

IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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C.A. No. 11-56430

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ROTHWELL, LTD.,

Plaintiff-Appellant,

v.

UNITED STATES OF AMERICA,

Defendant-Appellee.

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**PLAINTIFF-APPELLANT ROTHWELL, LTD.'S  
EXCERPTS OF RECORD  
VOLUME 2**

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Appeal from the Judgment of the United States District Court  
for the Central District of California  
D.C. No. 10-cv-00479-RGK-FFM  
(Honorable R. Gary Klausner)

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11 UNITED DISTRICT STATES COURT  
 12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

11 ROTHWELL, Ltd., )  
 12 a Cayman Islands Corporation, )  
 13 )  
 14 Plaintiff-Appellant, )  
 15 v. )  
 16 UNITED STATES OF AMERICA, )  
 17 )  
 18 Defendant-Appellee. )

Case No. 10-cv-00479-RGK-FFM  
**AMENDED NOTICE OF APPEAL**  
 9<sup>TH</sup> CIRCUIT DOCKET NO. 11-56430

19 Notice is hereby given that Plaintiff Rothwell, Ltd., in the above named case hereby appeals  
 20 to the United States Court of Appeals for the Ninth Circuit from the U.S. District Court for the  
 21 Central District of California Case No. CV10-00479 RGK(FFM), (1) order entered on April 6, 2011  
 22 (Doc. #30), (2) order entered on April 6, 2011 (Doc. #32), (3) order entered on April 12, 2011 (Doc.  
 23 #40), (4) oral order in open court refusing to sign and approve the pre-trial order on June 14, 2011,  
 24 by the Honorable R. Gary Klausner, U.S. District Judge, (5) order entered on June 30, 2011 (Doc.  
 25 #77), and (6) final judgment entered in this action on July 11, 2011 (Doc. #79).

26 DATED: August 25, 2011 WILLIAM A. COHAN, P.C.

27 By: s/ William A. Cohan  
 28 WILLIAM A. COHAN

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 25<sup>th</sup> day of August, 2011, I electronically filed the foregoing AMENDED NOTICE OF APPEAL, with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

s/ William A. Cohan  
William A. Cohan  
bill@williamacohan.com

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

- - -

HONORABLE R. GARY KLAUSNER, JUDGE PRESIDING

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ROTHWELL, LTD., a Cayman Islands corporation, Case No. 10-cv-00479-RGK-FFM

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

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COURT TRIAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Los Angeles, California

June 16, 2011

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APPEARANCES:

For the Plaintiff: Gabriel L. Cohan  
William A. Cohan

For the Defendant: Darwin Thomas  
Valerie L. Makarewicz

Reported by: Nichole Rhynard, RMR, CRR,  
CA CSR #137256  
Official Court Reporter  
nicholerhynard@yahoo.com

Proceedings recorded by mechanical stenography. Transcript produced by Reporter on computer.

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1 LOS ANGELES, CALIFORNIA; June 16, 2011 9:05 a.m.

2 THE COURT: Okay. All counsel are present. And you  
3 had a witness you wish to call this morning?

4 MR. WILLIAM COHAN: We do, Your Honor. If we may,  
5 we had a stipulation about some documentary exhibits that we  
6 wanted to enter right now if we could.

7 THE COURT: Okay.

8 MR. WILLIAM COHAN: We have an agreement on  
9 government's Exhibit 278, which is the notice of levy served  
10 on Morgan Stanley.

11 THE COURT: Exhibit 278? Okay.

12 MR. WILLIAM COHAN: Yes, Your Honor.

13 And Plaintiff's Exhibits 126, 127 and 128, which are  
14 respectively the financial demand for payment to  
15 Mr. Francis, is 126. 127 is a collection of three checks  
16 from Morgan Stanley Smith Barney to the Internal Revenue  
17 Service totalling 20,400 some-odd dollars. And 128 is the  
18 IRS revenue confirmation of receipt of those checks.

19 THE COURT: Okay.

20 MR. WILLIAM COHAN: And for that I will defer to  
21 co-counsel, who is going to inquire of the last witness.

22 THE COURT: Before you do, do counsel so stipulate  
23 on this?

24 MR. THOMAS: Yes, Your Honor.

25 THE COURT: They would be received.

1 MR. WILLIAM COHAN: Thank you, Your Honor.

2 Thank you, counsel.

3 (Exhibit Nos. 278, 126, 127, 128 admitted.)

4 MR. GABRIEL COHAN: Good morning, Your Honor.

5 Plaintiff Rothwell calls Mr. David Connell.

6 THE COURT: Step over here please and be sworn in.

7 DAVID CONNELL

8 The witness, after being duly sworn, testified as follows:

9 THE CLERK: State your full name and spell your last  
10 name.

11 THE WITNESS: David William Connell, C-O-N-N-E-L-L.

12 THE COURT: Counsel, you may inquire.

13 MR. GABRIEL COHAN: Thank you, Your Honor.

14 DIRECT EXAMINATION

15 BY MR. GABRIEL COHAN:

16 Q Good morning, Mr. Connell.

17 A Good morning.

18 Q I want to talk first briefly about your background and  
19 education. Can you please describe for the Court your  
20 education?

21 A Yes. I grew up in San Diego County. Went to high school  
22 in San Diego County. Went to the University of San Diego  
23 State. During San Diego State -- when I was at San Diego  
24 State there were various budget cuts in California. And I  
25 decided to pursue a law career in Mexico. I went to the

1 University of Tecnologica de Mexico, in Mexico there. I  
2 started law school there in '92. In 1993, I also started  
3 clerking for a firm by the name of Martinez del Campo del  
4 Rio where I clerked until I finished law school in 1995. In  
5 Mexico, to become -- at that time to become a licensed  
6 attorney, you have to write a thesis and do a thesis  
7 defense, which I did in 1997. I was accepted as a licensed  
8 attorney in Mexico.

9 Q So do you hold a license to practice law in Mexico?

10 A Yes, I do.

11 Q And can you briefly describe for the Court your  
12 experience post-law school? What firms you had worked for?

13 A During law school I started clerking with Martinez del  
14 Campo del Rio. I worked there until 1997. Martinez del  
15 Campo del Rio is a small boutique law firm that principally  
16 works in corporate areas. Some of the clients include  
17 Bacardi, Chrysler, McDonald's Mexico. One of the partners,  
18 Carlos del Rio, is the ex-chief justice of the Mexico  
19 Supreme Court. Under Carlos del Rio I did several -- I  
20 worked with him on several cases where he was an expert  
21 witnesses in the United States on Mexican law. I worked in  
22 corporate matters, trademark, shareholders meetings,  
23 litigation on trademark issues and corporate matters.

24 Q What firm did you work for after you worked for Martinez  
25 del Campo del Rio?

1 A In 1996, I was given an offer by Dennis Peyton. Dennis  
2 Peyton was an attorney that has written several books on how  
3 to buy real estate in Mexico. His principal office was in  
4 San Diego, in Tijuana. He was looking to open other offices  
5 and offered me a position to open the Ixtapa/Zihuatanejo  
6 office and join him, which I did in 1997. At that time the  
7 firm was called Peyton Amador & Takimoto. It was later  
8 called Peyton Amador. In 2000, the name was changed to  
9 Peyton Amador & Connell. And then in 2002, I believe it was  
10 changed to Peyton and Connell.

11 Q Do you currently now run your own law firm?

12 A Correct. In 2004, 2005 Dennis Peyton and I decided to  
13 continue to work together but divide the offices. He stayed  
14 with the Cabo San Lucas office, the San Diego office and the  
15 Tijuana office, and I continued to work -- to manage and  
16 took over the offices of Mexico City Ixtapa/Zihuatanejo and  
17 Puerta Vallarta, which Dennis and I also opened together  
18 while we worked together.

19 Q And what type of law does Connell & Associates primarily  
20 practice?

21 A We primarily practice foreign investment in Mexico's  
22 tourist areas. It's an area that takes into consideration  
23 corporate law. Foreign investments. The rights of  
24 foreigners in Mexico to purchase real estate. Their  
25 migratory status. Conflict resolution. Agrarian matters.

1 It's principally designed around the tourist industry and  
2 foreigners acquiring rights to property and developing  
3 property in Mexico.

4 Q Where does Connell & Associates have law offices?

5 A Currently we have offices in Mexico City,  
6 Ixtapa/Zihuatanejo and Puerto Vallarta.

7 Q And do you speak any other languages beside English?

8 A I'm fluent in Spanish. I'm also a -- for the Supreme  
9 Court of the state of Guerrero I'm a licensed translator for  
10 expert witness testimony on translations. English and  
11 Spanish translations.

12 Q Do you have any other businesses that you run?

13 A I participate in several businesses. One of my another  
14 principal businesses is I was offered the -- to open a  
15 franchise of Prudential California Realty in  
16 Ixtapa/Zihuatanejo from Steve Gaines, who was the founder of  
17 Prudential California Realty, which I currently am the  
18 broker/manager of that. Recognized as the broker/manager of  
19 that office.

20 Q Have you published any articles?

21 A Jointly and independently I have published several  
22 articles on how to buy real estate in Mexico. Tax effects  
23 of buying real estate in Mexico. Doing business in Mexico.  
24 Quite a few on the website. I'm not sure how many I have  
25 published, but it's quite a few.

1 Q What types of publications have run these articles?

2 A Mostly publications to do with foreigners coming to  
3 Mexico and investing in Mexico. Principally in real estate.  
4 Doing business in Mexico. Magazines -- "Forbes" ran one of  
5 our articles. We did an interview for an article for the  
6 "Wall Street Journal." That wasn't an article, but we were  
7 interviewed on the procedures of acquiring property in  
8 Mexico. And then a lot of your publications around Mexico  
9 and some in the United States that focus on development in  
10 Mexico.

11 Q Have you been a speaker at any conferences?

12 A Yes. I have spoken at several conferences on real estate  
13 and development in Mexico. Puerto Vallarta,  
14 Ixtapa/Zihuatanejo, Mexico City, and one in San Diego.

15 Q And primarily what were the topics for those conferences?

16 A The topics principally ranged around developing and  
17 buying land in Mexico. Some had to do with taxes. Some had  
18 to do with the way of holding title to land in Mexico.  
19 Immigration issues and cross-border business issues.

20 Q And did there come a point in time when you were retained  
21 by Rothwell to act as an expert witness?

22 A Yes. I was asked to give an opinion on certain questions  
23 that were put before me by Rothwell.

24 Q What was the scope of your engagement with Rothwell?

25 A I was asked to look at a company, Casa Blanca de Punta

1 Mita SA de CV, a limited liability corporation set up in  
2 Mexico, and the interest that company had in two properties  
3 in a development called Ranchos, Lots 13, 14.

4 Q Did you prepare a report in connection with your  
5 engagement by Rothwell?

6 A Yes, I did prepare a report. I think I submitted it  
7 on -- was it March -- or February or March of this year.

8 Q I will ask you, if you would, to find behind you  
9 somewhere what's been marked as volume 4 of Rothwell's  
10 exhibits.

11 MR. GABRIEL COHAN: Your Honor, before we get into  
12 this report I would ask that the Court recognize  
13 Mr. Connell's qualifications as an expert, and I move him as  
14 an expert for the Court.

15 MS. MAKAREWICZ: No objection.

16 THE COURT: Okay. Just keep in mind, Counsel, we're  
17 talking about an expert. I'm not too sure you've designated  
18 an expert in what. And you do know that in the courtroom an  
19 expert cannot testify as to what the law is. That has to be  
20 points of authorities. I'm assuming he's an expert in real  
21 estate, et cetera, and I am allowing that. But I just want  
22 to make sure we don't get confused. He can't give an expert  
23 opinion on what the law is. That has to be cited.

24 MR. GABRIEL COHAN: I completely understand, Your  
25 Honor. I mean expert really with respect to the reasons for

1 his factual investigation.

2 THE COURT: I understand. And we've talked about it  
3 before. I just wanted to make sure. It also could be an  
4 expert's opinion. But yes, he will be qualified as an  
5 expert.

6 MR. GABRIEL COHAN: Very well, Your Honor. Thank  
7 you.

8 BY MR. GABRIEL COHAN:

9 Q Now, Mr. Connell, if you would, could you look in the  
10 book towards the back to what has been marked as Rothwell's  
11 Exhibit 159?

12 A Yes, I have it here.

13 Q Okay. Will you take a minute to look through it?  
14 Do you recognize this document, Mr. Connell?

15 A Yes. This is the opinion I gave on the subject.

16 MR. GABRIEL COHAN: And at this time, Your Honor, I  
17 would move into evidence Exhibit 159.

18 THE COURT: Again what is 159?

19 MR. GABRIEL COHAN: It's a report that Mr. Connell  
20 wrote.

21 THE COURT: His expert report? Okay. Yes.

22 Any objection.

23 MR. THOMAS: No objection.

24 THE COURT: It will be received.

25 (Exhibit No. 159 admitted.)

1 BY MR. GABRIEL COHAN:

2 Q Now, Mr. Connell, do you recall what questions you were  
3 asked in connection with writing this report?

4 A Yes. The questions I stated in my report. I can go  
5 through them one at a time, if you'd like.

6 Q I think you'll see the questions are addressed on page 1  
7 of the report, if that would refresh your recollection.

8 A Yes.

9 Q Can you please tell the Court what the questions were  
10 that were asked of you?

11 A The nature and type of Casa Blanca's corporation Casa  
12 Blanca de Punta Mita SA de CV.

13 2. Nature and extent of Casa Blanca's legal and  
14 beneficial interest in lots 13, 14 and the improvements  
15 thereon.

16 3. Nature and extent of the legal and beneficial  
17 interest, if any, of all other parties identified in the  
18 William A. Cohan letter of February 11, 2011 in Casa Blanca,  
19 and taking into considering certain assumptions.

20 4. Nature and extent of the legal and beneficial  
21 interests, if any, of all of the parties identified in the  
22 William A. Cohan letter of February 11, 2011 and lots 13,  
23 14, any improvements thereon, and taking into consideration  
24 certain assumptions.

25 5. The source I rely upon for my conclusions.

1 BY MR. GABRIEL COHAN:

2 Q Mr. Connell, did you attach your curriculum vitae to the  
3 this report?

4 A Yes, I did.

5 Q Very well.

6 Now I want to talk to you first about the investigation  
7 that you conducted in response the first question, which is  
8 the nature and type of Casa Blanca's corporation.

9 What is the nature and type of Casa Blanca's corporation?

10 A Casa Blanca de Punta Mita is an SA de CV. It's one of  
11 the six types of commercial entities recognized by the law  
12 of commercial entities of Mexico. It is a limited liability  
13 corporation. A variable capital.

14 Q And did you do any investigation to determine whether  
15 Casa Blanca de Punta Mita was properly formed?

16 A Yes, we did. Casa Blanca de Punta Mita, in order to be  
17 limited in liability, must be -- a document of incorporation  
18 must be notarized and registered in the public commercial  
19 registry. We did go to the public commercial registry and  
20 verify, and also acquired the certificates from the public  
21 commercial registry showing that Casa Blanca de Punta Mita  
22 was registered correctly in the public commercial registry  
23 of Mexico.

24 Q And did you have occasion to look at any documents  
25 particular provided regarding Casa Blanca de Punta Mita?

1 A We were also provided with the notarized -- a copy of the  
2 notarized document of incorporation, which we call the Acta  
3 Constitutiva, which formed Casa Blanca de Punta Mita SA de  
4 CV and verified that that was the same document in the  
5 public commercial registry.

6 Q Is a corporation in Mexico, an SA de CV, is it completely  
7 an independent and distinct from its shareholders?

8 A Yes. The SA de CV as well as all commercial entities in  
9 Mexico are considered independent entities from their  
10 shareholders. The law of corporate entities -- it's one of  
11 the principles of the law of corporate entities. As a  
12 matter of fact, Article II. The second article of the law  
13 of corporate entities establishes that any entity set up  
14 under the rules of the law of corporate entities is  
15 independent from that of its shareholders.

16 Q I want to turn your attention to the second question.  
17 The nature and extent of Casa Blanca's legal and beneficial  
18 interest in lots 13B and 14 and improvements thereon.

19 Did you investigate the nature and extent of Casa  
20 Blanca's interests in lots 14 and 13B?

21 A Yes. That was one of the things we were asked to do. We  
22 were asked to review a document provided to us and to  
23 determine the legal interest of Casa Blanca de Punta Mita.

24 Q What documents were you provided with?

25 A We were provided with the deed to lot 13B and a copy of a

1 private agreement for the purchase of lot 14.

2 Q And what further investigation did you do in connection  
3 with these questions?

4 A We reviewed both the deed and the contract. With  
5 relation to the deed to lot 13B, we also went to the public  
6 property registry and verified that that was the existing  
7 deed for the property and no transfers of title had  
8 happened. The public registry in Mexico is the -- is the  
9 registrar's office where all real estate transactions must  
10 be registered in order for them to be valid before third  
11 parties.

12 Q What did the public registry show with respect to lot 14?

13 A With respect to lot 14 the private agreement that we had  
14 had sufficient information for us to locate the file of lot  
15 14 in the public registry. However, when we reviewed the  
16 file we found that the property was still in the name of the  
17 selling party. Club de Yates -- it's here in my report.  
18 Club de Yates to Punta Mita SA de CV. The company that was  
19 selling the property in the private agreement, it had not  
20 been transferred in the public registry to Casa Blanca de  
21 Punta Mita.

22 Q And did you obtain any document from the public registry  
23 with concern to lot 14?

24 A Both for lot 13B and 14B we pulled the registry  
25 certificates from the public registry. The public registry

1 certificate for lot 13B showed that Casa Blanca de Punta  
2 Mita was the owner. The public certificate for lot 14  
3 showed that the owner was Club de Yates Punta Mita SA de CV.

4 MR. GABRIEL COHAN: Your Honor, at this time may I  
5 use the Elmo to publish a portion of the report?

6 THE COURT: Certainly.

7 MR. GABRIEL COHAN: This is within Exhibit 159.

8 THE COURT: What page?

9 MR. GABRIEL COHAN: Unfortunately, Your Honor, I  
10 apologize, but the report is not Bates numbered. I would  
11 say that it's towards the back behind the numbered portions  
12 of the report and the documents that are referenced therein  
13 as attachments.

14 THE COURT: Okay.

15 BY MR. GABRIEL COHAN:

16 Q Mr. Connell, if you would take a look at the monitor that  
17 is next to you. Do you recognize this document that is  
18 displayed on the monitor?

19 THE COURT: Why don't you blow it up just a little  
20 bit?

21 MR. GABRIEL COHAN: Yes, Your Honor.

22 THE COURT: There you go. Thank you.

23 Do you recognize that?

24 THE WITNESS: Yes. This is the certificate given by  
25 the public property registry that corresponds to the

1 location of this property. It is the public certificate for  
2 lot number 14. I correct myself there, Club de Yates Costa  
3 Banderas is the name of the owner. Is the registered owner  
4 of lot 14.

5 BY MR. GABRIEL COHAN:

6 Q If I might, I will show you the second page of this  
7 document. Directing your attention to the highlighted  
8 portion, does this indicate a date on which in this document  
9 was prepared?

10 A Yes. The boss of the office of the registry prepared  
11 that document on the 24th of February 2011.

12 Q Now, in connection with lot 14, I believe you mentioned  
13 this before, that you were provided with a document other  
14 than the public deed that discussed the ownership rights of  
15 lot 14?

16 A We were provided with a copy of a private buy/sell  
17 agreement between -- it was actually between Cantiles De  
18 Mita and Casa Blanca De Punta Mita SA de CV.

19 MR. GABRIEL COHAN: If I might, Your Honor, I would  
20 request permission to display to the witness what's been  
21 previously been admitted as -- I believe it is Exhibit 139.  
22 Rothwell's Exhibit 139. The purchase agreement.

23 THE COURT: Yes.

24 BY MR. GABRIEL COHAN:

25 Q Mr. Connell, if you would take a look in the binder next

1 to you. I will show you the operative pages as well. But  
2 139 is contained in the Rothwell's exhibits, volume 2.

3 A I have it here.

4 Q Take a look at that document briefly, sir. Do you  
5 recognize this document?

6 A Yes. This is a private agreement that we were asked to  
7 review regarding the purchase of lot 14 by Casa Blanca de  
8 Punta Mita.

9 Q I want to direct your attention to what I'm also going to  
10 publish on the Elmo, which is, I believe, the third page of  
11 this. It bears the Bates number at the bottom CB 00473 of  
12 Exhibit 139.

13 A I have it here.

14 Q Do you see, sir, in the upper right-hand portion some  
15 language there written in English? I'm showing it to you as  
16 well on the Elmo.

17 A Yes.

18 Q Does that indicate what the purchase price was for lot  
19 14?

20 A Yes. It does indicate the purchase price was \$1,055,000.

21 Q Thank you.

22 I want to turn your attention a little bit further into  
23 this document. Give me just a moment. I believe there is  
24 paragraph 17 in there that I will direct your attention to.  
25 I will give you the page number for the record here in just

1 a moment.

2 Do you see on the page in the document number 14 -- in  
3 number 15 which bears the Bates number at the bottom corner  
4 of the page CB 00485?

5 A Yes.

6 Q Directing your attention to the paragraph that indicates  
7 17 -- you do see that I'm also showing it on monitor next to  
8 you -- can you describe for the Court what that paragraph  
9 is?

10 A It's a clause in the agreement stating that this is the  
11 only agreement between the parties that are entering into  
12 the agreement and there are no other -- there are no other  
13 agreements between parties.

14 Q Is it your understanding that this is analogous to an  
15 integration clause?

16 A Yes.

17 Q I want to direct your attention then to the last page, I  
18 believe it is, of document -- Exhibit 139. The signature  
19 page has the Bates number on the bottom right CB 00487. Do  
20 you see that?

21 A Yes.

22 Q Okay. I will show you also on the Elmo.

23 Can you indicate to the Court who the parties are to this  
24 transaction in this contract?

25 A The parties in this contract are Cantiles De Mita SA de

1 CV and Casa Blanca de Punta Mita SA de CV.

2 Q So who, according to this document, is the purchaser of  
3 lot 14?

4 A Casa Blanca de Punta Mita SA de CV.

5 Q Did you have occasion to review any documents in  
6 connection with title insurance in your investigation?

7 A Yes. I was provided with a copy of the title -- the  
8 application for title commitment.

9 Q I'm going to ask you to turn to what has been previously,  
10 I believe, moved into evidence as Exhibit 137. Rothwell's  
11 137.

12 A Yes, I have it here.

13 Q Would you take a moment to look through that document, if  
14 you would? Do you recognize this document?

15 A Yes. This is the commitment letter from Stewart Title  
16 guarantee in Mexico SA de CV for title insurance over lot  
17 14.

18 Q I'd like you to turn to the fourth page in Bates number  
19 CB 00466. I will also show it to you on the Elmo. Does  
20 this document indicate a price for title insurance on it?

21 A Yes, it does. It indicates 1,050,000.

22 Q Does it also indicate who the proposed insured is?

23 A Yes, it does. Casa Blanca de Punta Mita SA de CV.

24 Q Under paragraph 3, just to be clear, does it refer to a  
25 particular piece of real estate?

1 A Yes, it does. It refers to lot 14 of the development  
2 known as Rancho de Punta Mita.

3 Q Mr. Connell, were you asked also to investigate whether  
4 there was any interest in the improvements on lot 14?

5 A Yes. That was one of the questions I was asked in my  
6 opinion.

7 Q And were you able to determine who owns, according to the  
8 records in Mexico, the improvements on lot 14?

9 A The improvements on lot 14 -- there is no deed for Casa  
10 Blanca de Punta Mita. There is a contract to purchase. It  
11 is not registered. The improvements on that lot, you would  
12 have to assume that there Casa Blanca de Punta Mita or the  
13 person that sold them the property. You have the situation  
14 that's if the purchaser wants to have the deed registered in  
15 their name, they can. But I didn't get -- have -- wasn't  
16 provided with any documents or found anything that showed  
17 who had done the improvements to the property, to lot 14.

18 Q Now I want to turn your attention to the third question  
19 for which you addressed in your report, which is the nature  
20 and extent of the legal and beneficial interest, if any, of  
21 all the other parties identified in the William A. Cohan  
22 letter of February 11, 2011. I believe it's described in  
23 your report. Particularly I would like you to describe for  
24 the Court, if you would, parties that were identified. And  
25 again your report is Exhibit 159.

1 A Yes. In my report, I said:

2 Per the letter of Mr. Cohan dated 11 of February 2011,  
3 the following parties other than Casa Blanca de Punta Mita  
4 were identified.

5 A. Rothwell Limited.

6 B. The Francis Trust indentured.

7 C. Island Films Limited.

8 D. Summerland Holdings Limited.

9 E. Joseph R. Francis.

10 F. The Francis Trust.

11 G. Sands Media, Inc.

12 H. Mantra Films, Inc.

13 Q Were you also asked to make certain assumptions in  
14 connection with this question?

15 A Yes, I was. I was asked to make -- if you would like to  
16 follow assumptions --

17 Q Yes. Please describe the assumptions you made.

18 A The following assumptions I was asked to make:

19 1. That Island Films and Summerland Holdings Limited,  
20 Turks & Caicos Island corporations are the sole shareholders  
21 of Casa Blanca de Punta Mita.

22 2. Rothwell Limited, Cayman Island corporation,  
23 contributed the funds to purchase lots 13B and 14 directly  
24 to the sellers of lots 13B and 14 without any agreement to  
25 retain any interest or rights in the funds contributed or

1 real property, nor as a loan to Casa Blanca de Punta Mita.

2 The Francis Trust, a Turks & Caicos Islands trust, is the  
3 sole shareholder of Rothwell Limited, Summerland Holdings  
4 Limited, and Island Films Limited.

5 Sands Media, Inc. and Mantra Films, Inc., U.S.  
6 corporations, contributed the funds to develop and improve  
7 lots 13B and 14 by directly paying the building contractor  
8 without any agreement to retain any interest or rights to  
9 the funds contributed or the real property, nor is a loan to  
10 Casa Blanca de Punta Mita.

11 And the sole shareholder of Sands Media and Mantra Films  
12 is Joseph R. Francis, the settler of the Francis Trust.

13 Q And just for clarification, backing up just one moment,  
14 if I may, before we finish addressing this question. To be  
15 clear, did you find any public records which showed that  
16 Casa Blanca was the owner of lot 14?

17 A No, I did not.

18 Q Okay. Now --

19 A Let me rephrase that. The public registry in Mexico is  
20 where you would find a public record. There is a document  
21 in the tax -- local tax registry that shows them as the  
22 registered owner of the lot.

23 Q And do you believe that the purchase agreement gives them  
24 some interest in the property lot 14?

25 A The purchased agreement does give them an interest in the

1 lot, yes.

2 Q Is there any type of defect in the title then?

3 A Yes. There is a defect in the title in that it is not --  
4 does not have the required legal formality to be considered  
5 a transaction of property that can be fixed by either of the  
6 parties by asking a court to register the deed.

7 THE COURT: It can be fixed by asking a Court?

8 THE WITNESS: Yes, it can, Your Honor.

9 BY MR. GABRIEL COHAN:

10 Q Now turning back to the question. Does Rothwell Limited,  
11 a Cayman Island corporation, as far as you can tell from  
12 your investigation, have any legal and beneficial interest  
13 in lots 13 or 14?

14 A No. In accordance with Mexican law, they have no legal  
15 interest in 13B or 14.

16 Q Do they have any legal interest in Casa Blanca SA de CV?

17 A No. The only two entities of record and of the documents  
18 that we receive that have interest in Casa Blanca de Punta  
19 Mita are Island Films, Inc. and Summerland Holdings Limited.

20 Q And does the Francis Trust indenture, the Turks & Caicos  
21 discretionary trust, have any interest in lots 13B and lot  
22 14 as far as you can tell?

23 A Under Mexican law they have no legal interest.

24 Q Do they have any -- does the Francis Trust indenture, as  
25 far as the record and you can tell in your investigation,

1 have any interest in Casa Blanca de Punta Mita?

2 A No. It does have any legal interest under Mexican law.

3 Q Does the company Island Films Limited, a Turks & Caicos  
4 corporation, have any legal or beneficial interest in Casa  
5 Blanca de Punta Mita?

6 A Island Films, Inc. is what the deed of the incorporation  
7 says. I'm not sure if that was an error. But Island Films  
8 Limited, as such, does not appear in Mexico to have a legal  
9 interest. Island Films, Inc. does. It is a 50-percent  
10 shareholder of Casa Blanca de Punta Mita.

11 Q And does Summerland Holdings Limited have any legal or  
12 beneficial interest in Casa Blanca de Punta Mita as far as  
13 you could tell from your investigation?

14 A Under Mexican law, Summerland Holdings Limited is  
15 50-percent owner of the shares in Casa Blanca de Punta Mita  
16 SA de CV.

17 Q And does Island Films Limited have any interest as far as  
18 you can tell in underlying real estate of lots 13B and 14?

19 A The legal owner of the real estate is Casa Blanca de  
20 Punta Mita, which is independent from its shareholders. The  
21 shareholders do not hold any interest in the assets of Casa  
22 Blanca de Punta Mita. No, they do not hold any interest in  
23 any either lot.

24 Q And I am going to ask you essentially the same question  
25 with respect to Summerland Holdings Limited. Can you tell

1 from your investigation whether it has any legal or  
2 beneficial interest in lot 13B or lot 14?

3 A No. Summerland Holdings Limited does not have a legal  
4 interest in Mexico in lot 13B or 14.

5 Q Were you able to tell based on your investigation whether  
6 Joseph R. Francis has any legal or beneficial interest in  
7 Casa Blanca de Punta Mita SA de CV?

8 A Under Mexican law he does not appear as a shareholder.  
9 He has no legal interest in Mexico in Casa Blanca de Punta  
10 Mita or lot 13B or 14.

11 Q Okay. You preempted my next question, which is, I  
12 believe clear, whether or not he would have interest in the  
13 underlying real estate of lot 13B and 14?

14 A No, he would not.

15 Q Okay. And how about the Francis Trust? Were you able to  
16 determine whether it had any legal or beneficial interest in  
17 Casa Blanca de Punta Mita?

18 A No. The Francis Trust does not have any legal interest  
19 in Mexico and Casa Blanca de Punta Mita. And if I could  
20 preempt your next question, nor do they have in 13B or 14.

21 Q Very well.

22 Now, how about the company Sands Media, Inc. a U.S.  
23 corporation? Were you able to tell whether it has legal or  
24 beneficial interest in Casa Blanca de Punta Mita?

25 A Based on the documents reviewed and the commercial

1 registry, Sands Media, Inc. does not have any legal interest  
2 in Mexico, Casa Blanca de Punta Mita, or lot 13B or lot 14.

3 Q And also for the final company, for Mantra Films, Inc.  
4 another United U.S. corporation, were you able to determine  
5 in your investigation whether it had any legal or beneficial  
6 interest in Casa Blanca de Punta Mita or lots 13 and 14?

7 A Mantra Films, Inc. does not under Mexican law have any  
8 legal interest in Casa Blanca de Punta Mita or lots 13B and  
9 14.

10 Q Now, one of the assumptions you were asked to make,  
11 assumption number 4, was that Sands Media, Inc. and Mantra  
12 Films, Inc., U.S. corporations, contributed the funds to  
13 develop and improved lots 13B and 14 by directly paying the  
14 building contractor without any agreement to retain any  
15 interest or rights to the funds contributed to the real  
16 property, nor as a loan to Casa Blanca de Punta Mita.

17 Given that assumption, do they have any interests in lot  
18 13B or lot 14 or the improvements thereon?

19 A Given the assumptions that there was no documentation,  
20 they have no written legal interest. They may have an  
21 interest giving a -- well, they've given a gift, if they  
22 gave anything.

23 Q But does a gift give a legal interest in the realty? The  
24 real estate?

25 A No, it does not.

1 MR. GABRIEL COHAN: All right. May I have just a  
2 moment, Your Honor?

3 THE COURT: Yes.

4 MR. GABRIEL COHAN: No further questions for this  
5 witness, Your Honor.

6 THE COURT: Thank you, Counsel.

7 Counsel.

8 MR. THOMAS: We have no questions for this witness.

9 THE COURT: You may step down.

10 May this witness be excused?

11 MR. GABRIEL COHAN: Yes, Your Honor.

12 THE COURT: You're free to go. Thank you for coming  
13 in sir.

14 Other witnesses?

15 MR. COHAN: That's it.

16 MR. THOMAS: No, Your Honor.

17 THE COURT: Both sides ready to proceed with  
18 argument?

19 MR. WILLIAM COHAN: Yes, Your Honor.

20 THE COURT: Okay.

21 MR. WILLIAM COHAN: May it please the Court, Your  
22 Honor. We all, I think, have been through this a few times.  
23 So I know you've been waiting anxiously for this moment.  
24 Probably the most -- that's the second thing. The first  
25 thing would be the end of this moment. But seriously, if I

1 may, in developing the evidence in this case and looking at  
2 the evidence, or lack thereof, that the government presented  
3 in this case as opposed to the abundant evidence we  
4 presented in this case, I was reminded of a condition that  
5 occurs in young children called amblyopia anopsia.

6 It starts off with strabismus, when one eye is the  
7 dominant eye and the other eye is weaker and does not focus  
8 on the same object as the stronger eye. If that condition  
9 isn't remedied fairly early on by covering up the stronger  
10 and dominant eye, eventually the cerebral cortex ceases  
11 recognizing signals from weaker eye. Effectively, the child  
12 grows up with only one eye. Can only see out of that one  
13 eye.

14 What made me think of that was in the government's  
15 opening they suggested to the Court that it should not  
16 necessarily rely on control as being the single factor for  
17 this Court to resolve. Does the evidence show that Joe  
18 Francis controlled the Rothwell account or Rothwell or the  
19 Francis Trust or any of the other entities, the shares of  
20 which are owned by the Francis Trust? The answer is no  
21 because the government focused its one eye on Joe Francis  
22 and never focused either eye, the other eye that should have  
23 been focused, on the transferee of the funds from Mantra  
24 Films and Sands Media and the independent existence of the  
25 trust and of Rothwell and of Island Films and Summerland

1 Holdings and Casa Blanca de Punta Mita SA de CV. But the  
2 government's refusal to recognize the evidence doesn't make  
3 the evidence go away. And what the government did lacked  
4 perspective because, indeed, without two eyes a person  
5 doesn't really have any depth perception. And so the  
6 government did not really have perspective.

7 Rothwell presented this Court with the global  
8 perspective. Not only did we provide this Court with the  
9 witnesses who were in fact independent of Mr. Francis from  
10 day one -- the Court saw Owen Foley on video, who formed  
11 this trust in the Turks & Caicos Islands on or about May 24,  
12 1999. The Court saw and heard from Colin Chaffe, who was  
13 the principal of Hallmark Trust and who the government  
14 conceded in undisputed fact number 18 along with Nicola  
15 Jordan controlled the affairs of Rothwell from the day it  
16 was formed on June 9, 2000 to November 29, 2005, after which  
17 there really weren't any transactions involving Rothwell or  
18 the trust save and except for a few trades that were  
19 conducted through Mr. Welker.

20 And the Court also heard from Mr. Welker. And Mr. Welker  
21 testified without refutation of rebuttal. And, frankly,  
22 this was true off all the plaintiff's witnesses and all of  
23 the evidence. There was no refutation. There was no  
24 rebuttal. The control over Rothwell was entirely with  
25 Hallmark Trust, which then became Hallmark Bank and Trust

1 when, as the Court will recall, Mr. Trowbridge purchased the  
2 ownership of Hallmark Trust from Mr. Chaffe and Ms. Jordan.  
3 And there were a couple of tranches. And even after the  
4 purchase in 2003 by Mr. Trowbridge, for a period of time  
5 Mr. Chaffe and Ms. Jordan remained in control of the  
6 Rothwell account, which is really, strictly speaking, the  
7 only entity the control of which is before the Court. But  
8 we wanted the Court to have the global perspective and not  
9 to take what took place involving Mr. Francis and his  
10 deductions which Mr. Beas disallowed, whether properly or  
11 improperly, is beside the point.

12 The government didn't call witnesses to show that Joseph  
13 Francis controlled Rothwell or any of the people acting for  
14 or through Rothwell or Francis Trust or any corporations.  
15 It had no such witnesses, obviously. There was no  
16 significant cross-examination of refutation or rebuttal of  
17 any of plaintiff's evidence through witnesses or documents.  
18 We showed the Court the details of the formation and  
19 control, all the witness and all the participants. Control  
20 is one factor. As the Court knows, it is the dispositive  
21 factor. Plaintiff's evidence was un rebutted.

22 Last but not least, in case there was a real question as  
23 to control, when Mr. Francis for the first time attempted to  
24 exert control over the Francis Trust and/or any of the  
25 entities owned directly or indirectly by the Francis Trust

1 and the independent individuals showed their independence by  
2 refusing to acquiesce to Mr. Francis's request that became  
3 demands, that became threats, that became false accusations,  
4 the Court has before it the rather shocking and disgusting  
5 contents of Exhibit 159 showing Mr. Francis's bizarre,  
6 really obnoxious behavior. Threats. Accusations. Not only  
7 against Mr. Rayment, who had been his loyal attorney, who  
8 had protected Mr. Francis's interest and protected  
9 Mr. Francis's interest from Mr. Francis, who appears to be  
10 his own worst enemy. But Mr. Francis even attacked his  
11 parents.

12 I just realized I misspoke. Those e-mails are Exhibit  
13 143. Not 158. I apologize to the Court. Thank you,  
14 Counsel, for keeping track of your old man.

15 I think that is about enough for me to say. I anxiously  
16 await whatever the government has to say in support of  
17 evidence I never saw. Thank you.

18 THE COURT: Counsel?

19 MR. THOMAS: One point we apparently agree upon is  
20 that the two parties are working in almost entirely separate  
21 universes here, Your Honor. The plaintiff says that what  
22 the government presented is irrelevant, and the government  
23 maintains that most of what the plaintiff has presented is  
24 irrelevant.

25 The plaintiff hangs its hat on the formality of

1 establishing the Francis Trust under the Turks & Caicos  
2 Islands law and then asks the Court to find that that is the  
3 end of the inquiry. But following the formation of the  
4 trust, the plaintiff throws formality out the window. The  
5 trust and Mr. Chaffe acquire or incorporate numerous foreign  
6 corporations and then refuse to recognize the separateness  
7 of all those entities, claiming that they can all just be  
8 stirred together into one big pot they call the trust. But  
9 even plaintiff's expert on the Turks & Caicos Islands law  
10 explained to Mr. Cohan that the trust and Rothwell are  
11 entirely separate entities.

12 And, Your Honor, we would like to read from the  
13 deposition transcript of Mr. Foley. Pages 119, line 13  
14 through page 122, line 25. This portion of the transcript  
15 was marked by plaintiff and was not objected to by the  
16 defendant. My colleague will play the part of Mr. Cohan,  
17 and I will read the answers of Mr. Foley.

18 MS. MAKAREWICZ: [Reading deposition] I earlier  
19 asked you whether it would make any difference to you in  
20 answering the question about a transfer to Mr. Francis of  
21 the Mexican real estate owned by the trust. Would it make  
22 any difference if the property was actually owned by a  
23 Mexican corporation, the shares of which are owned -- were  
24 owned by Island Films Limited and Summerland Holdings  
25 Limited and the shares of Island Films Limited and

1 Summerland Holdings Limited were owned by the trust?

2 MR. THOMAS: [Reading the deposition] I don't  
3 believe it would make a difference. But that depends on the  
4 capacity in which Island Films or Summerland Holdings owned  
5 that real estate or owned the company that owns the real  
6 estate.

7 MS. MAKAREWICZ: Okay.

8 MR. THOMAS: So I need to know more about that. I  
9 think I would need to know how the funds got to Island Films  
10 and Summerland Holdings.

11 MS. MAKAREWICZ: Okay. Assume for the sake of my  
12 question that the funds came from Rothwell Limited, another  
13 corporation, all the shares of which are owned by the  
14 Francis Trust.

15 MR. THOMAS: I'm afraid that begs another question  
16 before I can answer your question, which is how did Rothwell  
17 Limited get those funds?

18 MS. MAKAREWICZ: Rothwell Limited got those funds  
19 from a distribution made by Joseph Francis. That is what I  
20 wanted you to assume for -- for the question.

21 MR. THOMAS: Actually, I don't know. I don't -- the  
22 long way around, I accept. But I don't understand your  
23 answer because is it the case that Joe Rothwell -- Joe  
24 Francis settled these funds on the trust and the trust then  
25 capitalized Rothwell Limited or made a capital contribution

1 to Rothwell Limited such that Rothwell Limited then had  
2 those funds?

3 MS. MAKAREWICZ: That is correct. And that's the  
4 sequence of events, as I understand it. Let me digress and  
5 provide one more detail. I want you to assume, because I  
6 believe those are the facts, that the funds were transferred  
7 to Morgan Stanley. And I'm not sure whether they were  
8 transferred to Rothwell first and then Rothwell transferred  
9 them to Morgan Stanley, or whether they were transferred  
10 from Morgan Stanley and then transferred to Rothwell. Would  
11 that make any difference?

12 The funds came from Mr. Francis or a business entity over  
13 which he had control and were settled on the trust either  
14 directly to the trust or to Rothwell. And then subsequent  
15 to that -- actually, I can't tell you the exact period of  
16 time subsequent to that. But subsequent to that those funds  
17 wound up being invested through a Mexican corporation into  
18 the acquisition of a 99-year lease on real estate in Mexico.

19 MR. THOMAS: The critical question -- the critical  
20 assumption I need to make here is whether the funds were  
21 settled on the trust and that the trust then, by whatever  
22 means, capitalized Rothwell with them. In other words,  
23 subscribe the shares in Rothwell or made a capital  
24 contribution to Rothwell.

25 MS. MAKAREWICZ: Made a capital contribution to

1 Rothwell.

2 MR. THOMAS: Okay. If I assume that the funds -- if  
3 that was the routing of the funds, then those funds belong  
4 to Rothwell. Those funds were not the trust asset.

5 MS. MAKAREWICZ: Well, I understand the [inaudible]  
6 of Rothwell were owned entirely by the Francis Trust.

7 MR. THOMAS: I appreciate that.

8 MS. MAKAREWICZ: Right.

9 MR. THOMAS: But so, therefore, if Rothwell then  
10 through some arrangement ended up being Rothwell Island  
11 Films and Summerland Holdings --

12 MS. MAKAREWICZ: Yes.

13 MR. THOMAS: -- made an arrangement whereby Rothwell  
14 funded those companies with money, which those companies  
15 then used to establish the American or Mexican subsidiary  
16 which required the real estate, it seems to me that  
17 everything below Rothwell, if you understand my drift --

18 MS. MAKAREWICZ: Yes.

19 MR. THOMAS: -- is not -- is not a trust matter.  
20 It doesn't fall to be considered by the trust because the  
21 funds used were Rothwell's own funds. They weren't the  
22 trust funds.

23 MS. MAKAREWICZ? Notwithstanding the fact that the  
24 trust is the 100-percent owner of the shares of Rothwell?

25 MR. THOMAS: Yeah. But the fact that the trust is

1 the owner of the shares of Rothwell doesn't mean that all  
2 the funds owned by Rothwell are funds of the trust.

3 [Reading of Deposition Concluded]

4 MR. THOMAS: Your Honor, the transactions involved  
5 in the present dispute do not involve the Trust at all.  
6 They involve Rothwell. Thus, all the Turks & Caicos Islands  
7 trust laws are irrelevant to this matter.

8 Also, almost everything about the Mexican property is  
9 also irrelevant. That property was not seized by the IRS.  
10 It was only the Morgan Stanley securities account that was  
11 seized. The only relevance of the Casa Blanca transaction  
12 in Mexico is to show how Joseph Francis was able to control  
13 Rothwell's assets so that he could use the -- those assets  
14 for his own enjoyment. The evidence clearly shows that  
15 Joseph Francis wanted to use Rothwell's assets to partially  
16 fund his home on the Mexican Rivera, and he did so. Since  
17 the assets that were seized were not located in Mexico, the  
18 laws of Mexico are likewise irrelevant to this case.

19 I will now discuss the factors that are used to determine  
20 nominee status and whether an entity is acting as a nominee  
21 for somebody else. Continued use and enjoyment of the  
22 assets. The only person that enjoyed the use of the assets  
23 of Rothwell was Joseph Francis. No consideration paid for  
24 the assets transferred. Sands and Mantra received nothing  
25 from Rothwell for their transfers to Rothwell. And likewise

1 they received nothing from Casa Blanca for the funds that  
2 were used to build the Mexican property.

3 Transfers made in anticipation of incurring liability  
4 where Joe Francis continued to enjoy the use of the assets.  
5 This one is obvious in that the entire scheme was to defraud  
6 the IRS out of its tax revenues by falsely claiming the  
7 transfers to Rothwell as business expenses and  
8 simultaneously put those assets beyond the reach of the IRS.

9 Close relationship between Joseph Francis and the  
10 nominee. Rothwell is wholly owned by the Francis Trust, and  
11 the only real beneficiary of the trust is Joseph Francis  
12 himself.

13 Retention of possession of the property by the debtor  
14 doesn't really apply in this case, but it is noteworthy.  
15 The assets that were seized end up under the management of  
16 Joseph Francis's stockbroker in Irvine, California.

17 Failure of the parties to record the conveyance of fact  
18 or likewise does not appear to be directly relevant to the  
19 instant matter because it seems to contemplate a transfer of  
20 real property while the instant matter concerns the  
21 securities account.

22 But it's again noteworthy that rather properly account  
23 for the transfers in their books and records, Sands and  
24 Mantra attempted to hide the true nature of the transfers by  
25 claiming the payments as false business expenses. And

1 Rothwell apparently didn't treat the funds it received as  
2 capital contribution from Sands and Mantra and provided  
3 Sands and Mantra with nothing in return.

4 Thus, to the extent they're applicable all of the factors  
5 used to determine nominee status are in favor of the  
6 government in this case.

7 When the issue of control is examined, it's clear that  
8 Joseph Francis had, effectively, control of the Rothwell  
9 despite what Mr. Rayment and Mr. Chaffe say. Mr. Rayment  
10 several times tried to say, oh, I can't answer your question  
11 due to the attorney-client privilege, but I can tell you  
12 this: Joseph Francis understood he did not have control of  
13 those assets.

14 But Mr. Rayment did not provide any foundation for this  
15 statement and clearly he could not get inside the head of  
16 Joseph Francis. He might be able to speak to his own  
17 understanding, but not to the understanding of Joseph  
18 Francis.

19 In any event, Mr. Rayment, as protector of the trust and  
20 attorney of Joseph Francis, was in the unique position of  
21 giving Mr. Francis what he wanted, even at Mr. Francis's  
22 direction and demand and simultaneously refusing to disclose  
23 that fact by claiming the attorney-client privilege.

24 Just as there is an obvious conflict of interest in the  
25 trustee being empowered to appoint the protector because the

1 protector is supposed to be watching over the trustee, there  
2 is likewise a conflict of interest in appointing the settlor  
3 or beneficiary's personal attorney as the protector because  
4 of his duty to fulfill, to the extent legally possible, the  
5 wishes of his client.

6 Thus, Mr. Rayment was in the perfect position to give  
7 Mr. Francis everything he wanted until the IRS seized the  
8 funds, and then reversed course and refused to give him  
9 anything that he wants in hopes of getting the funds  
10 returned to the plaintiff through this lawsuit.

11 Which brings me to my last point -- this unfortunate  
12 campaign undertaken by Mr. Francis against Mr. Rayment and  
13 his family. This is after the fact. After the seizure of  
14 the funds by IRS. And the question at issue is whether  
15 Rothwell held that account at Morgan Stanley as the nominee  
16 of Joseph Francis at the time the levy was made.

17 After the levy, Mr. Rayment had no choice but to deny  
18 Joseph Francis the control he enjoyed before the levy.  
19 Otherwise, Rothwell would not even have the meager prayer it  
20 is now offering to the Court. But, unfortunately, this is  
21 just another case of closing the barn door after the cow has  
22 fled.

23 The only issue in this case is whether under California  
24 property law Rothwell Limited held the Morgan Stanley  
25 securities account as nominee of Joseph Francis on November

1 6, 2009. The facts in this case overwhelmingly support a  
2 finding that that was the case, and the government asks that  
3 the Court enter such a decision. Thank you.

4 THE COURT: Thank you.

5 Rebuttal?

6 MR. WILLIAM COHAN: Your Honor, back to Rothwell.  
7 Now that we've talked about the bigger picture -- I'm not  
8 going to read from our trial brief. We briefed this matter.  
9 The evidence is un rebutted who controlled the Rothwell  
10 Limited account. You heard from Colin Chaffe and you heard  
11 from Mr. Welker. And you have the documents that show that  
12 every trade that was made in that account was directed by  
13 Hallmark either during the lengthy period of time during  
14 which most of the trades were made by Mr. Chaffe, subsequent  
15 to that when Mr. Trowbridge took over.

16 Eventually, Trowbridge and a couple of other gentlemen  
17 named Colin Whittingham and Gregory Herd [phonetic] also had  
18 brief conversations. But you have the documents that show  
19 that Mr. Welker was never directed by Mr. Francis with  
20 respect to this account and who controlled the account. And  
21 those people testified. There is not a shred of evidence  
22 that Joseph Francis ever controlled them. The mere fact  
23 that two transactions involving the acquisition of Mexican  
24 real estate actually were funded in part by money from  
25 Rothwell does not make Joseph Francis the controlling

1 person. He merely received a collateral benefit in exchange  
2 for conferring an even larger benefit by way of gift to the  
3 trust.

4 So prayers notwithstanding by the government, the  
5 evidence is unrebutted. And that evidence establishes that  
6 Joseph Francis never controlled Rothwell. That's all there  
7 is and there ain't no more. Thank you, very much. .

8 THE COURT: Counsel, in this matter it really is, as  
9 I said before, the case started a narrow or simplistic issue  
10 that has to be decided. It's an issue of fact and  
11 credibility that has to be decided by the Court. And has  
12 to -- in determining that has to apply the law that has been  
13 submitted in your trial briefs, which I will consider. And  
14 all the evidence is before the Court at this time.

15 I will be taking this under submission. We'll get the  
16 decision out to you shortly. I want to compliment both  
17 sides for the professional nature and way you handled this  
18 case. It was impressive, your work as attorneys and  
19 officers of the court. All four attorneys are appreciated  
20 by the Court. I want to let you know that.

21 We'll get the decision out to you shortly. This case  
22 will be continued under submission. Thank you.

23

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(Court in recess.)

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C E R T I F I C A T E

I, Nichole Rhynard, CCR, CRR, RMR, Court Reporter for the United States District Court in the Central District Court at Los Angeles, do hereby certify that I was present in court during the foregoing matter and reported said proceedings stenographically.

I further certify that thereafter, I have caused said stenographic notes to be transcribed under my direction and that the foregoing pages are a true and accurate transcription to the best of my ability.

Dated this 21st day of July 2011.

/S/ Nichole Rhynard  
Nichole Rhynard, CSR, CRR, RMR  
Official Court Reporter

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

- - -

HONORABLE R. GARY KLAUSNER, JUDGE PRESIDING

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ROTHWELL, LTD., a Cayman Islands corporation, Case No. 10-cv-00479-RGK-FFM

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

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COURT TRIAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Los Angeles, California

June 15, 2011

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APPEARANCES:

For the Plaintiff: Gabriel L. Cohan  
William A. Cohan

For the Defendant: Darwin Thomas  
Valerie L. Makarewicz

Reported by: Nichole Rhynard, RMR, CRR,  
CA CSR #137256  
Official Court Reporter  
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Proceedings recorded by mechanical stenography. Transcript produced by Reporter on computer.

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LOS ANGELES, CALIFORNIA; June 15, 2011, 9:03

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THE COURT: The record will reflect the witness is on the stand and was under cross-examination.

Counsel, you may continue.

BRIAN JAY RAYMENT,

The witness, after being duly sworn, testified as follows:

CROSS-EXAMINATION

BY MR. THOMAS:

Q Mr. Rayment, you were appointed as a protector of the Francis Trust in 2005. Is that correct?

A Yes, sir.

Q Who pointed you as protector of the Trust?

A It was done by Mr. Trowbridge who was at that time of director of Hallmark, the trustee.

Q Did you discuss your appointment as protector with Joseph Francis before it was made?

A I don't know if I discussed it before it was made or after it was made. I discussed it with him.

Q What did Mr. Francis say with regard to your appointment as protector?

A I don't recall him making any specific comment one way or the other, other than understanding it.

Q Did you ask Mr. Trowbridge to make the appointment of you as protector of the Trust?

A Actually, no. What had happened was he was in need of a

1 protector to do what he wanted to do which was get  
2 assurances that -- that the mandator situation was okay.

3 And it was in discussions between he and Mr. Chaffe --

4 Q Mr. Rayment, you answered the question no. I think  
5 that's sufficient.

6 THE COURT: And either attorney can ask you to  
7 embellish if they want to.

8 BY MR. THOMAS:

9 Q Did you attend the deposition of Mr. Trowbridge in this  
10 matter?

11 A I did.

12 Q Do you recall Mr. Trowbridge saying a person or persons  
13 who were connected with the Trust were not as comfortable  
14 dealing with him as they were in dealing with Mr. Chaffe?

15 A I do recall that testimony. Yes, sir.

16 Q Thank you.

17 Was that you who conveyed these feelings to  
18 Mr. Trowbridge?

19 A Actually I conveyed such feelings to Mr. Chaffe back at  
20 the time when the transfer took place from Mr. Chaffe to  
21 Mr. Trowbridge. Because I had never met Mr. Trowbridge.

22 Q Mr. Chaffe conveyed those feelings to Mr. Trowbridge to  
23 your understanding?

24 A I assume so.

25 Q Mr. Rayment, the agreed facts in this case show that in

1 2002 and 2003 Sands immediately made millions of dollars of  
2 transfers directly to Bermuda Commercial Bank account in  
3 Rothwell's name.

4 When did you become aware -- did you at some point become  
5 aware of those transfers?

6 A I became aware of them, yes.

7 Q When was it that you became aware of those payments from  
8 Sands to Rothwell?

9 A I don't remember the exact date. It was after they had  
10 been made.

11 Q Did you hear Mr. Chaffe testify that there was a standing  
12 arrangement that he would then promptly retransfer those  
13 funds to Rothwell's Morgan Stanley account?

14 A No. I don't recall him speaking to those funds. I  
15 recall him speaking to a general approach of investing any  
16 available cash in the securities account which would  
17 encompass those funds. Yes, sir.

18 Q Was it you who made that sort of standing arrangements  
19 with Mr. Chaffe?

20 A I didn't make it with him. He made the decision on it,  
21 but I was aware of it.

22 Q In advance?

23 A Well, certainly --

24 MR. WILLIAM COHAN: Object to the form of the  
25 question. Advance of what?

1 THE COURT: Counsel, in advance of?

2 BY MR. THOMAS:

3 Q Of those transfers being made. That standing  
4 arrangement, you were aware of that standing arrangement in  
5 advance of those transfers being made?

6 A You're referring to Mantra and Sands transfers?

7 Q Yes, sir.

8 A Yes, that's correct.

9 Q And did you ever discuss those transfers with Mr. Chaffe  
10 either before or after they were made?

11 A I certainly discussed them with him after they were made.  
12 Certainly discussed it with them in relation to these  
13 proceedings.

14 Q Who was it that made that arrangement with Mr. Chaffe, to  
15 your knowledge? That made that arrangement with Mr. Chaffe  
16 that the transfers would be promptly retransferred to the  
17 Rothwell Morgan Stanley account?

18 A I don't know who made the arrangement with him. My  
19 understanding is it was his decision.

20 Q Did you discuss these payments from Sands to Rothwell  
21 with Joseph Francis?

22 A We're now getting into attorney/client privilege  
23 communications. I would have to answer that by disclosing a  
24 communication I had with Mr. Francis as a client of mine.

25 Q Mr. Rayment, just go ahead and claim the privilege.

1 A I thought I had. I'm sorry.

2 THE COURT: Okay.

3 BY MR. THOMAS:

4 Q Did Joseph Francis direct you to make the arrangements  
5 with Chaffe that those funds would be retransferred to the  
6 Morgan Stanley account?

7 A No, sir.

8 Q Do you know whether it was Joseph Francis who authorized  
9 these transfers to Rothwell?

10 A I don't know who -- well, you're saying on behalf of  
11 Sands and Mantra.

12 Q Yes, sir.

13 A I am assuming it was.

14 Q Do you know?

15 A I believe it was.

16 Q Did Mr. Francis ever tell you that?

17 A Again I would have to assert the privilege with regard to  
18 that type of question.

19 Q Do you know what the purpose of those transfers was?

20 A No, sir.

21 Q You're familiar with Asia Pacific Mutual Insurance  
22 Company?

23 A I am.

24 Q Did Sands and Mantra each purchase a policy from Asia  
25 Pacific?

1 A Yes.

2 Q When did you first hear of Asia Pacific?

3 A In discussion I had with Mr. Chaffe.

4 Q When was that?

5 A I would say within the year before the transactions  
6 occurred. I don't remember the exact date.

7 Q Did Joseph Francis bring the proposed Asia Pacific  
8 insurance policies to you?

9 A No, sir.

10 Q Who provided those to you?

11 A Are you talking about actual physical written policies?

12 Q Yes, sir.

13 A I believe they were sent by -- someone from Asia Pacific  
14 or Liddell.

15 Q Did you discuss this matter with Mr. Francis before those  
16 policies were sent to you?

17 A Yes.

18 Q And when was it that you learned that Mr. Chaffe was  
19 involved with the Asia Pacific policies?

20 A Mr. Chaffe made me aware of Asia Pacific in general.

21 Q Did you and Mr. Francis meet with Sherie Bright and  
22 Moreland Liddell in Hawaii to discuss these insurance  
23 policies?

24 A Yes.

25 Q At that meeting in Hawaii did you tell Sherie Bright

1 and/or Mr. Liddell when Sands and Mantra transferred funds  
2 into the Asia Pacific bank account in Hawaii that Asia  
3 Pacific in Vanuatu was to be informed of such transfers  
4 immediately?

5 A I don't recall that specific statement.

6 Q Do you recall something of that nature?

7 A No.

8 Q Did you discuss these transfers to Asia Pacific with  
9 Lindsey Barrett in Vanuatu?

10 A I don't recall having a specific discussion with Lindsey  
11 Barrett. I don't recall.

12 Q Have you spoken with him before?

13 A I know the name. I don't recall if I had discussion with  
14 him or not. I know there were issues that came up about  
15 getting assurances as to validity of the deal. And if I had  
16 spoken with him it would have been in regards to that.

17 Q You don't recall ever speaking with Mr. Barrett regarding  
18 the specific payments that were being made to the Asia  
19 Pacific account in Hawaii?

20 A I had discussions about the payments. I don't recall if  
21 they were with him or Mr. Liddell?

22 Q How often did you have such discussions whether it is  
23 Mr. Barrett or Mr. Liddell?

24 A There were ongoing discussions leading up to the  
25 execution of the policies. Just getting comfortable with

1 the terms of the policies and the --

2 Q I was talking about the payments.

3 A After the execution of the actual policies themselves?

4 Q Yes, sir. The payments occurred, according to the agreed  
5 facts in this case, the payments occurred over a period of a  
6 few months or six or seven months in early 2003, I believe.

7 A Yeah, I'm sure there was some communication, but I  
8 believe the way that worked was they simply sent invoices to  
9 companies and the companies paid them.

10 Q Were you aware that there was a standing arrangement that  
11 these funds that were paid to Asia Pacific by Sands and  
12 Mantra would promptly be retransferred to Schedule Company  
13 less any fees or commissions charged by Asia Pacific?

14 A I don't know that I knew they were going to be  
15 transferred to Schedule Company. I knew that the -- for  
16 lack of a better definition, the corpus of the policy; in  
17 other words, that portion of the premiums that was not going  
18 to be retained for the fee by the insurance company, that  
19 portion that was kept in reserve to pay claims was to be  
20 transferred to the Trust.

21 Q Do you know how Asia Pacific knew where to transfer those  
22 funds?

23 A I would assume in terms of going through Schedule  
24 Company. That that information came from Mr. Chaffe.  
25 Because I don't know that I knew what Schedule Company was

1 at that point in time. But I was certainly involved in  
2 discussions about that being the place; in other words, the  
3 Trust being the place where the funds should end up.

4 Q You mentioned before that there was some sort of tax  
5 opinion presented to Mr. Francis regarding this -- these  
6 policies. Is that correct?

7 A Yes, sir.

8 Q And did you read that tax opinion?

9 A I did.

10 Q Did you ever suggest to Mr. Francis that he get a second  
11 opinion?

12 A I think -- I would have to take the privilege on that  
13 communication.

14 Q Did you know that these funds that were transferred  
15 through Schedule Company were actually going to be  
16 transferred through an intermediary before they were  
17 transferred to Rothwell?

18 A No, I didn't know the means by which they were going to  
19 get to the Trust.

20 Q Was it your understanding that Mr. Francis knew in  
21 advance that these funds would be deposited into a Rothwell  
22 account or to the Trust?

23 A I would have to get into attorney/client privilege  
24 communication.

25 Q You're claiming the privilege?

1 A Yes, sir.

2 Q Did Mr. Francis eventually tell you where the premium  
3 payments went after they'd been paid to Asia Pacific?

4 A Again, that would call for attorney/client communication.

5 Q Did Mr. Francis also tell you that there was a  
6 correlation between the amounts of the premium payments  
7 under the policies and the year-end profits of Sands and  
8 Mantra?

9 A Again, I would have to take the privilege on that  
10 communication.

11 MR. THOMAS: Could I have just a moment, Your Honor?

12 THE COURT: Yes.

13 BY MR. THOMAS:

14 Q Mr. Rayment, do you recall being interviewed by Special  
15 Agent Mark Jensen of the Internal Revenue Service on  
16 August 7th, 2006 in your offices in Tulsa, Oklahoma?

17 A I recall the interview. I don't recall the exact date.

18 Q And do you recall telling Mr. Jensen that Mr. Francis did  
19 eventually tell you where the premium payments went after  
20 they'd been paid to Asia Pacific?

21 A No.

22 Q Do you recall also telling Mr. Jensen that there was a  
23 correlation between the amounts of the premium payments  
24 under the policies and the year-end profits of Sands and  
25 Mantra?

1 A No.

2 Q If I showed you the memorandum of interview that was  
3 prepared by Mr. Jensen would that refresh your recollection  
4 as to whether you told him that?

5 A I -- I don't think that would change my recollection at  
6 all of what I said. I claimed the privilege in my interview  
7 with Mr. Jensen and I believe he put down or assume that it  
8 was Joseph Francis that told me things when it was really  
9 someone else.

10 Q Did you negotiate the purchase by Casa Blanca of Lot 14  
11 in the Punta Mita development in Mexico?

12 A Did I arrange it?

13 Q I said negotiate it?

14 A Yes.

15 Q And who did you conduct those negotiations with?

16 A Lot 14 was with Mohammed Hadid.

17 Q Okay.

18 Was the purchase price for lot \$1,030,000? Is that  
19 correct?

20 A If that's not it it's very close.

21 Q And except for the \$24,000 that Hallmark contributed to  
22 that transaction which Mr. Chaffe testified to earlier,  
23 didn't you cause Rothwell to make the balance of the payment  
24 of the purchase price to Hadid for Lot 14?

25 A Well, I didn't cause it, Mr. Chaffe did. But I

1 facilitated that.

2 Q Okay.

3 And when you went to Mr. Chaffe and suggested that  
4 Rothwell purchase a specific piece of property, Lot 14, for  
5 building a residence for Joe Francis, you did that, correct?

6 A Well --

7 Q I'm sorry, I'll rephrase the question. You went to  
8 Mr. Chaffe and suggested that Rothwell purchase a specific  
9 piece of property, Lot 14, for Joe Francis to build a  
10 residence on. Is that correct?

11 A I didn't put it that way, no.

12 Q Did you go to Mr. Chaffe and suggest that Rothwell  
13 purchase Lot 14?

14 A I actually suggested that the Trust purchase Lot 14.

15 Q And was that -- did you convey to Mr. Chaffe that that  
16 was for the purpose of having Joseph Francis build a  
17 residence on that lot?

18 A It was -- well, it depends on whose view you're looking  
19 at, Counsel. That's why I'm struggling with answering your  
20 question. That was not the purpose for the Trust entering  
21 into the transaction.

22 Q Did you tell Mr. Hadid in advance that Joseph Francis  
23 intended to build a home on that lot?

24 A Mr. Hadid?

25 Q I'm sorry. Did you tell Mr. Chaffe in advance that

1 Mr. Francis intended to build a home on that lot?

2 A Yes, I did.

3 Q Did you take that -- what you called an investment  
4 opportunity to Mr. Chaffe at the direction of  
5 Joseph Francis?

6 A Not at the direction. But at the request.

7 Q Did you discuss with Joseph Francis how Casa Blanca would  
8 be created and used for the purchase?

9 A I didn't explain how. I explained that the Trust would  
10 be forming this corporation for the purchase of the  
11 property.

12 Q Did Mr. Francis concur in using that type of structure to  
13 hold title to the Mexican property?

14 A He didn't concur or not concur. He acknowledged it.

15 Q What did Rothwell receive from Casa Blanca in return for  
16 providing the funds to purchase Lot 14?

17 A I don't think Rothwell received anything.

18 Q Thank you.

19 In fact, Rothwell did not even receive an interest in the  
20 shares in Casa Blanca, correct?

21 A That's correct.

22 Q Isn't it true that when you approached Mr. Chaffe about  
23 the proposal to buy Lot 14 you were aware that Mr. Francis  
24 had already paid Mr. Hadid a down payment for the purchase  
25 of that lot?

1 A Yes.

2 Q Do you know who paid for the construction of the home on  
3 Lot 14?

4 A It was paid by Mr. Francis's entities. I think primarily  
5 Sands and Mantra.

6 Q Thank you.

7 Do you know whether Sands and Mantra claim the payments  
8 that they made that were used to construct that home as  
9 business expenses on their U.S. income tax returns?

10 A I understand that from allegations that have been made in  
11 subsequent proceedings.

12 Q Did you make the referral that put Mr. Chaffe in touch  
13 with Mr. Welker at Morgan Stanley?

14 A Yes.

15 Q Did Mr. Chaffe then open a Rothwell bank account at  
16 Morgan Stanley?

17 A He did, yes.

18 Q Did Joseph Francis direct a request that you suggest or  
19 make that introduction to Mr. Chaffe and Mr. Welker?

20 A No.

21 Q Did you discuss it with Mr. Francis before you made the  
22 referral?

23 A I think I did.

24 Q Mr. Chaffe followed your suggestion that he have Rothwell  
25 or the Trust purchase Lot 14, correct?

1 A Correct.

2 Q And Mr. Chaffe also followed your direction or  
3 suggestion, I should say, that he have Rothwell purchase the  
4 adjoining lot, 13B, correct?

5 A He did follow my suggestion, yes.

6 Q Were there ever any suggestions you made to Mr. Chaffe  
7 regarding the Trust and Rothwell that Mr. Chaffe did not  
8 follow?

9 A Minor things like asking for a copy of something here or  
10 there. But I mean, the only significant actions undertaken  
11 by the Trust were the investment of funds in Rothwell's  
12 account and the purchase of the two lots.

13 Q So basically, he followed all of your suggestions as to  
14 investments with the Trust funds?

15 A That's a fair statement.

16 Q You testified yesterday at length about how Mr. Francis  
17 has recently threatened you. Is that correct?

18 A Yes.

19 Q Had he ever threatened you before this?

20 A No.

21 Q And with regard to the Trust and Rothwell, generally  
22 speaking, weren't things between you and Mr. Francis okay up  
23 until the time the whole structure came under investigation  
24 by the IRS?

25 A Could you repeat that question?

1 Q With regard to the Trust and Rothwell, generally  
2 speaking, weren't things between you and Mr. Francis okay up  
3 until the time the whole structure came under investigation  
4 by the IRS?

5 A Well, it -- it depends on how one would interpret okay.  
6 Mr. Francis is a very difficult client even in good times.  
7 And so do we have disagreements, are there issues, are there  
8 demands, do things happen that -- that make things not okay  
9 in my view, yes. Things that -- there were things that were  
10 not okay before.

11 Q And what were those?

12 A Just disagreements over fees, for instance. Not getting  
13 paid by him. Disagreements over what should happen. But  
14 getting into those would require getting into specific  
15 attorney/client communications.

16 Q And have you and your law firm now been sued by  
17 Mr. Francis?

18 A We have.

19 Q Do you have any concern that you may be liable to  
20 Mr. Francis for damages in connection with this matter?

21 A I have absolutely no concern of liability to Mr. Francis.

22 MR. THOMAS: I have no further questions.

23 THE COURT: Counsel?

24 REDIRECT EXAMINATION

25 BY MR. WILLIAM COHAN:

1 Q While we're on the subject of litigation, I want to hand  
2 the clerk copies of Exhibits 143A and 143B, which are copies  
3 of a restraining order and injunction. We previously  
4 provided copies, but we did that electronically and now we  
5 have them in print. So this is 143A.

6 The record should reflect I just I handed Mr. Thomas a  
7 copy of 143A and a copy of 143B. And I'm now handing the  
8 original and one to Ms. Williams of each. And I'd like the  
9 witness if possible to be handed copies of Exhibit 143A and  
10 143B.

11 Do you have Exhibits 143A and 143B before you,  
12 Mr. Rayment?

13 A I do.

14 Q And do you recognize those two documents?

15 A Yes.

16 Q Let's back up just a second before we address the lawsuit  
17 that's reflected in 143A and 143B to the inquiry that  
18 Mr. Thomas just made of you concerning the lawsuit that was  
19 filed against you and your law firm.

20 You testified that you had no concern about your personal  
21 liability to Mr. Francis. Do you have any concern about  
22 your or your firm's liability to Mr. Francis or any entity  
23 with which Mr. Francis was or is associated making any  
24 claims against you whatsoever?

25 A I do not.

1 Q Okay.

2 Do you have any claims for your or a family member's  
3 personal safety with respect to the threats that have been  
4 made by Mr. Francis against you and your family?

5 A Yes.

6 Q Inviting your attention if I may then to Exhibit 143A.  
7 Can you tell the Court what 143A is?

8 A This is a copy of a temporary restraining order that was  
9 entered by the superior court in my favor. And in favor of  
10 my family.

11 Q And is this in connection with an action that you had to  
12 bring against Mr. Francis through counsel you retained?

13 A Yes.

14 MR. WILLIAM COHAN: We move the admission of  
15 Exhibit 143A and I might as well say 143B since I'm --

16 THE COURT: We've already received 143, I'm  
17 assuming that's part of 143 --

18 MR. WILLIAM COHAN: No, these were additions that  
19 were just made, Your Honor.

20 THE COURT: The exhibit number.

21 MR. WILLIAM COHAN: We just added the exhibit  
22 numbers A and B to 143.

23 THE COURT: Counsel, 143 -- Exhibit 143 in its  
24 entirety has been admitted, correct?

25 MR. WILLIAM COHAN: Yes, Your Honor.

1 THE COURT: Is this part of 143?

2 MR. WILLIAM COHAN: No, it's not, Your Honor.

3 THE COURT: Another exhibit number, not 143. 143  
4 has been admitted in its entirety.

5 MR. WILLIAM COHAN: All right, Your Honor. Do you  
6 want us to renumber it now or at the break?

7 THE COURT: I don't care what you do. Anytime, you  
8 know, before the end of the trial. But I can't have two  
9 things marked 143. Okay?

10 MR. WILLIAM COHAN: Very well, Your Honor. My  
11 apologies, it's my fault. We'll put whatever the next  
12 consecutive numbers are. If I may refer to them by 143A and  
13 B for now.

14 THE COURT: Sure.

15 MR. WILLIAM COHAN: Thank you.

16 BY MR. WILLIAM COHAN:

17 Q Did you or counsel on your behalf, Ms. Beckwall  
18 [phonetic], request, attempt to get a restraining order  
19 earlier than the one that's reflected in exhibit currently  
20 marked as 143A which was filed May 16th of 2011?

21 A Yes.

22 Q And was that in the lawsuit that was filed by Mr. Francis  
23 against you?

24 A Yes. And the firm.

25 Q But it was not procedurally possible to do that?

1 A My understanding was the judge indicated that it needed  
2 to be on a specific form in a case originated by us and  
3 could not be brought as a counterclaim.

4 Q And did that lead to what's now been admitted as 143A  
5 temporarily?

6 A Yes.

7 Q And inviting your attention -- trying to find the -- is  
8 there an indication that this restraining order also refers  
9 to your children restraining any contact by Mr. Joe Francis  
10 of your children or yourself?

11 A Yes.

12 Q Is that on page that's marked as FGW 000163?

13 A That's -- that's correct.

14 Q Okay.

15 And is there an indication -- okay. That was entered  
16 May 16th of 2011, that order against Mr. Francis. Is that  
17 right?

18 A Yes.

19 Q And do you see on there an indication that a hearing on  
20 an injunction to make this restraining more permanent was  
21 set for June 6th, 2011?

22 A Yes.

23 Q And was a hearing held on that date in that matter of  
24 obtaining an injunction to make this order against  
25 Mr. Francis to protect you more permanent?

1 A Yes.

2 Q And then if I may invite your attention to Exhibit 143B.  
3 Do you have that before you now?

4 A I do.

5 Q And was there a determination by this Court that there  
6 was a credible threat of violence against you or family  
7 members of yours?

8 A Yes.

9 Q Do you know where that is? There it is. I just found  
10 it. It's on -- inviting your attention to FGW 000166 and  
11 item numbered 13. The box is checked where it indicates the  
12 order is based on a credible threat of violence and was  
13 signed by the judge on June 6th of this year?

14 A Yes.

15 Q Did you and your family members take Mr. Francis's  
16 threats of violence seriously?

17 A Very.

18 Q Now I want to go back to a question that Mr. Thomas asked  
19 you just a few moments before concerning whether things were  
20 okay, quote/end quote, between you and Mr. Francis after the  
21 Internal Revenue Service investigation of Mr. Francis began.

22 MR. THOMAS: Objection. That misstates what I asked  
23 Mr. Rayment.

24 THE COURT: Why don't you just ask the question,  
25 Counsel, rather than referring to it.

1 MR. WILLIAM COHAN: I just wanted to invite the  
2 attention of the witness of the copy, Your Honor, but I'll  
3 proceed.

4 THE COURT: Just ask the next question, that avoids  
5 a problem.

6 MR. WILLIAM COHAN: Very well, Your Honor.

7 BY MR. WILLIAM COHAN:

8 Q Mr. Rayment, did you have -- without getting into the  
9 details -- any discussion with Mr. Francis subsequent to the  
10 IRS investigating Mr. Francis for alleged tax crimes?

11 A Yes.

12 Q And when were the -- those discussions -- when did they  
13 begin, how far back are we going now?

14 A '06/'07.

15 Q So since the year 2006 or 2007 you have had occasions  
16 where you and Mr. Francis discussed the United States  
17 government and Internal Revenue Service, Department of  
18 Treasury investigations directed at Mr. Francis's entities  
19 with which he's associated?

20 A Yes, sir.

21 Q And when Mr. Francis learned that there had been a levy  
22 served on the Morgan Stanley account maintained by Rothwell  
23 did you have discussions about that fact and possible  
24 consequences with Mr. Francis without going into details?

25 A Yes.

1 Q And in the immediate aftermath of that notice of levy,  
2 did Mr. Francis's attitude toward you change?

3 A Not until February.

4 Q All right. So February of 2011?

5 A Correct.

6 Q I want to get the chronology clear for the Court here.  
7 So the notice of levy was November 6th of 2009, right?

8 A I believe that's right.

9 Q Okay.

10 And then Mr. Francis retained counsel to represent him in  
11 connection with the jeopardy assessment. Is that correct?

12 A Yes.

13 Q Did you have any communications with those attorneys at  
14 all about the -- the matter of Mr. Francis challenging the  
15 jeopardy assessment against him?

16 A I believe I provided a declaration for them in connection  
17 with that.

18 Q Okay.

19 And so you had at least some contact with Mr. Francis  
20 concerning the Francis trust and Rothwell beginning in late  
21 2009?

22 A Yes.

23 Q Okay.

24 And have you had numerous communications with Mr. Francis  
25 throughout calendar year 2010 about, for example, the filing

1 of the lawsuit that we're here on today?

2 A I don't know if I'd call it numerous. Not like it was  
3 back in '02 and '03. But quite a number.

4 Q All right. Let me rephrase. Have you had several  
5 discussions with Mr. Francis concerning the facts of this  
6 litigation that counsel had been hired for Rothwell and that  
7 this matter was proceeding through discovery and was going  
8 to be tried?

9 A Yes, I've had discussions with all the beneficiaries  
10 about that.

11 Q Okay. Thank you for that clarification.

12 Just to keep the beneficiaries apprised of what was going  
13 on with their trust, that they might get some money someday  
14 or might not?

15 A Yes.

16 Q And during that period of time throughout the year 2010,  
17 was there any change in Mr. Francis's attitude toward you?

18 A No.

19 Q So there was no change really in Mr. Francis's attitude  
20 until on or about February the 27th, 2011?

21 A That's correct.

22 Q Yesterday you were asked some questions about the  
23 benefits of an offshore trust. Do you recall considering  
24 any benefits in addition to those that would have been  
25 available to Mr. Francis and the potential beneficiaries of

1 the Francis Trust if such a trust had been set up in the  
2 United States where the benefits were greater in Turks and  
3 Caicos Island that you communicated to Mr. Francis?

4 A Without getting into details, yes.

5 Q Are you aware that there is a treaty between Turks and  
6 Caicos Island and the United States concerning the validity  
7 of Turks and Caicos Islands trusts being recognized by the  
8 United States government?

9 A Yes.

10 Q Did you communicate that as a potential benefit to the  
11 beneficiaries?

12 A Yes.

13 Q Did you consider that your prior association with  
14 Mr. Foley was in any wise beneficial?

15 A Beneficial from the standpoint of having somebody to turn  
16 to help, yes. I really didn't have that close of a  
17 relationship or know that much about him other than casually  
18 before entering into the Trust discussions with him.

19 Q Now, did you authorize me to forward what is in evidence  
20 as Exhibit 143, obviously without the incorrectly marked  
21 143A and B, did you authorize me to forward all of those  
22 e-mails and text messages including threats to you and your  
23 family to the district attorney for Clark County, Nevada to  
24 be used against Mr. Francis in the criminal case pending  
25 against him?

1 A Well, I didn't -- I didn't do it for the purpose of being  
2 used against him. I was looking to protect my family any  
3 way possible. I authorized you to send them.

4 Q And your reason for doing so is that you thought it might  
5 provide your family with some additional protection against  
6 Mr. Francis?

7 A Yes.

8 MR. WILLIAM COHAN: May I have a moment, Your Honor?

9 THE COURT: Yes.

10 MR. WILLIAM COHAN: I think I have a note here that  
11 143A and B may be in -- let's take care of marking them  
12 correctly now.

13 THE COURT: There's no problem. We can do that  
14 later.

15 MR. WILLIAM COHAN: May I have just a moment?

16 THE COURT: Sure.

17 MR. WILLIAM COHAN: I have nothing further. Thank  
18 you.

19 THE COURT: Okay.

20 Recross?

21 MR. THOMAS: No recross, Your Honor.

22 THE COURT: You may step down.

23 THE WITNESS: Thank you.

24 THE COURT: May this witness be excused or do you  
25 want him to remain?

1 MR. WILLIAM COHAN: I want him to remain if  
2 possible.

3 THE COURT: And do you want him to remain in the  
4 courtroom, is there any objection to him staying in the  
5 courtroom?

6 MR. THOMAS: None whatsoever, he can go back to  
7 counsel table, Your Honor.

8 THE COURT: Thank you, Counsel.

9 MR. WILLIAM COHAN: Thank you. Now, I think my  
10 co-counsel has some evidence to offer at this time, Your  
11 Honor.

12 THE COURT: Okay.

13 MR. GABRIEL COHAN: Your Honor, at this point in the  
14 trial we'd like to move towards the deposition phase of our  
15 evidence if we may.

16 THE COURT: Sure.

17 MR. GABRIEL COHAN: And I would request permission  
18 to publish video excerpts of the deposition exhibits for  
19 several of the witnesses starting with Mr. Owen Foley, which  
20 is Exhibit No. 149.

21 THE COURT: Okay.

22 MR. THOMAS: Your Honor, I would like to interpose  
23 an objection for the record at this time. It's my  
24 understanding that the intention of the plaintiffs is to --  
25 the depositions have been marked and -- by both parties.

1 It's my understanding that the plaintiff wants to provide  
2 video excerpts of only part of what has been marked. In  
3 other words, it's sort of like a highlight reel.

4 THE COURT: Right.

5 MR. THOMAS: And that they then want the Court to  
6 take the rest of the deposition simply by submission for the  
7 Court to read. We have no objection to the depositions  
8 being submitted to the Court to be read as marked by the  
9 parties. But we don't feel it's appropriate for them to  
10 play a highlight reel of just portions that they want now.

11 THE COURT: Okay.

12 And I think I understand your objection. You're  
13 objecting that it's kind of repetitive?

14 MR. THOMAS: I'm objecting that instead of playing  
15 all of the portions that have been marked they only want to  
16 select certain portions to play.

17 THE COURT: Okay.

18 The objection will be overruled. And if you wish to play  
19 further excerpts when you present your case you can.

20 Counsel, I think we had an agreement beforehand that  
21 the -- any deposition that was played by video there would  
22 be a transcript submitted to the Court and that the reporter  
23 would not have to try to take down the video. Is that  
24 correct?

25 MR. GABRIEL COHAN: That is correct, Your Honor.

1 THE COURT: Counsel?

2 MR. THOMAS: Yes. And it's my understanding that  
3 those five deposition transcripts have been marked and have  
4 been submitted or are being submitted to the Court.

5 MR. GABRIEL COHAN: That is correct, Your Honor.  
6 The originals pursuant to the local rule with the clerk.

7 MR. WILLIAM COHAN: May I have just a moment, Your  
8 Honor?

9 THE COURT: Sure.

10 MR. GABRIEL COHAN: Just -- just to clarify if I  
11 may, Your Honor. There's -- there's two video depositions  
12 segments that we wish to offer. We also further request to  
13 read brief portions of it through. And our reason in  
14 reading it is because the portions we wish to read are brief  
15 and there's several of them, it's just not efficient to play  
16 clips for those portions.

17 THE COURT: And this will be -- all of these will be  
18 of Foley. Is that correct?

19 MR. GABRIEL COHAN: The first -- the first set that  
20 we'd like to play is with respect to Mr. Foley. There are  
21 five clips in total, approximately 30 minutes.

22 THE COURT: Okay.

23 MR. GABRIEL COHAN: And then there would be three  
24 clips we'd like to play from Exhibit 158, which corresponds  
25 to witness John Welker's deposition.

1 THE COURT: Okay.

2 MR. GABRIEL COHAN: And then some portions of also  
3 Mr. Trowbridge's, Brian Trowbridge's deposition, which is  
4 Exhibit 1 --

5 THE COURT: That will be read, not played.

6 MR. GABRIEL COHAN: That will be read, Your Honor.  
7 May I transfer the -- thank you, Your Honor.

8 (Video played)

9  
10 MR. GABRIEL COHAN: Your Honor, I'm moving on to a  
11 second clip, if I may.

12 THE COURT: Okay.

13 MR. GABRIEL COHAN: This clip is reflected also in  
14 Exhibit 149 in the transcript, and it would be pages 46,  
15 line 13 through page 51, line 14.

16 THE COURT: Okay.

17 (Video played)

18 MR. GABRIEL COHAN: Your Honor, at this time with  
19 that foundation I would like to move Exhibit 151 into  
20 evidence, which is the Foley opinion referred to during that  
21 clip.

22 THE COURT: Any objection?

23 151?

24 MR. GABRIEL COHAN: That's correct, Your Honor.

25 MR. THOMAS: No objection, Your Honor. It's our

1 understanding the depositions have been marked and that,  
2 obviously, the Court will consider the objections that have  
3 been made in writing to the content of those depositions.

4 THE COURT: Okay.

5 MR. GABRIEL COHAN: And also, Your Honor, following  
6 up on that, in connection with Mr. Foley's background, I  
7 would also move Exhibit 150, which is his curriculum vitae.

8 MR. THOMAS: No objection.

9 MR. GABRIEL COHAN: Thank you, Your Honor.

10 (Exhibits 150, 151 admitted.)

11 MR. GABRIEL COHAN: Your Honor, for the third clip  
12 let the record reflect that this corresponds to the  
13 transcript at page 53, line 3 through page 57, line 16.

14 THE COURT: Okay.

15 (Video played)

16 MR. GABRIEL COHAN: One minute while I queue up the  
17 second one.

18 Let the record reflect that this fourth clip is the  
19 transcript Exhibit 149 at page 78 through line 21. Page 78,  
20 line 6 through page 78, line 21.

21 THE COURT: Okay.

22 (Video played)

23 MR. GABRIEL COHAN: One more moment to queue up the  
24 final clip, Your Honor.

25 THE COURT: Okay.

1 MR. GABRIEL COHAN: And if I may, Your Honor, let  
2 the record reflect that this clip for Mr. Foley is Exhibit  
3 149 page 116, line 3 through page 118, line 4.

4 THE COURT: Okay.

5 (Video played)

6 MR. GABRIEL COHAN: Thank you, Your Honor. With the  
7 Court's patience, if I could at this time queue up the  
8 deposition of Mr. John Welker, which would be Exhibit 158.

9 THE COURT: Okay.

10 MR. GABRIEL COHAN: And I would offer that into  
11 evidence at this time.

12 THE COURT: Okay.

13 MR. GABRIEL COHAN: Okay. Let the record reflect  
14 this clip from Mr. Welker, Exhibit 158, corresponds to the  
15 transcript page 19, line 6 through page 24, line 11. And it  
16 will also be discussing Exhibit 113 for which I will move  
17 its admission at the conclusion of the clip?

18 THE COURT: Okay.

19 (Video played)

20 MR. GABRIEL COHAN: Your Honor, at this time I move  
21 Exhibit 113.

22 THE COURT: Okay. Received.

23 (Exhibit No. 113 admitted.)

24 THE COURT: Is this a good time, or do you have  
25 another?

1 MR. GABRIEL COHAN: I've got two brief clips. But  
2 this is fine for a break. We've got about four minutes for  
3 clips on this one.

4 THE COURT: Let's do the two brief. And that will  
5 finish with Welker?

6 MR. GABRIEL COHAN: That's correct, Your Honor.

7 THE COURT: Let's do that.

8 (Video played)

9 MR. GABRIEL COHAN: If I may let the record reflect  
10 that this second clip is pages 47, line 13 through page 48,  
11 line 5 of Exhibit 158.

12 I need to key up one another file. This clip corresponds  
13 to the transcript of Welker Exhibit 158, would be pages 110,  
14 line 2 through 111, line 19.

15 THE COURT: Okay.

16 MR. GABRIEL COHAN: That concludes the clips, Your  
17 Honor.

18 THE COURT: Okay. Why don't we take our morning  
19 recess at this time. We'll back in 10 to 15 minutes and  
20 take up at that time.

21 (Court in recess.)

22 THE COURT: Okay. Counsel, next witness?

23 MR. WILLIAM COHAN: Yes, Your Honor. Before we do,  
24 Your Honor, a couple of brief housekeeping matters.  
25 Ms. Williams has informed me that I failed to move into

1 evidence Exhibit 231, which is the government's exhibit. I  
2 think it's bank records. I thought I had done so yesterday,  
3 but apparently I did not. So I'd like to do that now. I  
4 don't think there is any objection.

5 THE COURT: 231 will be received.

6 (Exhibit No. 231 admitted.)

7 MR. WILLIAM COHAN: And --

8 THE COURT: How about 233?

9 MR. WILLIAM COHAN: Pardon me?

10 THE COURT: Did you move 233 in, too?

11 MR. WILLIAM COHAN: Yes. And 232, Your Honor. I  
12 thought I had done the whole trilogy there. But --

13 THE COURT: Okay.

14 MR. WILLIAM COHAN: Yeah. 232 and 233 I understand  
15 are already in, Your Honor.

16 THE COURT: Yes.

17 MR. WILLIAM COHAN: And the last little bit of  
18 housekeeping. The exhibits erroneously marked as A and B to  
19 143 have now been remarked respectively as Exhibits 167 and  
20 168.

21 THE COURT: Got it.

22 MR. WILLIAM COHAN: Okay. So they're admitted under  
23 those numbers --

24 THE COURT: Yes, they'll be admitted under those  
25 numbers. And any reference to 143A and 143B will be

1 designated -- will be referring to 167 and 168.

2 (Exhibits 143A, 143B remarked and admitted as  
3 Exhibits 167, 168.)

4 MR. WILLIAM COHAN: Thank you, Your Honor.

5 Next counsel and I are going to read --

6 THE COURT: Go ahead.

7 MR. GABRIEL COHAN: Your Honor, if we may, we're  
8 going to briefly read some excerpts from the deposition of  
9 Brian Trowbridge. It's Exhibit 157. And I move its  
10 admission.

11 THE COURT: 157?

12 MR. GABRIEL COHAN: 157, Your Honor.

13 THE COURT: Okay. Got it. Okay.

14 (Exhibit No. 157 admitted.)

15 MR. GABRIEL COHAN: I don't know if it's easier  
16 perhaps if I give you the transcript cites just for the  
17 record?

18 THE COURT: It would be, yes.

19 MR. GABRIEL COHAN: Okay. We'll be reading page 20,  
20 lines 8 through 20. Page 23, lines 1 through 10. Page 24,  
21 line 20 through page 27, line 4. Page 35, line --

22 THE COURT: Page 24 to page --

23 MR. GABRIEL COHAN: I'm sorry. Let me repeat it,  
24 Your Honor. Page 24, line 20 through page 27, line 4.

25 THE COURT: Okay.

1 MR. GABRIEL COHAN: Page 35 at line 4 through page  
2 36 at line 14. Also page 50, line 10 through page 50, line  
3 22. And page 51, line 15 through page 52, line 3. Page  
4 111, line 8 through page 112, line 5. And the last section  
5 would be page 133, line 8 through page 133, line 21.

6 THE COURT: Okay. Thank you, very much.

7 MR. GABRIEL COHAN: And we plan on doing it together  
8 just for simplicity. He'll read the questions. I will read  
9 the responses.

10 THE COURT: That's fine.

11 MR. WILLIAM COHAN: Your Honor, may be seated while  
12 we do this?

13 THE COURT: Yes.

14 DEPOSITION OF BRIAN TROWBRIDGE

15 (The following deposition read in to the record.)

16 Q Question: Well, at some point did you become the sole  
17 owner of all the outstanding shares? That would be of  
18 Hallmark.

19 A Yes. Yeah. Around 2003 we were -- I believe my  
20 recollection is initially we were the sole owner of the  
21 shares and that Collen and Nicola bought back in and then we  
22 bought them back out again.

23 Q Question: Okay. But in any event, there was an initial  
24 purchase, and ultimately you acquired all the shares of  
25 Hallmark. Is that correct?

1 A Yes. And at all material times I controlled Hallmark.

2 Q Question: Well, from the time you began the acquisition?

3 A Yep.

4 MR. WILLIAM COHAN: Now we're moving to page 23,  
5 line 2, Your Honor.

6 THE COURT: Okay.

7 A As trustee, I am not required to follow directions of  
8 anybody. I have an independent duty to offer the Trust to  
9 the best interest of the beneficiaries. I have never spoken  
10 to Mr. Francis or met him. And, in fact, I have never  
11 received any direction from Mr. Francis at any time with  
12 respect to this trust.

13 Q Question: Well, you just testified, according to my  
14 understanding, that you did. But let me ask you --

15 A No, I never spoke with Mr. Francis.

16 Q Okay.

17 A I didn't say I spoke with Mr. Francis.

18 Q Page 24, line 20.

19 Question: Okay. During the period of time when you  
20 were -- when I say "you," I'm referring to you in your  
21 capacity as the majority or holding that the owner of all of  
22 the stock in Hallmark Trust. Were you totally in control of  
23 the assets of the Francis Trust?

24 A No.

25 Q Question: And who else, if anyone else, was in control

1 of the assets of the Francis Trust?

2 A I'm not sure that I know for sure other than to say that  
3 Rothwell was the company that controlled. Or at least the  
4 notable shareholder for Rothwell was Collen Chaffe or Nicola  
5 Jordan.

6 Q Question: Okay. And did you have an understanding as to  
7 why Collen Chaffe and/or Nicola Jordan had the  
8 responsibility for controlling Rothwell as opposed to you?

9 A My understanding was, and I think I probably got this  
10 from Mr. Rayment and Collen Chaffe, was that's -- that's the  
11 way Mr. Francis wanted it.

12 Q Question: Okay. And were you free to disregard or to go  
13 along with Mr. Francis in your role as trustee?

14 A Absolutely.

15 Q Question: Okay. Now, at some point did you begin to  
16 play a role in directing the affairs of Rothwell?

17 A Yeah. I hadn't had much to do with Rothwell. I knew  
18 that it had a Morgan Stanley account. And I recall getting  
19 a call from an investment officer at Morgan Stanley. I  
20 think his name was Michael Weller. John -- John Weller.  
21 Welker. Welker. And wanted to know -- telling me that  
22 there was cash in the Rothwell account and asking me if I  
23 wanted to reinvest it. Up to that point I had thought that  
24 Collen and Nicola had been doing that. And I'm not sure  
25 whether they were or weren't.

1 But as a trustee it's my responsibility to ensure that  
2 the assets of the Trust are invested. A trustee has a duty  
3 to ensure there is a return on the Trust assets. So  
4 periodically I would talk to Mr. Welker and we would discuss  
5 what needed to be reinvested and what to reinvest in.  
6 Generally speaking, we took a very conservative approach,  
7 you know, like primarily government treasuries and  
8 investment-rated bonds. That sort of thing.

9 Q Question: And did you have -- I believe you testified  
10 you didn't have conversations with Mr. Francis?

11 A I've never spoken to the man or met him.

12 Q Okay. So did anyone direct --

13 A I did have -- I should make this clear just so that  
14 everybody understands. I did have some e-mail communication  
15 with Mr. Francis. I became concerned that there was no  
16 up-to-date due diligence on the file. I didn't have a  
17 current passport or a proven address or bank reference with  
18 respect to Mr. Francis. So I intended to communicate with  
19 him to obtain that information, unsuccessfully. I did have  
20 one or two e-mail responses from him.

21 Q Okay.

22 A But I never got the information requested.

23 Q And moving to page 35, beginning at line 4.

24 The question is: Take a look at, if you would, at RL89  
25 for just a moment.

1 A Uh-huh.

2 Q Question: There is an identification of a John J. Welker  
3 SVP wealth advisor. And above that and right below the  
4 large logo for Morgan Stanley, a reference for the Welker  
5 group. Do you see that on RL89?

6 A I do.

7 Q Question: And does this refresh your recollection as to  
8 the name of the account representative?

9 A Yes.

10 Q Question: And is that the person you had communications  
11 with?

12 A Yes, it is.

13 Q Question: And did you ever get any direction -- excuse  
14 me. And did you ever get any directions to Mr. Welker as to  
15 make any sorts of trades or other moves with the assets in  
16 this account?

17 A Generally speaking, I don't recall ever asking to make a  
18 trade. Generally speaking, what happened is Mr. Welker  
19 would call me and say a certain investment had matured and  
20 there was X number of dollars in the account, what did you  
21 want to do with it? And on some occasion he offered some  
22 suggestions. On other occasions I would say, you know,  
23 what -- can we roll this over? Because that's done well for  
24 us or whatever. So between the two of us we would make some  
25 sort of a decision with respect to what to do with the

1 funds.

2 Q Question: Did you consult with Joseph Francis?

3 A Absolutely not.

4 Q Question: Did you consult with anyone else other than  
5 Mr. Welker in making these decisions?

6 A No.

7 Q Question: Did you talk with Mr. Rayment about the  
8 decisions?

9 A No.

10 Q Moving to page 50. And this is a question propound by  
11 Ms. Makarewicz, who is present in court representing the  
12 government.

13 Question: Mr. Trowbridge, you stated that when you  
14 assumed control of Hallmark, that the Rothwell account was  
15 primarily held by or controlled by Nicola Jordan and  
16 Mr. Chaffe?

17 A Correct.

18 Q Question: Why in 2005 and 2006 did you become an active  
19 participant with Rothwell Limited at that point?

20 A At that point Collen and Nicola Jordan were no longer in  
21 my office. And if you recall, I testified that I bought  
22 them out. So it was necessary for me, in my capacity as  
23 trustee, to become more involved in the operation of the  
24 Trust to ensure that I was complying with my obligations.

25 Q Page 51, beginning at line 15.

1 Question: Okay. Inviting your attention,  
2 Mr. Trowbridge, to RL179 through RL185. Would you take just  
3 a moment?

4 A Uh-huh.

5 Q Actually, I can do this with you. Do you recognize your  
6 signature on RL179?

7 A Yes.

8 Q Does this refresh your recollection at all as to the  
9 transition in control from Mr. Chaffe and Ms. Jordan to you  
10 as the principal in Hallmark with respect to -- particular  
11 to the account of Bermuda Commercial Bank?

12 A Yes. This would have been about the time I bought Collen  
13 and Nicola out of Hallmark.

14 MR. GABRIEL COHAN: Your Honor, if we could be  
15 permitted, at this time I would move Exhibit 106, which is  
16 what's being discussed in that last section.

17 MR. WILLIAM COHAN: So 106 is RL179 to 185.

18 THE COURT: Okay.

19 MR. THOMAS: No objection.

20 THE COURT: Received.

21 (Exhibit No. 106 admitted.)

22 MR. GABRIEL COHAN: Thank you, Your Honor.

23 MR. WILLIAM COHAN: Moving -- I am corrected by my  
24 paralegal, Your Honor. It's actually somewhat larger. It's  
25 RL156 through 186.

1 THE COURT: I'm sorry. RL156 through?

2 MR. WILLIAM COHAN: Through 186. It comprises  
3 Exhibit 106, which has just been received.

4 THE COURT: Okay.

5 MR. WILLIAM COHAN: Thank you.

6 Okay. Next we are on page 111, Your Honor, beginning at  
7 line 8.

8 Q Question: Did you make --

9 THE COURT: Just a second. Go ahead.

10 Q Question: Did you make any distributions to Mr. Francis  
11 while you were responsible for the account?

12 A Never.

13 Q Question: Did you make any distributions to anyone  
14 during that period of time you were responsible for the  
15 Rothwell account?

16 A Hallmark received some fees from the Trust assets.

17 Q Question: Right. Other than paying fees for your  
18 services, known services related in managing the Trust, or  
19 were any disbursements made to any beneficiaries?

20 A No.

21 Q Question: Did you make any distributions to anyone from  
22 the Francis Trust other than for fees for your companies and  
23 other essential services provided, any distribution to any  
24 beneficiary --

25 A No.

1 Q -- of the Francis Trust?

2 A No.

3 Q You never did?

4 A No.

5 Q Were you ever requested to do so?

6 A No.

7 MR. COHAN: Moving to page 133, Your Honor.

8 THE COURT: Okay.

9 Q Question: Under your understanding of the Rothwell --  
10 excuse me -- the Francis Trust, did you have to consult with  
11 any person, i.e. the protector, in order to liquidate the  
12 Rothwell account, or was that something that was under your  
13 absolute authority as trustee?

14 A My recollection is that was under my absolute authority.  
15 But I'd have to go back and look at the Trust documents.

16 Q Question: But it's your general understanding that you  
17 didn't have to check or clear any liquidation or any  
18 movement of a Morgan Stanley account with any other person?

19 A That's correct.

20 MR. GABRIEL COHAN: And that would conclude portions  
21 of the transcript, Your Honor.

22 THE COURT: Okay.

23 MR. GABRIEL COHAN: At this time if I may, Your  
24 Honor, pursuant to the local rules, without reading from the  
25 transcript, I would also move Exhibit 156, which is the

1 deposition of Brian Stewart.

2 MR. THOMAS: No objection. Again those transcripts  
3 have been marked and the objections are noted with the  
4 transcripts.

5 THE COURT: Okay.

6 (Exhibit No. 156 admitted)

7 MR. WILLIAM COHAN: And I think, Your Honor, at this  
8 time we're prepared to defer to the government. We still  
9 have one witness, and that's Mr. Keehnel. And he'll be  
10 tomorrow morning, whenever the Court orders us to reconvene.

11 THE COURT: Counsel, you had one of the witnesses on  
12 your list that you chose not to call? Michael Nahass?

13 MR. WILLIAM COHAN: Yes.

14 THE COURT: Okay.

15 MR. WILLIAM COHAN: We've decided not to call him,  
16 Your Honor.

17 THE COURT: Okay. All right. So you're resting  
18 subject to being able to call Mr. Kivel?

19 MR. WILLIAM COHAN: Yes.

20 THE COURT: Okay. Counsel?

21 MS. MAKAREWICZ: The government calls revenue agent  
22 George Beas to the stand.

23 GEORGE BEAS

24 The witness, after being duly sworn, testified as follows:

25 THE CLERK: State your full name and spell your last

1 name for the record.

2 THE WITNESS: My name is George Beas. And my last  
3 name is spelled B-E-A-S.

4 THE COURT: You may inquire, Counsel.

5 MS. MAKAREWICZ: Thank you, Your Honor.

6 DIRECT EXAMINATION

7 BY MS. MAKAREWICZ:

8 Q Good morning, Mr. Beas.

9 A Good morning.

10 Q Are you currently employed?

11 A No.

12 Q Are you retired?

13 A Yes, I am.

14 Q How long have you been retired?

15 A Approximately three months.

16 Q Prior to being retired, what did you do for work?

17 A I was a revenue agent for the Internal Revenue Service.

18 Q How long were you employed by the IRS?

19 A Approximately 39 years.

20 Q What positions have you held with IRS?

21 A A work study student. I was a tax auditor and a revenue  
22 agent.

23 Q What does a revenue agent do?

24 A A revenue agent examines income tax returns, individual  
25 income tax returns, partnerships, corporations and

1 S corporations.

2 Q What is your educational background?

3 A I attended junior college and California State  
4 University. And in attending those schools I took business  
5 courses, and also I completed 24 units of accounting.

6 Q Have you ever received any special training or continuing  
7 professional education in the course of your career that  
8 would be applicable to this case?

9 A Yes. As a special enforcement revenue agent I have taken  
10 special courses to detect fraud, to identify unreported  
11 income by the use of indirect methods, and a continuing  
12 professional education with different methods to examine  
13 income tax returns and different interview process and other  
14 items of any tax changes.

15 Q How often would you have continuing professional  
16 education?

17 A We would have it once a year.

18 Q Have you received any awards for your work with the IRS?

19 A Yes. I have received three awards from the United States  
20 attorney's office. I have received an award from the  
21 criminal investigation division, and also I have received  
22 awards from the examination division.

23 Q Have you done any teaching within the IRS?

24 A Yes. I have done some CPE training identifying fraud  
25 awareness.

1 Q Have you previously testified in court regarding tax  
2 examination matters?

3 A Yes.

4 Q How many times?

5 A Three times.

6 Q In what courts?

7 A This court.

8 Q As a revenue agent can you give your best estimation of  
9 the number of tax examinations you were assigned over the  
10 course of your career?

11 A Approximately about 5,000 returns.

12 Q In those examinations how many involved sub-S  
13 corporations?

14 A I would say about 500.

15 Q In those examinations, your total amount of examinations,  
16 how many involved the allegation of the fraud penalty  
17 pursuant to 26 USC 6663?

18 A About 200.

19 Q Mr. Beas, are you familiar with the criminal matter of  
20 the United States versus Joseph Francis?

21 A Yes.

22 Q How did you become aware of that case?

23 A I was assigned to this case as an expert witness during  
24 the criminal trial.

25 Q In preparation for the criminal trial and your

1 anticipated testimony, what documents, if any, did you  
2 review?

3 A I reviewed bank statements. Wire transfers. Income tax  
4 returns. Corporate returns. Memorandums of interview.  
5 General ledgers.

6 Q Are you aware of how the criminal case concluded?

7 A Yes.

8 Q And what was the conclusion?

9 A The conclusion was there was a plea offer and it was  
10 accepted.

11 Q And after Francis pled guilty to violations of Title 26  
12 what, if anything, did the IRS do civilly regarding the  
13 income tax returns of Francis?

14 A There were civil adjustments appropriated for the  
15 individual return and S corporations.

16 Q Were you the revenue agent assigned to the examination of  
17 Francis's return?

18 A Yes.

19 Q When did you begin the civil investigation?

20 A Approximately October of 2009.

21 Q What was the purpose of the civil investigation?

22 A To disallow personal expenses, known business expenses  
23 being claimed by the S corporation and the individual  
24 return.

25 Q What years did your examination cover?

1 A The years covered were 2001, 2002, and 2003.

2 Q In the course of your examination of Francis's income tax  
3 returns for 2001, 2002, 2003, did you examine any  
4 S corporation returns that related to Francis?

5 A Yes, I did.

6 Q And which were they?

7 A There were for the year 2002, 2003 for the 1120  
8 S corporation.

9 Q And what are those corporations named?

10 A Sands Media, Inc. and Mantra Films, Inc.

11 Q I'd like to first identify the tax returns that were  
12 involved in your work in this case. I refer you to the  
13 exhibit binder for the government, 1 and 2, which are at  
14 your stand.

15 MS. MAKAREWICZ: Your Honor, those are the binders  
16 we'll be using primarily.

17 BY MS. MAKAREWICZ:

18 Q Mr. Beas, could you please turn to proposed government's  
19 Exhibit 230? Last exhibit in binder 1. Do you have it?

20 A I do.

21 Q Can you identify this exhibit?

22 A This exhibit is a form 1120S. A United States income tax  
23 return for an S corporation for the year 2002.

24 Q For which entity?

25 A Sands Media, Inc.

1 Q This was a tax return filed with the IRS?

2 A Yes, it was.

3 Q How do you know it was filed with the IRS?

4 A There is stamp on the face of the first page of the  
5 return stating that the return was received by Ogden, Utah.  
6 There is also a document locator number on the top  
7 right-hand corner of the return.

8 Q What is a document locator number?

9 A It's a number that when the return is received, it's  
10 stamped showing where the document -- the return is going to  
11 be filed at the campus.

12 Q Did you review this document as part of your work in this  
13 case?

14 A Yes, I did.

15 Q Have you reviewed the return in preparation for your  
16 testimony today?

17 A Yes, I did.

18 Q What items in general on the return did you review?

19 A I reviewed the entire return, but also the -- I reviewed  
20 the deductions claimed on the 1120S corporation.

21 Q Why did you review these items?

22 A Because I identified allowable deductions being claimed  
23 on the 1120S corporate returns.

24 Q Mr. Beas, please turn to proposed government's Exhibit  
25 209. Do you have it?

1 A Yes, I do. I have it.

2 Q Can you identify this exhibit?

3 A This is a form 1120S for United States income tax return  
4 for an S corporation for the year 2003.

5 Q For which entity?

6 A For Sands Media, Inc.

7 Q Was this tax return filed with the IRS?

8 A Yes.

9 Q How do you know that it was filed with the IRS?

10 A There is stamp on the first page of the return. It was  
11 received from Ogden, Utah. And also there is a document  
12 locator number on the top right-hand corner of the return.

13 Q Did you review this document as part of your work in this  
14 case?

15 A Yes, I did.

16 Q Have you reviewed the return, this return in preparation  
17 for your testimony today?

18 A Yes, I have.

19 Q Okay. Mr. Beas, can you please turn to --

20 THE COURT: Did you want to introduce these?

21 MS. MAKAREWICZ: I was going to do it at all once.

22 THE COURT: Okay.

23 BY MS. MAKAREWICZ:

24 Q Please turn to binder 2, Exhibit 243.

25 A What was that?

1 Q 243. Can you identify this?

2 A This is a form 1120S United States income tax return for  
3 an S corporation for the year 2002.

4 Q For which entity?

5 A For Mantra Films, Inc.

6 Q This was filed with the IRS?

7 A Yes, it was.

8 Q How do you know it was filed with the IRS?

9 A On the first page of the return there is a stamp that it  
10 was received by Ogden, Utah. Also there is document locator  
11 number on the top right-hand corner of the return.

12 Q Did you review this document as part of your work?

13 A Yes, I did.

14 Q Have you reviewed the return in preparation for your  
15 testimony today?

16 A Yes, I have.

17 Q Turning back to exhibit binder 1. Can you please turn,  
18 Mr. Beas, to government's Exhibit 218?

19 A This is a form 1120S United States income tax return for  
20 an S corporation for the year 2003.

21 Q For which entity?

22 A Mantra Films, Inc.

23 Q Was this tax return filed with the IRS?

24 A Yes, it was.

25 Q How do you know it was filed with the IRS?

1 A On the first page of the return there is stamp and  
2 received from Ogden, Utah. Also there is document locater  
3 number on top right-hand corner of the return.

4 Q Did you review this document as part of your work in this  
5 case?

6 A Yes.

7 Q Have you reviewed the return in preparation for your  
8 testimony today?

9 A Yes.

10 MS. MAKAREWICZ: Your Honor, at this time the  
11 government would move that Exhibits 230, 209, 243, and 218  
12 be admitted into evidence at this time.

13 MR. WILLIAM COHAN: No objection.

14 THE COURT: They will be received.

15 (Exhibit Nos. 209, 230, 243, 218 admitted.)

16 BY MS. MAKAREWICZ:

17 Q Mr. Beas, did you examine other documents pertinent to  
18 your civil investigation?

19 A Yes, I did.

20 Q Please describe in general the documents you reviewed.

21 A The documents I reviewed were corporate income tax  
22 returns and general ledger wire transfers and bank  
23 statements.

24 Q And based upon the records you reviewed do you know  
25 whether Sands had a bank account in 2002 and 2003?

1 A Yes, they did.

2 Q At what bank did Sands have an account?

3 A Wells Fargo bank.

4 Q Mr. Beas, can you please turn to government's Exhibit  
5 223?

6 A Yes.

7 Q Can you identify this exhibit?

8 A Yes. This is a bank account ending in 188 for Sands  
9 Media, Inc.

10 Q Did you review this document as part of your work in this  
11 case?

12 A Yes, I did.

13 Q Mr. Beas, can you please turn to government's proposed  
14 Exhibit 225?

15 A Yes.

16 Q Can you identify this exhibit?

17 A This is also bank account with Wells Fargo bank with  
18 account number ending in 740.

19 Q For which entity?

20 A For Sands Media, Inc.

21 Q Did you review this document as part of your work in this  
22 case?

23 A Yes, I did.

24 MS. MAKAREWICZ: Your Honor, at this time the  
25 government moves Exhibits 223 and 225 be admitted into

1 evidence.

2 MR. COHAN: No objection.

3 THE COURT: Received.

4 (Exhibit Nos. 223, 225 admitted.)

5 BY MS. MAKAREWICZ:

6 Q Based upon the records you reviewed, do you know if  
7 Mantra has a bank account?

8 A Yes.

9 Q What bank did Mantra have an account?

10 A Wells Fargo bank.

11 Q How many accounts did Mantra have?

12 A Two accounts.

13 Q Did you review documents that related to Mantra's bank  
14 account as part of your work in this case?

15 A Yes.

16 Q When a determination is made to adjust the tax returns  
17 for Mantra and Sands, how do adjustments on corporate  
18 returns affect Francis's individual returns?

19 A Any income or any deductions that are allowed or not  
20 allowed on the income tax return on the corporate tax  
21 return, they are a flow-through. Whether it's income or  
22 expenses or a net profit or a net loss from that 1120S  
23 corporation, it's a flow-through to the individual income  
24 tax return. And it could be an increase or a decrease in  
25 taxes.

1 Q Based upon the records you reviewed, did you make a civil  
2 determination regarding the Mantra and Sands corporate  
3 returns for 2002 and 2003?

4 A Yes, I did.

5 Q And in general can you please describe your  
6 determination?

7 A I disallowed business expenses that were being claimed on  
8 the corporate returns, which the allowance of these known  
9 business expenses were a flow-through to the individual  
10 return which increased the individual returns tax viability.

11 Q Thank you.

12 Mr. Beas, I want to identify the specific material you  
13 reviewed in your civil determination, which includes the  
14 returns of Sands and Mantra, their general ledgers and the  
15 pertinent bank documents and wire transfers. Can you please  
16 return back to government's Exhibit 230 which has been  
17 admitted into evidence?

18 MS. MAKAREWICZ: May I have permission to publish on  
19 the Elmo?

20 THE COURT: Yes. Counsel, you can enlarge it a  
21 little bit if you wish.

22 BY MS. MAKAREWICZ:

23 Q Did you examine this return?

24 A Yes, I did.

25 Q And on the first page of this return what line regarding

1 the business deductions did you examine?

2 A I examined the deductions portion of the return on line  
3 19.

4 Q Does that line refer to a separate statement?

5 A Yes, it is. It says that line to go to statement number  
6 3.

7 Q Can you turn in that exhibit to page US 000181?

8 A Yes.

9 Q On statement 3, Mr. Beas, can you please identify the  
10 deduction you examined regarding consulting expenses?

11 A I'm sorry. Would you repeat that again?

12 Q Can you please turn to Exhibit page 181, Mr. Beas, in  
13 that exhibit?

14 A Yes.

15 Q On statement 3 can you identify the deduction you  
16 examined regarding consulting expenses? That is the third  
17 line down. Consulting expense for 14,195. What documents  
18 did you examine to investigate if this deduction was  
19 allowable as an ordinary and necessary business expense?

20 A General ledger.

21 Q Can you turn to government's Exhibit 228?

22 A Yes.

23 Q Can you identify this exhibit?

24 A Yes. It's -- it's a general ledger for Sands Media, Inc.  
25 for the year 2002.

1 Q Did you review this document in your work in this case?

2 A Yes, I did.

3 MS. MAKAREWICZ: At this time the government moves  
4 that Exhibit 228 be admitted into evidence. We've taken  
5 some time to delineate what portions of these large general  
6 ledgers we would like the Court to turn its attention to.

7 THE COURT: Okay. Any objection?

8 MR. WILLIAM COHAN: No objection.

9 THE COURT: Received.

10 (Exhibit No. 228 admitted.)

11 BY MS. MAKAREWICZ:

12 Q Can you describe how this ledger is organized?

13 A Yes. This ledger is organized by entries being made for  
14 operational expenses or income being reported by Sands  
15 Media. It starts out in chronological order. At the end of  
16 the ledger it identifies categories of the listing of this  
17 general ledger for different types of income or expenses.

18 Q Can you turn to 229, proposed government's exhibit?

19 A Yes.

20 Q Can you identify this exhibit?

21 A Yes. This is again a general ledger for Sands Media,  
22 Inc. for the year 2002. But on this general ledger it  
23 identifies a different category that were selected from the  
24 general ledger.

25 Q But this would tie -- this exhibit would tie back to the

1 general ledger?

2 A Yes.

3 Q Just a portion?

4 A Yes, the portion from the general ledger.

5 Q Did you review this document as part of your work in this  
6 case?

7 A Yes, I did.

8 MS. MAKAREWICZ: At this time the government moves  
9 Exhibit 229 be admitted.

10 MR. COHAN: No objection.

11 THE COURT: Received.

12 (Exhibit No. 229 admitted.)

13 BY MS. MAKAREWICZ:

14 Q Mr. Beas, on page 12-0078 where was the consulting  
15 expense reported on the general ledger?

16 MR. WILLIAM COHAN: Forgive me. What page?

17 MS. MAKAREWICZ: It's in the same exhibit. Exhibit  
18 229 on the second page. 12-0078.

19 MR. WILLIAM COHAN: Thanks.

20 THE WITNESS: Consulting services is on the lower  
21 portion of the page.

22 BY MS. MAKAREWICZ:

23 Q How much was the total for consulting expenses booked on  
24 this general ledger?

25 A 14,195,310.

1 Q Can you refer to plaintiff's binder 1? Turn to Exhibit  
2 229. Excuse me. 129.

3 MR. WILLIAM COHAN: Do you mean defendant's?

4 MS. MAKAREWICZ: Plaintiff's.

5 THE WITNESS: What was that binder number?

6 MS. MAKAREWICZ: Should be plaintiff's binder 1.  
7 Exhibit 129.

8 MR. WILLIAM COHAN: There we go.

9 BY MS. MAKAREWICZ:

10 Q Can you turn to what's been marked on top of the page as  
11 document 277-5? Do you recognize this document?

12 A Yes, I do.

13 Q How do you recognize this document?

14 A This document is Sands Media consulting service expenses  
15 that were transferred to Rothwell Limited.

16 Q Was this chart used within the criminal case?

17 A Yes, it was.

18 MS. MAKAREWICZ: Your Honor, at this time I'd like  
19 to move Plaintiff's Exhibit 129 into evidence.

20 THE COURT: Received.

21 (Exhibit No. 129 admitted.)

22 MS. MAKAREWICZ: Thank you, Your Honor.

23 BY MS. MAKAREWICZ:

24 Q Mr. Beas, did you review this chart and underlying  
25 documents -- pardon me.

1           What documents did you review to verify the statements  
2           made on this chart?

3           A     The documents that I reviewed were wire transfers.

4           Q     Did you review this chart and underlying documents in the  
5           course of your civil investigation?

6           A     Yes, I did.

7           Q     What information does this chart summarize?

8           A     This chart shows the date a transfer occurred. When it  
9           was posted. The company, Sands Media. The account, Casa  
10          Blanca. And the type was a wire transfer. And for Casa  
11          Blanca and the amounts that were wired.

12          Q     Thank you.

13                Mr. Beas, if you could keep this chart out for a moment.  
14          But I'd also like you to return to government's exhibit --  
15          proposed Exhibit 227.

16          A     Yes.

17          Q     Do you see Exhibit 227?

18          A     Yes.

19          Q     Can you identify this exhibit?

20          A     This is wire transfer.

21          Q     Did you review this document as part of your work in this  
22          case?

23          A     Yes, I did.

24                    MS. MAKAREWICZ: Your Honor, at this time the  
25          government moves that Exhibit 227 be admitted into evidence.

1 MR. WI LIAM COHAN: No objection.

2 THE COURT: Received.

3 (Exhibit No. 227 admitted.)

4 BY MS. MAKAREWICZ:

5 Q Turning your attention to US 000415, which is the fourth  
6 document in this exhibit.

7 A Yes.

8 Q Can you explain what this report means?

9 A Yes. This report is a transaction report from the Wells  
10 Fargo bank. It states that -- dated January 31, 2003.  
11 There was a wire transfer from Sands Media in the amount of  
12 750,000 to Bermuda Commercial Bank.

13 Q And does this exhibit correspond to the line on the  
14 plaintiff's chart at Exhibit 129?

15 A Yes, it does.

16 Q Is that the same for the remaining wire transfer reports  
17 in this Exhibit?

18 A Yes, it does.

19 Q Did you attempt to verify that this wire occurred,  
20 Mr. Beas?

21 A Yes.

22 Q And what documents did you use to verify that this wire  
23 occurred?

24 A Bank statements.

25 Q Can you please turn to proposed government's Exhibit 224?

1 A Yes.

2 Q Can you identify this exhibit?

3 A Yes. Bank statement from Wells Fargo bank.

4 Q For which entity?

5 A For Sands Media, Inc.

6 Q Did you review this document as part of your work in this  
7 case?

8 A Yes, I did.

9 MS. MAKAREWICZ: Your Honor, at this time the  
10 government would move Exhibit 224 into evidence at this  
11 time.

12 MR. WILLIAM COHAN: No objection.

13 THE COURT: Received.

14 (Exhibit No. 224 admitted.)

15 BY MS. MAKAREWICZ:

16 Q Turning your attention to the third page of the document  
17 in what we're calling the wire transfer that we just  
18 discussed. The wire on January 31 for 750,000, how were you  
19 able to verify the wire had occurred using bank statements  
20 for Sands?

21 A Looking at the bank statement, there was a debit that was  
22 posted on the statement January 31 in the amount of 750,000  
23 that was wired to Bermuda Commercial Bank.

24 Q For which account?

25 A For Sands Media, Inc.

1 Q To which account with Bermuda Commercial?

2 A To the Rothwell account.

3 Q How do the amounts of the wires that we just reviewed tie  
4 to the consulting expense taken on the general ledger at  
5 Exhibit 229?

6 A These are expenses that were wire transferred out to  
7 Rothwell Limited.

8 Q If you add the total amount of wire transfers, does that  
9 correspond to the number taken back on the consulting  
10 expense portion of the general ledger?

11 A Yes, it does.

12 Q In your investigation did you examine where funds were  
13 wired out from Sands, where those funds went? Pardon me.  
14 Were you able to verify that the monies wired from Sands  
15 went to Bermuda Commercial Bank?

16 A Yes.

17 Q Can you please turn to what's been entered into evidence  
18 as government's Exhibit 231? Government's Exhibit volume  
19 two. If you'd take a moment and read through that exhibit.

20 A Exhibit 231, these are files for the Bermuda Commercial  
21 Bank.

22 Q Did you review this document as part of your work in this  
23 case?

24 A Yes, I did.

25 Q Can you please turn your attention to page US 000246

1 through US 002248?

2 A Yes.

3 Q Can you identify these pages of the exhibit?

4 A Yes. These are transaction reports for Rothwell Limited.

5 Q Did you review this document or this portion of this  
6 exhibit as part of your work in this case?

7 A Yes, I did.

8 Q Now, a moment ago we previously reviewed the Wells Fargo  
9 wire records of Sands made on January 31 for 750,000. Where  
10 on this report does it confirm that such funds were  
11 transferred into this Bermuda Commercial account?

12 A On this transaction report dated January 31, 2003 there  
13 is an amount for 750,000. If you look across, see it  
14 comes -- a wire transfer comes from Sands Media, Inc.

15 Q Which pages are you looking at, Mr. Beas?

16 A 2247.

17 Q Thank you.

18 Mr. Beas, after your review of all of these documents,  
19 the general ledger, the wire records and bank statements,  
20 did you make a determination regarding the allowance of the  
21 consulting expenses taken as a deduction on Sands's 2002  
22 corporate return?

23 A Yes, I did. They were unallowable business expenses.  
24 They were not ordinary and necessary business expenses.

25 Q Thank you.

1 Turning to what's been admitted into evidence as  
2 government's Exhibit 230, which is the last exhibit of  
3 binder 1. Please turn your attention to page 181. Please  
4 identify what other expense on this Sands return you  
5 examined.

6 A This return I examined the deductions portion of the  
7 return, which is on line 18 of statement number 3.

8 Q Can you turn to statement number 3? And which portion of  
9 statement number 3 besides consulting expenses did you  
10 review?

11 A I reviewed the insurance expense and the amount 557,000.

12 Q Mr. Beas, can you please turn back to what's been entered  
13 into evidence as government's Exhibit 228? You've  
14 identified it as Sands's general ledger for 2002.

15 A Yes.

16 Q Can you please turn to page 12-0081?

17 A Yes.

18 Q Can you identify where on this portion of the general  
19 ledger the insurance expense is reported?

20 A Yes. About in the middle of the page.

21 Q What was the total amount claimed?

22 A Amount shown on general ledger and claimed on the return  
23 is \$557,094. Hard to read.

24 Q I understand.

25 Which entry in this insurance category did you examine?

1 A I examined Asia Pacific Mutual in the amount of 500,000.

2 Q Was an insurance deduction claimed by Sands as a business

3 deduction on its 2003 income tax return?

4 A Yes, it was.

5 Q Can you please turn to what's been entered into evidence

6 as 209?

7 A Yes.

8 Q Where on this return is insurance claimed as a deduction?

9 A It's claimed under the deductions part of the first page

10 of the 1120 on statement number 1.

11 Q Can you please turn to statement number 1?

12 A Yes.

13 Q And where on statement number 1 is insurance claimed?

14 A On the portion which says statement 1. About three lines

15 down it says insurance in the amount of 2,521,463.

16 Q Any was this expense listed in the general ledger for

17 Sands for 2003?

18 A Yes, it was.

19 Q Mr. Beas, can you please turn to government's exhibit --

20 proposed Exhibit 203?

21 A Yes.

22 Q Can you identify this exhibit?

23 A Yes. This is a general ledger for Sands Media, Inc. as

24 of December 31, 2003.

25 Q Did you review this document as part of your work in this

1 case?

2 A Yes, I did.

3 MS. MAKAREWICZ: At this time the government would  
4 move Exhibit 203 be admitted into evidence.

5 MR. WILLIAM COHAN: No objection.

6 THE COURT: Received.

7 (Exhibit No. 203 admitted.)

8 BY MS. MAKAREWICZ:

9 Q Mr. Beas, can you turn to government's Exhibit 208? Can  
10 you identify this exhibit?

11 A Yes. This is a general ledger for Sands Media, Inc. as  
12 of December 31st, 2003.

13 Q Is this a portion of the general ledger that we just  
14 referred to?

15 A Yes. It identifies different categories from that  
16 general ledger.

17 Q Did you review this document as part of your work in this  
18 case?

19 A Yes, I did.

20 MS. MAKAREWICZ: Your Honor, at this time the  
21 government moves the specific portion of the general ledger  
22 at Exhibit 208 into evidence.

23 MR. WILLIAM COHAN: No objection.

24 THE COURT: Received.

25 (Exhibit No. 208 admitted.)

1 BY MS. MAKAREWICZ:

2 Q Mr. Beas, can you identify the portion of the general  
3 ledger where the insurance expense is reported?

4 A On this general ledger it's on the top portion of the  
5 page.

6 Q And what entries of the insurance expense category did  
7 you examine?

8 A The entries that were shown on general ledger were the  
9 amounts of 250,000 and on down through the column.

10 Q Does the total reconcile with the deduction taken on  
11 Sands 2003 return?

12 A Yes.

13 Q Do you know to whom these amounts were paid?

14 A They were paid Asia Pacific Mutual Insurance Company.

15 Q Mr. Beas, did Mantra claim an insurance deduction on its  
16 2002 and 2003 income tax returns as well?

17 A Yes, they did.

18 Q Can you turn in Exhibit binder 2 to government's Exhibit  
19 243?

20 A Yes.

21 Q Can you please identify where the insurance expense  
22 deduction was claimed on Mantra's 2002 income tax return?

23 A On the first page of the return under deductions there is  
24 a -- statement number 3.

25 Q Can you turn to statement number 3?

1 A On statement number 3 of the return there is an insurance  
2 expense shown on that statement.

3 Q What documents did you examine to investigate if this  
4 deduction was allowable as an ordinary and necessary  
5 business expense?

6 A The general ledger.

7 Q Mr. Beas, can you turn to proposed government Exhibit  
8 238?

9 A Yes.

10 Q Can you identify this exhibit?

11 A Yes. This is a general ledger for Mantra Films, Inc. as  
12 of December 31, 2002.

13 Q Did you review this document as part of your work?

14 A Yes, I did.

15 MS. MAKAREWICZ: At this time the government moves  
16 Exhibit 238 be admitted.

17 MR. COHAN: No objection.

18 THE COURT: Received.

19 (Exhibit No. 238 admitted.)

20 BY MS. MAKAREWICZ:

21 Q Can you turn your attention to the insurance expense  
22 booked on page US0001247 at the end of the exhibit?

23 A Yes.

24 Q Examining this category of expense, what portion of this  
25 insurance category did you examine?

1 A The insurance expense at the lower portion of the page.

2 Q And specifically which insurance expense did you examine?

3 A Asia Pacific Mutual Insurance Company.

4 Q Thank you.

5 Mr. Beas, can you please turn to government's Exhibit  
6 218?

7 A Yes.

8 Q This is Mantra's 2003 form 1120. Can you please identify  
9 where on the return Mantra claimed an insurance deduction?

10 A It is claimed on statement number 2.

11 Q Can you please turn to statement number 2?

12 A Yes.

13 Q Can you indicate where on this statement the insurance  
14 expense is claimed?

15 A Yes. It's a line down from statement 2, which says  
16 insurance. And look across and the amount is 1,879,705.

17 Q Was this report -- excuse me. Was this expense reported  
18 on the general ledger for Mantra for 2003?

19 A Yes, it was.

20 Q Mr. Beas, can you please turn to government's Exhibit  
21 212?

22 A Yes.

23 Q Can you identify this?

24 A This is a general ledger for Mantra Films, Inc. as of  
25 December 31, 2003.

1 Q Did you review this document as part of your work in this  
2 case?

3 A Yes, I did.

4 MS. MAKAREWICZ: Your Honor, at this time the  
5 government moves that Exhibit 213 be admitted into evidence.

6 MR. WILLIAM COHAN: No objection.

7 THE COURT: Received.

8 (Exhibit No. 213 admitted.)

9 BY MS. MAKAREWICZ:

10 Q Mr. Beas, can you turn to government's Exhibit 217?

11 A Yes.

12 Q Can you identify this exhibit?

13 A Yes. This is a general ledger for Mantra Films, Inc. as  
14 of December 31, 2003.

15 Q Is this a specific portion of the general ledger we just  
16 referred to?

17 A Yes.

18 Q Did you review this document as part of your work in this  
19 case?

20 A Yes, I did.

21 MS. MAKAREWICZ: At this time the government moves  
22 that Exhibit 217 be admitted into evidence.

23 MR. COHAN: No objection.

24 THE COURT: Received.

25 (Exhibit No. 217 admitted.)

1 BY MS. MAKAREWICZ:  
2 Q Mr. Beas, what portion of the insurance category did you  
3 examine?  
4 A The Asia Pacific Mutual Insurance.  
5 Q And where is that indicated on this page of the general  
6 ledger?  
7 A Top portion of the general ledger on this page.  
8 Q Can you identify the total amount?  
9 A Yes. It's one million eight hundred -- I'm sorry. It's  
10 a little hard to read. 1,886,666 -- 1,685,866.  
11 Q Mr. Beas, I read that as 1,666,666.  
12 A Yes. And 57 cents.  
13 Q 67 cents.  
14 A 67 cents.  
15 Q Okay. Mr. Beas, turning -- do you agree with that  
16 statement, Mr. Beas?  
17 A Yes, I do.  
18 Q Thank you.  
19 Turning your attention to the insurance policy documents.  
20 Did you review the specific Asia Pacific policies for Sands  
21 and Mantra in the course of your investigation?  
22 A Yes, I did.  
23 Q Mr. Beas, can you please turn to government's Exhibit  
24 proposed Exhibit 201? Can you take a few moments to review  
25 the document?

1 A Yes.

2 Q Can you identify this document?

3 A Yes. This is an insurance policy for Asia Pacific Mutual  
4 for Sands Media, Inc.

5 Q Did you review this document as part of your work in this  
6 case?

7 A Yes, I did.

8 MS. MAKAREWICZ: At this time, Your Honor, the  
9 government moves that Exhibit 201 be admitted into evidence.

10 MR. COHAN: No objection.

11 THE COURT: Received.

12 (Exhibit No. 201 admitted.)

13 BY MS. MAKAREWICZ:

14 Q Can you flip to the next exhibit, government's Exhibit  
15 proposed 202?

16 A Yes.

17 Q Can you identify this exhibit?

18 A Yes. This is a statement of premium invoice from Asia  
19 Pacific Mutual.

20 Q Did you review this document as part of your work in this  
21 case?

22 A Yes, I did.

23 MS. MAKAREWICZ: Your Honor, at this time the  
24 government moves that Exhibit 202 be admitted into evidence.

25 MR. COHAN: No objection.

1 THE COURT: Received.

2 (Exhibit No. 202 admitted.)

3 BY MS. MAKAREWICZ:

4 Q How much was the price of the policy for Sands Media?

5 A The premium price was \$3 million.

6 Q Mr. Beas, can you turn your attention to government's  
7 proposed Exhibit 210?

8 A Yes.

9 Q Do you recognize this document?

10 A Yes. This is an insurance policy from Asia Pacific for  
11 Mantra Films, Inc.

12 Q Did you review this document as part of your work in this  
13 case?

14 A Yes, I did.

15 MS. MAKAREWICZ: Your Honor, at this time the  
16 government moves that Exhibit 210 be admitted.

17 MR. COHAN: No objection.

18 THE COURT: Received.

19 (Exhibit No. 210 admitted.)

20 BY MS. MAKAREWICZ:

21 Q To the best of your recollection, is the policy taken by  
22 Mantra any different than the policy Sands purchased?

23 A No.

24 Q Mr. Beas, can you flip to -- turn to government's  
25 proposed Exhibit 211?

1 A Yes.

2 Q Can you identify this exhibit?

3 A Yes. This is a premium invoice from Asia Pacific Mutual  
4 to Mantra Films.

5 Q Did you review this document as part of your work in this  
6 case?

7 A Yes, I did.

8 MS. MAKAREWICZ: Your Honor, at this time the  
9 government moves that Exhibit 211 be admitted into evidence.

10 MR. WILLIAM COHAN: No objection.

11 THE COURT: Received.

12 (Exhibit No. 211 admitted.)

13 BY MS. MAKAREWICZ:

14 Q Mr. Beas, can you tell how much the price of this policy  
15 was?

16 A The premium amount was \$2 million.

17 Q This is for Mantra?

18 A This is for Mantra Films, Inc.

19 Q Now, Mr. Beas, can you turn back to Plaintiff's Exhibit  
20 129 at page 277-4?

21 A Yes.

22 Q Do you have that, Mr. Beas?

23 A Yes.

24 Q Did you review -- have you seen this chart before?

25 A Yes, I have.

1 Q Did you review this chart for accuracy during the  
2 criminal case?

3 A Yes.

4 Q And what documents did you review to verify the  
5 statements had been made on this chart?

6 A Wire transfers.

7 Q Did you review this chart and the underlying documents in  
8 the course of your civil investigation?

9 A Yes.

10 Q What information does this chart summarize?

11 A It shows wire transfers from Mantra Films, Sands Media  
12 and Asia Pacific Mutual as being transferred for premiums  
13 for insurance and transferred to Schedule Company, and  
14 transfers to Rothwell Bermuda Commercial Bank.

15 Q Mr. Beas, if you could keep this chart handy. I want to  
16 identify now the underlying evidence used in your  
17 investigation with respect to the information contained on  
18 this chart. Please turn to government's proposed Exhibit  
19 205.

20 A Yes.

21 Q Can you identify this exhibit in general?

22 A Yes. This is a wire transfer transaction report from  
23 Wells Fargo bank.

24 THE COURT: I'm sorry. The number again, Counsel?

25 MS. MAKAREWICZ: 205.

1 BY MS. MAKAREWICZ:

2 Q Did you review this document as part of your work in this  
3 case?

4 A Yes, I did.

5 MS. MAKAREWICZ: At this time the government moves  
6 Exhibit 205 be admitted into evidence.

7 MR. COHAN: No objection.

8 THE COURT: Received.

9 (Exhibit No. 205 admitted.)

10 BY MS. MAKAREWICZ:

11 Q Now, Mr. Beas, turning your attention to the wire report  
12 on page 000512, can you explain what this report indicates?

13 A This transaction report from Wells Fargo bank states that  
14 there was a wire transfer on January 28, 2003 in the amount  
15 of 250,000 from Sands Media to the Bank of Hawaii.

16 Q For whose account?

17 A For the Asia Pacific Mutual Insurance Company.

18 MR. WILLIAM COHAN: What page, Counsel?

19 MS. MAKAREWICZ: 512. First page of the exhibit.

20 MR. WILLIAM COHAN: Right. But forgive this  
21 interruption. I see January 27 and March 1. I didn't see  
22 January 28.

23 BY MS. MAKAREWICZ:

24 Q Mr. Beas, can you please turn your attention to  
25 government's Exhibit 206? Can you identify this?

1 A Yes. This is an investigation report from the Bank of  
2 Hawaii.

3 Q Did you review this document as part of your work in this  
4 case?

5 A Yes, I did.

6 MS. MAKAREWICZ: At this time the government moves  
7 that Exhibit 206 be admitted into evidence.

8 MR. WILLIAM COHAN: Can I take a second to look at  
9 it?

10 THE COURT: Yes.

11 MR. WILLIAM COHAN: Could I voir dire on this, Your  
12 Honor? I don't know what -- where this came from other than  
13 apparently the Bank of Hawaii was doing some investigation.

14 THE COURT: Why don't we let her lay the foundation  
15 on it.

16 Do you recognize this document?

17 THE WITNESS: Yes.

18 THE COURT: What is it?

19 THE WITNESS: It's report from Bank of Hawaii  
20 stating they received a wire amount of 250,000.

21 THE COURT: Go ahead.

22 BY MS. MAKAREWICZ:

23 Q Mr. Beas, have you seen wire -- investigations report  
24 similar to this during the course of your career?

25 A Yes, I have.

1 MS. MAKAREWICZ: Your Honor, at this time the  
2 government moves Exhibit 206 to be admitted into evidence.

3 MR. WILLIAM COHAN: No objection.

4 THE COURT: Received.

5 (Exhibit No. 206 admitted.)

6 BY MS. MAKAREWICZ:

7 Q I believe that you already stated this. But can you --  
8 again turning your attention to page 2089, what does this  
9 report indicate?

10 A This report indicates that Bank of Hawaii received a wire  
11 transfer in the amount of 250,000.

12 Q From who?

13 A From Sands Media, Inc.

14 Q To whom?

15 A To Asia Pacific Mutual Insurance Company.

16 Q Mr. Beas, can you please turn to Exhibit 207?

17 A Yes.

18 Q Can you identify this exhibit?

19 A Yes. There is a fax from Asia Pacific Mutual Insurance  
20 Company stating an amount that was a payment -- an amount  
21 wire transferred in the amount of 250,000.

22 Q Did you review this document as part of your work in this  
23 case?

24 A Yes.

25 MS. MAKAREWICZ: At this time the government moves

1 Exhibit 207 be admitted into evidence.

2 MR. WILLIAM COHAN: No objection.

3 THE COURT: Received.

4 (Exhibit No. 207 admitted.)

5 BY MS. MAKAREWICZ:

6 Q Mr. Beas, during your investigation did you examine  
7 documents similar to those we have just review evidencing  
8 transfers by Mantra to Asia Pacific Mutual Insurance  
9 Company?

10 A Yes, I have.

11 Q Mr. Beas, can you please turn to proposed government's  
12 Exhibit 214?

13 A Yes.

14 Q Can you identify this exhibit in general?

15 A This is a transaction report from the Wells Fargo bank.

16 Q Did you review this document as part of your work?

17 A Yes, I did.

18 MS. MAKAREWICZ: The government moves Exhibit 214 be  
19 admitted into evidence.

20 MR. WILLIAM COHAN: No objection.

21 THE COURT: Received.

22 (Exhibit No. 214 admitted.)

23 BY MS. MAKAREWICZ:

24 Q Turning your attention to page 524, what does this  
25 document indicate?

1 A This transaction report dated January 28, 2003 that a  
2 wire transfer in the amount of 250,000 from Mantra Films was  
3 wired to Bank of Hawaii for Asia Pacific Mutual Insurance  
4 Company.

5 Q Mr. Beas, can you please turn to government's proposed  
6 Exhibit 215?

7 A Yes.

8 Q Can you identify this exhibit in general?

9 A This is an investigation report for the Bank of Hawaii.

10 Q Did you review this document as part of your work in this  
11 case?

12 A Yes, I did.

13 MS. MAKAREWICZ: Your Honor, at this time the  
14 government moves that Exhibit 215 be admitted into evidence.

15 MR. WILLIAM COHAN: No objection.

16 THE COURT: Received.

17 (Exhibit No. 215 admitted.)

18 BY MS. MAKAREWICZ:

19 Q Mr. Beas, turning your attention to page 2081. What does  
20 this document indicate?

21 A This report states that there was a wire transfer  
22 received for the Bank of Hawaii for Asia Pacific Mutual  
23 Insurance Company from Mantra Films, Inc.

24 Q Mr. Beas, can you please turn to government's Exhibit  
25 216?

1 A Yes.

2 Q Can you identify this exhibit --

3 A Yes.

4 Q -- in general?

5 A Yes. It's a fax for Asia Pacific Mutual Insurance  
6 Company showing an amount of 250,000.

7 Q Did you review this document as part of your work in this  
8 case?

9 A Yes, I did.

10 MS. MAKAREWICZ: Your Honor, at this time the  
11 government moves that Exhibit 216 be admitted into evidence.

12 MR. WILLIAM COHAN: No objection.

13 THE COURT: Received.

14 (Exhibit No. 216 admitted.)

15 BY MS. MAKAREWICZ:

16 Q You just indicated the document shows a transfer of  
17 250,000. From whom and to whom that was transfer made?

18 A This document shows that the bank was Wells Fargo bank  
19 for Mantra Films, Inc. transferred 250,000 for Asia Pacific  
20 Mutual Insurance Company.

21 Q Now, Mr. Beas, during your investigation did you  
22 investigate what happened to the funds after they were  
23 transferred to Asia Pacific?

24 A Yes.

25 Q And returning to the Plaintiff's Exhibit 129 chart 277-4,

1 is that fact reflected on this chart?

2 A Yes, it is.

3 Q Where?

4 A On this chart --

5 MR. WILLIAM COHAN: Which page of 129, Counsel?

6 THE COURT: Which page?

7 MR. WILLIAM COHAN: 277-4.

8 THE COURT: Dash 4.

9 MR. WILLIAM COHAN: Thank you.

10 BY MS. MAKAREWICZ:

11 Q What column does this indicate transfers from Asia  
12 Pacific -- from Asia Pacific?

13 A The column shows that from Asia Pacific there were  
14 amounts transferred to the Schedule Company.

15 Q Mr. Beas, can you turn to proposed government's Exhibit  
16 219?

17 A Yes.

18 Q Do you recognize this exhibit?

19 A Yes, I do.

20 Q What's that?

21 A A fax indicating monies that were transferred.

22 Q Did you review this document as part of your work in this  
23 case?

24 A Yes, I did.

25 MS. MAKAREWICZ: Your Honor, at this time the

1 government moves that Exhibit 219 be admitted into evidence.

2 MR. WILLIAM COHAN: No objection.

3 THE COURT: Received.

4 (Exhibit No. 219 admitted.)

5 BY MS. MAKAREWICZ:

6 Q Now, Mr. Beas, using the first fax as an example, what  
7 does this document indicate?

8 A It indicates that Bank of Hawaii transferred funds in the  
9 amount of 424,900 to Schedule Company.

10 Q Can you turn to proposed government's Exhibit 220?

11 A Yes.

12 Q Can you identify this in general?

13 A Yes. This is a fax.

14 Q And did you review this fax as part of your work in this  
15 case?

16 A Yes, I did.

17 MS. MAKAREWICZ: The government moves that Exhibit  
18 220 be admitted into evidence.

19 MR. WILLIAM COHAN: No objection.

20 THE COURT: Received.

21 (Exhibit No. 220 admitted.)

22 BY MS. MAKAREWICZ:

23 Q Turning your attention to part 2 of this fax, how does  
24 this exhibit differ from the previous fax shown to you?

25 A It shows the amount of 90,959 transferred, being made to

1 Bermuda Commercial Bank.

2 Q Thank you.

3 Mr. Beas, can you please turn to government's Exhibit  
4 221? Can you identify this exhibit?

5 A Yes.

6 Q What is this exhibit?

7 A This is a report. Investigation report for the Bank of  
8 Hawaii.

9 Q Did you review this document as part of your work in this  
10 case?

11 A Yes, I did.

12 Ms. MAKAREWICZ: At this time the government moves  
13 that Exhibit 221 be admitted into evidence.

14 MR. WILLIAM COHAN: No objection.

15 THE COURT: Received.

16 (Exhibit No. 221 admitted.)

17 BY MS. MAKAREWICZ:

18 Q Now, Mr. Beas, using the report on the first page, 2101,  
19 what does this document indicate?

20 A This document indicates Bank of Hawaii transferred funds  
21 in the amount of four -- the amount of 424,900 to Schedule  
22 Company.

23 Q Mr. Beas, can you please turn to Exhibit 222? Can you  
24 identify this exhibit?

25 A Yes.

1 Q What is it?

2 A This is an investigation report from Bank of Hawaii.

3 Q Did you review this document as part of your work in this  
4 case?

5 A Yes, I did.

6 MS. MAKAREWICZ: At this time the government moves  
7 Exhibit 222 be admitted into evidence.

8 MR. WILLIAM COHAN: No objection.

9 THE COURT: Received.

10 (Exhibit No. 222 admitted.)

11 BY MS. MAKAREWICZ:

12 Q Mr. Beas, using the report on the first page, 2112, what  
13 does this indicate?

14 A This document indicates that there was a wire transfer in  
15 the amount of \$90,959 from Asia Pacific Mutual Insurance  
16 Company for a payment to Bermuda Commercial Bank.

17 THE COURT: We'll break at this time. We'll come on  
18 back in at 1:30. We'll take up at that time.

19 (Court in recess.)

20 THE COURT: Counsel, you may continue.

21 MS. MAKAREWICZ: Thank you, Your Honor.

22 BY MS MAKAREWICZ:

23 Q Mr. Beas, prior to the break we were discussing evidence  
24 showing transfers from Sands and Mantra in to the Asia  
25 Pacific Bank of Hawaii account. Turning now to a part of

1 your investigation, did you investigate what happened to the  
2 funds once they were transferred to Schedule Company?

3 A Yes.

4 Q Okay. Please turn to what's been entered into evidence  
5 as government's Exhibit 231. If you could turn to please  
6 page 2247.

7 A I'm sorry. What page?

8 Q You've identified this as part of the Bermuda Commercial  
9 Bank records of Rothwell Limited?

10 A Yes.

11 Q Did you review this document with respect to Schedule  
12 Company transfers into this account?

13 A Yes.

14 Q Using this page, Mr. Beas, can you indicate an example  
15 where funds were deposited into this account from Schedule  
16 Company?

17 A Yes. At the bottom of the page on this transaction  
18 report there is funds transferred from 887,240. If you look  
19 across on February 18, it's a wire from Schedule Company.

20 Q Thank you.

21 Mr. Beas, can you, in the same exhibit, turn to page  
22 2252?

23 A Yes.

24 Q Can you identify this exhibit?

25 A Yes, I can.

1 Q What is this?

2 A This is a letter indicating that Mr. Joseph Francis is a  
3 beneficial owner.

4 Q Of what?

5 A Of Rothwell Limited.

6 Q Did you review this document as part of your work?

7 A Yes, I did.

8 Q How was this document used in your civil investigation?

9 A It was used to determine that Mr. Joe Francis, funds that  
10 were wired to him -- those funds belonged to him.

11 Q Mr. Beas, turning your investigation -- excuse me.  
12 During your investigation did you investigate what happened  
13 to the funds once they were transferred into Rothwell's  
14 Bermuda Commercial account?

15 A Yes. They were wired out to a Morgan Stanley account.

16 Q Mr. Beas, if you would turn your attention back to the  
17 schedule at 2247 in that same exhibit. Can you provide the  
18 Court an example of where you see money being wired from  
19 this account to the Morgan Stanley account?

20 A Yes. On the transaction report, on the posted date  
21 February 4, 2003 there is an amount of \$750,000 that was  
22 wire transferred to Dean Whitter Rentals?

23 Q Thank you.

24 Mr. Beas, can you now turn your attention to what's been  
25 entered into evidence as government's Exhibit 251?

1 MS. MAKAREWICZ: Your Honor, may I inquire as to  
2 whether or not Exhibit 251 has been admitted into evidence?

3 THE CLERK: No.

4 MS. MAKAREWICZ: Thank you.

5 BY MS. MAKAREWICZ:

6 Q Mr. Beas, do you recognize this exhibit?

7 A Yes, I do.

8 MR. COHAN: We'll stipulate to admissibility. This  
9 is a Morgan Stanley account statement for the relevant  
10 period.

11 MS. MAKAREWICZ: The government moves Exhibit 251  
12 into evidence at this time.

13 THE COURT: Received.

14 (Exhibit No. 251 admitted.)

15 BY MS. MAKAREWICZ:

16 Q Can you turn your attention to MSSB 247? Previously on  
17 the transaction report you identified a transaction of a  
18 wire from the -- from the Rothwell Bermuda account occurring  
19 on February 4, 2003 that would be deposited into Morgan  
20 Stanley's -- Rothwell's Morgan Stanley account. Can you  
21 identify that on this exhibit?

22 A On this statement under deposits for Morgan Stanley, the  
23 date of February 4, transfer wire funds in the amount of  
24 749,980.

25 Q There is difference of \$20?

1 A Yes, \$20 dollars difference for a processing fee or some  
2 fee for the handling of transaction.

3 Q Mr. Beas, was your deposition taken in this case?

4 A Yes, it was.

5 Q Did you review the transcript of the deposition?

6 A Yes.

7 Q Were the statements you made in the deposition accurate?

8 A Yes, except for one statement.

9 Q Were you asked by Mr. Cohan about distributions from  
10 Rothwell's Morgan Stanley account?

11 A Yes.

12 Q In your deposition -- in your deposition how many  
13 distributions did you state were made from the Rothwell  
14 Morgan Stanley account?

15 A Three.

16 Q And was that -- what was inaccurate about that statement?

17 A There was only two from the Rothwell Limited account.  
18 And I made a mistake by including an additional withdrawal  
19 from that account, which was Mr. Joe Francis. Joe Francis's  
20 withdrawal from his personal account. From the Morgan  
21 Stanley account.

22 Q It was your confusion between the two --

23 MR. WILLIAM COHAN: Objection. Leading.

24 THE COURT: Rephrase the question, Counsel.

25 BY MS. MAKAREWICZ:

1 Q Why did you make this error?

2 A I made this error because I was thinking of the entire  
3 Morgan Stanley account and was not thinking specifically of  
4 the Rothwell account.

5 Q When you finished your review of all documents, general  
6 ledgers, the policy statements, the wire reports and the  
7 investigation reports, did you make a determination  
8 regarding the allowance of the Asia Pacific insurance policy  
9 purchased by Sands and Mantra and claimed as a deduction in  
10 2002 and 2003?

11 A Yes, I did.

12 Q What was that determination?

13 A That determination that I made was that Mr. Joe Francis  
14 claimed unallowable business expenses and that Mr. Joe  
15 Francis was on both sides of the transaction here from his  
16 corporate funds. He was a wiring money out. And on the  
17 other side of the transaction he was receiving moneys in to  
18 the Morgan Stanley account.

19 Q Mr. Beas, turning back to Sands's 2003 return, can you  
20 please turn to what's been entered into evidence as  
21 government's Exhibit 209?

22 A Yes.

23 Q Page 194.

24 A Yes.

25 Q Using this portion of the return, can you identify any

1 other expense category you examined?

2 A Yes.

3 Q Which?

4 A These were professional fees claimed on statement 1 of  
5 the corporate return -- the S corporation return.

6 Q What document did you examine to investigate if this  
7 deduction was allowable as an ordinary and necessary  
8 business expense?

9 A The general ledger.

10 Q Can you turn to government's Exhibit 203? Please direct  
11 your attention to the page marked US 1115.

12 A Yes.

13 Q Can you identify the portion of this general ledger where  
14 professional fee expenses were reported?

15 A Yes. Top portion -- top portion, right page under  
16 professional fees.

17 Q What portion of this professional services category did  
18 you examine?

19 A I examined on this general ledger payments to Hadid  
20 Interiors, Crescent Capital.

21 Q What was your determination regarding professional  
22 service expense claimed on Sands's 2003 return?

23 A These were not allowable business expenses.

24 Q Why?

25 A Because they were paid for the construction of Mr. Joe

1 Francis's beach front property in Mexico.

2 Q Did Mantra claim a similar deduction for professional  
3 expenses on its 2002 and 2003 returns?

4 A Yes.

5 Q Can you please turn to government's Exhibit 243?

6 A Yes.

7 Q Can you please turn to page 206? Where on the return was  
8 a professional fee expense claimed on Mantra's 2002 return?

9 A It was claimed on statement number 3 at the bottom  
10 portion of those expenses and professional services for  
11 1,357,171.

12 Q What documents did you examine to investigate if this  
13 deduction was allowable as an ordinary and necessary  
14 business expense?

15 A General ledger.

16 Q Can you please turn to Exhibit 241?

17 A Yes.

18 Q Turn to page 11 -- 1224. Can you identify this exhibit?

19 A Yes, I can.

20 Q What's this?

21 A This is general ledger for Mantra Films, Inc. general  
22 ledger as of December 31, 2002.

23 Q Is this the portion of the main ledger?

24 A Yes, it is.

25 MS. MAKAREWICZ: At this time the government moves

1 that Exhibit 241 be admitted into evidence.

2 MR. WILLIAM COHAN: No objection.

3 THE COHAN: Received.

4 (Exhibit No. 241 admitted.)

5 BY MS. MAKAREWICZ:

6 Q Mr. Beas, can you please identify where the professional  
7 fee expense was reported on this portion of the general  
8 ledger?

9 A Yes. They're at the bottom of the page in that category  
10 professional services.

11 Q Does the total continue to the next page?

12 A Yes, it does.

13 Q What portions of the professional fee expense did you  
14 examine?

15 A Both pages on professional services I examined Capital  
16 Crescent payments that were posted to the ledger. And on  
17 the second page also Crescent Capital.

18 Q Mr. Beas, can you please turn to Exhibit 240?

19 A Yes.

20 Q In general can you distinguish this document?

21 A Yes. These are canceled check.

22 Q Did you examine these documents as part of your work in  
23 this case?

24 A Yes. A number of checks, yes.

25 MS. MAKAREWICZ: Your Honor, at this time the

1 government would move that Exhibit 240 be admitted into  
2 evidence.

3 MR. WILLIAM COHAN: I'm going to object because I  
4 can't even read what these are. Not a single one of my  
5 copies is even legible. But maybe the witness saw the  
6 originals.

7 THE COURT: Can you identify the original, or is it  
8 legible to you, sir?

9 THE WITNESS: Yes, it is.

10 THE COURT: Can we have a legible version to give to  
11 defense counsel -- plaintiff's counsel?

12 MS. MAKAREWICZ: I can get him a better copy at the  
13 break.

14 MR. WILLIAM COHAN: I don't believe it's material.  
15 I don't want to delay this. But for the record --

16 THE COURT: Can you show him now so he knows what  
17 you're questioning him on?

18 MR. WILLIAM COHAN: Shall I go to the podium?

19 MS. MAKAREWICZ: I was going to publish them, if he  
20 wants to see them.

21 MR. WILLIAM COHAN: I can't make it out. It's not  
22 really controversial. I assume he saw checks that were  
23 more, you know, legible than this because I can't see the  
24 amount.

25 THE COURT: I will admit them subject to a motion to

1 strike if I can't make them out. I'm going to overrule the  
2 objection. I'm going to admit it subject to a motion to  
3 strike if I can't make it out.

4 MS. MAKAREWICZ: Thank you, very much.

5 MR. WILLIAM COHAN: I'm sure they can find  
6 underlying data.

7 THE COURT: I understand.

8 BY MS. MAKAREWICZ:

9 Q Mr. Beas, can you make out the checks?

10 A Yes.

11 MR. WILLIAM COHAN: Okay.

12 BY MS. MAKAREWICZ:

13 Q What are these checks specifically?

14 A Payment for Crescent Capital for expenses for Mr. Joe  
15 Francis's personal residence.

16 Q Do these checks in this exhibit reconcile the check  
17 number on general ledger?

18 A Yes.

19 Q After --

20 THE COURT: Wait, wait, wait. Can you actually tell  
21 the check number on that? I can't tell anything.

22 THE WITNESS: The amount at the bottom. The check  
23 number shown at the bottom of the check.

24 THE COURT: I can see -- I can't make out the  
25 amount.

1 THE WITNESS: The amount is on the bottom right-hand  
2 side.

3 MR. WILLIAM COHAN: It's a million dollars.

4 THE COURT: Bottom right hand. To me it says  
5 20001000000000.

6 MR. GABRIEL COHAN: That's what I see, Your Honor.

7 MS. MAKAREWICZ: The check was written for 100,000.

8 THE COURT: Is that what you see?

9 THE WITNESS: I see -- okay.

10 THE COURT: Okay. That's the amount?

11 THE WITNESS: Yes.

12 MR. WILLIAM COHAN: Well, I withdraw the objection.  
13 If that's the amount, I have never seen it.

14 MS. MAKAREWICZ: These are canceled checks.

15 BY MS. MAKAREWICZ:

16 Q Mr. Beas, after reviewing these documents, returning to  
17 the general ledger, the checks, did you make a determination  
18 regarding the professional services expenses deducted on  
19 Sands and Mantra's income tax returns?

20 A Yes. These were unallowable business expenses claimed on  
21 the 1120S corporation.

22 Q What was the basis of your disallowance?

23 A The disallowance was my basis, was that they were not  
24 ordinary and necessary business expenses. They were  
25 expenses that were diverted from the corporate return to pay

1 for Mr. Joe Francis's beach front property in Mexico.

2 Q Thank you.

3 Mr. Beas, can you please turn to government's Exhibit  
4 243? You've also examined this as Mantra's 2002 1120  
5 return?

6 A Yes.

7 Q Did you examine any other portion of Mantra's 2002  
8 return?

9 A Yes.

10 Q What was the last category you examined?

11 A Statement number 3. I was statement number 5.

12 Q What category is that, Mr. Beas?

13 A On statement number 5 the category was media of the cost  
14 of goods sold in the amount of 29,948.13.

15 Q Is that on page 206A?

16 A Yes, it is.

17 MR. WILLIAM COHAN: Just for the record, it's  
18 actually 29,948,013.

19 THE WITNESS: Okay. I'm sorry.

20 THE COURT: Go ahead.

21 BY MS. MAKAREWICZ:

22 Q What part of this deduction did you examine?

23 A The footage expense.

24 Q What documents did you examine to investigate if this  
25 deduction was allowable as an ordinary and necessary

1 business expense?

2 A The general ledger.

3 Q Can you turn to government's Exhibit 238 page 1209?

4 A Yes.

5 MR. WILLIAM COHAN: 238?

6 MS. MAKAREWICZ: Towards the end of the document.

7 BY MS. MAKAREWICZ:

8 Q Where on this page is footage reported?

9 A It's reported on the top portion of the page.

10 Q What portions of this footage expense did you examine?

11 A Payments to Casa Blanca totalling the amount of  
12 442,141.50.

13 Q Please turn to proposed government's Exhibit 244.

14 A Yes.

15 Q Can you identify this exhibit in general?

16 A Yes. These are checks -- they were checks of payments to  
17 Casa Blanca.

18 Q Did you review this document as part of your work in this  
19 case?

20 A Yes, I did.

21 MS. MAKAREWICZ: At this time the government moves  
22 Exhibit 244 into evidence.

23 MR. WILLIAM COHAN: No objection.

24 THE COURT: Received.

25 (Exhibit No. 244 admitted.)

1 BY MS. MAKAREWICZ:

2 Q Mr. Beas, can you describe what these checks are  
3 specifically?

4 A These checks are payments from Mantra Films to Casa  
5 Blanca for payment to -- for the construction of a personal  
6 residence. Beach front property in Mexico.

7 Q Did the checks in this exhibit reconcile with the checks  
8 in general ledger?

9 A Yes.

10 Q Did Mantra take similar footage expenses on its 2003  
11 return?

12 A Yes.

13 Q Can you please turn to what's been entered into evidence  
14 as government's Exhibit 218? Please turn to page 222.

15 A Yes.

16 Q Which category of cost of goods sold is footage computed?

17 A Under media. Statement number 4.

18 Q What document did you examine to investigate if this  
19 deduction was allowable as an ordinary and necessary  
20 business expense?

21 A The general ledger.

22 Q Can you please turn to government's Exhibit 212?

23 A Yes.

24 Q Turn to page 845, which I believe is towards the back.

25 You've identified this previously as the March of 2003

1 general ledger?

2 A Yes.

3 Q What portions -- do you see the footage expense on that  
4 page?

5 A Yes, I do.

6 Q What portions of the footage expense did you examine?

7 A I examined the footage expense for Case Blanca de Punta  
8 Mita -- I examined the Crescent Capitol on the general  
9 ledger in the amount of 50,000.

10 Q Mr. Beas, after reviewing these documents, the return,  
11 the general ledger, for the footage expenses for 2002 and  
12 2003 taken as a deduction on Mantra's income tax returns,  
13 did you make a determination regarding the footage deduction  
14 for Mantra for those years?

15 A Yes. They were not ordinary and necessary business  
16 expenses. They were disallowed on the 1120 corporate  
17 return.

18 Q After you examined Mantra and Sands's 2002 and 2003  
19 returns, did you determine if any penalties were applicable  
20 to the examination?

21 A Yes. A civil fraud penalty was asserted on my report.

22 Q Why?

23 A Because the taxpayer, Joe Francis, committed tax evasion  
24 by deducting expenses that he was not entitled to that were  
25 not ordinary and necessary business expenses. He had -- he

1 had nominees and entities offshore where he disguised his  
2 income and reported expenses. And these funds that he wired  
3 out were income that he received back. In my -- also the  
4 expenses that he claimed for his personal residence were  
5 nondeductible. Again those were not ordinary and necessary  
6 expenses because they were for his own personal use.

7 Q When you made your determination regarding the business  
8 expenses claimed on the returns of Sands and Mantra, what  
9 did you do?

10 A I prepared my report and closed out my case.

11 MS. MAKAREWICZ: If I could have a moment, Your  
12 Honor?

13 THE COURT: Yes.

14 MS. MAKAREWICZ: I have no further questions of this  
15 witness.

16 THE COURT: Cross?

17 CROSS-EXAMINATION

18 BY MR. WILLIAM COHAN:

19 Q Good afternoon, Mr. Beas.

20 A Good afternoon.

21 Q We've met previously, haven't we?

22 A Yes, we have.

23 Q And you were deposed in this case on February 22, 2011,  
24 were you not?

25 A That's correct.

1 Q You've already admitted on the witness stand that you  
2 gave false testimony under oath, didn't you?

3 A Not false testimony. I made a mistake.

4 Q Well, if you make a mistake, isn't the mistake false?

5 A In my opinion, no.

6 Q Your testimony that was false was that \$5,450,000 came  
7 out of the Rothwell account when in truth and fact the money  
8 came out of Joe Francis's personal account, and that money  
9 went to pay for Joe Francis's personal residence in Bel Air,  
10 California. Is that right?

11 A Correct. And for the Pacific Palisades property also.

12 Q Now, you believe it was the Pacific Palisades property  
13 also?

14 A I'm trying to -- right. The withdrawal was for the  
15 Bel Air property.

16 Q And so you are recalling now? What's this?

17 A The amount that was withdrawn from his Morgan Stanley  
18 account was for the purchase of his Bel Air property.

19 Q Are you sure?

20 A Yes.

21 Q The amount is 5,450,000?

22 A Yes.

23 Q You're sure?

24 A Yes.

25 Q You're not confused now?

1 A No.

2 Q Now, you say you were confused during your deposition  
3 when you made the false statement that the 5,450,000 came  
4 out of Rothwell account that was used to purchase Joe  
5 Francis's personal residence. Is that your testimony now?

6 A Yes.

7 Q Do you recall being asked prior to the question about  
8 Exhibit GG from the tax court that incorrectly stated that  
9 the \$5,450,000 came out of Rothwell's account a bunch of  
10 questions about the fact that only two disbursements were  
11 ever made by Rothwell for any purpose?

12 A That's right. Only two withdrawals from Rothwell.

13 Q Only two withdrawals from the two Rothwell accounts ever.  
14 Is that right?

15 A That's correct.

16 Q During the course of your investigation you were very  
17 concerned about any monies that might have been disbursed by  
18 the Rothwell account because if any were disbursed for Joe  
19 Francis's personal benefit, that would be material to your  
20 conclusions, wouldn't it?

21 A That's correct.

22 Q Right. And there were only two, right?

23 A That's correct.

24 Q And you reviewed the flowchart that constitutes Exhibit  
25 129, didn't you?

1 A Yes.

2 Q Let's take a look at Exhibit 129. That's our exhibit,  
3 plaintiff Exhibit 129. Do you have Exhibit 129 before you?

4 A Yes, I do.

5 Q May I invite your attention to page number document 277-6  
6 at the top?

7 A 277-6?

8 Q Yes sir. At the top it's a flowchart. It shows Joe  
9 Francis's name at the top and it shows the flow of funds?

10 A Yes.

11 Q I will put this on the Elmo. Okay.

12 Can you see there that on March 13 of 2002, \$1,030,000  
13 were transferred from Rothwell Limited Bermuda Commercial  
14 Bank account to Crescent Capital to purchase lot 14?

15 I'm showing it on the Elmo. Can you see that on the  
16 screen?

17 A Yes.

18 Q So that's one of the two disbursements that were ever  
19 made by Rothwell for any purpose, correct?

20 A Yes.

21 Q And then if you look just above that there is one other  
22 disbursement, isn't there?

23 A Yes.

24 Q And what's that one other disbursement, Mr. Beas?

25 A From the Rothwell Limited account from Irvine Morgan

1 Stanley.

2 Q Right. That's the only money that ever came out of that  
3 Morgan Stanley account. Is that right?

4 A That's correct.

5 Q What is the amount?

6 A A little over one million.

7 Q It's \$1,023,000?

8 A Correct.

9 Q So your testimony is that you were confused by my  
10 questions during your deposition. Is that right?

11 A My recollection is at the time not that I was confused,  
12 but I was trying to recall the transactions that you had  
13 mentioned.

14 Q You were trying to recall the transactions. What was  
15 confusing about the fact that there were only one  
16 transaction that ever came out of the Rothwell Limited  
17 account for 1,023,000 and me asking you about 5,450,000 that  
18 didn't come out of that account?

19 A At the time my thinking was that there were two accounts  
20 in the Morgan Stanley account. One was a personal account  
21 for Mr. Joe Francis, and the other was for the Rothwell  
22 Limited Morgan Stanley account.

23 Q Was the fact that there were two accounts too confusing  
24 for you? You couldn't remember or distinguish between them.  
25 Is that right?

1 A No. I just combined -- when you mentioned it, I just  
2 recalled the Morgan Stanley account, knowing that there was  
3 two type of accounts. One with a personal account, and the  
4 other was for the Rothwell Limited account.

5 Q Let's go to your testimony during this deposition that  
6 Ms. Makarewicz asked you about. I'm inviting your attention  
7 to the questions and answers on page 86 of your deposition.  
8 Do you see that?

9 MS. MAKAREWICZ: Objection. This document has not  
10 been entered into evidence.

11 THE COURT: It can be used for impeachment after  
12 you've questioned him on it.

13 MR. WILLIAM COHAN: It's deposition Exhibit 147. I  
14 will move it into evidence at this time.

15 MS. MAKAREWICZ: Objection. It's hearsay. Mr. Beas  
16 is on the stand.

17 THE COURT: Sustained. Sustained.

18 BY MR. WILLIAM COHAN:

19 Q Let me ask you -- I want to invite your attention to the  
20 questions and answers -- about what you say under oath  
21 today. You were confused. Okay? Do you see the page  
22 before you? Page 86 where I ask you, beginning on line 3:  
23 "You previously testified there were only two  
24 disbursements --"

25 THE COURT: Counsel, I will cut you off. You're

1 reading from something that is not evidence. You can ask  
2 him a question and use the deposition to impeach him if you  
3 wish.

4 MR. WILLIAM COHAN: That's what I'm doing.

5 THE COURT: No. You're reading the deposition in.

6 BY MR. WILLIAM COHAN:

7 Q Didn't you testify there were only two disbursements from  
8 Rothwell Limited's account?

9 MS. MAKAREWICZ: Objection. This question has been  
10 asked and answered numerous times.

11 THE COURT: Overruled.

12 THE WITNESS: Can you repeat the question?

13 BY MR. WILLIAM COHAN:

14 Q Didn't you testify that there were only two disbursements  
15 from Rothwell Limited with Morgan Stanley?

16 A Yes.

17 Q Those were for purchases for lots in Mexico, weren't  
18 they?

19 A That's correct.

20 Q Then you testified 5,450,000 came out of an account in  
21 addition to the Rothwell Limited account in addition to  
22 those two, didn't you?

23 A Yes.

24 Q That was because you were confused?

25 A Yes.

1 Q You made mistake?

2 A Yes.

3 Q Your testimony earlier was that didn't make the testimony  
4 you gave false?

5 A My opinion -- I was not trying to make a false statement.  
6 My opinion was that I didn't recall.

7 Q But your testimony was not that you didn't recall, was  
8 it? It was that the money had come out of the Rothwell  
9 account, correct?

10 A If I remember -- if I recall, yes.

11 Q Okay. Now, during the course of your investigation did  
12 you see a memoranda of interview of a man named Michael  
13 Barrett?

14 A Yes.

15 Q You know Mr. Barrett was working for Mantra Films and  
16 Sands Media, correct?

17 A Yes.

18 Q Michael Barrett is the gentleman who was providing the  
19 information to the tax return preparer who prepared the tax  
20 returns for Sands Media and Mantra Films, Inc. for 2002-2003  
21 that you've been testifying about today, correct?

22 MS. MAKAREWICZ: Objection. Foundation.

23 THE COURT: If you know?

24 THE WITNESS: Yes.

25 BY MR. WILLIAM COHAN:

1 Q You know it was Mr. Barrett who provided figures to the  
2 tax return preparer, correct?

3 A Yes.

4 Q Did you know that Mr. Barrett filed a claim for a reward  
5 for monies that were obtained from Joe Francis?

6 A No, I do not know that.

7 Q Didn't you ask Special Agent Jensen whether Mr. Barrett  
8 might have had a motive to frame Joe Francis to get money?

9 A No. I never heard of a motive stated that way or Special  
10 Agent Mark Jensen mention that to me.

11 Q Special Agent Jensen didn't mention to you the fact that  
12 Michael Barrett admitted giving a false statement to the  
13 IRS?

14 A No.

15 Q You weren't aware that Mr. Barrett and two other men set  
16 up a company to defraud Mr. Francis?

17 A No, I have no knowledge of that.

18 Q So you've never heard of WMR marketing?

19 A No, I haven't.

20 Q You've never heard of William Lareau?

21 A No.

22 Q You've never heard of Roman Pellick?

23 A No.

24 Q And yet you are the agent who imposed fraud penalties  
25 against Mr. Francis?

1 A For the items that -- false deductions that he claimed on  
2 his corporate return, yes.

3 Q Well, did you know that those false items were actually  
4 submitted to Mr. Barrett by the return preparer?

5 A My understanding is that Mr. Barrett did give information  
6 for the preparation of his tax returns to be filed with the  
7 preparer. But I was under the assumption that -- my  
8 determination that it was Joe Francis that gave Mr. Barrett  
9 the information so that he can have his return prepared.

10 Q You didn't know Mr. Barrett was the controller and  
11 responsible for making disbursements?

12 A I know that he was the controller of the company.

13 Q So you knew Mr. Barrett was the controller for Sands  
14 Media?

15 A Yes.

16 Q You knew he was the controller for Mantra Films?

17 A Yes.

18 Q You knew he was person responsible for providing  
19 information to the return preparer? You just --

20 A I just assumed so, yes, because he is the controller.  
21 Not that he specifically gave the preparer the information.  
22 I just assumed because he's the controller that he did give  
23 that information to the preparer under the orders of Mr. Joe  
24 Francis.

25 THE COURT: You're saying you have no personal

1 knowledge one way or the other?

2 THE WITNESS: No, I have no personal knowledge.

3 THE COURT: Next question?

4 BY MR. WILLIAM COHAN:

5 Q You didn't know it was actually Mr. Barrett who accused  
6 Mr. Francis of taking these false deductions and claiming an  
7 award for himself? You didn't know that?

8 A No.

9 Q If it was Mr. Barrett who was responsible for these false  
10 entries on these tax returns, there shouldn't be any fraud  
11 penalty against Mr. Francis, should there?

12 A I do not know that to be true.

13 Q Well, you've never undertaken any inquiry to find out,  
14 have you?

15 A No.

16 Q Did you know that Mr. Barrett had a signature stamp in  
17 order to use Joe Francis's name on documents and he used it  
18 on checks?

19 A No, I did not know that.

20 MR. WILLIAM COHAN: Nothing further of this witness.

21 THE COURT: Any redirect?

22 MS. MAKAREWICZ: No more redirect.

23 THE COURT: You may step down.

24 May this witness be excused?

25 MS. MAKAREWICZ: Yes, Your Honor.

1 THE COURT: Next witness?

2 MS. MAKAREWICZ: The government calls Mr. Mohammed  
3 Hadid to the stand.

4 MOHAMMED HADID

5 The witness, after being duly sworn, testified as follows:

6 THE CLERK: State your full name and spell your last  
7 name for the record.

8 THE WITNESS: My name is Mohammed Anwar Hadid. My  
9 last name is H-A-D-I-D.

10 COURT REPORTER: Sir, could you spell your middle  
11 name?

12 THE WITNESS: A-N-W-A-R.

13 THE COURT: Counsel, you may inquire.

14 DIRECT EXAMINATION

15 BY MS. MAKAREWICZ:

16 Q Mr. Hadid, I notice that you brought some personal items  
17 with you to the stand. Can you please place those to the  
18 side?

19 Mr. Hadid, what do you do for a living?

20 A I'm a developer.

21 Q What types of projects do you develop?

22 A For the last 40 years I have built -- developed over  
23 3 million square feet in Washington, D.C., Aspen,  
24 Scottsdale, Arizona and other parts of the world. And I  
25 have built about 15 Ritz-Carltons in the '80s and early

1 '90s.

2 MR. WILLIAM COHAN: I'm sorry. I'm not objecting.  
3 I just didn't understand the last part of the -- 15?

4 THE WITNESS: 15 Ritz-Carltons.

5 MR. WILLIAM COHAN: 15 Ritz-Carltons?

6 THE WITNESS: Yes, sir.

7 MR. WILLIAM COHAN: Thank you.

8 THE COURT: In the '80s and '90s?

9 THE WITNESS: Yes, sir.

10 THE COURT: Okay. Now, just speak into the mic so  
11 we can all hear you.

12 Go ahead.

13 BY MS. MAKAREWICZ:

14 Q Do you own a company named Crescent Capital?

15 A I did.

16 Q Do you own a company named Hadid Construction?

17 A In Mexico, yes.

18 Q Were you involved in a development in Punta Mita, Mexico?

19 A I have.

20 Q And what was the name of the development?

21 A Ranchos.

22 Q How did you become involved in the development?

23 A In 1999 I was approached by a gentleman named Jorge Gomez  
24 who was a partner with Deenie who owned the total  
25 development in Punta Mita around the Four Seasons hotel.

1 Q And what was your involvement in the development?

2 A I was consultant at the time to -- they were master  
3 planning the -- the development around the Four Seasons  
4 hotel. So I came in to help them.

5 Q Do you know Joe Francis?

6 A I do.

7 Q How did you first meet him?

8 A It was an occasion where he wanted to fly an aircraft  
9 named -- to Falcon 20. And Marty Lou, who was a pilot,  
10 asked me if he could take him on a test ride in the Falcon  
11 20.

12 Q Can you describe the first meeting with Mr. Francis?

13 A I was leaving to Mexico at that time. And Mr. Francis I  
14 believe -- I'm sure he -- I'm not exactly sure if he came by  
15 himself or not. But he was one of the passengers on the  
16 aircraft.

17 Q And can you describe your first trip with Mr. Francis in  
18 Mexico?

19 A He traveled with me to Mexico. He stayed in my home  
20 there, which I developed at Ranchos. First house was  
21 Ranchos Punta Mita.

22 Q What happened during his visits with respect to the Punta  
23 Mita project?

24 A I assumed he enjoyed the trip. He loved the area. He  
25 thought that would be a place for him to purchase a

1 residence or lot.

2 Q Why did Francis want to purchase a lot in Punta Mita?

3 A He enjoyed his stay, I guess.

4 Q To your knowledge, what was the property going to be used  
5 for?

6 MR. WILLIAM COHAN: Object. Lack of foundation.

7 THE COURT: Sustained.

8 Did he indicate to you what it was going to be used for?

9 THE WITNESS: All the Ranchos are used for  
10 residential area. Residential project.

11 THE COURT: Residential. Okay.

12 BY MS. MAKAREWICZ:

13 Q Are there covenants, conditions and restrictions  
14 regarding the Punta Mita property?

15 A There are, yes.

16 Q How are you aware of the CC and Rs?

17 A All residents there were delivered a packet with the  
18 CC and Rs.

19 Q Were you instrumental in developing the CC and Rs?

20 A I was part of the group at the time, yes.

21 Q Can you conduct business within the Punta Mita property  
22 or in the development?

23 A I'm sorry. Say that again.

24 Q Can you conduct business -- can an owner of a home  
25 conduct business within the Punta Mita residential area?

1 A I'm not aware of.

2 Q Would that include filming?

3 A I'm not aware of.

4 Q Do you have a lawyer in Mexico?

5 A Yes.

6 Q And what's his name?

7 A His name is Luis Hernandez.

8 Q Based on your visits with Mr. Francis, did he select a  
9 lot to purchase?

10 A We walked all the lots in Punta Mita on the Ranchos, and  
11 he indicated that lot 14 will be a good lot for him.

12 MR. WILLIAM COHAN: Your Honor, excuse me for  
13 raising this now. We lodged an objection to the fact that  
14 this witness was not disclosed to us. And the government  
15 agreed it was only going to use this witness for impeachment  
16 purposes. I don't see us going the direction of  
17 impeachment. Your Honor hasn't ruled on our objection. But  
18 I thought I needed to renew it at this point.

19 THE COURT: Okay. It will be renewed for the record  
20 and the Court will only consider it for any areas where it  
21 is impeachment.

22 MS. MAKAREWICZ: Thank you, Your Honor.

23 BY MS. MAKAREWICZ:

24 Q Were there negotiations regarding the price of the lot?

25 A Yes.

1 Q And with whom did you negotiate the price of lot 14?

2 A With Mr. Francis.

3 Q Did you reach an agreement regarding the purchase price  
4 of lot 14?

5 A We reached an agreement that the price would be  
6 1,550,000.

7 Q And can you please expand upon the agreement you reached  
8 with Mr. Francis for the purchase of lot 14? The mechanics?

9 A Mechanics is that I have the right at the time to  
10 purchase that particular lot for approximately 1,300,000.  
11 And then I would sell it to him for 1,550,000. And reason  
12 why I had -- at the time when I developed these lots I was  
13 able to -- to have four lots that I can -- I can buy at the  
14 certain price and I can resell or flip for a price higher  
15 than that.

16 Q Again how much was the purchase price of lot 14?

17 A 1,550,000.

18 MS. MAKAREWICZ: Your Honor, I'd like to approach  
19 the clerk with some exhibits that have been marked as the  
20 government's next in line.

21 THE COURT: Okay. Also give a copy to the  
22 defendant --

23 MS. MAKAREWICZ: I'm handing a copy to plaintiff's  
24 counsel.

25 THE COURT: Okay.

1 BY MS. MAKAREWICZ:

2 Q Mr. Hadid, can you turn to Exhibit 290? Without  
3 revealing the content, can you identify this document?

4 A This is from my attorney Luis Hernandez to Mr. Brian  
5 Rayment, representing Mr. Joe Francis at the time. Yes.

6 Q How did you have a copy of this exhibit?

7 A I have had my documents in storage. I pulled them out  
8 and this was from the original documents that we had when we  
9 closed on the project.

10 MS. MAKAREWICZ: At this time government moves Exhibit  
11 290 in evidence.

12 THE COURT: It was an e-mail that was sent from your  
13 attorney to --

14 THE WITNESS: Yes, sir.

15 THE COURT: Were you copied on it?

16 THE WITNESS: Yes, sir.

17 THE COURT: That's your copy?

18 THE WITNESS: Yes.

19 MR. WILLIAM COHAN: I don't understand that there is  
20 anything in here that is impeaching anything.

21 THE COURT: So far's all impeachment. I will  
22 overrule the objection.

23 The testimony was that the Trust bought the lot --  
24 Francis -- so this would be improper impeachment. Go ahead.

25 BY MS. MAKAREWICZ:

1 Q Mr. Hadid, can you turn your attention to the end of the  
2 first paragraph where it states: "For the closing, parties  
3 agreed the price to be paid incorrectly spelled in full?  
4 1,550,000 US dollars."

5 Was that your understanding regarding the price of Lot  
6 14?

7 A That's correct.

8 Q Mr. Hadid who paid the initial deposit to you for the  
9 land of Lot 14?

10 A Initial deposit was paid by Mr. Francis. \$100,000 from  
11 his personal bank account.

12 Q Mr. Hadid, there is a set of binders at the witness  
13 stand. Can you turn to the government binder 2 and Exhibit  
14 245?

15 A I'm sorry?

16 THE CLERK: Counsel, I'm sorry. 245?

17 MS. MAKAREWICZ: Yes.

18 THE WITNESS: Yes.

19 BY MS. MAKAREWICZ:

20 Q Without revealing the contents, do you recognize this  
21 document?

22 A I do.

23 Q And was this a document that you maintained in the --  
24 your files for lot 14?

25 A Yes, ma'am.

1 MS. MAKAREWICZ: Your Honor, at this time I would  
2 like to move this into evidence. Exhibit 245.

3 MR. WILLIAM COHAN: No objection, Your Honor, given  
4 the Court's ruling.

5 THE COURT: And, Counsel, I'm going to treat your  
6 objection as being a continuing objection for the purposes  
7 of impeachment. So you won't have to make that objection  
8 every time. Overruled.

9 You may continue.

10 (Exhibit No. 245 admitted.)

11 BY MS. MAKAREWICZ:

12 Q Mr. Hadid, was this the only amount of money that  
13 Mr. Francis paid to you?

14 A No, ma'am.

15 Q Mr. Hadid, can you please turn to the smaller set of  
16 exhibits just handed to you previously and Exhibit 291?

17 A Yes, ma'am.

18 Q Without revealing the content, can you identify this  
19 document?

20 A This is another e-mail from Mr. Luis Hernandez  
21 to Mr. Brian Rayment.

22 Q And how did you receive a copy of this document?

23 A I received a copy of the document from Mr. Luis  
24 Hernandez.

25 Q Where did you receive -- where did you file this

1 document?

2 A In my files.

3 MS. MAKAREWICZ: Your Honor, at this time I'd like  
4 to move Exhibit 291 in to evidence.

5 THE COURT: Received.

6 (Exhibit No. 291 admitted.)

7 BY MS. MAKAREWICZ:

8 Q Mr. Hadid, can you turn to the second page of the  
9 document?

10 A Yes, ma'am.

11 Q With respect to the paragraph titled "Closing on lot 14"?

12 A Yes, ma'am.

13 Q The document states that you -- excuse me --

14 Mr. Hernandez spoke with you that morning and that "he told  
15 me that the total price of 1,550,000 would be paid as  
16 follows," and that it delineates specific portions to be  
17 paid to you and through escrow. Is that correct?

18 A Yes, ma'am.

19 Q That was your understanding of the deal between yourself  
20 and Mr. Francis regarding lot 14?

21 A Yes, ma'am.

22 Q Mr. Hadid, can you please turn to government's Exhibit  
23 292?

24 Mr. Hadid, without revealing the content, can you  
25 identify this document?

1 A Yes, ma'am.

2 Q What is this document?

3 A These are two stubs of checks that were received on, I  
4 believe, around March -- March -- it says six here. I  
5 believe we received it probably the date after. But for  
6 400,000 and 100,000. Total 500,000.

7 Q Where did you find this document?

8 A They were in my files.

9 MS. MAKAREWICZ: At this time I'd like to move 292  
10 into evidence.

11 THE COURT: It will be received.

12 (Exhibit No. 292 admitted.)

13 BY MS. MAKAREWICZ:

14 Q Mr. Hadid, what are the check numbers on this exhibit?

15 A The check numbers are 4428, 4425.

16 Q Again, these are the two checks you received from Mantra  
17 from Francis for the purchase of lot 14?

18 A Yes, ma'am.

19 Q Did Crescent Capital have a bank account with City  
20 National Bank?

21 A Yes.

22 Q In the same binder can you please turn to Exhibit 240?  
23 Mr. Hadid, on the bottom right-hand corner of those  
24 documents there is a number indicating page numbers. Can  
25 you please turn to US 000475?

1 A Yes, ma'am.

2 Q To the best of your ability can you read the check number  
3 of this check?

4 THE COURT: If you can make it out.

5 THE WITNESS: It seems like there is 468362413.

6 BY MS. MAKAREWICZ:

7 Q Can I turn your attention to the first few numbers  
8 written out on the bottom of that check?

9 A 004425.

10 Q Mr. Hadid, turning the page to 476, to the best of your  
11 ability can you see how that check was cashed?

12 A That was deposited at Crescent Capital LTD.

13 Q That is your company?

14 A Correct.

15 Q Can you turn to page 479? And reading the first three  
16 numbers --

17 A Yes, ma'am.

18 Q The first set of numbers on the bottom of check, can you  
19 identify the check number?

20 A That 004428.

21 Q Again to the best of your ability, on the next page can  
22 you identify how the check was cashed?

23 A Same way. To City National Bank and to Crescent Capital,  
24 which is our account.

25 Q Thank you.

1 Mr. Hadid, turning to the last exhibit 293. It was part  
2 of the documents presented to you earlier, the smaller  
3 documents.

4 A Oh.

5 Q Without revealing the content of this document, can you  
6 identify it?

7 A Yes.

8 Q What's this?

9 A It's another document from Luis Hernandez to Mr. Rayment.

10 Q How did you have a copy of this e-mail?

11 A I received a copy from Mr. Luis Hernandez.

12 MS. MAKAREWICZ: Your Honor, at this time the  
13 government would move Exhibit 293 into evidence.

14 THE COURT: Received.

15 (Exhibit No. 293 admitted.)

16 BY MS. MAKAREWICZ:

17 Q Mr. Hadid, I'd like to refer you to the bottom of the  
18 e-mail. I understand it goes from bottom to the top in  
19 chronological order. Do you see the statement -- part of  
20 the statement from Luis to Brian stating: "I understand  
21 that Mr. Francis and Mr. Hadid want to close the deal as  
22 soon as possible"?

23 Do you know which deal that is?

24 A There was only one deal.

25 Q That was?

1 A Lot 14.

2 Q Mr. Hadid, turning to the next response from Mr. Rayment  
3 to Mr. Hernandez. In the middle of that page: "I am  
4 meeting with Joe this evening and we'll discuss the deal."

5 Was that your understanding?

6 A Yes, ma'am.

7 Q In your experience with the business deal to purchase lot  
8 14, who was the person or entity that purchased lot 14?

9 A Only person I dealt with was Joe Francis.

10 Q Have you ever heard of Rothwell Limited?

11 A I have not.

12 MS. MAKAREWICZ: No further questions, Your Honor.

13 THE COURT: Cross?

14 MR. WILLIAM COHAN: May I have a moment, Your Honor?

15 THE COURT: Sure.

16 CROSS-EXAMINATION

17 BY MR. WILLIAM COHAN:

18 Q Good afternoon, Mr. Hadid.

19 A Good afternoon, sir.

20 Q Do you recall that the actual closing on this lot  
21 involved another million dollars, give or take, that we  
22 haven't seen yet in these documents?

23 A There was a million 50.

24 Q Right. And Do you recall that million 50 came from a  
25 company that was incorporated in Mexico by Mr. Rayment or

1 attorneys working for him called Casa Blanca de Punta Mita  
2 SA de VC?

3 A Am I aware of where the money came from?

4 Q Are you aware that actually that was the entity which  
5 acquired title to lot 14?

6 A Case Blanca Mexico, yes.

7 Q You were aware that actually although Mr. Francis was the  
8 source of some funds, the remainder of the funds came from a  
9 trust and the corporation that acquired ownership of the  
10 property was Casa Blanca de Punta Mita SA de CV?

11 A All I know is that there was an amount of 1,050,000 that  
12 needs to go to a title company to close such a deal. Yes.

13 Q You were aware that the million 50,000 came not directly  
14 from Mr. Francis, correct?

15 A I'm not aware of that.

16 Q You didn't know where the money came from?

17 A No. I didn't care. At the time we transferred title,  
18 transferred the actual deal from myself, Hadid Development  
19 at the time, to Mr. Francis or his entity.

20 Q You're not aware that the actual transfer was to a  
21 corporation that was Case Blanca de Punta Mita SA de CV?

22 A I'm aware that the transfer of title from me to an entity  
23 that is controlled or owned by Mr. Francis.

24 Q And you say that it was controlled or owned by  
25 Mr. Francis. Do you know anything about the actual

1 ownership of that entity?

2 A I do not.

3 Q Okay. So you're just assuming that Mr. Francis has some  
4 sort of control over it, right?

5 A Well, he paid me the 500,000, which is a combination of  
6 the 26 -- approximately 263,000 that I put up a deposit for  
7 the lot with Stewart Title Company. Plus my profit, which  
8 is combination of. So that was 260,000 plus. So that's how  
9 I received the \$500,000 total.

10 Q All right. I understand how you received the money. But  
11 my question concerned the name of the entity that -- that  
12 acquired the actual ownership of the property. And you  
13 confirmed that was Casa Blanca de Punta Mita SA de CV,  
14 right?

15 A The company that acquired the ownership was, if I recall  
16 that far back, was the Mexican corporation that was set up  
17 by a Mexican lawyer in Guadalajara.

18 Q Did you know that Mr. Rayment actually hired the attorney  
19 in Guadalajara to perform those services?

20 A I believe so, yes.

21 Q And have you ever heard of Island Films Limited?

22 A I have not.

23 Q Summerland Holdings Limited?

24 A I have not.

25 Q Are you aware of the Francis Trust?

1 A I'm not.

2 Q Have you ever been to the Turks & Caicos Islands?

3 A I have not.

4 Q Do you know Colin Chaffe?

5 A I do not.

6 MR. WILLIAM COHAN: I have nothing further of this  
7 witness. Thank you.

8 THE COURT: Anything further, Counsel?

9 MS. MAKAREWICZ: No, Your Honor.

10 THE COURT: You may step down. Thank you, sir.  
11 May this witness be excused?

12 MS. MAKAREWICZ: Yes, Your Honor.

13 THE COURT: You're free to go. Thank you for coming  
14 in.

15 MR. WILLIAM COHAN: Your Honor?

16 THE COURT: Just a second.

17 MR. WILLIAM COHAN: I'm sorry.

18 THE COURT: Okay. Yes, Counsel?

19 MR. THOMAS: The government rests.

20 THE COURT: Okay. Rebuttal witnesses at this time?  
21 You have one coming in tomorrow. Don't worry about that.  
22 Anybody else until that witness?

23 MR. WILLIAM COHAN: Can we have just a moment, Your  
24 Honor?

25 THE COURT: Sure.

1 MR. WILLIAM COHAN: We would like to call  
2 Mr. Rayment briefly in rebuttal.

3 THE COURT: Okay.

4 BRIAN JAY RAYMENT

5 The witness, after being duly sworn, testified as follows:

6 THE CLERK: May I please ask that you re-state your  
7 name for the record?

8 THE WITNESS: Yes. Brian J. Rayment.

9 THE COURT: Okay. Counsel, you may inquire.

10 MR. WILLIAM COHAN: Thank you.

11 DIRECT EXAMINATION

12 BY MR. WILLIAM COHAN:

13 Q Mr. Rayment, do you recall negotiations in connection  
14 with which the property, lot 14, was acquired basically  
15 through an offering made by Mohammed Hadid?

16 A Yes.

17 Q And do you recall discussions that you had with Mr. Hadid  
18 about the contributions that would be made to pay the  
19 entirety of the purchase price?

20 A Well, yes. And the purchase price was as he indicated.  
21 Two different things. I have viewed it differently than he  
22 did because we understood the purchase price at closing to  
23 be the million 50. And he was being paid I think what I  
24 referred to in my deposition as a spiff in the middle for  
25 his interest that he had in the contract.

1 Q Because, as Mr. Hadid testified, he had an option  
2 basically to acquire the property strictly for the purpose  
3 of flipping it?

4 A I don't know that. I mean, what I understood was that he  
5 was the owner of the lot. But then it turned out as we got  
6 closer to closing he was going to get that portion of the  
7 purchase price and the rest was going to be paid to the  
8 Mexican corporation that was in title. So when it closed at  
9 Stewart Title, or through them, only the million -- roughly  
10 a million 50 was handled through Stewart Title to pay to the  
11 actual owner of the property.

12 Q Okay. Is that price the amount that is reflected in the  
13 documents for which title is insured?

14 A Yes.

15 Q Did you have any conversations with Mr. Hadid about the  
16 details of the Francis Trust?

17 A No.

18 Q And did you tell Mr. Hadid that the Mexican corporation  
19 was going to be owned half by Island Films and half by  
20 Summerland Holdings, which were owned by the Francis Trust?

21 A No. I didn't think it was any of his business.

22 Q Is that why you didn't tell him?

23 A Yes.

24 BY MR. WILLIAM COHAN: Nothing further.

25 THE COURT: Cross?

CROSS-EXAMINATION

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BY MR. THOMAS:

Q So, Mr. Rayment, when you told me earlier today that the purchase price for that property was \$1.03 million, that was false testimony, correct?

A 1.03?

Q Yes. \$1.03 million. \$1,030,000. That's what you said the purchase price was for that property?

A I believe we spoke about a million 30. If it's a million 30 or a million 50, counsel, I'll stand corrected.

Q No. The purchase price was 1.5 million. Mr. Hadid just testified to that.

So you were aware of that because you were copied on those e-mails, weren't you?

A I think we're playing semantics. The difference between the million five and the million -- roughly million 30 or million 50 comes down to how much was actually paid to purchase the property versus what was paid to Mr. Hadid for his -- if you want to call it a spiff or brokerage or whatever. But the actual purchase price paid to the buyer was just over a million. I think, frankly, now that you bring it up, the difference between the million 30 and the million 50 was, I think, about \$22,000 in the engineering fees that had to be paid and the 2,500 or \$3,500 that went to capitalize the company in Mexico. But I'm speaking in

1 generalities, counsel. That purchase range, to the best of  
2 my recollection, is where it was. Around a million 30 to a  
3 million 50.

4 Q You were copied on that e-mail that Mr. Hadid just  
5 identified that said that the purchase price for the  
6 property was 1.55 million.

7 My question is to you, when you testified earlier today  
8 that the purchase price of that property was 1.03 million,  
9 that was false testimony, wasn't it? You can answer that  
10 question "yes" or "no," Mr. Rayment.

11 THE COURT: He can answer the question. It doesn't  
12 have to be "yes" or "no."

13 Go ahead.

14 THE WITNESS: As I indicated, counsel, the purchase  
15 price that was paid to the seller of the property through  
16 Stewart Title to obtain a deed in the name of Case Blanca de  
17 Punta Mita was somewhere in the 130 to 1 -- a million 30 to  
18 a million 50,000 range. An additional amount was, I agree,  
19 paid to Mohammed Hadid. But that was because he brokered  
20 the deal. It wasn't to the owner of the property to  
21 purchase it.

22 MR. THOMAS: No further questions.

23 THE COURT: You may step down.

24 Any other witnesses other than tomorrow?

25 MR. COHAN: Nothing further, Your Honor, until

1 tomorrow at a time you have not yet identified.

2 THE COURT: 9:00 tomorrow. See everybody back then  
3 at 9:00 tomorrow morning.

4

5 (Court in recess.)

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C E R T I F I C A T E

I, Nichole Rhynard, CCR, CRR, RMR, Court Reporter for the United States District Court in the Central District Court at Los Angeles, do hereby certify that I was present in court during the foregoing matter and reported said proceedings stenographically.

I further certify that thereafter, I have caused said stenographic notes to be transcribed under my direction and that the foregoing pages are a true and accurate transcription to the best of my ability.

Dated this 21st day of July 2011.

/S/ Nichole Rhynard  
Nichole Rhynard, CSR, CRR, RMR  
Official Court Reporter

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

- - -

HONORABLE R. GARY KLAUSNER, JUDGE PRESIDING

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ROTHWELL, LTD., a Cayman Islands corporation, Case No. 10-cv-00479-RGK-FFM

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

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COURT TRIAL

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Los Angeles, California

June 14, 2011

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APPEARANCES:

For the Plaintiff: Gabriel L. Cohan  
William A. Cohan

For the Defendant: Darwin Thomas  
Valerie L. Makarewicz

Reported by: Nichole Rhynard, RMR, CRR,  
CA CSR #137256  
Official Court Reporter  
nicholerhynard@yahoo.com

Proceedings recorded by mechanical stenography. Transcript produced by Reporter on computer.

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LOS ANGELES, CALIFORNIA; June 14, 2011, 9:37 a.m.

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THE CLERK: Calling calendar item number 3, Case Number SACV10-479-RGK, Rothwell Limited versus United States.

Counsel, please rise and make your appearances.

MR. WILLIAM COHAN: Good morning. William Cohan. With me, Gabriel Cohan, both representing Rothwell Limited.

THE COURT: Counsel.

MR. THOMAS: Darwin Thomas for defendant.

MS. MAKAREWICZ: Valerie Makarewicz on behalf of the government.

THE COURT: Thank you.

Both sides ready to proceed?

MR. GABRIEL COHAN: Yes, Your Honor, we are.

THE COURT: We talked about time limits. This is about a ten-hour case. You asked to call witnesses out of order, or at least call him until Thursday.

I want to make sure everybody is on line, we'll call that witness on Thursday morning. Is that correct?

MR. GABRIEL COHAN: Yes, Your Honor. We anticipate he'll be arriving in L.A. from Mexico tomorrow.

THE COURT: Anything before we get started logistically?

MR. THOMAS: We have a number of things we need to

1 go through. We have an objection to -- Mr. Rayment is  
2 sitting at counsel table here. He is a percipient witness  
3 and should be excluded during the proceedings. I didn't see  
4 him on the witness list.

5 MR. GABRIEL COHAN: But he's my designated  
6 representative for Roth Limited. Even though Mr. Chaffe is  
7 indeed the director of Rothwell, Mr. Chaffe will testify.  
8 And then as far as I understand he will be excused to return  
9 home. Mr. Rayment I wish to have with me. He's been  
10 present at all the depositions and throughout discovery.

11 THE COURT: He may stay. He may stay.

12 Next question: Any other issues?

13 Counsel, do you wish to proceed with opening?

14 Anything else?

15 MR. THOMAS: We do have certain questions we have to  
16 address. One is we don't have the pretrial order entered  
17 yet, Your Honor. Has it been signed by the Court and --

18 THE COURT: I don't think we need it, Counsel. This  
19 is a court trial.

20 MR. THOMAS: We have a lot of stipulated facts in  
21 the pretrial order that will be --

22 THE COURT: And both of you have stipulated, and I'm  
23 assuming you'll just live by your stipulations.

24 MR. THOMAS: Sure.

25 MR. WILLIAM COHAN: We do have a lengthy list of

1 undisputed facts.

2 THE COURT: Like 102 or something?

3 MR. WILLIAM COHAN: I think 112, but I'm not  
4 positive.

5 THE COURT: That's correct. And I have that.

6 MR. WILLIAM COHAN: Okay.

7 THE COURT: Okay.

8 Anything else we need?

9 MR. WILLIAM COHAN: Well, if I may inquire of the  
10 Court. Because it is a trial to the Court, I don't want to  
11 take time making an opening statement --

12 THE COURT: That's fine.

13 MR. WILLIAM COHAN: -- to repeat what the Court  
14 already knows.

15 THE COURT: That's fine. The Court has read the  
16 trial briefs. My only question is if you care to make an  
17 opening statement. There is no need to make opening  
18 statement if you don't want to, particularly in a court  
19 trial.

20 MR. WILLIAM COHAN: Okay. If the Court would  
21 indulge me just a few minutes to sort of get warmed up, I'll  
22 make a very brief, like --

23 THE COURT: Are you going to do calisthenics or --

24 MR. WILLIAM COHAN: Well, if you would like, Your  
25 Honor. But that's not what I meant.

1 THE COURT: Well, let me just make sure we can keep  
2 control of this.

3 You wish to waive your opening statement. Is that  
4 correct?

5 MR. WILLIAM COHAN: No. I was about to say I would  
6 like to make a brief opening statement.

7 THE COURT: Oh, sure, sure. Go ahead, Counsel.

8 MR. WILLIAM COHAN: But I was inquiring, and you've  
9 responded that you've already read the trial briefs which  
10 means it will be a very short opening statement --

11 THE COURT: Sure. Sure.

12 MR. WILLIAM COHAN: -- if I may.

13 THE COURT: Sure.

14 MR. WILLIAM COHAN: Thank you, Your Honor.  
15 Shall I proceed?

16 THE COURT: Yes, please.

17 MR. WILLIAM COHAN: I'm here on behalf of Rothwell  
18 Limited. Rothwell Limited had an account at Morgan Stanley.  
19 And as the Court knows, there were approximately 20 million  
20 dollars' worth of securities in that account when, on  
21 November 6, 2009, the Internal Revenue Service levied on  
22 that account and compelled Morgan Stanley within the next,  
23 roughly, 60 days to liquidate securities the in that account  
24 and pay them to the United States.

25 That's why we're here, because Rothwell wants its money.

1 Under the provisions that entitle us to come into court,  
2 7426 of the Internal Revenue Service code, we seek a refund  
3 of the proceeds plus interest.

4 We have a number of witnesses; the Court is familiar  
5 with, I think, the list. But I wanted to let the Court know  
6 that we have from the Turks & Caicos Islands, Mr. Colin  
7 Chaffe, who will be my first witness, a live witness.

8 Followed by Mr. Rayment who will be my second witness.

9 Thereafter, we will providing testimony by way of -- the  
10 Court's ruling has entitled us to present testimony by  
11 deposition. We will be offering deposition testimony of the  
12 principle broker on that account, whose name is John Welker,  
13 to demonstrate what we believe is the only issue before the  
14 Court.

15 Which is that Joe Francis never controlled the Rothwell  
16 account at any time; he never controlled the Trust that owns  
17 all of the shares of Rothwell. Actually, there is a nominee  
18 company called Inceptre, Limited, which holds title to those  
19 shares for the benefit of the Trust. And Mr. Chaffe will be  
20 testifying about the various entities that comprise the  
21 Trust.

22 But the only reason why we're going into some details on  
23 these entities besides Rothwell is because the Court  
24 mentioned its concern with the Mexican property, the  
25 purchase of which was funded by Rothwell Limited.

1           Indeed, the evidence will show that the only  
2 disbursements ever made from Rothwell's either bank account  
3 or Morgan Stanley account were, in the year 2002, a little  
4 over a million dollars was paid to purchase Lot 14 in  
5 Ranchos Punta Mita in Mexico. And the -- Mr. Chaffe hired  
6 Mr. Rayment who will testify that he went to Mexico and  
7 arranged the purchase of that property.

8           At that time Mr. Rayment was serving as one of Mr. Joseph  
9 Francis' attorneys. The Court is certainly familiar with  
10 the fact that the funds that were in the form of securities  
11 in that Rothwell account came from essentially two  
12 Subchapter S corporations, the shares of which were owned by  
13 Joe Francis.

14           We will also be offering on Thursday morning the  
15 testimony of a Mexican law expert attorney, David Keehnel,  
16 who did research into the state of title was provided with  
17 facts and circumstances pursuant to which the purchase of  
18 the property was Mexico was funded. And he has provided the  
19 Court and the litigants with an expert report about which  
20 he'll testify on Thursday morning.

21           Again, the only interest that Mr. Joe Francis has or ever  
22 had in that property is as a tenant of the corporation.  
23 Casa Blanca de Punta Mita, SA to CV -- which I will  
24 henceforth refer to as Casa Blanca, Your Honor, sparing you  
25 the rest of it -- the shares of which are owned by two

1 Turks & Caicos corporations.

2 The shares of those two corporations are owned by the  
3 Francis Trust. Mr. Chaffe, who is our first witness, will  
4 be explaining that. I go into that just to give the Court a  
5 little preview of the names and why are there so many.

6 I know it took me review several times before I started  
7 to get all these different corporations sort of straight in  
8 my mind, what did they have to do with the overall  
9 situation.

10 So with that, I will ask Mr. Chaffe to take the witness  
11 stand and tell you that all the evidence will show that  
12 Mr. Chaffe and his successor who acquired the Trust,  
13 Hallmark Trust, was initially the Trust that actually acted  
14 as trustee for the Francis Trust.

15 And Mr. Chaffe served in the capacity, really, as the  
16 principle of Hallmark until he sold his interest, along with  
17 his partner Nicola Jordan, whose name appears in a few  
18 places, but she had a very, very minimal role in these  
19 proceedings.

20 Mr. Chaffe and Ms. Jordan ultimately yield their --  
21 yielded their control over the Trust and control over  
22 Rothwell to a Mr. Brian Trowbridge. And we will be  
23 presenting deposition testimony that is essentially  
24 uncontested from Mr. Trowbridge to explain the period of  
25 time from Mr. Chafe 's and Ms. Jordan's departure as

1 basically being in control during the rest of the period  
2 before the levy.

3 Mr. Trowbridge, and a couple of other gentlemen who were  
4 working for Mr. Trowbridge with Hallmark, which became  
5 Hallmark Bank & Trust -- this is another one of those little  
6 details that I hope the Court will not be confused by -- but  
7 it was under the control of Mr. Trowbridge, that the name of  
8 Hallmark, which was Hallmark Trust Limited, which was the  
9 trustee of the Francis Trust, was changed to Hallmark Bank &  
10 Trust because Mr. Trowbridge got into the credit card  
11 business.

12 As a result of which, as he explained in his deposition,  
13 the authorities in Turks & Caicos Islands required the  
14 change of name to include "bank," so that it was Hallmark  
15 Bank & Trust.

16 So I already said once that I was going to call  
17 Mr. Chaffe to the witness stand. Now I feel like I have  
18 given the Court enough of a repetition of matters that are  
19 contained in the properties that I think we should bring  
20 Mr. Chaffe up here can get started with the testimony.

21 THE COURT: In just a second, not at this time, sir.

22 Thank you. I appreciate the opening statement. One  
23 question I have, Mr. Trowbridge's video transcript is not on  
24 the witness list. Is he going to be your witness or defense  
25 witness or do you know?

1 MR. WILLIAM COHAN: Mr. Trowbridge should be on our  
2 list, Your Honor. Brian Trowbridge should be on our witness  
3 list by way of --

4 THE COURT: I have Brian Stewart.

5 MR. WILLIAM COHAN: Brian Stewart is also one of our  
6 witnesses. He's from Morgan Stanley.

7 THE COURT: I have seven witnesses. I have seven  
8 witnesses. But that's okay. I just want to know, he's  
9 going to be one of your witnesses. Is that --

10 MR. WILLIAM COHAN: Right. We were not going to be  
11 offering video of Mr. Trowbridge. And my --

12 THE COURT: That's okay.

13 MR. WILLIAM COHAN: -- my co-counsel was just about  
14 to remind me of that. But I think I correctly stated, we  
15 were just offering deposition transcript. Because there is  
16 no dispute whatsoever, we're just offering the transcript.

17 THE COURT: No problem.

18 I also want to make sure that both sides know what I'm  
19 talking about. The time limit is five hours each; that  
20 includes deposition testimony both video and written.

21 Okay. Thank you, Counsel. Before you call your witness,  
22 does the defense wish to make an opening statement --

23 MS. MAKAREWICZ: Yes, we do.

24 THE COURT: -- or do you wish to reserve it until  
25 you put on your case?

1 MS. MAKAREWICZ: Whatever the Court's convenience.

2 THE COURT: It's your choice.

3 MS. MAKAREWICZ: I will go right now, Your Honor.

4 Thank you very much.

5 May it please the Court. On November 6, 2009, when  
6 the IRS seized Rothwell Securities' account held at Morgan  
7 Stanley, the IRS's levy was not wrongful. The evidence  
8 presented by the United States will show that Rothwell is  
9 the nominee of Joseph Francis.

10 The government will establish that Francis used Rothwell,  
11 along with at least six other corporations, to direct the  
12 properties from his Girls Gone Wild business into Rothwell  
13 and his home in Mexico.

14 The evidence will show that Francis transferred over  
15 \$15 million directly to Rothwell's account at Bermuda  
16 Commercial Bank, and indirectly through insurance premiums  
17 he paid to a company based in Vanuatu.

18 The money Francis transferred was used to fund the levy  
19 account at Morgan Stanley. Francis' intent to direct these  
20 funds to nominee will be shown by his attempts to conceal  
21 the transfers by claiming the payments as business expenses  
22 for his solely owned corporations, Sands Media and Mantra  
23 Films.

24 Francis claims the deductions on the 2002 and 2003  
25 corporate returns of Sands and Mantra, creating the

1 appearance of dramatic reduction of the net income of the  
2 corporation, which in turn substantially reduced the income  
3 that Francis reported for those years on his personal tax  
4 return.

5 The evidence show that the formality of the settlement of  
6 Francis Trust in the Turks & Caicos, and the incorporation  
7 of plaintiff in the Cayman Islands, there is no resemblance  
8 to the actual relationship between Francis and Rothwell and  
9 the terms of these documents.

10 This case is about context and perspective. When  
11 Rothwell was examined in the context of the facts of this  
12 case, it is apparent that Rothwell is the nominee of  
13 Francis, which Francis used to reduce his personal income,  
14 defraud his creditors, establish the levied securities  
15 account, and build a multimillion dollar vacation estate for  
16 himself on the Mexican Rivera.

17 The evidentiary burden in this case is on plaintiff.  
18 Rothwell has repeatedly misstated the burden that it needs  
19 to meet in this suit. Rothwell bears the initial burden of  
20 approving title to the levy property which neither party  
21 disputes. Then the United States has the burden of  
22 persuasion to show there is nexus between Francis and the  
23 levied property.

24 Through the evidence presented at trial, United States  
25 will carry this burden and show that Rothwell is Francis'

1 nominee. However, once the United States has established  
2 the nexus between Francis and the levied funds, Rothwell  
3 bears the ultimate burden of proving that the levied  
4 property is not Francis', but instead belongs to Rothwell.  
5 This ultimate burden is not one that Rothwell can meet.

6 The evidence will show that at the inception of the  
7 Francis Trust -- that the inception Francis Trust was the  
8 first step in Francis' scheme to utilize a series of  
9 corporate shells to conceal the profits of Sands and Mantra  
10 from the IRS.

11 In 1999 *Girls Gone Wild* had become a part of popular  
12 culture through production, promotion, and distribution of  
13 videos, pay-per-view shows, and magazines featuring young  
14 college women. Two Francis-controlled S corporations that  
15 operate *Girls Gone Wild*, Sands, and Mantra, began earning  
16 millions.

17 The evidence will show that Francis elicited the  
18 assistance from longtime personal attorney and confidant,  
19 Brian Rayment. To shelter his income from taxation, the  
20 evidence will show that Rayment was not only Francis'  
21 attorney but also counsel for Sands and Mantra, the Trust,  
22 Rothwell and Rothwell's foreign subsidiaries, Casa Blanca de  
23 Punta Mita, Island Films, and Summerland Holdings.

24 Rayment became the Trust protector and Colin Chaffe was  
25 selected by Rayment and Francis to be the trustee. Pursuant

1 to terms of the Trust, Mr. Chaffe needs Rayment's permission  
2 to take any major action on behalf of trust, including, for  
3 example, the purchasing and selling of trust assets and  
4 making distributions to beneficiaries.

5 The Trust cannot make any payment in excess of \$10,000  
6 without Rayment's approval. Rayment can even compel the  
7 appointment of a trustee of his choice. The evidence will  
8 show that in the connection with the Trust, Chaffe  
9 incorporated Rothwell became its the director. Chaffe  
10 opened up at least two accounts for Rothwell, one at  
11 Morgan -- excuse me -- one at Bermuda Commercial Bank and  
12 the other at Morgan Stanley.

13 As part of the Bermuda commercial documents relating to  
14 Rothwell, Chaffe identified Francis as the beneficial owner  
15 of Rothwell. Chaffe is not new to the professional  
16 trustees' business. At the time he was trustee for the  
17 Francis Trust, he was also managing at least 100 others.

18 Then Chaffe opened Rothwell's account with Morgan  
19 Stanley. At the same branch of Morgan Stanley in Irvine,  
20 California, and with the same broker, John Welker, it  
21 managed accounts for Francis, his companies, and Rayment.

22 The evidence will show that with the Trust and Rothwell  
23 in place, Francis began moving millions offshore. This  
24 chart illustrates the flow of funds directed by Francis.  
25 From Sands -- this chart illustrates the flow of funds

1 directed by Francis from Sands and Mantra divided into three  
2 parts. The first method Francis used to funnel funds  
3 offshore included direct transfers from Sands to Rothwell  
4 Bermuda's commercial account.

5 Another method was Francis purchasing two insurance  
6 premiums with the Asia Pacific Mutual Insurance Company for  
7 Sands and Mantra.

8 And finally, Francis used money from Sands and Mantra to  
9 build a custom home in Puerto Vallarta. As for the first  
10 part of the plan, between December 2002 and August 2003, a  
11 matter of nine months, Francis made nine wire transfers  
12 totalling over 10.4 million directly from Sands' Wells Fargo  
13 account to Rothwell's Bermuda commercial account.

14 Once Francis wired the money into Rothwell's Bermuda  
15 account, the money was promptly wired out to Rothwell's  
16 Morgan Stanley account. For example, as seen on this chart  
17 which only shows the transfers between April and August  
18 2003, on April 24th, Francis wired \$5.4 million from Sands  
19 into Rothwell's Bermuda commercial account. And four days  
20 later, \$5 million was wired out to Rothwell's Morgan Stanley  
21 account.

22 On June 4, \$449,870 was wired in from Sands by Francis,  
23 and on June 5, \$449,830 was wired out. On July 21st,  
24 Francis wired \$889,903 from Sands in, and on the same day  
25 \$889,903 was wired out. The evidence will show that Francis

1 reported the 10.4 million paid to Rothwell as consulting  
2 expenses and claimed corresponding business deduction on  
3 Sands's U.S. tax returns. And as a result of these  
4 deductions, the gross income of Sands was reduced by  
5 50 percent.

6 Through this artifice, Francis was effectively able to  
7 fund Plaintiff Morgan Stanley's account tax free. The  
8 United States will present the testimony of IRS Revenue  
9 Agent Beas who will walk the Court through the voluminous  
10 wire documents, bank statements, tax records, and general  
11 ledger entries that map this web of transfers.

12 Chaffe's duties to Francis were not limited to acting as  
13 a professional trustee. It was Chaffe who referred Francis'  
14 amendment to the Asia Pacific Mutual Insurance Company. The  
15 evidence will show that Asia Pacific sold Francis two  
16 insurance policies for total of \$5 million. Francis claimed  
17 the policy premiums on the 2002 and 2003 corporate returns  
18 for Sands and Mantra.

19 Francis wired the \$5 million from Sands and Mantra to the  
20 Asia Pacific Bank of Hawaii account. Once the 5 million  
21 came into the account of Asia Pacific, \$4.9 million was  
22 quickly transferred offshore to an account owned by Colin  
23 Chaffe's company, Schedule Company.

24 Then \$4.4 million was transferred from Schedule Company  
25 to Rothwell's Bermuda commercial account where it was

1 commingled with the 10 million that Francis had already  
2 transferred directly to the Bermuda bank by Sands.

3 The evidence will show that by August 2003, Francis had  
4 channeled over 16 million from Sands and from the insurance  
5 premiums paid to Asia Pacific into the levied securities  
6 account at Morgan Stanley, all tax free.

7 The evidence that shows both Francis' control and his  
8 enjoyment of the Rothwell funds is the same evidence  
9 concerning the purchase and improvement of the residence  
10 built in Punta Mita, Mexico. Francis and Rayment visited  
11 the area together, and based on those trips, Rayment  
12 suggested to Chaffe that Rothwell purchase the waterfront  
13 lot in Mexico.

14 Rothwell then purchased Lot 14, and later, an adjoining  
15 Lot 13B. The construction of the 35,000-square-foot home  
16 was solely directed and paid for by Francis with money  
17 transferred directly to the builder by Sands and Mantra.

18 The evidence will show that the mechanics of this  
19 purchase of the Mexican property itself establishes the same  
20 blurring of any legal separation between Francis and  
21 Rothwell. The evidence will show that the Punta Mita  
22 project began with an initial down payment made by Francis  
23 from his personal funds.

24 A month later, Rothwell transferred a little over a  
25 million dollars from his Bermuda commercial account for the

1 purchase of Lot 14, and then another 24,000 was paid by  
2 Chaffe's company Hallmark Limited to cover the remaining  
3 balance. Francis has repeatedly gone on national television  
4 shows to show off the house he calls his own. Yet, no  
5 rental agreement exists between Rothwell and Francis, and  
6 neither Sands, Mantra, or Rothwell has listed the Punta Mita  
7 property as an asset on their books.

8 The evidence will show that the money generated by Sands  
9 and Mantra to pay for the building of the Punta Mita  
10 property was deducted by Francis as business deductions  
11 toward consulting expenses, professional fees, and footage.

12 Revenue Agent Beas will speak to the fact that there is  
13 no evidence of any actual consulting, professional, or  
14 footage expenses. Rothwell suggests that the millions  
15 Francis used to build his dream home was a gift by Francis  
16 to the Trust which the Trust used to capitalize Rothwell.  
17 However, despite the elaborate web of foreign entities that  
18 Francis, Rayment, and Chaffe created, the formality of those  
19 structures was never honored.

20 There is no evidence that Francis made and other  
21 contributions directly to the Trust. Instead, Francis  
22 skipped the formalities of the foreign structure he created  
23 and simply made payment directly to Rothwell or directly to  
24 the builders of Punta Mita residence.

25 And the evidence will show, Your Honor, that after

1 Francis' dream home in Mexico was completed, and millions of  
2 tax-free dollars were transferred around the world to end up  
3 in an account in Irvine, California, Francis' scheme was  
4 complete. Then, for years, elaborate securities accounts  
5 sat and earned thousands of dollars of interest that was not  
6 report on Francis' return, despite being the beneficial  
7 owner of Rothwell's account.

8 As the Court recalls, this is not first time Francis has  
9 tried to reclaim the levied securities account from the IRS  
10 by filing actions in this court. The first attempt was the  
11 request by Francis for a temporary restraining order to  
12 prevent the IRS from levying upon the subject bank account,  
13 which Judge Fairbank denied.

14 The second time was in this court where the Court found  
15 that the IRS's jeopardy assessment and levy of the subject  
16 account was reasonable under the circumstances. Now, in a  
17 final attempt to reclaim the levied funds, Rothwell filed  
18 this present suit.

19 Again, Your Honor, this case is about context and  
20 perspective. When put into context, the actions of Francis  
21 will clearly establish that Rothwell is the nominee of  
22 Francis. Thus, Francis has an interest in the levied  
23 property of Rothwell at the time the levy arose against  
24 Francis for his outstanding income tax liability.

25 Because Rothwell is the nominee of Francis, the levy made

1 by IRS on November 6, 2009, that seized Rothwell Securities'  
2 account, was not wrongful pursuant to 7426 of the Internal  
3 Revenue Code.

4 Thank you, Your Honor.

5 THE COURT: Thanks very much, Counsel.

6 Counsel, you want to call your first witness.

7 MR. WILLIAM COHAN: Yes, Your Honor, I do.

8 Mr. Chaffe, would you come forward, please, and be sworn.

9 COLIN ROLPH CHAFFE

10 The witness, after being duly sworn, testified as follows:

11 THE CLERK: Thank you. You may be seated.

12 I'm going to ask that you state your full name for the  
13 record and spell your last name.

14 THE WITNESS: Colin Rolph, R-O-L-P-H, and last name  
15 Chaffe, C-H-A-F-F-E.

16 THE COURT: You may inquire, Counsel.

17 MR. WILLIAM COHAN: Thank you, Your Honor.

18 DIRECT EXAMINATION

19 BY MR. WILLIAM COHAN:

20 Q How are you this morning, Mr. Chaffe?

21 A Still a little bit jet-lagged.

22 Q All right. And where have you come from to appear here  
23 to testify?

24 A From the United Kingdom.

25 Q All right. So you say you're a bit jet-lagged. Are you

1 otherwise able to understand questions and respond  
2 accurately such that you're not impaired in memory or  
3 otherwise?

4 A Yes.

5 Q I want to briefly go through your personal history.

6 Where were you born, sir?

7 A I was born in Suffolk, England, 29th of November, 1943.

8 Q All right. And were you raised in and educated in the  
9 United Kingdom?

10 A I was.

11 Q Did you graduate college?

12 A I didn't go to university. I graduated at the hotel  
13 school.

14 Q Okay. What hotel school was that and when did that  
15 happen?

16 A That was Westminster College in 1965.

17 Q And by way of continuing education or employment, did you  
18 get any further formal education after that?

19 A No.

20 Q What sorts of business ventures did you engage in, then,  
21 after graduating from what I think you called hotel college?

22 A Hotel college, yes.

23 Q This would be some sort of management?

24 A Yes. It was what they called a higher national diploma  
25 in hotel management. At that particular time in England,

1 there was only about one college offering it, the degree  
2 course in hotel management. So my main career until the age  
3 of -- you know, until about 1989, my main career was in the  
4 hotel and catering business.

5 Q All right. You were in the hotel and catering business  
6 for, I believe, approximately 24 years?

7 A 24 years. But I owned a restaurant, actually, until  
8 2001. But I wasn't actually involved in the running of it.

9 Q Where was that restaurant located, sir?

10 A That was located in Jersey in the Channel Islands.

11 Q We know that you have been active in the Turks & Caicos  
12 Islands. So if we could briefly go through the period of  
13 time from 1989 onward.

14 Where were you in 1989, and what were you doing by way of  
15 employment?

16 A Right. In 1988 myself, and my then domestic partner,  
17 Nicola Jordan, moved to the Cayman Islands. And Nicola  
18 Jordan had already been in the Trust business in Jersey.  
19 And we moved there and she worked for a bank in the Cayman  
20 Islands, and I was working just part time for a real estate  
21 brokerage company.

22 Q This was on the -- in the Cayman Islands?

23 A In the Cayman Islands.

24 Q The Cayman Islands are approximately how far from the  
25 Turks & Caicos Islands?

1 A If you could fly directly there, probably about two hours  
2 flying. As it is, you have to kind of go through Miami or  
3 Jamaica.

4 Q I see. Somewhere in the Caribbean?

5 A Yes.

6 Q So you and Ms. Jordan were living together, she was  
7 working for a bank --

8 A Yes.

9 Q -- in Cayman?

10 A Yes.

11 Q And for what period time did that continue until  
12 something changed by way of employment and location?

13 A I believe she worked at that bank for about three years.

14 Q And I will ask this question with the words, then what  
15 happened?

16 A Right. In 1991 we decided to start our own trust  
17 company.

18 Q And did you do so?

19 A We did.

20 Q And where was that and what was the name of the company?

21 A The company was Hallmark Trust Limited -- Hallmark Trust  
22 Limited. And it was in the Turks & Caicos Islands.

23 Q Why did you go from the Cayman Islands to the Turks &  
24 Caicos Islands to establish this trust company?

25 A At that particular time, the payout capital in the

1 Caymans Islands, I think was -- the requirement to start a  
2 trust company was, I think, either 500,000 or \$1 million.  
3 In the Turks & Caicos Islands it was \$250,000.

4 Q So is it fair to say that because it was much less  
5 expensive to get started, you and Ms. Jordan decided to go  
6 to the Turks and pay in \$250,000 and get a license for  
7 Hallmark Trust Limited to act as a trust company?

8 A That is correct.

9 Q Thank you. So I'd like to invite your attention, if I  
10 might, to Exhibit 107. I don't know whether that book is up  
11 there. I know it's near you somewhere.

12 Tell me when you have Exhibit 107 in front of you, sir.

13 A I have it in front of me now.

14 Q Do you recognize Exhibit 107?

15 A Yes.

16 Q And can you tell the Court what Exhibit 107 is.

17 A It's the memorandum and articles of association of  
18 Inceptre Holdings.

19 Q And what is Inceptre Holdings?

20 A Inceptre Holdings was the nominee company for Hallmark  
21 Trust Limited.

22 Q When you say "nominee company," can you explain summarily  
23 what function a nominee company serves? And indeed, what  
24 function has Inceptre Holdings served vis-a-vis Hallmark  
25 Trust Limited?

1 A Often in the Trust business, and in fact in general in  
2 the corporate management business, individuals do not  
3 necessarily take up the shares, or standers, directors, and  
4 officers of the company, and it's common practice to use a  
5 nominee for those purposes.

6 Q Did there come a time when Inceptre Holdings -- first of  
7 all, is it correct that you and Ms. Jordan formed Inceptre  
8 Holdings Limited in or about 1991?

9 A Yes.

10 Q And it says that it was recorded -- do you see that? --  
11 on 5th day of March, 1992? Do you see on Page 1 of Exhibit  
12 107?

13 A I'm just looking for the actual -- yes. March 1992.

14 Q Okay. And may I invite your attention to the page  
15 numbered in the lower right-hand corner IH 00025?

16 Right near the end, sir. I think it's the --

17 A Yes.

18 Q -- I think it's the last page.

19 Do you see any indication of who the owners are of  
20 Inceptre Holdings Limited?

21 A Yes. It's myself and Nicola Jordan.

22 Q Has that been the case ever since 1992 when this company  
23 was formed?

24 A In fact, if you look very carefully, initially it was  
25 owned by Hallmark Trust Limited. And a year later we

1 transferred it to ourselves, myself and Nicola Jordan.

2 Q And you had, I believe, testified earlier that you and  
3 Ms. Jordan formed Hallmark Trust Limited in 1991. Is that  
4 right?

5 A Correct.

6 Q Inviting your attention to following two pages, do you  
7 recognize those two pages of Exhibit 107? They're marked as  
8 IH 00026 and 00027.

9 A Yes.

10 Q And those are?

11 A The share certificates, one to me and one to Nicola  
12 Jordan, each for 50 shares.

13 Q Now, do you know whether the shares of Rothwell Limited  
14 are owned by Inceptre Holdings Limited?

15 A They are owned by me personally at the moment.

16 Q They're owned by you personally at the moment?

17 Were they ever owned by Inceptre Holdings Limited?

18 A Yes. Initially, they were.

19 Q And for what period of time were they owned by Inceptre  
20 Limited -- excuse me -- Inceptre Holdings Limited prior to  
21 your acquisition of them personally?

22 A I believe -- I believe that they were always held by  
23 Inceptre Holdings.

24 Q Okay. Other than Inceptre Holdings, which was owned by  
25 yourself and Ms. Jordan, has anyone other than Inceptre

1 Holdings Limited and you personally now ever owned any  
2 shares of Rothwell Limited?

3 A I don't believe so.

4 Q Has Mr. Joe Francis ever owned or held any interest in  
5 Inceptre Holdings Limited?

6 A No.

7 Q Has Mr. Joseph Francis ever owned any interest in  
8 Rothwell Limited?

9 A No.

10 Q Has Mr. Francis ever controlled and directed you in any  
11 way, shape, or form in any of the services that you've ever  
12 performed for Hallmark Trust Limited?

13 A No.

14 Q All right. Bear with me just a moment.

15 I'd like to invite your attention, if I might, to what's  
16 been marked for purposes of identification as Exhibit 101.

17 And ask you if you recognize Exhibit 101. The very first  
18 exhibit in your book.

19 Do you have that before you?

20 A Yes, I do.

21 Q Would you take just a moment and look through this  
22 exhibit? It's -- let's see. I'm just looking at the pages  
23 and they're not -- well, I was going to say, they're not  
24 consecutively numbered all the way through because my copy,  
25 they're cut off. But I think -- you know, I can't even read

1 the last page. But I think they're roughly 30 pages here.

2 I want to ask you, first of all, if you'd flip to the  
3 very last page and see if you recognize a signature there.

4 A I'm on the last page of --

5 Q The last page of 101.

6 A I have it. Yes, I have it.

7 Q Do you recognize your signature?

8 A Yes, I do.

9 Q Do you recall signing this particular document? And I  
10 want to make sure it's a certain ambiguity in the way I  
11 presented this. I want you to back up just five pages.

12 Do you see the page -- I can't read the lower right-hand  
13 corner, but I think yours should be FT 00025. Lower  
14 right-hand corner.

15 A I have no numbers on this.

16 Q Does yours show, "Dated March 2, 2010" at the very top?

17 A The page I've come back to, the last thing on it is  
18 "Power to Engage in Trade."

19 Q Well, if you go from the very back of this exhibit and  
20 you come forward five pages from that, you should have a  
21 page dated March 2, 2010, and in bold in the middle of the  
22 page, "Retirement and Appointment of New Trustees for the  
23 Francis Trust."

24 A I'm sorry. I think I went the wrong way. Yes.

25 Q Do you have that?

1 A Yes.

2 Q Do you recognize this document, this five pages?

3 A Yes.

4 Q And can you tell the Court what these five pages, the  
5 last five pages, of Exhibit 101 represent?

6 A That is the retirement of Hallmark Bank & Trust as  
7 trustee and the appointment of myself as trustee.

8 Q And that took place on or about March the 2nd of the year  
9 2010?

10 A Yes, it did.

11 Q Now, was this by and between you individually and  
12 Mr. Trowbridge acting on behalf of Hallmark Bank & Trust?

13 A Yes.

14 Q All right. Did you learn why -- strike that.

15 What were the circumstances that led to the transfer of  
16 trusteeship from Mr. Trowbridge to yourself if you can  
17 summarize that briefly?

18 A I obviously know Mr. Trowbridge quite well. And towards  
19 the end of 2009, he said that he was resigning as the  
20 trustee of the Francis Trust.

21 Q Okay. Let me then go back to the beginning of Exhibit  
22 101, and ask you to look at first 24 pages. Actually,  
23 forgive me. It would be the first 21 pages that I believe  
24 constitutes the original settlement document.

25 Do you have the first 21 pages before you of Exhibit 101,

1 sir?

2 A Yes, I do.

3 Q Do you recognize those first 21 pages?

4 A Yes, I do.

5 Q And what are those first 21 pages of Exhibit 101?

6 A It's the settlement of trust between Joseph Raymond  
7 Francis and Hallmark Trust, Limited.

8 Q At the time that this settlement was entered into, were  
9 you and Ms. Jordan the principals who owned Hallmark Trust  
10 Limited?

11 A Yes, we were.

12 Q And do you see on the -- let' see. I'm looking for a  
13 page which has a date on it. And I believe we have a  
14 stipulation and an undisputed fact that this trust was  
15 established May the 24th of 1999. I don't see a date on the  
16 first -- I don't see it on here. But is it your  
17 recollection that it is May?

18 A I thought it was April. And I think it has been cut off  
19 somewhere.

20 Q I do, too. But I think we have a stipulation that it's  
21 May the 24th of 1999.

22 A I do, too.

23 Q Do you have -- I may have --

24 MR. WILLIAM COHAN: Your Honor, unfortunately, these  
25 exhibits when they were copied, the bottom was chopped off

1 here, so I don't have numbered pages. But it's the 21st  
2 page. I can read FT 00022 in the lower right-hand corner of  
3 Exhibit 101.

4 Right before that is the last page of the initial  
5 settlement document.

6 Co-counsel has shown me that it is Stipulated Fact Number  
7 4, Your Honor. So I don't want to dwell on this over much.  
8 It's just that -- a detail that we need to make sure is  
9 clearly set.

10 BY MR. WILLIAM COHAN:

11 Q Do you recognize, Mr. Chaffe, your signature on this 21st  
12 page as director?

13 A I do.

14 Q And do you recall signing this document and accepting  
15 this engagement to be the trustee --

16 A I do.

17 Q -- of --

18 A Yes.

19 Q Okay. Thank you.

20 Inviting your attention to the next page of Exhibit 101.

21 Do you see this page?

22 A Yes.

23 Q And can you tell the Court your understanding of the  
24 statements on this page? The one where it says at the top,  
25 "Appointment of Mandators for Francis Trust"?

1 A Yes. I can explain that a little bit.

2 Q Would you, please.

3 Let me preface, before we get into that, had you for the  
4 period of time from approximately June of 2000 been acting  
5 the director of Rothwell Limited?

6 A Yes.

7 Q And did you establish Rothwell Limited as a corporation  
8 in Cayman Islands on about June 9, 2000?

9 A Yes.

10 Q Did you establish an account with Morgan Stanley around  
11 July of 2001?

12 MR. THOMAS: Objection. Leading.

13 THE COURT: Overruled.

14 MR. WILLIAM COHAN: Undisputed fact.

15 A Yes.

16 BY MR. WILLIAM COHAN:

17 Q From the time that account was established until January  
18 28 of '05, had you and Ms. Jordan directed the broker at  
19 Morgan Stanley to engage in transactions to purchase and  
20 sell securities?

21 A Yes, I had.

22 Q You had.

23 Do you recall the name of the broker with whom you dealt  
24 during that period of four years, three and a half four  
25 years?

1 A John Welker.

2 Q Did you communicate with Mr. Welker during that period of  
3 three and a half to four years?

4 A Yes.

5 Q Did you have occasion at some point to engage in a  
6 transaction whereby Mr. Trowbridge acquired some interest in  
7 Hallmark?

8 A Yes. We sold Hallmark to Mr. Trowbridge in two tranches.

9 Q Tranches are known as installments?

10 A Yes.

11 Q So there were two installments of payments whereby  
12 Mr. Trowbridge acquired ownership?

13 A Yes.

14 Q Do you recall when the second and final installment was  
15 paid in transfer of ownership of Hallmark Trust was  
16 consummated?

17 A It was some time in 2003.

18 Q All right. Did you remain in any capacity as an agent  
19 for or employee of Hallmark Trust after that transfer?

20 A Not after that time I. Did remain as the director for  
21 some time and for Rothwell.

22 Q Now, if I may, I'd like to invite your attention to FT  
23 00022 of Exhibit 101. This is appointment of mandators for  
24 Francis Trust.

25 Can you explain what was going on on or about January 28

1 of '05 with respect to this appointment mandators of the  
2 Francis Trust?

3 A My recollection is Mr. Trowbridge was the owner of  
4 Hallmark Trust, was not entirely comfortable with myself and  
5 Nicola Jordan continuing as mandators for Rothwell Limited.  
6 He wanted indemnity from the Trust that any of our actions,  
7 Hallmark Trust would not be responsible for them or held  
8 Accountable for them.

9 Q I believe it's an undisputed fact that you and Ms. Jordan  
10 directed the affairs of Rothwell Limited from its creation  
11 June 9, 2000 until November 29, 2005. I think that's  
12 undisputed fact number 18.

13 So I'll volunteer that just to fast forward.

14 Is it correct that even though Mr. Trowbridge purchased  
15 all of Hallmark Trust and acted as the trustee, that entity  
16 acted as trustee for Francis Trust, nevertheless you and  
17 Ms. Jordan continued to control the Rothwell Limited account  
18 and Rothwell Corporation until November 29, 2005?

19 A Yes.

20 Q And at that point in time what took place with respect to  
21 the Rothwell account at Morgan Stanley Smith Barney?

22 A At that time all account signatories were changed and the  
23 directors were changed.

24 Q Now, let me -- forgive me for going back and forth. We  
25 have to cover a number of different things going on during

1 the same time period.

2 You heard the government's opening statement. So I want  
3 to invite you to the circumstances surrounding the  
4 acquisition of Mexican real estate.

5 Do you recall how you first learned that there was  
6 something called Lot 14 in Punta Mita that eventually  
7 Rothwell Limited extended a million dollars, slightly more  
8 than that, I think it was \$1,030,00 to acquire that property  
9 for another corporation?

10 A Yes.

11 Q Can you describe how this situation was presented to you  
12 initially?

13 A It was a contact from Mr. Rayment who suggested that it  
14 would be a good investment and a good purchase for the  
15 Francis Trust.

16 Q At that point in time, which was I represent to you to be  
17 early 2002, was there any asset other than cash and  
18 securities owned by Rothwell to the best of your knowledge  
19 and belief?

20 A Not to the best of my knowledge, no.

21 Q And was there some discussion of diversification of the  
22 assets at that time?

23 A Yes, there was.

24 Q Was there any discussion about the desire of Mr. Francis  
25 to construct a residence on this property to add a lot of

1 value to it if the Trust would make the purchase of the  
2 underlying real estate?

3 A Yes, there was.

4 Q Did you authorize Mr. Rayment to take any action in  
5 pursuant of the acquisition of this real estate by the Trust  
6 or some corporation controlled by the Trust?

7 A Yes. I retained Mr. Rayment to act on the Trust's  
8 behalf.

9 Q Did you to the best of your knowledge and belief execute  
10 some sort of power of attorney authorizing him to act for  
11 the Francis Trust to set up a Mexican corporation?

12 A From memory, yes.

13 Q And do you recall having discussions with Mr. Rayment  
14 about establishing that corporation?

15 A Yes.

16 Q Were you under the impression that you were ordered or  
17 required or directed by Joseph Francis to authorize  
18 disbursement to acquire this real estate, or was it  
19 something you chose to do?

20 A It was a recommendation and I chose to follow that  
21 recommendation. The recommendation was from Brian Rayment.

22 Q To the best of your knowledge and belief was a residence  
23 constructed on this real estate?

24 A Yes.

25 Q Are you familiar with a Mexican corporation known as -- I

1 will do the whole thing Casa Blanca de Punta Mita SACV?

2 A Yes.

3 Q Do you mean SA means associate anonyma and CV means  
4 capital variable?

5 A I knew about SA but not CV.

6 Q There you go. I have done my good deed for the day.  
7 Thank you.

8 In any event, you're familiar with that corporate name?

9 A Yes.

10 Q Do you know who or what held the ownership of the shares  
11 representing ownership of Casa Blanca?

12 A Island Films Limited and Summerland Holdings Limited.

13 Q Those are corporations which are incorporated where?

14 A In the Turks & Caicos Islands.

15 Q What entity or company owns the shares representing  
16 ownership of Island Films and Summerland Holdings if you  
17 know?

18 A At the time it was Hallmark Trust.

19 Q And are those assets to the best of your knowledge of the  
20 Francis Trust?

21 A Yes, they are.

22 Q When Mr. Rayment made recommendation to purchase Lot 14  
23 in 2002, there was more than one protector of the Francis  
24 Trust?

25 A In 2002? I don't remember.

1 Q Do you recall when Mr. Rayment became a protector of the  
2 Francis Trust initially?

3 A Not the exact date.

4 Q Do you have FT 00022 before you, sir?

5 That's within Exhibit 101. The page that is headed  
6 Appointment of Mandators for Francis Trust?

7 A In the trustee, yes.

8 Q I have no numbers on here at all.

9 MR. WILLIAM COHAN: May I approach, Your Honor?

10 THE COURT: No. It has to go through the clerk.

11 THE CLERK: What exactly are you looking for?

12 MR. WILLIAM COHAN: Let me count the pages from the  
13 back. Starting with last page of Exhibit 101.

14 THE COURT: Are you seeking to have this exhibit  
15 admitted?

16 MR. WILLIAM COHAN: Yes. My understanding is all  
17 unobjected exhibits were admitted, Your Honor. Perhaps  
18 that's my error.

19 THE COURT: Is that agreeable, Counsel?

20 MR. THOMAS: Yes. All exhibits to which there are  
21 no objections are admitted.

22 THE COURT: Okay.

23 MR. WILLIAM COHAN: We don't have to go through the  
24 exercise.

25 THE COURT: No. What I want you to do is when you

1 mention an exhibit just ask it be admitted. I don't want --  
2 if some exhibit is not used, I don't want it admitted. Any  
3 exhibit you refer to, that's fine. But you have a whole  
4 bunch of exhibits. You may or may not be addressing them  
5 all during trial.

6 MR. WILLIAM COHAN: I will be wanting to move most  
7 of them.

8 THE COURT: That's okay. When you mention an  
9 exhibit say move in evidence; I will say accept it unless  
10 there is objection.

11 MR. WILLIAM COHAN: Exhibit 101?

12 THE COURT: For your benefit, Counsel, you've also  
13 mentioned 101, you also mentioned 107. Both these are  
14 admitted.

15 MR. WILLIAM COHAN: I would like to move in the  
16 entirety of the first volume 101 through 125.

17 MR. THOMAS: Agreed, Your Honor.

18 (Exhibit No. 101-125 admitted.)

19 BY MR. WILLIAM COHAN:

20 Q Now, the question --

21 THE COURT: Back up. The only problem I have with  
22 that, attorneys many times will say I want this document  
23 admitted has got 700 pages. They only refer to two or three  
24 pages. I have a custom in this court those pages that you  
25 refer to during the trial will be admitted. I'm not going

1 to read 700 pages if only two and three are referred to.  
2 When you say you want the entire thing admitted into  
3 evidence, those parts that are referred to or that I have to  
4 refer to and decide the case that's fine. But try to limit  
5 it. With all due respect we've got -- what, eight volumes  
6 here thousands of pages I won't read all thousands of pages.  
7 Let me know which ones you want me to read.

8 MR. WILLIAM COHAN: Very well, Your Honor.

9 BY MR. WILLIAM COHAN:

10 Q I'm now trying to refresh your recollection about the  
11 time Mr. Rayment became a protector of the Francis Trust. I  
12 have on the Elmo and hopefully you can see this?

13 A Yes.

14 Q The date on that is January 28, 2005. It shows Brian  
15 Rayment as protector. Do you see that?

16 A Yes. Yes.

17 Q Is it correct that it was at or about this time  
18 Mr. Rayment became the protect or a protector of the Trust?

19 A Yes.

20 Q I will invite your attention to Exhibit 104.

21 Do you recognize this?

22 A Yes.

23 Q If you would, please turn to the page number 35, lower  
24 right-hand corner of this exhibit. Rothwell Limited 035.

25 Do you recognize your signature on that page?

1 A Yes, I do.

2 Q Do you recall that you signed this document to create  
3 Rothwell Limited?

4 A Yes, I do.

5 MR. WILLIAM COHAN: Your Honor, I'm moving this in.

6 THE COURT: Received.

7 (Exhibit No. 104 admitted.)

8 THE COURT: Let me ask you what year was Rothwell  
9 incorporated?

10 THE WITNESS: Incorporated June 2000.

11 THE COURT: It was not until 2005 there was a  
12 protector?

13 THE WITNESS: There is another protector called  
14 Pittsford Limited.

15 THE COURT: Between 2000 and 2005?

16 THE WITNESS: Yes.

17 THE COURT: But the original trust when created was  
18 created with the protector.

19 THE WITNESS: Yes.

20 THE COURT: Okay. Go ahead.

21 BY MR. WILLIAM COHAN:

22 Q Without going into document Exhibit 101 --

23 THE COURT: Yes.

24 BY MR. WILLIAM COHAN:

25 Q Excuse me. Reflects that Hallmark Trust was the trustee.

1 And Pittsford Limited bits during limited corporation that  
2 was appointed as protector initially.

3 THE COURT: Which is consistent with trial briefs,  
4 that's fine.

5 MR. WILLIAM COHAN: I want to make sure court  
6 understands Rothwell Limited is just a corporation that  
7 beneficially owned by Francis Trust in case I was  
8 conflating.

9 THE COURT: I understand.

10 BY MR. WILLIAM COHAN:

11 Q Inviting your attention to what's been marked for  
12 identification as Exhibit 104, lower right-hand corner  
13 Rothwell Limited 0036. Next page.

14 Do you recognize these articles of association of  
15 Rothwell Limited?

16 A Yes.

17 MR. WILLIAM COHAN: Without taking more court time I  
18 do want to move in the balance of the Exhibit 104. I so  
19 move.

20 THE COURT: Okay. Any objection?

21 MR. THOMAS: None, Your Honor.

22 THE COURT: Received.

23 (Balance of Exhibit No. 104 admitted.)

24 BY MR. WILLIAM COHAN:

25 Q When you were responding to questions about the ownership

1 of Casa Blanca you mentioned its shares were owned by Island  
2 Films and Summerland Holdings, correct?

3 A Yes.

4 Q Inviting your attention if I might to Exhibit 132.  
5 Do you have 132 before you?

6 A Yes, I do.

7 Q Do you recognize what's been marked for purposes of  
8 identification as Exhibit 132?

9 A It's the Memorandum and Articles of Association of Island  
10 Films Limited.

11 Q Is this the same Island Films Limited that owns half the  
12 shares of Casa Blanca?

13 A It is.

14 MR. WILLIAM COHAN: Move this into evidence, Your  
15 Honor.

16 THE COURT: Received. 132.

17 (Exhibit No. 132 admitted.)

18 BY MR. WILLIAM COHAN:

19 Q Invite your attention next to Exhibit 133, Mr. Chaffe.

20 A Yes.

21 Q Do you have that before you?

22 A Yes.

23 Q And do you recognize this as the Memorandum of  
24 Association and Articles of Association of Summerland  
25 Holdings Limited?

1 A I do.

2 Q Is this the Summerland Holdings that owns other 50  
3 percent of the shares of Casa Blanca?

4 A It is.

5 MR. WILLIAM COHAN: Move this in as well.

6 THE COURT: Received.

7 (Exhibit No. 133 admitted.)

8 BY MR. WILLIAM COHAN:

9 Q Inviting your attention to Exhibit 134.

10 A Yes.

11 Q Do you recognize Exhibit 134?

12 A I do.

13 Q What's Exhibit 134, sir?

14 A It's the equivalent of the memorandum and articles of  
15 association of the Mexican company. Don't ask me to  
16 pronounce and don't ask me to translate it.

17 Q Very well. I won't.

18 MR. WILLIAM COHAN: Move admission of 134 as being  
19 indeed what the witness identified.

20 THE COURT: Received.

21 (Exhibit No. 134 admitted.)

22 MR. WILLIAM COHAN: Thank you, Your Honor.

23 BY MR. WILLIAM COHAN:

24 Q When you established the Bermuda Commercial Bank account  
25 at -- near the inception of the creation of Rothwell

1 Limited, do you recall the circumstances under which you  
2 provided information about Mr. Joseph Francis to the Bermuda  
3 Commercial Bank?

4 A I do.

5 Q Can you tell the Court briefly what those circumstances  
6 were?

7 A Over the years the due diligence required by banks and  
8 especially since the Patriot Act has increased considerably.  
9 Any banks want to know really the source of funds that are  
10 going into that account.

11 Q And did you provide information to the Bermuda Commercial  
12 Bank about Mr. Francis?

13 A Yes, I did.

14 Q Why did you do that?

15 A Basically it was a requirement to open the account. To  
16 verify the source of funds.

17 Q All right. And was that what you intended to do when you  
18 identified Mr. Francis as associated with this account?

19 A Well, the source of the funds it was from the company  
20 properties owned by Mr. Francis.

21 Q Right. And there was a document that you provided to the  
22 bank which identified Mr. Francis as the beneficial owner of  
23 the account?

24 A Exactly. Really is -- it really refers to the person  
25 settling the funds into the account. Every bank now

1 especially since -- since the kind of events in New York,  
2 regulations were tightened up and every bank is increasingly  
3 more -- regulated to know where the source of funds is.

4 Q So when you describe Mr. Francis as the beneficial owner  
5 of the account, did you mean he actually had any ownership  
6 interest in the account once the funds were in the  
7 possession of Rothwell Limited?

8 A No.

9 Q And to the best of your knowledge and belief, does  
10 Mr. Francis have any ownership interest in any asset of  
11 Rothwell Limited?

12 A No.

13 Q Have you ever authorized or made any expenditures for the  
14 benefit of Joseph Francis personally?

15 A No.

16 Q Invite your attention to a second acquisition of real  
17 estate in Mexico that took place in September of 2005. Do  
18 you remember the facts and circumstances surrounding that  
19 transaction in which Rothwell disbursed a little over  
20 million dollars to acquire something identified as Lot 13B  
21 in Ranchos Punta Mita?

22 A I do.

23 Q Can you summarize for the Court the circumstances in  
24 which those disbursements were made?

25 A I was contacted by Mr. Rayment who said the additional

1 lot would greatly improve the property. I think it might  
2 have been something to do with views. It was generally  
3 given more of an estate feel to the whole property and thus  
4 enhancing the value of the property.

5 Q When you say the property, is it your testimony Lot 14  
6 and Lot 13B are immediately adjacent to each other?

7 A Yes.

8 Q Did you have discussions with Mr. Rayment about actually  
9 handling the mechanics of the transaction whereby that  
10 property would be acquired?

11 A Yes.

12 Q Did you authorize Mr. Rayment to undertake any activity  
13 in that regard?

14 A Yes. Again I authorized him to follow through and, you  
15 know, make sure that the acquisition was made.

16 Q Okay.

17 Now, is it correct that you actually authorized the  
18 disbursements of the funds from Rothwell Limited account to  
19 pay for Lot 13B?

20 A Yes, I did.

21 Q And why, if you recall, did Rothwell not retain any  
22 ownership interest in connection with this piece of real  
23 estate?

24 A We just decided Summerland Holdings had been set up  
25 originally as a property holding company and just inevitably

1 became active. Rothwell Limited was set up to hold  
2 securities account.

3 Q Okay.

4 Summerland Holdings and Island Films became the joint  
5 owners of all the stock of Casa Blanca, correct?

6 A Yes.

7 Q And why was that?

8 A It was just something we decided on -- mainly to get  
9 Summerland active and Island Films active a little bit.

10 Q Did you consult with Joseph Francis about that?

11 A Not at all.

12 Q Never discussed it with him at all?

13 A No.

14 Q Have you ever met Joseph Francis?

15 A No.

16 Q Have you ever spoken to Joseph Francis?

17 A Two or three times.

18 Q All right. Did Joseph Francis ever order you to do  
19 anything?

20 A No.

21 Q Did he ever attempt to control your behavior?

22 A He has recently.

23 Q All right. Let me ask you whether you recall receiving  
24 communications this year beginning on or about February 27  
25 of 2011?

1 A Yes.

2 MR. WILLIAM COHAN: May I have moment?

3 THE COURT: In fact, Counsel, this is a good time to  
4 take the morning recess. We'll take 10 or 15 minutes.  
5 We'll come back at 11:00. Start up again at that time.

6 (Court in recess.)

7 THE COURT: The witness is on the stand. Counsel, I  
8 will try and remind you as far as time is concerned. 45  
9 minutes have been used so far. There is 300 minutes each  
10 side has.

11 Counsel.

12 MR. WILLIAM COHAN: May I?

13 THE COURT: Yes.

14 BY MR. WILLIAM COHAN:

15 Q Do you have Exhibit 109 before you, Mr. Chaffe?

16 A Yes.

17 Q Inviting your attention to the second page of Exhibit  
18 109, lower right-hand corner. You should see MSSB 003231

19 A Yes.

20 Q Do you recognize your signature just above that?

21 A Yes.

22 Q Do you recall the circumstances under which you signed  
23 this piece of paper dated on or about July 2 of 2001?

24 A Yes.

25 Q Tell the Court why you signed this document.

1 A This document claims certain benefits per foreign  
2 corporation with respect to taxation in the United States.

3 Q Do you recognize this Exhibit 109 as being a compilation  
4 of opening materials for opening an account at Morgan  
5 Stanley Dean Whitter at or about that time?

6 A Yes.

7 MR. WILLIAM COHAN: Move Exhibit 109.

8 THE COURT: Received.

9 (Exhibit No. 109 admitted.)

10 BY MR. WILLIAM COHAN:

11 Q I asked you about some entities that are owned direct or  
12 indirectly by the Francis Trust. I wanted to just cover the  
13 rest of them with respect to whether Joseph Francis has any  
14 interest as far as you know whatsoever in Island Films,  
15 Summerland Holdings, Casa Blanca de Punta Mita, Rothwell.  
16 Does Mr. Francis have any interest in any of those entities  
17 to the best of your knowledge and belief?

18 A No.

19 Q Once funds were transferred into those accounts -- strike  
20 that -- into accounts that you were responsible for, did  
21 Mr. Francis attempt to control your behavior up until  
22 February of this year?

23 A No.

24 Q To your knowledge did he ever attempt to control the  
25 behavior of Ms. Jordan?

1 A No.

2 Q Can you summarize how you became the personal trustee in  
3 this case after Mr. Trowbridge resigned? Why you did that?

4 A Right. I had retired. I'm a little bit over 65 now. I  
5 retired from any active participation in businesses other  
6 than my own properties in Turks & Caicos Islands.

7 And Mr. Trowbridge -- we know each other quite well. He  
8 rang me one day. Said I have had enough; I resigned as  
9 trustee of the Francis Trust.

10 Q Do you know what he meant by "I've had enough"?

11 A I believe he was not very happy with the behavior of  
12 Mr. Francis.

13 Q Did he complain about it?

14 A A little bit, yes.

15 Q Do you know the circumstances that he was referring to  
16 that he was unhappy involving Mr. Francis?

17 A Not exactly.

18 Q All right. Why did you agree to allow Mr. Francis to  
19 occupy the residence that he constructed on Lot 14 without  
20 paying rent?

21 A Mr. Francis is a beneficiary of the Francis Trust. And  
22 it is quite common practice, even from the Densiley  
23 [phonetic] trust from United States, like Melon,  
24 Rockefeller, Getty, huge family trusts, they will often buy  
25 properties and allow the beneficiary to occupy them.

1 Q Without paying rent?

2 A Without paying any rent, yes.

3 Q Is it your understanding that Mr. Francis or companies  
4 under his control have been paying the expenses and  
5 maintaining this property?

6 A Yes, they have.

7 Q Has that been since it was initially constructed?

8 A Yes.

9 Q I'd like to invite your attentions to Exhibit 231 through  
10 233. I'm not sure -- do you have those binders as well?

11 MR. WILLIAM COHAN: Through a brief period of  
12 corporation, we worked this out together.

13 BY MR. WILLIAM COHAN:

14 Q Do you have Exhibit 231 before you?

15 A Yes.

16 Q Do you recognize the exhibit that is marked as Exhibit  
17 231, Mr. Chaffe?

18 I invite your attention to second page. It's identified  
19 as US 002234. Is that your signature?

20 A Yes.

21 Q Does this refresh your recollection as to this  
22 compilation of documents identified as Exhibit 231?

23 A Yes.

24 Q This is what?

25 A Account opening documentation for the Rothwell account at

1 Bermuda Commercial Bank.

2 Q Now, I invite your attention to page US 002252, near the  
3 end of this.

4 A Yes.

5 Q Do you have that before you?

6 A Yes.

7 Q Do you recognize your signature on this document?

8 A Yes.

9 Q It indicates in bold Rothwell Limited limited address of  
10 the beneficial owner.

11 A Yes.

12 Q And was Mr. Francis actually a beneficial owner of  
13 Rothwell Limited at the time that you executed this  
14 document?

15 A He is -- would be better referred to as beneficiary.

16 Q All right. He is one of the beneficiaries of the Francis  
17 Trust. Is that right?

18 A That is correct.

19 Q Do you know whether there was any obligation on behalf of  
20 the trustee ever to make any distribution to Mr. Francis or  
21 any of other beneficiaries at any time?

22 A There is no obligation to do so.

23 Q Ever?

24 A Ever.

25 Q Okay.

1 So you provided this document that is identified as US  
2 002252 to the bank in Bermuda?

3 A Yes. As previously stated it's a requirement for most  
4 banks regarding the source of funds.

5 Q Did you mean to imply that Mr. Francis actually had an  
6 ownership interest in these funds once they were transferred  
7 to Rothwell Limited?

8 A No, I did not. But it was a requirement of the bank. It  
9 was -- which had to be fulfilled.

10 Q All right. Inviting your attention to the very next page  
11 that is identified as US 002255. Excuse me. 2253. Do you  
12 see that?

13 A Yes.

14 Q And do you recognize that?

15 A Yes.

16 Q And what is that?

17 A It's a copy of Mr. Francis' passport at the time.

18 Q And did you receive that at the time?

19 A Yes, I did.

20 Q How did you receive the copy that is identified now and  
21 in evidence as US 002253 which is part of Exhibit 231?

22 A I don't remember, but I believe it was by fax.

23 Q Okay. I invite your attention if I might to the next  
24 Exhibit which is Exhibit 232. Do you recognize Exhibit 232?

25 A Yes.

1 Q Can you tell the Court what Exhibit 232 consists of?

2 A Consists of copies of wire transfers.

3 Q Those wire transfers are to? To what?

4 A Well, there is a mixture. There are wire transfers to  
5 various parties.

6 Q Do you see in that it indicates wire transfers to  
7 Rothwell Limited?

8 A Yes, I do.

9 MR. WILLIAM COHAN: Move Exhibit of 232.

10 THE COURT: Received.

11 (Exhibit No. 232 admitted.)

12 BY MR. WILLIAM COHAN:

13 Q Inviting your attention to the Exhibit 233. Do you  
14 recognize Exhibit 233?

15 I will represent these appear to be account opening  
16 statements or documents for opening the account at the  
17 Bermuda Commercial Bank into funds.

18 A 233?

19 Q Yes. Take a look at US 002709, if you would. It's a  
20 Certificate of Incorporate for Rothwell. It has what I  
21 believe is your signature at the bottom. I'm asking if you  
22 recognize it. If that's your signature on US 002709  
23 Exhibit --

24 THE COURT: You can see it.

25 A Yes. That is not my signature.

1 MR. WILLIAM COHAN: Move admission of 233.

2 THE COURT: Okay.

3 (Exhibit No. 233 admitted.)

4 BY MR. WILLIAM COHAN:

5 Q I want to look at Exhibit 264. We're moving to a  
6 different binder.

7 Could you turn to Exhibit 264, Mr. Chaffe.

8 Do you have 264 before you, Mr. Chaffe?

9 A Yes, I do.

10 Q I represent these are the Morgan Stanley account  
11 statements. They're quite voluminous. All I want you to do  
12 is take as long as you need to satisfy yourself that you  
13 recognize these as the accounting -- excuse me. The account  
14 statements for the Rothwell account at Morgan Stanley Smith  
15 Barney?

16 A Yes, they are.

17 Q Do you recall receiving these statements over a period of  
18 several years while you were responsible for the trades in  
19 that account?

20 A Yes, I did. They were for Rothwell Limited for my  
21 attention.

22 MR. WILLIAM COHAN: Move admission of 264.

23 THE COURT: Received.

24 (Exhibit No. 264 admitted.)

25 BY MR. WILLIAM COHAN:

1 Q Just to keep you confused as much as possible, back to  
2 book number one demonstrating my extraordinary  
3 organizational skills. Not. Excuse me, just a moment.

4 Inviting your attention to -- excuse me. Really I have  
5 outdone myself. This isn't the right volume. Next one  
6 though. I was close. I only missed it by one.

7 THE COURT: Okay. What's the Exhibit?

8 MR. WILLIAM COHAN: I believe it's Exhibit 135, Your  
9 Honor. Let me know when you've found Exhibit 135.

10 A I have it.

11 BY MR. WILLIAM COHAN:

12 Q Do you recognize this document?

13 A Yes.

14 Q Can you tell the Court what Exhibit 135 is?

15 A Power of attorney exercised with respect to Brian  
16 Rayment.

17 Q What is it authorizing Mr. Rayment to do?

18 A It is authorizing him to act on behalf of Island Films in  
19 the matter -- really for anything he wishes to do.

20 Q Did it have any particular connection to the transaction  
21 by which Rothwell expended a little over a million dollars  
22 to acquire Lot 14 if you recall?

23 A Yes, it did but as you see from the thing it's blanket.  
24 It's blanket kind of power of attorney.

25 Q Invite your attention -- you've identified the portion of

1 Exhibit 135 which I moving into evidence now --

2 THE COURT: Received.

3 (Exhibit No. 135 admitted.)

4 BY MR. WILLIAM COHAN:

5 Q You referred to power of attorney to act on behalf of  
6 Island Films Limited. If you flip into the exhibit on page  
7 CB 00369 I think you'll see Mr. Rayment was appointed that  
8 for Summerland Holdings Limited?

9 A That is correct.

10 Q These powers of attorney were documentation by you  
11 engaged Mr. Rayment to make the arrangements acquire the  
12 property on which Mr. Francis was to build and did build a  
13 residence?

14 A Yes, that's correct.

15 Q If we could move to Exhibit 136.

16 I think it's easy to remember the right-hand side of the  
17 page than left. Right is English left is Spanish?

18 A Yes.

19 Q Do you recognize Exhibit 136?

20 A Yes.

21 Q Can you tell the Court what this is?

22 A This is a more specific power of attorney relating to  
23 Ranchos Punta Mita.

24 Q Did you sign this?

25 A Yes.

1 MR. WILLIAM COHAN: Move admission Exhibit 136.

2 THE COURT: Okay. Received.

3 (Exhibit No. 136 admitted.)

4 BY MR. WILLIAM COHAN:

5 Q Now, if you I'd like to invite your attention to Exhibit  
6 137. Do you recognize Exhibit 137?

7 A Yes. This is a document related to Punta Mita regarding  
8 Stewart Title.

9 Q Did you understand that Stewart Title insured the title  
10 to Lot 14 in connection with acquisition of this property --

11 A Yes.

12 MR. WILLIAM COHAN: Move Exhibit 137.

13 THE COURT: Okay.

14 (Exhibit No. 137 admitted)

15 BY MR. WILLIAM COHAN:

16 Q To Exhibit 138 if we could. Do you recognize 138?

17 A Yes.

18 Q Can you tell the Court briefly what Exhibit 138 consists  
19 of?

20 A This is the title insurance from Stewart relating to the  
21 second lot.

22 Q Okay. Which was purchased in September of 2005?

23 A That's correct.

24 MR. WILLIAM COHAN: Move admission of 138, Your  
25 Honor.

1 THE COURT: Received.

2 (Exhibit No. 138 admitted.)

3 BY MR. WILLIAM COHAN:

4 Q Invite your attention next to 139, Mr. Chaffe. Do you  
5 have that before you?

6 A Yes.

7 Q Do you recognize 139?

8 A Yes.

9 Q Can you briefly state what Exhibit 139 consists of? At  
10 least according to the right-hand side of pages in English?

11 A This is really the assignment of the rights in the land  
12 in Mexico from seller to Casa Blanca.

13 MR. WILLIAM COHAN: Move admission of 139.

14 THE COURT: Received.

15 (Exhibit No. 139 admitted.)

16 BY MR. WILLIAM COHAN:

17 Q Could you take a look at Exhibit 140.

18 Do you recognize 140? This one is more problematic  
19 because it's -- the bulk of it is in Spanish. But if you  
20 look at the second to the last page or the last page you'll  
21 see the date. Can you tell the Court what Exhibit 140 is or  
22 appears to you to be?

23 A Without translation I do not recollect exactly what this  
24 document is.

25 THE COURT: Okay.

1 BY MR. WILLIAM COHAN:

2 Q I represent it's a grant deed to Lot 13B. I invite your  
3 attention to the date of 12th of September of 2005. I think  
4 we have a stipulation that that was the date on which the  
5 purchase of Lot 13B was consummated. Does that help?

6 A Yes. I have to take your word for it. But I do not  
7 speak any Spanish at all.

8 Q I love it when that happens.

9 MR. WILLIAM COHAN: Exhibit 140. Could I move that  
10 into evidence?

11 THE COURT: 139 or 140?

12 MR. WILLIAM COHAN: 140.

13 THE COURT: 140 admitted.

14 (Exhibit No. 140 admitted.)

15 BY MR. WILLIAM COHAN:

16 Q Invite your attention to Exhibit 141. I'm not going to  
17 of course ask you to identify the first page. It speaks for  
18 itself. And I represent to the Court it's a letter from  
19 Stewart Title to special agent Mark Jensen of the Internal  
20 Revenue Service, concerning a summons to get information on  
21 Lot 14 that we've been upon here upon data is name of the  
22 development in Punta Mita where Lot 14 was purchased and  
23 which the residence of built.

24 MR. WILLIAM COHAN: I will move the admission of  
25 Exhibit 141, Your Honor and without questioning this witness

1 about it any further.

2 BY MR. WILLIAM COHAN:

3 Q Do you recall receiving more e-mails requesting that you  
4 resign as trustee in favor of someone -- bless you --  
5 selected by Mr. Francis and/or someone identified as Howard  
6 Fischer, an attorney for Mr. Francis?

7 A There were numerous e-mails from Mr. Francis.

8 Q And did you respond to those e-mails?

9 A No.

10 Q Were you contacted, either directly or indirectly, by  
11 some attorney in the Turks and Caicos Islands purportedly  
12 representing Mr. Francis?

13 A I was.

14 Q And did you retain counsel in connection with that  
15 matter?

16 A I did.

17 Q And have any lawsuits or formal allegations been made  
18 against you by anyone acting on behalf of Mr. Francis?

19 A No.

20 Q Other than the government's accusations against you here  
21 in this lawsuit, have you ever been accused of any sort of  
22 misconduct of which you're aware, in any formal proceeding  
23 whatsoever?

24 A No.

25 MR. WILLIAM COHAN: May I have just moment, Your

1 Honor?

2 THE COURT: Yes.

3 BY MR. WILLIAM COHAN:

4 Q Do you believe, Mr. Chaffe, that, among other reasons,  
5 Mr. Francis contributed to the improvement of the Casa  
6 Blanca property by building a home on it because it would  
7 inure to the benefit of the Francis Trust?

8 A Any improvement has to increase the value of the  
9 property, and thus, you know, the assets of the Francis  
10 Trust.

11 Q Have any of the beneficiaries, including Mr. Joe Francis,  
12 his parents -- we are not aware that he has any children.  
13 Has any beneficiary ever made a request of you to do  
14 anything, other than the indirect request to invest Rothwell  
15 money in the Mexican real estate?

16 A No.

17 MR. WILLIAM COHAN: I think that's all I have at  
18 this time, Your Honor. Thank you.

19 And so we've used up, I think, about an hour and 15  
20 minutes. Thank you, Your Honor.

21 CROSS-EXAMINATION

22 BY MR. THOMAS:

23 Q Mr. Chaffe, when did you meet Brian Rayment?

24 A I believe it was around about 2001.

25 Q And was the nature of that meeting in connection with

1 Mr. Rayment representing Joseph Francis in the settlement of  
2 the Francis Trust?

3 A Yes. He was introducing himself.

4 Q Did you have any involvement in the actual settlement of  
5 the Francis Trust?

6 A I accepted the appointment as trustee.

7 Q So were you presented with the Trust document to sign as  
8 trustee after it had been created and signed by Mr. Francis?

9 A Yes.

10 Q And before that time, you did not have contact with  
11 Mr. Rayment or Mr. Francis regarding the establishment of  
12 the Trust?

13 A No.

14 Q Did you ever discuss with Mr. Rayment what the reasons  
15 were for setting up a trust in the Turks and Caicos Islands?

16 A No.

17 Q Did Mr. Rayment ever say to you what the reasons were for  
18 setting up a trust in the Turks and Caicos Islands?

19 A No.

20 Q When Mr. Rayment contacted you about being the trustee  
21 for the Trust, did you discuss with him the potential tax  
22 consequences of having a trust in the TCI?

23 A Mr. Rayment did not contact me.

24 Q Who contacted you about being the trustee of the Trust?

25 A Mr. Owen Foley.

1 Q And then did you subsequently meet with Mr. Rayment  
2 regarding that referral?

3 A No.

4 Q Could you tell us, then, how the Trust document came to  
5 you and you signed the document as the trustee?

6 A It came from Mr. Foley. And I don't show whether I  
7 executed it in his office or my office.

8 Q Had you met Mr. Rayment before that time?

9 A No.

10 Q When did you meet Mr. Rayment following your execution of  
11 the Trust document?

12 A As I said, around about 2001. Sometime in 2001.

13 Q About how long after your execution of the Trust  
14 document?

15 A Well, 2001 would have been a couple years.

16 Q Have you ever told --

17 How many trusts for Americans have you acted as trustee  
18 for? And when I say "you," I'm speaking of Hallmark or you  
19 through Hallmark.

20 A Hallmark Trust, when we acquired another trust company,  
21 it was well in excess of 100. Probably more than that, but  
22 many were very simple.

23 Q And how many trusts after that did you acquire or become  
24 the trustee for, after you acquired Hallmark?

25 A Well, I -- you know, I actually founded Hallmark, and

1 then sold to Mr. Trowbridge, and worked with Mr. Trowbridge  
2 for almost two years. And during that time, we acquired  
3 another trust company.

4 And at that time, I think we had about 400 incorporated  
5 companies under the -- within our control, and at that time  
6 probably as many as 150 trusts.

7 Q How many trusts did you become a trustee for before  
8 Hallmark was sold to Mr. Trowbridge?

9 A Probably about 60, 70.

10 Q How many of those were trusts settled by Americans, do  
11 you know?

12 A Probably about 80 percent.

13 Q And did you ever tell any of those settlors of those  
14 trusts that one of the benefits of having a trust in the TCI  
15 was that matters can be kept secret?

16 A I don't believe so.

17 Q You mentioned you had spoken with Mr. Francis.  
18 Well, first off, I have to confirm my understanding.

19 You have not met Mr. Francis personally. Is that  
20 correct?

21 A Never.

22 Q Okay. You said that you had spoken with him two or three  
23 times. Is that correct?

24 A That is correct.

25 Q On the telephone?

1 A Yes.

2 Q Could you tell us what the nature of those contacts were?

3 A And I'm going back a long -- a long while.

4 One of them was in relationship to the Mexican property.  
5 And he did phone me to say, "Colin, you know, this would  
6 really help Island Films," you know, and him domestically in  
7 his business, to have the property in Mexico.

8 Q And the other two times?

9 A The other two times -- just trying to think back to what  
10 they would be.

11 One was the request of Mr. Trowbridge, when  
12 Mr. Trowbridge was having trouble with getting Mr. Francis  
13 to comply; Mr. Trowbridge asked me to contact Mr. Francis if  
14 I could, and ask him to kind of comply. And Mr. Francis put  
15 the phone down on me.

16 Q "Put the phone down"; hung up, you mean?

17 A Hung up.

18 Q And do you recall any other conversation that you had  
19 with Mr. Francis on the phone?

20 A Not really.

21 Q Have you exchanged written communications with  
22 Mr. Francis, particularly like e-mails?

23 A Not to the best of my knowledge.

24 Q And so you never communicated with either Mr. Rayment or  
25 Mr. Francis regarding the selection of Hallmark as the

1 trustee for the Trust?

2 A No.

3 Q Was the Trust funded with any assets at the time of its  
4 settlement?

5 A Yes.

6 Q What were those?

7 A It was settled with, I believe, a share from Island Films  
8 Limited.

9 Q I'm sorry. Could you --

10 A The shares of Island Films were settled into the Trust.

11 Q Is that all?

12 A That is all.

13 Q Who set up Island Films?

14 A Caribbean Management Services.

15 Q You weren't involved in the settlement -- I mean the  
16 creation of Island Films?

17 A No, I was not.

18 Q That was owned by Mr. Francis at the time?

19 A Yes, I believe. That was incorporated on behalf of  
20 Mr. -- for Mr. Francis before he settled the Trust, and he  
21 then settled the shares into the Trust, which is quite  
22 common practice.

23 Q Do you know if Island Films had any assets?

24 A No, I don't believe it did.

25 Q So there was no monetary -- no money that was used to

1 settle the Trust?

2 A No. But that is quite usual practice.

3 Q Did Mr. Francis then contribute additional assets to the  
4 Trust thereafter?

5 A Yes.

6 Q And what were those?

7 A They were payments into Rothwell.

8 Q Well, Rothwell is not the Trust, correct?

9 A Rothwell is in an underlying company within the Trust.

10 Q Okay. So he didn't contribute any monies directly to the  
11 Trust; he just paid them into Rothwell?

12 A He paid them into Rothwell.

13 Q Why was Rothwell used to fund the Trust instead of making  
14 the payments into the Trust itself?

15 A That is -- it's often done that way. Often a trust will  
16 have numerous corporate entities, rather than hold stuff  
17 directly in the Trust. But the shares of those entities are  
18 then held by the Trust, and therefore, assets of those  
19 companies are those of the Trust.

20 Q Aren't the assets of the Trust the shares of the  
21 companies?

22 A Yes, they are. So the value of the shares is the asset  
23 of the Trust.

24 Q Okay. But you didn't answer my question, is why is that  
25 done?

1 A I don't know why it is done. But it is common practice.

2 Q And was that common practice one that you suggested to  
3 the settlor or through Mr. Rayment?

4 A Basically, as you've already stated, Island Films and  
5 Summerland Holdings I believe were already in existence.  
6 And then Rothwell was set up to diversify and to hold a  
7 securities account.

8 Q Couldn't the Trust have held the securities account  
9 itself?

10 A It is possible, yes.

11 Q Isn't it true that one of the purposes of using a  
12 corporation such as the plaintiff, is to obscure the  
13 holdings of the Trust?

14 A No, it is not.

15 Q Who are the beneficiaries of the Trust?

16 A Joseph Francis; his parents, and I can't tell you their  
17 names; and I believe it's Oklahoma Film Corporation.

18 Q Do you know anything about Oklahoma Film Corporation?

19 A No, I do not.

20 Q Okay. Now, did the Trust have a protector at the time it  
21 was set up?

22 A Yes, it did.

23 Q And that was Pittsford Limited?

24 A That is correct.

25 Q Is the Trust in TCI required to have a protector?

1 A No. But many do.

2 Q Who chooses the protector?

3 A Initially?

4 Q Yes.

5 A Initially, sometimes the settlor will recommend a  
6 protector.

7 Q But who chooses the protector?

8 A Initially, the trustee.

9 Q And the trustee has control over who the protector will  
10 be?

11 A To a point, yes.

12 Q What do you mean by "to a point"?

13 A I'm not quite sure what your question is. If you could  
14 repeat the question.

15 Q The trustee has the control over who is chosen as a  
16 protector for the Trust?

17 MR. WILLIAM COHAN: I guess I should interpose an  
18 objection as calling for expert opinion from this witness --

19 THE COURT: Overruled.

20 MR. WILLIAM COHAN: He certainly can give his  
21 opinion --

22 THE COURT: Overruled.

23 BY MR. THOMAS:

24 Q Who is it that has control over the selection of the  
25 protector of the Trust?

1 A Well, if the protector is determined in the Trust deed,  
2 as it was in this particular time, Pittsford is a corporate  
3 entity which can act as protector.

4 THE COURT: Let me ask, the Trust document itself  
5 can dictate how and when and who is the protector. Is that  
6 correct?

7 THE WITNESS: That is correct, yes.

8 THE COURT: So the Trust, if you wish to create a  
9 trust, you could say, "And I want the trustee to pick the  
10 protector, or you could say "the trustor will pick the  
11 protector," or you can say it either way in the Trust.

12 THE WITNESS: Yes.

13 THE COURT: So what we're really interested in, and  
14 I'm going to -- what did this trust document say?

15 THE WITNESS: I have to refer back to the Trust  
16 document.

17 THE COURT: I think that was your question, Counsel,  
18 is what this particular one said. Is that correct?

19 Well, I'll let you go on.

20 THE WITNESS: Yes. This particular one, from my  
21 memory, sir, appointed Pittsford Limited.

22 THE COURT: And that was in the Trust  
23 document that --

24 THE WITNESS: In the original trust document, it  
25 appointed Pittsford Limited as the protector.

1 THE COURT: And let me anticipate his next question.

2 Was there anything in the document that talked about how  
3 to determine successor protectors or how to relieve a  
4 protector, or do you know if there's anything in the  
5 document?

6 THE WITNESS: Nothing in the document to say that.

7 BY MR. THOMAS:

8 Q And Pittsford Limited was a -- was a nominee company used  
9 by Hallmark. Is that correct?

10 A No.

11 Q Then what was Pittsford Limited, again?

12 A Pittsford Limited was set up by -- at the instruction of  
13 Misick & Stanbrook, Owen Foley, to act as the protector for  
14 the Trust. And it is a British Virgin Islands company.

15 Q Who owned Pittsford Limited?

16 A I don't know.

17 Q Were you ever told, by anybody, who owned Pittsford  
18 Limited?

19 A No.

20 Q Who acted on behalf of Pittsford Limited?

21 A For many, many years, nobody.

22 Q And Pittsford Limited was the only protector of the  
23 Francis Trust until Mr. Rayment was appointed in 2005?

24 A That is correct.

25 THE COURT: Who appointed Mr. Rayment? I mean, he

1 came in as a successor protector. Is that correct?

2 THE WITNESS: Not really as a -- I -- I find it very  
3 difficult to answer this, because I was actually no longer  
4 involved when --

5 THE COURT: I find it very difficult, because you  
6 told me that the document itself, the Trust document, did  
7 not provide for a successor protector or who appointed a  
8 successor protector, and that was my question. It wasn't in  
9 the document who chooses the successor. And I'm assuming  
10 that that would be dictated by the document.

11 THE WITNESS: I believe that was done by  
12 Mr. Trowbridge when he was in control in 2005.

13 THE COURT: You were just saying that you believe  
14 that the trustee was able to pick the successor protector.

15 THE WITNESS: I believe so.

16 THE COURT: Is not a protector, one of the reasons  
17 to have a protector, to oversee and restrict the trustee?

18 THE WITNESS: It is, indeed.

19 THE COURT: Is it common, then, for a trustee to  
20 pick the person that will oversee them?

21 THE WITNESS: No, it is not.

22 THE COURT: Okay. Well, I'll --  
23 Counsel, it's your case.

24 MR. THOMAS: Thank you, Your Honor.

25 BY MR. THOMAS:

1 Q I, too, am confused, Mr. Chaffe.

2 During that period of time before Mr. Rayment was  
3 appointed as a protector of the Trust, wasn't the permission  
4 of the protector required if the Trust was going to make a  
5 distribution to a beneficiary?

6 A Yes, it did.

7 Q So who would you go to to get permission to make a  
8 distribution to beneficiary, when Pittsford was the only  
9 protector of the Trust?

10 A Officially, you have to go to Pittsford.

11 Q And did you go to Pittsford to get permission to make  
12 that investment in the Mexican property?

13 A No, I did not.

14 Q And you have no knowledge of who the owners, officers,  
15 directors and employees of Pittsford are?

16 A I have some knowledge now of recent history. But  
17 previously, no.

18 Q What is your knowledge of recent history?

19 A Nicola Jordan is the director now of Pittsford Limited.

20 Q But that occurred more recently, didn't it?

21 A In 2010.

22 Q Okay. And before that time, you don't know?

23 A I don't know.

24 Q How did Ms. Jordan become -- what did you say she was?  
25 The director?

1 A Yes.

2 The whole -- the whole Pittsford question, at some stage,  
3 whether it be Misick & Stanbrook or somebody else, I believe  
4 dropped the ball a little bit on Pittsford.

5 Q So you're saying that there were no directors before  
6 Ms. Jordan?

7 A There was no recorded director in the registry in the  
8 British Virgin Islands.

9 Q And to your knowledge, Pittsford's only purpose in its  
10 existence, at least before Ms. Jordan became director in  
11 2010, was for the purpose of being the protector of the  
12 Francis Trust?

13 A Yes.

14 Q And what is the function of the protector? Could you  
15 tell us what the protector does?

16 A The main function of the protector, I believe, in the  
17 Francis Trust, is to actually appoint new trustees if  
18 necessary.

19 Q And the protector -- I think we asked you this before --  
20 has some control in terms of making distributions to  
21 beneficiaries. Is that correct?

22 A Yes, sir, as an element of control.

23 Q And approval of expenditures by the Trust of over  
24 \$10,000?

25 A Yes.

1 Q And the protector has to approve the disposition of any  
2 trust assets. Is that correct?

3 A Not really, no.

4 Q Could you explain that, then.

5 A Right. Basically, the protector is there to ensure that  
6 the trustee is kept honest, for want of a better word.

7 Q The protector has --

8 A Yes, and -- and basically, he will always keep an eye on  
9 the Trust and ask for regular reporting, just to follow what  
10 the Trust is doing. But he does not have any final say in  
11 what the Trust does. And if the trustee does something  
12 without the permission of the protector, that transaction is  
13 still a legal and valid transaction, but the trustee may  
14 have committed a breach of trust and be liable to  
15 prosecution.

16 Q Can the protector --

17 And you mentioned that the protector generally gets  
18 reports from the Trust as to its activities and its assets.  
19 Is that correct?

20 A That's correct.

21 Q And so during that period of time, were you instead  
22 giving these reports to Mr. Rayment and Mr. Francis?

23 A I never sent anything at all to Mr. Francis -- to  
24 Francis, but I occasionally would send a report to  
25 Mr. Rayment, yes.

1 THE COURT: This is after 2005?

2 THE WITNESS: Yes.

3 THE COURT: Okay. Before 2005 --

4 THE WITNESS: I think occasionally I would send  
5 something to Mr. Rayment.

6 THE COURT: Even before 2005?

7 THE WITNESS: Occasionally.

8 THE COURT: Before he was the protector?

9 THE WITNESS: Yes.

10 THE COURT: And I just want to make sure I have it  
11 right. You said that the protector may not approve  
12 something or may disapprove something; but if the trustee  
13 does that, it's still valid?

14 THE WITNESS: It is still totally valid, sir.

15 THE COURT: So the protector really has no power,  
16 other than maybe --

17 THE WITNESS: No, but the protector can then change  
18 the trustee.

19 THE COURT: Okay. Okay.

20 Let's break at this time. We'll be back at 1:15 to  
21 take up at that time. Remember, if you can be right back at  
22 1:15, we'll get started then.

23 MR. WILLIAM COHAN: One question, Your Honor.

24 THE COURT: Yes.

25 MR. WILLIAM COHAN: On the cross-examination time,

1 is that counted as part of our five hours?

2 THE COURT: Yeah. Any time you're talking,  
3 you're -- for instance, he's used now 20 minutes of his  
4 time.

5 MR. WILLIAM COHAN: Thank you.

6 (Court in recess.)

7 THE COURT: Okay. The record should reflect that  
8 the witness is still on the witness stand, and the  
9 cross-examination. Counsel, you may continue.

10 MR. THOMAS: Thank you, Your Honor.

11 BY MR. THOMAS:

12 Q Mr. Chaffe, can the protector of the Trust compel a  
13 change or the appointment of a new trustee?

14 A He's empowered to change the trustee if he wishes to  
15 exercise that right.

16 Q Okay. And then I understand, from what you said earlier,  
17 that Mr. Rayment was chosen as a second protector, I  
18 believe, in 2005. Was that correct?

19 A That is correct.

20 Q Who chose Mr. Rayment as a new protector of the Trust?

21 A I believe Hallmark Trust under Brian Trowbridge.

22 Q Does the settlor have the power to appoint a protector  
23 for the Trust?

24 A No.

25 Q But, again, the trustee has the power of appointing a

1 protector?

2 A Yes, it does.

3 Q And as the judge asked, the job of the protector is to  
4 watch over the trustee. Is that correct?

5 A Yes, is to protect the integrity of the Trust. That's  
6 correct.

7 Q Is there any limit to the number of protectors that a  
8 trust can have?

9 A Not really.

10 Q And why was Mr. Rayment appointed as a second protector  
11 of the Trust?

12 A I don't know. I was not involved with that appointment  
13 at all.

14 Q Did you --

15 After the sale of Hallmark to Mr. Trowbridge, did you  
16 continue to handle the matters of Rothwell Limited?

17 A I did.

18 Q And was that something that you had intended to do, even  
19 after the sale of Hallmark to Mr. Trowbridge?

20 A Not really.

21 Q Then how did it come about that you did that?

22 A It just -- it just happened, and Mr. Trowbridge had just  
23 said, Carry on, carry on, until we can get the complete  
24 transfer done."

25 Q Well, were you dealing with Mr. Rayment regarding the

1 operation of Rothwell at that time?

2 A I would send Mr. Rayment accounting occasionally, and  
3 that is it.

4 Q And once Mr. Rayment was appointed as a protector, was it  
5 your understanding that you would have to honor his  
6 directions and requests regarding the operation of the  
7 Trust?

8 A I don't have to honor any directions at all. I am the  
9 trustee.

10 Q So you could do as you chose?

11 A Exactly.

12 Q Subject to the power of being replaced?

13 A Yes.

14 Q Was there a letter of wishes given to you or Hallmark as  
15 trustee?

16 A I believe something was probably given to Hallmark Trust  
17 at the inception. I really don't remember.

18 Q Did you discuss the letter of wishes with Rayment before  
19 it was prepared?

20 A No, I did not.

21 Q Who prepared the letter of wishes?

22 A To the best of my recollection, it was given to me by  
23 Mr. Owen Foley.

24 Q And was that done at the same time the Trust was created?

25 A I believe so.

1 Q Did you ever communicate directly with Mr. Francis  
2 regarding the letter of wishes?

3 A No.

4 Q Okay. I did want to make clear from what you'd said  
5 before, you had spoken to Mr. Francis two, maybe three  
6 times, but you never had any e-mail exchanges with him. Is  
7 that correct?

8 A To the best of my knowledge, until the -- you know, until  
9 I received a lot of stuff earlier this year. But I don't  
10 think I have ever e-mailed Mr. Francis directly.

11 Q And you had not received --

12 A No.

13 Q -- mail -- e-mail from Mr. Francis --

14 A No.

15 Q -- or any other type of written communication?

16 A Not to my memory.

17 Q You don't know whether anybody requested Mr. Trowbridge  
18 to appoint Mr. Rayment as a second protector of the Trust?

19 A I don't know that at all, no.

20 Q Did Mr. Rayment ever discuss that matter with you?

21 A No.

22 Q And when did you advise either Mr. Rayment --

23 Well, I guess you say you didn't have any contact with  
24 Mr. Francis about the sale of the Trust to Mr. Trowbridge.  
25 Is that correct?

1 A That is correct.

2 MR. WILLIAM COHAN: Object to the form of the  
3 question. You mean Hallmark? The reference to the Trust I  
4 thought was ambiguous. That's why --

5 THE COURT: Why don't you restate the question,  
6 Counsel.

7 MR. THOMAS: I'm sorry.

8 BY MR. THOMAS:

9 Q Yes, the sale of Hallmark to Mr. Trowbridge; when did you  
10 discuss that with Mr. Rayment?

11 A I may at some stage have told him, you know, that I was  
12 selling Hallmark Trust Limited. But I don't recall that, so  
13 I don't really know.

14 Q So you don't know whether Mr. Rayment was actually  
15 advised of that before the sale was made?

16 A I don't think he probably was.

17 Q Was it your intention to go on conducting business for  
18 Rothwell in any event? Is that one reason that you didn't  
19 advise Mr. Rayment of the sale?

20 A No.

21 Q It was not your intention to do that?

22 A No.

23 Q Then why did you go ahead and handle the matters of  
24 Rothwell after the sale of Hallmark?

25 A Mr. Trowbridge really had had, I think, a lot on his

1 plate, and because I was handling it fine, and I did remain  
2 as a director of Hallmark until March of 2003, and was, you  
3 know, still very active until March of 2003. And I think  
4 Mr. Trowbridge had a lot of restructuring to do, and just  
5 said, initially, "Go ahead and just carry on doing this  
6 work."

7 Q Isn't it true that Mr. Rayment was not comfortable with  
8 Mr. Trowbridge taking over the matters of Rothwell?

9 A No, I don't think that's true.

10 Q And did Mr. Rayment ever express to you any concerns  
11 about the transfer of the trustee -- well, the sale of  
12 Hallmark and change of trustee from, we'll say, you to  
13 Mr. Trowbridge?

14 A No, he did not.

15 Q So, after the sale of Hallmark to Mr. Trowbridge, did you  
16 continue to handle the Rothwell matters without even  
17 discussing that with Mr. Trowbridge?

18 A I would keep Mr. Trowbridge informed of what was  
19 happening.

20 THE COURT: Let me go back a couple questions so I  
21 have it clear.

22 You transferred to Trowbridge the Hallmark before Rayment  
23 was appointed as protector, or after?

24 THE WITNESS: I believe before.

25 THE COURT: Which is consistent with what you said

1 about that Trowbridge is the one that brought him on.

2 THE WITNESS: Yes.

3 THE COURT: Okay. Go ahead.

4 MR. WILLIAM COHAN: The record should reflect two  
5 years before, Counsel.

6 Excuse me, Your Honor.

7 BY MR. THOMAS:

8 Q Okay. Then, as I understand it, you were appointed as a  
9 mandator of the Trust. Is that correct?

10 A No. I was appointed as a mandator for -- but I think not  
11 the actual trust, but for certain kind of activities  
12 concerning the corporations of the Trust.

13 Q Concerning the corporations?

14 A Yes. I'd have to refresh myself on the actual document.  
15 Because, remember, I did not draw that document up. I was  
16 not --

17 Q Okay. So what -- you were appointed. And, again, I  
18 guess, Nicola Jordan may have been involved too, but we'll  
19 just speak to you, okay?

20 You were appointed as mandator. Is that correct?

21 A Yes.

22 Q And if I remember correctly, the only -- you said a  
23 mandator for the corporations that were in the Trust. Is  
24 that right?

25 A Yes.

1 Q There were no other assets in the Trust besides the  
2 corporations. Isn't that correct?

3 A That is correct.

4 Q Okay. So what was it that you were to do as a mandator?

5 A Very -- very, very little, really.

6 Q Well, what --

7 A To carry on the operation of the companies within the  
8 Trust.

9 Q Okay. I think I understand, but I guess I don't really  
10 know the word meaning of the word "mandator." Is that a  
11 technical term in trust law or the TCI trusts?

12 A It gives a right of signature and a -- and a certain kind  
13 of scope for action.

14 Q Okay. So essentially, you're saying that that was some  
15 sort of formal authorization for you to go ahead and act on  
16 behalf of those corporations?

17 A Yes.

18 Q And could you explain to me why it was necessary to do  
19 that if you were already a director of Rothwell, if Rothwell  
20 is a separate entity from the Trust?

21 A Yes. Because Rothwell was -- is actually an integral  
22 part of the Trust, and therefore, the trustee has to mandate  
23 me to do that.

24 Q Okay. And that was done by Mr. Trowbridge?

25 A That's correct.

1 Q You have always been the director of Rothwell. Is that  
2 correct?

3 A No, I have not.

4 Q Then when was the time that you were not a director of --  
5 for Rothwell?

6 A From somewhere late in 2005.

7 Q Until when?

8 A Until March, approximately March, 2010.

9 Q Who was the director of Rothwell during that period of  
10 time?

11 A I believe it was nominee companies of Hallmark Trust.

12 Q Were you replaced as --

13 Were you replaced as director by the nominee company of  
14 Hallmark Trust at some point in time?

15 A Yes.

16 Q And was that when the -- Hallmark was sold to  
17 Mr. Trowbridge?

18 A It was considerably later than that.

19 Q Why was that change made?

20 A I think finally Mr. Trowbridge got around to kind of  
21 saying, "Well, we've got to get things completely straight,  
22 and let's kind of do that."

23 Q Okay. And you were the person who incorporated Rothwell.  
24 Is that correct?

25 A Yes.

1 Q And you incorporated in the Cayman Islands?

2 A That is correct.

3 Q Why was the Cayman Islands chosen as the place to  
4 incorporate Rothwell?

5 A It in some ways is a slightly better jurisdiction for  
6 investment vehicles.

7 Q In what ways?

8 A You actually have, if -- if you choose a Caymanian  
9 provider, you have a wider choice of provider in the Cayman  
10 Islands. And the banking facilities are far, far better.

11 Q If the banking facilities in the Cayman Islands are far  
12 superior, why did Rothwell open its bank account in Bermuda?

13 A A sales rep from Bermuda Commercial Bank paid a visit to  
14 Hallmark Trust looking for business.

15 Q Did you --

16 How soon after the settlement of the Francis Trust was  
17 Rothwell incorporated?

18 A About a year, I believe.

19 Q And did you discuss the incorporation of Rothwell with  
20 Mr. Rayment before it was incorporated?

21 A Yes, I -- you know, I did, yes.

22 Q What is your position with Rothwell now?

23 A I'm a director personally of Rothwell now.

24 Q Now, during this time that you were the director of  
25 Rothwell, before a --

1 I'm sorry. I'm slipping here.

2 Before a Hallmark-controlled entity became the director  
3 of Rothwell, between the time that it was incorporated and  
4 the time that you were no longer the director, were you the  
5 only director of Rothwell?

6 A Yes. I believe -- and I'd have to look at paperwork. I  
7 believe Inceptre was the director, until --

8 Q And were there no officers appointed for Rothwell?

9 A No.

10 Q And no employees?

11 A No.

12 Q Have you been compensated by Rothwell in any way, such as  
13 salary or the receipt of fees, commissions?

14 A Yes.

15 Q Could you tell us when and how much you were compensated  
16 by Rothwell.

17 A Yes. Since I took over as director again in 2010, I have  
18 been compensated 30,000.

19 Q And what about during the time after Rothwell was  
20 incorporated, before the new director was appointed by, I  
21 believe, Mr. Trowbridge?

22 A Compensation -- and I have to think back to Hallmark  
23 Trust days. I believe compensation was in the form of  
24 directors fees, which I would probably imagine were in the  
25 region of two thousand to two thousand five hundred dollars

1 a year.

2 Q And that's all?

3 A Yes.

4 Q Mr. Chaffe, agreed facts in this case show that in 2002  
5 and 2003, Sands Media made millions of dollars of transfers  
6 directly into the Bermuda Commercial Bank account of  
7 Rothwell. Were you regularly advised of those transfers  
8 before the transfers were made?

9 A I don't believe so.

10 Q Are you sure that you were not advised of those transfers  
11 in advance of their making?

12 A You have to remember, I'm not as young as I used to be,  
13 and you're asking me to remember events ten or eleven years  
14 ago. The simple answer is, "I don't know."

15 Q Okay. What about at the time the transfers were made?  
16 Did you get some sort of notification somehow that those  
17 transfers were being made into the Rothwell Bermuda  
18 Commercial Bank account?

19 A Yes. We had notifications from the bank.

20 Q From the bank?

21 A Yes. Probably from the online facility.

22 Q So is that typically how you would find out that the  
23 transfers had been made?

24 A Yes.

25 Q Did you discuss those transfers with Mr. Rayment during

1 the period of time that they were being made in 2002 and  
2 2003?

3 A No.

4 Q Did you have an understanding that those transfers had to  
5 be immediately retransferred to the Morgan Stanley account  
6 in Irvine?

7 A Yes.

8 Q And how did you have that understanding?

9 A From a prior discussion with Mr. Rayment.

10 Q And could you tell us what the content of that discussion  
11 was.

12 A I obviously have great difficulty in remembering that.  
13 But it was, I think, along the lines of we have the account  
14 open, and any, you know -- any transfers we want to get  
15 invested.

16 Q Invested specifically in the account in Irvine?

17 A Yes. That account was -- Rothwell was specifically set  
18 up as an investment company.

19 Q Did Rothwell have any other accounts besides the one in  
20 Bermuda and the one with Morgan Stanley?

21 A No.

22 Q Did you know who made the transfers into the Bermuda  
23 account of Rothwell?

24 And I'm again speaking of the 2002-2003 transfers.

25 A Yes.

1 Q Who was it that made those transfers?

2 A Sands Media and Mantra Films.

3 Q And did Mr. Rayment advise you ahead of time that that's  
4 who would be making the transfers?

5 A No.

6 Q Then how did you find out that they --

7 A From the banks themselves.

8 Q They advised you of who --

9 A Yes. From -- you have a record on the Internet of, when  
10 the money comes in, who the remitter is.

11 Q And you knew that these were Joe Francis' corporations?

12 A Yes.

13 Q Did you know what the purpose of the transfers was?

14 A As far as I knew, they -- it was funds being settled into  
15 the Trust.

16 Q By Joe Francis' corporations?

17 A Yes.

18 Q Did Rothwell keep a set of books and records?

19 A Yes.

20 Q How did they account for these transfers on their books  
21 and records?

22 A They would have been monies settled into the Trust.

23 Q Rothwell is a separate entity --

24 A The money's settled in -- into Rothwell, yes. So  
25 receipts.

1 Q Just recorded as a receipt by Rothwell?

2 A Yes.

3 Q And what did Rothwell provide to Sands and Mantra for  
4 these receipts?

5 A It didn't provide anything.

6 Q Did the Trust keep a separate accounting of the Trust's  
7 books and records, if you will?

8 A Yes. The Trust -- the Trust actually has a consolidated  
9 balance sheet and ledger of everything that's in the  
10 underlying companies.

11 Q So is this what you're saying: Rothwell itself didn't  
12 have a separate set of books and records; it was a  
13 consolidated group of books and records based --

14 A Rothwell has its own books. But then they're  
15 consolidated into statements for record --

16 Q Who maintained the Rothwell books and records?

17 A For a while when we were at Hallmark Trust, Nicola  
18 Jordan. And then when we left Hallmark Trust, Gregory Hurd.

19 Q So what other activities did Rothwell have besides  
20 receiving these funds and investing them?

21 A None.

22 Q Are you the person who actually made the transfers from  
23 the Bermuda bank account to the Morgan Stanley account?

24 A Yes. Either myself or Nicola Jordan.

25 Q Did you discuss these transfers with Mr. Rayment on an

1 ongoing basis?

2 A No.

3 Q He simply warned you ahead of time, or advised you ahead  
4 of time I should say, that these transfers would be made,  
5 and that when and if they were made, you were to transfer  
6 them to the Morgan Stanley account?

7 A Yes. That's what we discussed and agreed upon.

8 Q So in doing so, you were acting on the directions of  
9 Mr. Rayment?

10 A No.

11 Q You just said that's what you agreed upon.

12 A No. We agreed, but that's -- I wasn't acting on his  
13 instructions.

14 Q You know, the transfers in and out of that Bermuda  
15 account didn't quite match up. Sometimes they'd be around  
16 in the Bermuda account for a period of time, or a smaller  
17 transfer would be made to the account in Morgan Stanley.

18 Why was that, if you had agreed that you would simply  
19 take those funds and transfer them to the Morgan Stanley  
20 account?

21 A There are fees involved. And probably it's quite  
22 possible that from that account some corporate fees were  
23 paid to Hallmark Trust, so that only certain funds were in  
24 there. We also kept a cash balance in the Bermuda  
25 commercial account.

1 Q How much of a cash balance would you keep in the Bermuda  
2 account?

3 A Normally we would keep about half a million dollars.

4 Q And what sort of fees would Hallmark collect for handling  
5 these transfers?

6 A For the actual individual transfers, in my day, nothing.  
7 I think Mr. Hurd used to kind of have a little charge of  
8 probably 40 or 50 dollars when he did it, but in my day,  
9 nothing. But you have the bank charges, which are typically  
10 75, 80 dollars.

11 Q What was the purpose of transferring these funds through  
12 the Bermuda account?

13 A When you say "what is the purpose" --

14 Q Yes.

15 Sands paid the monies directly to Rothwell.

16 A Yeah.

17 Q But instead of putting them into the Irvine account of  
18 Morgan Stanley, they went to the Bermuda account, stayed for  
19 a few days, and then went to Morgan Stanley.

20 What was the purpose of transferring the funds through  
21 the Bermuda account?

22 A Right. The -- the --

23 First of all, the funds had to be settled into Rothwell  
24 as part of the Trust.

25 Q They're both Rothwell accounts.

1 A No, but it still has to be settled into Rothwell -- you  
2 know, into the Rothwell official account, and then  
3 transferred into the brokerage account of choice. That was  
4 the way we decided to do it.

5 Q So the answer is, that was done because that's the way  
6 that you decided to do it.

7 A Yes.

8 Q Have you ever heard of Asia Pacific Mutual Insurance  
9 Company?

10 A Yes.

11 Q And when did you first hear of Asia Pacific?

12 A I don't remember the year. But it would have been in the  
13 late -- mid to late '90s.

14 Q And how did you hear of this company?

15 A From Bright Enterprises.

16 Q And what is Bright Enterprises?

17 A It's a bookkeeping and accounting practice in Hawaii.

18 Q And how did you come in contact with Bright Enterprises  
19 and learn about Asia Pacific?

20 A We -- Bright Enterprises was one of the professional  
21 intermediaries in the United States that we worked with.

22 Q What is a professional intermediary?

23 A People like accountants and lawyers that refer you  
24 business.

25 Q So Bright Enterprises would refer you business?

1 A That is correct.

2 Q Where did you come in contact with Bright Enterprises?

3 A Through another attorney in Hawaii.

4 Q So have you ever referred anybody to Bright Enterprises  
5 with respect to these two insurance policies sold by Asia  
6 Pacific?

7 A Yes.

8 Q How many people did you refer to Bright Enterprises with  
9 respect to Asia Pacific?

10 A One.

11 Q One?

12 Who was that?

13 A That was, in fact, turned out to be Mantra Films and  
14 Sands Media.

15 Q Was this referral made through Mr. Rayment?

16 A Yes.

17 Q Now, did you know that most of the premiums that were  
18 paid on the Asia Pacific policies that it sold to Sands  
19 Media and Mantra Films would be paid to Schedule Company?

20 A The actual commencement of the negotiations, no. But  
21 later, yes.

22 Q Okay. What is Schedule Company?

23 A Schedule Company was one of the nominee companies of  
24 Hallmark, as well.

25 Q Did you hold a position with Schedule Company?

1 A Yes. I was one of the directors.

2 Q And who were the other directors?

3 A The other director was Nicola Jordan.

4 Q And what business did Schedule Company conduct outside of  
5 this Asia Pacific matter?

6 A It was a nominee director on several companies.

7 Q So it's just a nominee director?

8 A Yes, a nominee company.

9 Q It didn't itself conduct any insurance business or  
10 anything like that?

11 A No.

12 Q And that company was owned by Hallmark?

13 A At the time, yes.

14 Q Was it later directly owned by you?

15 A Yes. I can't remember the exact sequence, but I believe  
16 it was owned by Hallmark to begin with, and then Nicola  
17 Jordan and myself. I would have to refer to the mem & arts  
18 to see who held what.

19 Q The agreed facts in this case show that during the first  
20 half of 2003, Sands and Mantra paid \$5 million into a bank  
21 account in Hawaii for the benefit of Asia Pacific. And that  
22 during the first seven months of 2003, about four and three  
23 quarter million was wired from that same account of Asia  
24 Pacific in Hawaii to, I believe, two different accounts that  
25 Schedule Company maintained.

1           Isn't it true that Schedule Company received those funds,  
2 and that you promptly transferred those funds, or most of  
3 them, to Rothwell's Bermuda Commercial Bank account?

4       A    Yes.

5       Q    Were you advised by Mr. Rayment of exactly when you  
6 should expect Schedule Company to receive those transfers?

7       A    No.

8       Q    How did you know they were going into Schedule Company?

9       A    Again, through -- from the bank.

10      Q    And Mr. Rayment never said anything to you about the time  
11 those were made?

12      A    No.

13      Q    Did you discuss this with him before those transfers were  
14 made?

15      A    Maybe. But I don't believe so.

16      Q    Well, then, how did you know that they were to be paid  
17 into the Rothwell account?

18      A    No, in -- we had an agreement that any funds at that  
19 particular time would go into the investment account.

20      Q    Any funds received by the Schedule Company?

21      A    Any funds received into the Trust and settled into the  
22 Trust were to go into -- into Rothwell.

23      Q    But they were received by Schedule Company?

24      A    Schedule is just a nominee. And again, it was a choice  
25 of routing, that that's the way they would go.

1 Q So you didn't work with anybody at Asia Pacific, such  
2 that you would know exactly when these transfers were being  
3 made?

4 A Not exactly. I cannot remember back that far. I dealt  
5 with Lindsay Barrett sometimes in Vanuatu, and obviously I  
6 talked to Cherie Bright and Morgan Liddell.

7 Q And you assured Mr. Rayment that when funds were received  
8 from Asia Pacific by Schedule Company, that those funds  
9 would be transferred into the Rothwell account?

10 A That was the policy we established, yes.

11 Q And this is the only client that you ever did that with?

12 A Yes.

13 Q Did you do any -- any similar type of things for other  
14 clients, using a company called Colony Mortgage?

15 MR. WILLIAM COHAN: Object to the form of the  
16 question. I don't know what "similar things" means in this  
17 context.

18 THE COURT: -- clear it up, Counsel.

19 MR. THOMAS: I'm sorry?

20 THE COURT: Why don't you clear it up.

21 BY MR. THOMAS:

22 Q Did you make any similar transfers into trusts that were  
23 handled by Hallmark, in connection with activities involving  
24 a company called Colony Mortgage?

25 A I actually don't quite understand that question. A

1 transfer from who to where, for what?

2 Q I'll move on.

3 Now, you said earlier that Mr. Rayment came to you with  
4 the suggestion that Rothwell may want to invest in Lot 14 of  
5 the Casa Blanca property in Mexico, correct?

6 A That is correct.

7 Q And did you speak with Mr. Francis about that directly?

8 A Not at that specific time.

9 Q Later?

10 A Yes.

11 What actually happened was that Mr. Francis telephoned me  
12 one day, I think several weeks later, and just expressed his  
13 desire that that would be a nice asset for the Trust and,  
14 you know, it would help him. And as beneficiary, you know,  
15 I agreed with him.

16 Q And did he tell you he was going to build a house on that  
17 land?

18 A Yes, he did.

19 Q Now, you said earlier that that was a common thing for  
20 big trusts, such as the Mellons or something like that, to  
21 buy a property so that the beneficiary could live in it. Is  
22 that correct?

23 A That is correct.

24 Q Could you give me one example of where such a trust  
25 purchased a property that was to be occupied by the settlor

1 of the Trust?

2 A There will be many -- I can't give you them, but I'm  
3 sure -- in case law. And if Mr. Foley was here, he would  
4 give you many, many cases.

5 Q And I had a question here asking whether it was supposed  
6 to be the Francis Trust that made the purchase, or Rothwell.  
7 But you sort of explained that it's all just part of one  
8 basket. Is that right?

9 MR. WILLIAM COHAN: I guess I'm going to object to  
10 the form of the question, because I'm not sure -- I think I  
11 understand, but I don't think the witness does, what that  
12 question means.

13 THE COURT: Do you understand the question?

14 THE WITNESS: Not really. I don't --

15 THE COURT: Why don't you restate it.

16 THE WITNESS: -- and understand the "basket."

17 THE COURT: Okay. Why don't you restate it.

18 BY MR. THOMAS:

19 Q You did not distinguish the separateness of Rothwell from  
20 the Trust itself, did you?

21 A No.

22 Q Now, you said that the shares of Casa Blanca were owned  
23 by Island Films and Summerland Holdings, correct?

24 A Yes.

25 Q And that those companies are owned by Hallmark, correct?

1 A They were, yes.

2 Q Were those companies, or either of them, previously owned  
3 by Mr. Francis?

4 A Island Films was.

5 Q And, what? He transferred that to Hallmark?

6 A He settled the shares into the Francis Trust.

7 Q As part of transaction to purchase the property in  
8 Mexico?

9 A No.

10 Q Previously?

11 A Very, very -- very, very pre- -- even, I think, right at  
12 the inception of the Trust.

13 Q Did Mr. Rayment handle this whole transaction regarding  
14 the purchase of the property in Mexico?

15 A Yes, he did.

16 Q And then you just transferred the funds from the Rothwell  
17 account as he instructed?

18 A It was agreed that Rothwell would provide the funds to  
19 purchase the land.

20 Q And in going into this transaction for Rothwell and the  
21 Trust, it was your understanding that there would be no  
22 return on the property except the promise of Mr. Francis to  
23 build a home on it. Is that correct?

24 A Whenever I make an investment, I -- mostly I would hope I  
25 will have a capital gain somewhere down the line. But in

1 this particular instance, I knew there would be added value,  
2 as the house was going to be built on it.

3 Q Were you aware that Mr. Francis had already made a down  
4 payment to purchase that property, Lot 14, before  
5 Mr. Rayment approached you with the proposal?

6 A No, I was not.

7 Q Did he tell you that at the time that he approached you?

8 A No.

9 Q You know, in the purchase of that first lot, Lot 14, the  
10 document showed that I think about a million thirty thousand  
11 dollars or something was transferred to Mexico, I believe  
12 either the escrow or the Mexican seller, for the purpose of  
13 purchasing that lot. There was also \$24,000 that was  
14 transferred pretty much at the same time from Hallmark for  
15 that purpose.

16 Can you tell us why Hallmark chipped in \$24,000 on the  
17 purchase of the property?

18 A Yes. I believe -- I believe that was fees. I believe  
19 that was professional fees related to the purchase. But I  
20 would have to go right back on -- on all of the accounts for  
21 that.

22 But I believe that was probably a separate little invoice  
23 that we received, that we paid directly out of Hallmark.

24 Q Have you ever reviewed the books and records of Casa  
25 Blanca?

1 A No.

2 Q Do you know if they have books and records?

3 A No.

4 Q Do you know who paid for the construction of the home on  
5 the property in Mexico?

6 A To the best of my knowledge, it was companies owned by  
7 Mr. Francis.

8 Q And I'm going to repeat a couple of things that I believe  
9 I understood you to say earlier.

10 Later, Lot 13-B, an adjoining property, was purchased.  
11 Is that correct?

12 A Yes.

13 Q And that Rothwell provided the funds to purchase that  
14 property, as well?

15 A Yes.

16 Q And that came from the Irvine Morgan Stanley account?

17 A Yes.

18 Q How did you come to that second investment in the Mexican  
19 property?

20 A I believe I had a call from Mr. Rayment to say that there  
21 was further land available, and it would enhance the overall  
22 value of the property and make it have a -- much more of a  
23 feeling of an estate. Therefore, I certainly concurred and  
24 agreed, and made the decision to purchase it.

25 Q Do you view Casa Blanca as also being part of the Trust?

1 A I do indeed, yes.

2 Q Do you know who has used the property in Mexico since the  
3 home was constructed on it?

4 A Mr. Francis.

5 Q Is there a rental or lease agreement between Casa Blanca  
6 or Rothwell or the Trust and any other party for the use of  
7 the property?

8 A No.

9 Q Have any rents ever been collected by Casa Blanca or  
10 Rothwell or the Trust for the use of the property?

11 A No.

12 Q And has Casa Blanca or Rothwell or the Trust ever kept  
13 any written accounting for the cost of constructing and  
14 maintaining the home there?

15 A No.

16 Q Is it you that opened the Rothwell securities account,  
17 Morgan Stanley in Irvine?

18 A Yes.

19 Q And was that done because Mr. Rayment referred you to  
20 Mr. Welker?

21 A Yes.

22 Q Did you know that -- whether Mr. Francis already had a  
23 banking relationship with Mr. Welker?

24 A No.

25 Q And so, excepting the payment for the property in Mexico,

1 isn't it true that essentially all of Rothwell's real assets  
2 were in the Morgan Stanley account?

3 A That is correct.

4 MR. THOMAS: Okay. I have no further questions,  
5 Your Honor.

6 THE COURT: Okay.

7 Redirect?

8 MR. WILLIAM COHAN: Yes.

9 (Pause in proceedings)

10 THE COURT: Okay. You may inquire.

11 REDIRECT EXAMINATION

12 BY MR. WILLIAM COHAN:

13 Q Mr. Chaffe, do you have volume one with Exhibit 101 in it  
14 within reach, sir? Do you have it?

15 A Yes.

16 Q Okay. Do you recall being asked some questions about the  
17 protector being required to consent to a -- to any  
18 distribution in excess of \$10,000 as part of the Trust?

19 A Yes.

20 Q Could I invite your attention to paragraph 2 in the Trust  
21 document? Again I don't have page numbers. I'm going to  
22 display it. Inviting your attention -- I can count --

23 THE CLERK: Counsel, may I ask what exhibit it is?

24 MR. WILLIAM COHAN: 101. It's the 12th page.

25 THE COURT: Paragraph number? Does it have a

1 he controlled, built a residence on those lots?  
2 A Yes.

3 Q Now I'd like to invite your attention a little farther  
4 into the document. Again I apologize for the lack of page  
5 numbers. But let's just turn the pages together. This is  
6 actually the last page of the Francis Trust indenture. And  
7 I'd like to invite your attention to the very top of the  
8 page.

9 Oh, I'm sorry. Do you have that before you? Above the  
10 bold language that says "The seventh schedule"?  
11 A Yes, I do.

12 Q Okay. And it says, if I may invite your attention:  
13 "Upon a protector being appointed or continuing in his  
14 appointment the trustees exercise of their powers under  
15 clauses 1M parens small Roman numeral 2C4A --" I will stop  
16 right there. And then: "In any disposition of the Trust  
17 fund, the value of which exceeds U.S. \$10,000."

18 Do you see that this is a limitation on the, if I may put  
19 it this way, veto power of the protector?  
20 A Yes.

21 Q This \$10,000? And do you see that it does not include  
22 paragraph 2A?  
23 A Yes.

24 Q That being the one that we just read, correct?  
25 A Uh-huh. Yes.

1 Q And did you understand that the investment in real est  
2 that you've testified about concerning Lot 14 was not a  
3 disposition of the Trust fund, but rather an investment of  
4 funds?

5 A That is correct.

6 Q All right. Thank you.

7 Why did you volunteer to act as the personal trustee when  
8 Mr. Trowbridge decided he didn't wish to continue to act as  
9 trustee? What motivated you?

10 A Probably a sense of fiduciary duty as I was the initial  
11 trustee and had taken on, you know, Mr. Francis as a client  
12 and the Francis Trust, you know, as an entity. And I felt  
13 very strongly that the Trust had to have a trustee. And  
14 more importantly, because of the levy, a trustee that knew  
15 the background and the history of the transactions of the  
16 Trust. And I'm here present today to fulfill my fiduciary  
17 duty in that respect.

18 Q And did you take exception to the United States  
19 government contending that you or some other means were used  
20 by Mr. Francis to control Rothwell?

21 A Yes, I did.

22 Q Now, you testified briefly about your compensation for  
23 services. I believe since you undertook to act as the  
24 trustee and the director of Rothwell since was it March of  
25 2010?

1 A Yes.

2 Q And the total amount that you've been compensated for  
3 your services at \$30,000 plus expenses?

4 A Yes. That is actually from Rothwell. As a trustee, a  
5 personal trustee under the Turks and Caicos trust ordinance,  
6 I'm not allowed to charge a fee as trustee as an individual.  
7 Only licensed trust companies can do that.

8 MR. WILLIAM COHAN: May I have just a moment, Your  
9 Honor?

10 THE COURT: Yes.

11 MR. WILLIAM COHAN: I have nothing further of this  
12 witness. Thank you, Your Honor.

13 THE COURT: Redirect?

14 MR. THOMAS: Just a couple of questions, Your Honor.

15 MR. WILLIAM COHAN: You mean recross, Your Honor?

16 THE COURT: Recross.

17 RECCROSS EXAMINATION

18 BY MR. THOMAS:

19 Q I think you said that Rothwell's only assets were in that  
20 Morgan Stanley account. Is there other -- are there other  
21 funds that Rothwell has had elsewhere at any period of time  
22 here?

23 A No. Other than the 500,000 that was kept actually in the  
24 Bermuda Commercial Bank, which I stated earlier.

25 Q Oh, is that --

1 A It was about 500,000 cash. Cash was always maintained.

2 Q Is that still there?

3 A The Bermuda Commercial Bank account was closed as a  
4 result of the investigations into its affairs.

5 Q And where did money from that account go?

6 A I was not trustee at the time. And I believe it went  
7 into the Hallmark Trust trust account.

8 Q How is the current action be financed?

9 A It was financed initially by the 500,000 that was  
10 available. And now it is on a contingency basis.

11 Q Do you have any concerns that you may be subject to  
12 liability in the Turks and Caicos with respect to this  
13 matter?

14 A No.

15 MR. THOMAS: Thank you.

16 THE COURT: Okay. You may step down.

17 THE WITNESS: Thank you.

18 THE COURT: Okay. Next witness, Counsel?

19 MR. WILLIAM COHAN: Yes. Mr. Rayment.

20 THE COURT: Is it agreeable with both sides that  
21 this prior witness may be excused?

22 MR. WILLIAM COHAN: Yes.

23 MR. THOMAS: Yes.

24 THE COURT: Okay. Thank you. You're free to go.

25 Thanks for coming in.