finish your answer to the previous question?

6 THE WITNESS: The answer is yes, I did receive what I believe was that

7 documentation. The problem is that I still have holes in the documentation that's

8 been provided.

9 Q Including the documentation that was provided today?

10 A Well, I haven't had a chance to review that documentation.

11 Q Have you looked at it at all?

12 A I flipped through it for two seconds.

13 Q What does it appear to be?

14 A Checks and receipts.

15 Q Yeah, it appears to be checks with back-up receipts for --

16 A Again, I haven't had a chance to review those.

17 Q Well, let me ask you this then. As you sit here today, can you give

18 this Court an opinion that any fraud has occurred in connection with the accounting

19 practices of this company? Yes or no?

20 A Can you state the question again, please?

21 Q Can you give an opinion today, yes or no, that actual fraud has been

22 committed by Mr. Hahn or Kokoweef in connection with the accounting activities

23 that have occurred?

24 A Do you want yes or no?

1 Q Yes.

2 A Okay. Tell me what that is?

3 A I've seen all kinds of indications that fraud may be occurring.

4 Q I asked you if you can give an opinion, not that fraud may be occurring,
5 but whether it did occur?

6 MR. BELLER: Your Honor, he's answering, he's trying to the best of his
7 ability even though Mr. Clary is pointing a question, if you will.

8 THE COURT: He can -- That's a fair question. He can ask the question.

9 THE WITNESS: Sorry, can you restate?

10 BY MR. CLARY:

11 Q You said that you could give an opinion that fraud may be occurring,
12 is that correct?

13 A I have all kinds of evidence, red flags, if you will, that there might be
14 fraud.

15 Q But red flags are not fraud.

16 MR. BELLER: Your Honor, he's not allowing him at least to finish.

17 THE COURT: This isn't the trial. This is just -- He can ask him whether he --

18 MR. BELLER: He's not allowing him to finish his answer, is my objection.

19 THE COURT: Let him finish it. Let him finish the answer.

20 THE WITNESS: I have all kinds of indications that fraud may be occurring.
21 Is there a specific instance that I completely can close the loop that definitively says
22 that fraud actually did occur? No.

23 MR. CLARY: No further questions.

24 THE COURT: Do you have redirect?

1 MR. BELLER: Yeah, just if I may briefly. Very briefly.

2 THE COURT: All right.

3 REDIRECT EXAMINATION OF TALON STRINGHAM

4 BY MR. BELLER:

5 Q Talon, in terms of the -- Mr. Clary asked you about until the returns are
6 filed there is no fraud in terms of reorganization. We're in 2008. What years were
7 you looking at to see in terms of the reorganization?

8 A Well, the journal entry that was alluded to happened in 2006.

9 Q Okay. So by the furthest extension that the IRS would give, that would
10 have been -- When would that tax return have been -- had to have been filed?

11 A Some time last year.

12 Q Okay.

13 A I mean, I don't know what their filing dates are, but presumably some
14 time last year.

15 Q Last year, '07.

16 A Yeah.

17 Q Now, insofar as explanations, without belaboring what you have said,
18 do you feel your affidavit and testimony and exhibits basically relate to the Court
19 what red flags you believe there are which would indicate fraud?

20 A Yes. Based on all the documentation I've been able to examine to this
21 point, yes.

22 Q And when Mr. Clary asked you about the three binders, in other words,
23 the first wave of documents -- I think I asked you about this on your direct -- you got
24 initial documents and then the QuickBooks. You compared the initial documents to

1 the QuickBooks and substantially those documents that you had were substantially
2 the same, correct?

3 A Yes.

4 Q But you also testified that there were holes in terms of what you
5 needed to ascertain whether or not there was fraudulent activity, correct?

6 A Correct.

7 Q Now, insofar as an opinion is concerned, let's forget the yes or no
8 and let's just, if you would --

9 MR. CLARY: I object. We're not going to forget the yes or no.

10 THE COURT: Well, he can go beyond the yes or no. That's what I think
11 counsel is -- where he's going.

12 MR. CLARY: That's not what he said.

13 THE COURT: I don't know that he needs to forget his prior answer.

14 BY MR. BELLER:

15 Q Okay. In recognizing that you can't opine because you don't have,
16 is it fair to say, Talon, that the thrust of your testimony for this evidentiary is to show
17 the Court the indicia of red flags which would indicate potential fraud?

18 A Yes, that was the point.

19 Q Okay. And in terms of your first affidavit, your second affidavit, do
20 you feel based upon what you have seen -- recognize the purpose of this hearing
21 is to see whether or not there is enough here or what's here for the Court to set
22 a bond on a threshold of what appears to be fraudulent or not, how would you
23 categorize what you have seen, as an expert, and what is your opinion as to those
24 red flags?

1 MR. CLARY: Well, I object to that question. That's invading the province
2 of the Court.

3 THE COURT: That's very helpful to me. It's a question that I find to be
4 extremely relevant. Overruled.

5 THE WITNESS: I believe there's enough red flags in this case that we need
6 to look at it further. And there's enough problems based on what I've seen so far
7 that we need to close the loop.

8 MR. BELLER: Does that complete your answer?

9 THE WITNESS: Yes.

10 MR. BELLER: Thank you, sir. Pass the witness.

11 RECROSS EXAMINATION OF TALON STRINGHAM

12 BY MR. CLARY:

13 Q Are you aware that in this case Mr. Segel made a motion to this
14 Court to attempt to do some discovery prior to this hearing, and that counsel for
15 the plaintiffs objected to that and opposed it and discovery was not permitted?
16 Are you aware of that?

17 A I don't recall that, no.

18 MR. CLARY: Okay. No further questions.

19 MR. SEGEL: Your Honor, I have a couple if you don't mind, very, very briefly.

20 CROSS-EXAMINATION OF TALON STRINGHAM

21 BY MR. SEGEL:

22 Q I'm a little confused about the documents that you received and when
23 you received them. As I understand your testimony, you received initially some
24 checks when you were first retained in April or May of this year, is that correct?

1 A There were some checks. There were also some other documents,
2 bank statements.

3 Q Did you receive the three, the four-inch red binders?

4 A I have some binders in my office.

5 Q Did you receive those initially when you were retained?

6 A Yes.

7 Q Okay. So in your affidavit it says on page 7 -- or paragraph 7 says:
8 "As of today the only new information I have received is a copy of the QuickBooks
9 data and supporting binders of bank statements and mine receipt files from 2003
10 to 2007." So I'm not sure if you have your affidavit. Paragraph 7 suggests to me
11 that you were saying in your second affidavit that you signed on -- bear with me
12 please until I get to the end of the page -- the 21st day of July, that that's when you
13 received the binders of documents?

14 A I'm trying to remember the time line here.

15 Q Do you have your affidavit in front of you?

16 A I do.

17 Q If you'll look at paragraph 7. Why don't you read paragraph 7 and
18 see if that refreshes your recollection?

19 A I've read it. I received bank statements, mine receipt files originally.
20 There was a second wave of documentation that I believe came with bank
21 statements and receipts as well, along with the QuickBooks files.

22 Q So you don't have a recollection of when you got those red binders?

23 A Well, the binders I have aren't red, so that's part of the problem
24 probably.

1 Q Okay. Well, did you receive copies of the receipts, copies of the
2 checks in April or May when you were retained?

3 A When I first was engaged I brought -- or I received a banker's box
4 worth and a half probably of binders that had receipts, bank statements and
5 cancelled checks.

6 Q Okay. So earlier then when you testified that the red flag that Hahn
7 has critical control, you said here that I had checks, no other documentation. This
8 is when you were talking about -- it's your first affidavit. Your testimony was: Had
9 checks, no other documentation. Is that a mis-statement of what transpired?

10 A I guess I'm not -- I'm a little confused.

11 Q Let me start -- When Mr. Beller was asking you about your first
12 affidavit --

13 A Okay.

14 Q -- you talked about red flags, you talked -- you said, quote, "May be
15 some valid reasons for the transactions," referring to subsection 2, paragraph 10
16 of your affidavit. Then later at other questioning you said when asked what you
17 had, you said I had checks, no other documentation. That's what you said it in
18 response to being questioned about your first affidavit. Are you going to change
19 that testimony now, or is that what happened?

20 A Well, I'm not recalling that particular testimony --

21 Q Okay.

22 A -- but I will say that as of the first affidavit I had some bank statements,
23 I had some cancelled checks, I had some receipts.

24 Q Okay. Were you aware that these binders were provided to Mr. Beller

1 and Mr. Burke in the fall of 2007?

2 A No.

3 Q Were you aware that they asked for those documents to prepare an
4 audit of the books and records of Kokoweef and E.I.N.?

5 A No.

6 Q Are you aware if any audit has ever been done of the books and
7 records of Kokoweef or E.I.N.?

8 A Well, other than the work that I'm doing, which I wouldn't classify in
9 the accounting sense of the word audit, no.

10 Q Okay. And the fact is that there's a lot of red flags. Do you do small
11 businesses, do you analyze small businesses very often?

12 A Yes.

13 Q And do you generally find when you do small businesses that they
14 don't dot their i's and cross their t's?

15 A It's pretty common, yes.

16 Q And is it pretty common, also, that you get red flags when you do
17 their audits?

18 A Well, most of the work I work on there's red flags, I would say.

19 Q So you're actually -- most of your work is you've been retained by
20 one side or the other to prove or disprove that there's been misconduct, correct?
21 You're an expert, that's what you do?

22 A That's part of what I do, yeah.

23 MR. SEGEL: Okay. No further questions, Your Honor.

24 THE COURT: Do you have any --

1 MR. BELLER: No, Your Honor.

2 THE COURT: All right. You may stand down, sir. Thank you.

3 All right. It's ten to 1:00.

4 MR. CLARY: Your Honor, can we submit written argument?

5 MR. BELLER: I'll go one better. I would submit it on --

6 THE COURT: Well, let me ask you this before we go further. I assume by
7 your asking that question the way that you are, counsel, that you didn't have any
8 additional evidence to put on at this time, right? I mean, you don't have any rebuttal
9 evidence?

10 MR. CLARY: That's correct.

11 THE COURT: Okay, good. Okay.

12 MR. BELLER: Your Honor --

13 MR. CLARY: I'm keeping my word about finishing by one o'clock.

14 THE COURT: Right.

15 MR. BELLER: All we would be doing, in my opinion, is regurgitating what the
16 Court has heard. I mean, I have certainly the utmost respect for this Court. I mean,
17 you've heard it all. You have the affidavits, you have the exhibits. I would be willing
18 to submit it on what you've heard, Mr. Stringham's exhibits, and await a decision.
19 The only -- the concern that I have, Your Honor, with all of this is then he's going to
20 file, I'm going to file.

21 THE COURT: No, I would -- If I were to entertain written arguments as
22 opposed to oral arguments being made now, I would give you a date by which both
23 sides would submit their arguments. It would be basically just a summation of the
24 evidence that has been adduced today, not a regurgitation of what's already been

1 stated. In that regard what's been stated up until now in papers was before this
2 hearing. This evidentiary hearing has now taken place. I think each side should
3 be given an opportunity to sum up the evidence that has been given. That hasn't
4 -- that's not in the prior papers because it hadn't taken place yet.

5 MR. CLARY: That's correct, Your Honor. And I've learned --

6 THE COURT: So my thinking would be if I just gave you a date very soon,
7 5:00 p.m. by that date both sides would submit their summation -- again, not a
8 regurgitation of what's already been stated, not a re-argument of what the law is
9 or how it applies or whatever, just the salient points that you believe have been
10 made in this summation and how they're affected by the law that applies. I think
11 that would be --

12 MR. CLARY: Helpful.

13 MR. BELLER: Happy to.

14 MR. CLARY: And I learned a long time ago, Your Honor, that that's the best
15 way to do it.

16 THE COURT: All right.

17 MR. CLARY: Not to do it orally at the end of the hearing.

18 THE COURT: Okay. Well, I mean, how about -- I mean, I know that the
19 plaintiffs are concerned about a stay that's in effect pending the resolution of this
20 matter.

21 MR. BELLER: Yes.

22 THE COURT: So I'm thinking that I would set a deadline very quickly.

23 MR. CLARY: That's fine.

24 THE COURT: What do you think? I mean, it could be this Friday, it could be

1 a week from today. What do counsel think?

2 MR. CLARY: How about the following Monday?

3 THE COURT: Oh, next Monday? How's that Mr. Beller? I'm not looking at
4 opening brief with a responding brief with a reply brief. I'm looking at blind briefs
5 submitted by 5:00 p.m. on the date that I'll designate.

6 MR. BELLER: And briefs as to basically what the --

7 THE COURT: Summation here.

8 MR. BELLER: Okay, what the evidence shows.

9 THE COURT: Right.

10 MR. CLARY: Our oral argument put in writing.

11 MR. BELLER: Excuse me, counsel. Are you talking about this coming
12 Monday or a week from? I didn't know.

13 THE COURT: I think counsel --

14 MR. CLARY: I was talking about this coming Monday, but I don't care, it
15 could be a week from Monday.

16 MR. BELLER: Well --

17 MR. SEGEL: Mr. Beller has a concern, Your Honor, on time frame, so we'll
18 defer to what Mr. Beller wants for the time frame.

19 THE COURT: All right.

20 MR. BELLER: Can I just ask Mr. Stringham a question?

21 THE COURT: Sure.

22 (Mr. Beller confers with Mr. Stringham)

23 MR. BELLER: Could we have until Wednesday of next week?

24 THE COURT: Absolutely. Is that okay with you, Mr. Clary?

1 MR. CLARY: That's fine, Your Honor.

2 THE COURT: Okay. And again, you're summing up the evidence as it
3 relates to the statute pursuant to which this motion has been made.

4 MR. CLARY: I'm going to do it as soon as I can get to it while it's fresh in
5 my mind.

6 THE COURT: Right. Okay. That's basically what you're going to be doing.

7 MR. BELLER: That's correct, Your Honor.

8 THE COURT: And hit your salient points and then it will stand submitted
9 as of 5:00 p.m. Wednesday, August 6th, 2008, and I'll rule as quickly as I can
10 thereafter. Okay?

11 MR. BELLER: Very good. Thank you very much, Your Honor.

12 MR. SEGEL: Your Honor, one issue I'd like to raise. We have this huge
13 tome, none of which was admitted as evidence, so we would like that excluded from
14 the Court's deliberation.

15 THE COURT: Well, I'll allow counsel to refer to items that are in the record.
16 I mean, there are items that are attached to those affidavits.

17 MR. SEGEL: Well, Your Honor, the only thing he used the book for, as I
18 recall, was actually to have our witness refer to Mr. Stringham's affidavits, which you
19 have in pleadings already. There was nothing else that I recall that was referred to
20 in this book, so.

21 MR. BELLER: I'm just going to be using Mr. Talon's first, second affidavit.

22 THE COURT: Right. Argument will be limited to items that are in evidence.

23 MR. BELLER: Yeah, and what was supplied by the defendant.

24 THE COURT: As far as I'm concerned, I'm treating the affidavit as I would

1 one submitted on a motion for preliminary injunction. I mean, I can consider the
2 items stated in the affidavit as lending support to -- or affidavits as lending support
3 to positions taken by the parties on this preliminary issue. But no, those items are
4 not introduced into evidence.

5 MR. SEGEL: There are issues, Your Honor, that were in Mr. Stringham's
6 affidavit that weren't addressed by active testimony. I'm not sure if that's relevant,
7 but I just wanted that to be clear.

8 MR. BELLER: That was just as a matter of courtesy to the Court and
9 counsel. I'm only looking at -- there's just a bunch of stuff here. I've been in a
10 bifurcated Triple A, and the person that prepared this --

11 THE COURT: Okay. One issue I'll be interested in, and I don't want to open
12 up argument on it now, but I think that one issue I would be interested in, and we've
13 addressed this I think before in this case, has to do with the authority of the Court
14 on a motion for security to revisit its rulings to -- as the case proceeds. In other
15 words, is the Court allowed to set security at one stage and then revisit that security
16 at a later stage? I don't know.

17 MR. SEGEL: Your Honor, I do believe the statute specifically addresses that
18 issue with the court.

19 THE COURT: Okay. And I think I referenced that.

20 MR. SEGEL: I think it specifically says you can move it either way. But
21 hopefully I'm reading the right statute, but that's my recollection.

22 THE COURT: Okay. Well, I'd be interested in knowing --

23 MR. CLARY: I don't think there's any case law on that that I've been able
24 to find.

1 MR. SEGEL: There's also a provision in there that says we can draw down
2 on it, so I'm not sure what that means, either.

3 THE COURT: Okay, because we're at a very early stage in this case.

4 MR. SEGEL: Yes.

5 THE COURT: And that's what I'd like to hear what you have to say about
6 that. Okay?

7 MR. SEGEL: Thank you, Your Honor.

8 MR. BELLER: Thank you, Your Honor.

9 THE COURT: Or see what you have to say about that. I won't be hearing it.
10 Okay?

11 MR. CLARY: Thank you.

12 MR. CANNON: Thank you.

13 THE COURT: Thank you. Court is in recess.

14 (PROCEEDINGS CONCLUDED AT 12:58:50 P.M.)

15 * * * * *

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18 ATTEST: I do hereby certify that I have truly and correctly transcribed the
19 audio/video proceedings in the above-entitled case to the best of my ability.

20

21 Liz Garcia
Liz Garcia, Transcriber
LGM Transcription Service

Date 1/12/09

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