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1 BE IT REMEMBERED that the above-entitled and
2 numbered matter came on regularly to be heard before the
3 Arizona Corporation Commission, in Hearing Room 2 of
4 said Commission, 1200 West Washington Street, Phoenix,
5 Arizona, commencing at 9:37 a.m., on the 7th of May,
6 2014.

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BEFORE: MARC E. STERN, Administrative Law Judge

10 APPEARANCES:

11 For the Arizona Corporation Commission, Securities
12 Division:

12

13 Ms. Stacy Luedtke
14 Staff Attorney, Securities Division
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KAREN L. KESSLER, RPR
Certified Reporter
Certificate No. 50821

24

25

1 ALJ STERN: We're back on the record in the
2 matter of Tri-Core Companies, LLC, et al., in Docket No.
3 S-20867A-12-0459.

4 My name is Marc Stern. I'll preside over this
5 proceeding today.

6 We will take appearances again for the Division.

7 MS. LUEDTKE: Stacy Luedtke.

8 ALJ STERN: And do you want to enter your
9 appearance, Mr. Mogler?

10 MR. MOGLER: Jason Mogler, yes, sir.

11 ALJ STERN: And you're here on behalf of the
12 entities also, correct?

13 MR. MOGLER: That's correct yes, sir.

14 ALJ STERN: But you're not representing -- one
15 thing I want to be sure -- Tri-Core Mexico, that's not
16 your thing to represent, that's a separate entity.

17 MR. MOGLER: I'm mentioned in the complaint, so
18 in the respect that I'm defending myself in the
19 complaint?

20 ALJ STERN: Yeah. Well that's --

21 MS. LUEDTKE: They have already been defaulted.

22 ALJ STERN: That entity, that company has
23 already been defaulted.

24 MR. MOGLER: Oh, I'm not trying to defend any
25 company that's been defaulted. I'm just trying to

1 defend my position in that company.

2 ALJ STERN: Okay.

3 MR. MOGLER: And my responsibility thereof.

4 ALJ STERN: Okay. With respect to that,
5 Ms. Huerta, are you still just observing today?

6 MS. HUERTA: Yes. I will observe.

7 ALJ STERN: All right. With that, we're ready
8 to proceed.

9 Who is your next witness, Mr. Mogler?

10 MR. MOGLER: Yesterday you had indicated that I
11 needed to submit evidence from --

12 ALJ STERN: Oh, right. I think you were
13 Exhibits R-1 through R-10.

14 MR. MOGLER: Yeah. I went through and I
15 renumbered everything, and I made copies. I gave a copy
16 to the assistant. I don't know what --

17 ALJ STERN: The court reporter?

18 MR. MOGLER: The court reporter. And so you
19 have copies of those. I also gave copies renumbered to
20 Stacy Luedtke as well.

21 ALJ STERN: Okay. Did you give them to me?
22 These are new ones?

23 MR. MOGLER: Those are the ones that we are
24 going to use today.

25 ALJ STERN: Okay. Because I have the other ones

1 from yesterday.

2 So Exhibits R-1 through R-10, do you have any
3 problems with those, Ms. Luedtke?

4 MS. LUEDTKE: I do, Judge. Some of those were
5 not even referenced in the testimony yesterday. They
6 may have been marked, but not referenced.

7 ALJ STERN: Okay. Which ones --

8 MS. LUEDTKE: I'm trying to -- I think R-1 was
9 Mr. Stevens' resume, and just subject to my objection
10 about it being used for any purpose with respect to
11 qualifying him as an expert, which you said you weren't
12 going to consider, I don't have a problem to that coming
13 in generally.

14 ALJ STERN: Okay. Just a minute. All right.
15 R-1, so that, I'm going to admit that.

16 (Exhibit R-1 was admitted into evidence.)

17 ALJ STERN: How about --

18 MS. LUEDTKE: I don't have a problem with R-2,
19 which is the agreement between Mr. Stevens and
20 Mr. Gibbons.

21 ALJ STERN: Wait a second. R-2. Okay.

22 Exhibit R-2 is admitted.

23 (Exhibit R-2 was admitted into evidence.)

24 ALJ STERN: What else?

25 MS. LUEDTKE: For 3, I don't know what 3 is.

1 The operating agreement. I don't even have that marked
2 as being referenced yesterday.

3 ALJ STERN: R-3. Let me see if I can find it.

4 MS. LUEDTKE: I believe it was an operating
5 agreement for Tri-Core Mexico Land Development already
6 in evidence anyway.

7 ALJ STERN: Is that -- wait a second.

8 MR. MOGLER: Which one is that? Sorry.

9 ALJ STERN: Operating agreement. Yeah, I'm
10 trying to find R-3.

11 MS. LUEDTKE: It wasn't even referenced in the
12 testimony yesterday.

13 ALJ STERN: It wasn't?

14 MS. LUEDTKE: Neither was R-4.

15 ALJ STERN: Okay. She's objecting to those
16 documents because those two particular documents, R-3
17 and 4, because they weren't, nobody testified about
18 them.

19 MR. MOGLER: The company was mentioned in the
20 testimony. It speaks to the operating arrangement
21 within the company. So I would think that it would
22 speak to that.

23 ALJ STERN: Left me take a look at it.

24 MS. LUEDTKE: He referenced S-123, which is the
25 operating agreement that's already admitted into

1 evidence. And I think that's where we were trying to
2 make sure that there was no duplication.

3 MR. MOGLER: I'm fine with that if it's a
4 duplicate.

5 ALJ STERN: Okay. So S-123 --

6 MR. MOGLER: There's just a lot of paperwork in
7 this case.

8 ALJ STERN: R-3 is S-123, you're saying?

9 MS. LUEDTKE: It's the same thing. And S-123 is
10 already in evidence, so --

11 ALJ STERN: So we'll just -- that's okay.
12 S-123, that is the operating agreement. Okay.

13 MS. LUEDTKE: Actually, I don't know what R-4
14 is.

15 ALJ STERN: All right. Let's see what R-4 is.
16 If I can find it. It is the -- well, see I'm not sure.

17 Do you know what R-4 is, what you allege to be
18 R-4, Mr. Mogler?

19 MS. LUEDTKE: Yeah. You go from R-3 to R-5 on
20 here.

21 MR. MOGLER: There is no R-4.

22 ALJ STERN: No R-4.

23 MR. MOGLER: Yeah, there's no --

24 ALJ STERN: So we don't need to worry about R-4.
25 Okay. How about R-5? What is R-5?

1 MS. LUEDTKE: R-5, I do you have an objection
2 to. That was the appraisal -- actually, it was the
3 document that says Lot 5 total that Mr. Stevens couldn't
4 identify and said he wasn't sure what it was.

5 ALJ STERN: Wait a minute.

6 MS. LUEDTKE: It says, on the list, that it's an
7 appraisal, but I'm not sure that's actually what that
8 document is since there was no testimony about what it
9 actually was.

10 ALJ STERN: Okay. Just a minute. Okay. So
11 R-5 --

12 You heard her objections, Mr. Mogler. Do you
13 have any comment?

14 MR. MOGLER: Mr. Stevens created the document,
15 and therefore would have knowledge of the document. He
16 did testify yesterday to it. In fact, I think he talked
17 about the value of the properties on it, so I would --

18 MS. LUEDTKE: He actually did not. He testified
19 that he was not sure what that document was.

20 ALJ STERN: Yeah. I --

21 MS. LUEDTKE: That's part of the problem with
22 trying to move the next day, because we're not --

23 ALJ STERN: Right. I remember him testifying
24 that. But for whatever it's worth, I don't think it was
25 established what the value of the properties were from

1 his testimony. I --

2 MS. LUEDTKE: To the extent that he created this
3 document, it would, again, be the expert issue as well.
4 I don't remember him testifying that he created this
5 document either. I would assume that he actually
6 created the appraisals, but the testimony yesterday was
7 he wasn't sure what this document was.

8 ALJ STERN: Mr. Mogler?

9 MR. MOGLER: I can't presume to testify for
10 Mr. Stevens. What I can say is I believe he spoke to it
11 and we admitted it for the value. As you can --

12 ALJ STERN: Well, you moved to admit it. You
13 didn't --

14 MR. MOGLER: We moved to admit it.

15 And what you had indicated yesterday was that
16 there was value on the land and --

17 ALJ STERN: Yeah, but, as I recall, Mr. Mogler,
18 he didn't testify to what the land was worth. I know,
19 there's testimony that the contract purchased the parcel
20 was \$1.7 million.

21 MR. MOGLER: I agree with that, sir. Yes, sir.

22 ALJ STERN: Okay. But as far as admission, I
23 think I'll deny admitting R-5. It's just, it's too
24 vague, and it's not probative to prove anything.

25 MR. MOGLER: Yes, sir.

1 ALJ STERN: Okay. What's R-6?

2 MS. LUEDTKE: It's a -- I'm not sure.

3 ALJ STERN: Santa Clara Resort, that's that --

4 MS. LUEDTKE: Illustration. I don't have a
5 problem with R-6.

6 ALJ STERN: That's just that little drawing or
7 printout of a picture of whatever.

8 No problem with R-6, we'll admit R-6.

9 (Exhibit R-6 was admitted into evidence.)

10 ALJ STERN: Okay. Then R-7 is something that's
11 captioned, Market Analysis. And I don't know --

12 MS. LUEDTKE: This was the appraisal that we
13 actually started talking about yesterday. I don't think
14 there was much testimony on it, but it's an appraisal
15 that Mr. Stevens apparently performed and -- I believe
16 the same goes for R-8, although R-8 was not referenced
17 in any testimony yesterday. R-7 was, and you denied him
18 being able to talk about it because he wasn't qualified
19 as an expert and, or designated as an expert, and they
20 indicated they were not doing so.

21 ALJ STERN: Well, for whatever its purpose is --
22 I think there's some probative value. It's created,
23 apparently, by an entity in Las Vegas.

24 MS. LUEDTKE: Well, it's Mr. Stevens. And my
25 only problem with admitting it at this point is I was

1 not able to cross him because you indicated that this
2 was not going to be coming in and he wasn't able to
3 testify about it.

4 ALJ STERN: That is true. I think under the
5 circumstances I can't admit Exhibit R-7 either.

6 MR. MOGLER: Sir?

7 ALJ STERN: Yes, sir.

8 MR. MOGLER: The appraisals were used with the
9 lenders who lent the money during presentation --

10 ALJ STERN: Well, you can testify later. I
11 mean, I understand, perhaps, but --

12 MS. LUEDTKE: There was no testimony on that
13 either.

14 ALJ STERN: Excuse me?

15 MS. LUEDTKE: I said there is no testimony on
16 that either. I mean, if Mr. Mogler wants to testify
17 about that and testify that he provided those documents
18 to all the investors, then that's one thing, but there
19 is no testimony on that.

20 ALJ STERN: Mr. Mogler, I can't admit Exhibit
21 R-7. I'm sorry. It's just not -- you can call
22 Mr. Stevens back, if you want, and have him testify
23 about this. His signature is on it at some point, but
24 there really is no testimony that directly spells out,
25 at least according to my notes, what it represented. I

1 have the reference to your earlier exhibit listing, and
2 then R-7, and that's about it.

3 So, based on what the testimony has been so far,
4 there's not enough foundation for it. So R-7 won't be
5 admitted.

6 All right. Let's go on to R-8.

7 MS. LUEDTKE: R-8 was not referenced in the
8 testimony yesterday either. It's another appraisal.

9 ALJ STERN: Which one is that, the TMLD number
10 on that? Is there a number on that from Mr. Mogler?

11 MS. LUEDTKE: 29.

12 ALJ STERN: 29? Let me see if I can find it.

13 Okay.

14 I believe you're correct with respect to no
15 discussion, because I can't find any notes on it.

16 Mr. Mogler, any comments on R-8?

17 MR. MOGLER: Can I take a look at R-8? I don't
18 have it in front of me.

19 ALJ STERN: Yeah. It's TMLD, it was TMLD.

20 MR. MOGLER: Once again, it was a tool used, or
21 appraisal that Mr. Stevens, as counsel pointed out, to
22 create the value, but it was also used as a tool for the
23 lenders to lend on the properties and the projects.

24 ALJ STERN: Well, but it --

25 MR. MOGLER: There is no testimony to that. I

1 understand that and respect it, so...

2 ALJ STERN: All right. There's just no
3 foundation at all. So, you know -- and here again, this
4 is a multipage document that I don't have any testimony
5 on really relating to what it's supposed to show, what
6 it establishes, et cetera. So I can't admit that
7 either. I'm going to have to deny it.

8 Okay. R-9.

9 MS. LUEDTKE: I don't have any problems with 9
10 or 10.

11 ALJ STERN: All right. Exhibits R-9, admitted,
12 and R-10 -- just make sure I have what R-9 is. That's
13 the letter from the attorney is R-9. That's
14 Mr. Radosevich, I guess. And R-10 is the Form D,
15 correct?

16 MS. LUEDTKE: Right.

17 ALJ STERN: All right. That's admitted.

18 (Exhibits R-9 and R-10 were admitted into
19 evidence.)

20 ALJ STERN: With that we're ready.

21 Who's your next witness?

22 MS. LUEDTKE: Well, there's more on that list.
23 There's an R-12. I don't know what that is. I'm trying
24 to find it.

25 ALJ STERN: Oh, R-12. There's an S-110. Could

1 that be it?

2 MS. LUEDTKE: I think it's TMLD-25. It wasn't
3 referenced in the testimony yesterday either.

4 MR. MOGLER: It was referenced by Mr. Stevens in
5 him continuing to use the services of Tri-Core
6 Companies, and those were promissory notes signed by
7 Mr. Stevens to secure those services.

8 MS. LUEDTKE: Again, Judge, there was no
9 testimony on that. If Mr. Mogler or someone else wants
10 to testify about that, there may be some relevance, but
11 I don't know --

12 ALJ STERN: Wait. What is -- we're talking now
13 about what was TMLD-25, which is now what?

14 MS. LUEDTKE: R-12.

15 ALJ STERN: R-12.

16 MS. LUEDTKE: I think they skipped R-11. So
17 there is no R-11. We go to R-12.

18 ALJ STERN: I don't find a reference to R-12
19 actually in my notes.

20 MS. LUEDTKE: I don't have it either.

21 ALJ STERN: And that's these --

22 MR. MOGLER: Well, I'll bring it up when
23 Mr. Hinkeldey is on the stand at some point.

24 ALJ STERN: All right, well, you can try and do
25 that then.

1 TMLD-25 is R-12. It's not admitted at this
2 time, there's no evidence to support it.

3 Okay. Are we ready to proceed? Mr. Mogler?

4 MR. MOGLER: Yes.

5 ALJ STERN: Who is your witness?

6 MR. MOGLER: My witness is Mr. Jim Hinkeldey.

7 ALJ STERN: Okay. Mr. Hinkeldey, do you want to
8 come forward and be sworn in as a witness?

9 (Jim Hinkeldey was duly sworn by the Certified
10 Reporter.)

11 MR. MOGLER: Would it be all right with the
12 court if I cleared a few things up in terms of -- well,
13 I'll go ahead and do it. If I get in trouble for it,
14 I'll --

15 ALJ STERN: We'll tell you when you get in
16 trouble for it, if you get in trouble.

17

18 JIM HINKELDEY,
19 called as a witness on behalf of the Respondent, having
20 been previously sworn by the Certified Reporter to speak
21 the truth and nothing but the truth, was examined and
22 testified as follows:

23 DIRECT EXAMINATION

24 BY MR. MOGLER:

25 Q. Mr. Hinkeldey, how are you today?

1 A. Fine, thank you.

2 Q. Thank you for coming.

3 Just to clean up yesterday a little bit.

4 How long have you --

5 ALJ STERN: Wait. Wait. Let's just back up a
6 little bit.

7 Remember how you start --

8 MR. MOGLER: I'm leading, right?

9 ALJ STERN: No. Aside from leading, you know,
10 you've got a witness on the stand. We do know his name,
11 but would you lay a little background information in
12 there, into the record?

13 MR. MOGLER: You're absolutely correct.

14 BY MR. MOGLER:

15 Q. Mr. Hinkeldey, can you tell us a little bit
16 about yourself and your background and your history?

17 A. My background and my history. I'm 62 years old,
18 going on 63 this year. I have been involved in real
19 estate and finance for almost my whole life. I live in
20 Arizona. I worked in real estate and also, way back
21 when, beginning before Fannie Mae and Freddie Mac, I
22 worked with the original mortgage backed securities.

23 I think that kind of sums it up, I think.

24 Q. Did you -- where did you meet Mr. Mogler and
25 when did you guys become partners?

1 A. I met Jason Mogler at Eagle Home Mortgage, which
2 was a mortgage company out of, I believe, it was
3 Seattle, Washington. And that was approximately ten
4 years ago.

5 Q. And the company that you both worked for --

6 A. In fact, it might have been longer than ten
7 years ago. Could have been. No, I think it was about
8 ten.

9 Q. Ten years ago.

10 And the company that you both worked at at the
11 time, it was Eagle Mortgage?

12 A. Eagle Home Mortgage, yes.

13 Q. And then it progressed to Republic Mortgage; is
14 that correct?

15 A. Well, no. Eagle Home Mortgage then moved over
16 to another company, which was Republic Home Mortgage, or
17 Republic Mortgage, I believe, and that was out of Las
18 Vegas.

19 Q. And then from there, Mr. Mogler went to the
20 Royal Bank of Canada as the director of construction
21 lending for the company, title?

22 A. I believe that's true, yes.

23 Q. And then from there you guys met up again. Is
24 that correct to say?

25 A. Yes, that is correct.

1 Q. And you took a -- at the time they were officing
2 Tri-Core Business Development, asked you to become
3 aboard to be an independent consultant; is that correct?

4 A. Well, yes, it was.

5 Q. Okay. And then from there --

6 ALJ STERN: Were you an employee of --

7 THE WITNESS: No. I was a consultant.

8 ALJ STERN: What's a consultant?

9 THE WITNESS: I was brought upon because, at
10 that time, Vince Gibbons created, with Jason and so
11 forth, a, a mortgage banking company to do land. He was
12 an engineer, so he was trying to do tract development,
13 or he was attempting to do tract development, and the
14 natural transition of Mr. Gibbons was to not only be
15 able to offer the services of infrastructure and so
16 forth, joint venture, build the development, but also
17 offer home financing as well.

18 ALJ STERN: Well, who was paying you?

19 THE WITNESS: I believe it was Tri-Core Business
20 Development. It was not Tri-Core Engineering, that I
21 know. But I forget if there was an entity Tri-Core
22 Lending or not.

23 BY MR. MOGLER:

24 Q. And you were purely a consultant at that time?

25 A. Yes.

1 Q. And during that consulting role, you attended
2 meetings for the benefit of Tri-Core Business
3 Development; is that correct?

4 A. Yes, it is.

5 Q. All right. And then from there, yourself,
6 Mr. Mogler, and Vince Gibbons, created Tri-Core
7 Companies, yeah, Tri-Core Companies, TCC?

8 A. Yes.

9 Q. If I could just reference R-13, please.
10 Do you have that in front of you, Mr. Hinkeldey?

11 A. Yes.

12 MS. LUEDTKE: Hang on. I'm a little confused.
13 Because I don't have anything corresponding to what R-13
14 is.

15 MR. MOGLER: TCC-36.

16 ALJ STERN: Let me ask you a question,
17 Mr. Mogler.

18 I know you gave me a stack of loose paper here
19 this morning. It's not stapled together. Is this all
20 R-13, this pile?

21 MR. MOGLER: I can't see it from here, sir.

22 ALJ STERN: Well, it says Tri-Core Companies,
23 LLC, non-circumvention --

24 MR. MOGLER: Yes, sir.

25 ALJ STERN: -- non-disclosure.

1 Is this whole pile R-13?

2 MR. MOGLER: No, sir.

3 ALJ STERN: Where does it -- I assume it begins
4 on the first page, but how long, how far does it go?

5 MR. MOGLER: It's --

6 ALJ STERN: Does it go down to this yellow tab
7 that follows, because then there's --

8 MR. MOGLER: Yes.

9 ALJ STERN: -- some signatures, but --

10 MR. MOGLER: You should see photos on the last
11 pages.

12 ALJ STERN: The last page is photos?

13 MR. MOGLER: Yeah.

14 ALJ STERN: Okay. Wait a minute. Project
15 experience catalog. Is that --

16 MR. MOGLER: Yes, sir. Yeah.

17 ALJ STERN: I mean, you know, when you're
18 handing out a pile of paper you sort of --

19 MS. LUEDTKE: What is it? I'm -- there's a
20 photo on the end of it?

21 MR. MOGLER: Yeah.

22 ALJ STERN: Now, let me ask you this too,
23 Mr. Mogler.

24 How many exhibits are we going to have, like
25 loose piled paper? Because the court reporter has to

1 keep these things separate, believe it or not. And we
2 can take a few minutes here and separate these out and
3 staple them if we have to, or paperclip them, or do
4 something. But we have to keep them so we know what is
5 involved.

6 MR. MOGLER: Yeah. The stack that you have is
7 the Lot 47 and TCC, and it goes from R-13 to R-17, it
8 should.

9 ALJ STERN: But we don't know where one begins
10 and --

11 MS. LUEDTKE: Well, there are Bates numbers at
12 the bottom, I believe, at least on my, what used to be
13 TCC-36, which I believe is now --

14 MR. MOGLER: R-13.

15 MS. LUEDTKE: -- R-13. And that is TRI_C10878,
16 and mine ends at 10910. Is that right?

17 ALJ STERN: I have it -- see, he said there were
18 pictures --

19 MS. LUEDTKE: That's my problem here too,
20 because that's not what I have.

21 ALJ STERN: And 10910, I don't know what is
22 there, but I don't think those are the pictures.

23 MR. MOGLER: I originally came in with them
24 bound. I recopied them last night and then relabeled
25 them.

1 MS. LUEDTKE: What is your first and last Bates
2 number?

3 MR. MOGLER: My last Bates number is 10893.

4 MS. LUEDTKE: Okay. Mine just goes on further.
5 And to tell you the truth, that was the part I was going
6 to have problems with.

7 So if they want to separate that out, I don't
8 have a problem with it.

9 ALJ STERN: Okay. I just want to check with the
10 court reporter.

11 Do you know then, do you have a separated out
12 copy --

13 What is going to be the court reporter's copies?

14 MR. MOGLER: She indicated that --

15 ALJ STERN: Oh, those that Mr. Hinkeldey has.

16 MR. MOGLER: Yes, sir.

17 ALJ STERN: Okay. But they're all loose, right?

18 MR. MOGLER: Yes, sir.

19 ALJ STERN: We are going to have to have them
20 attached together so they're not floating around in
21 different places.

22 Let me see if I can obtain a stapler that would
23 do some of this for you.

24 MS. LUEDTKE: We have one right here.

25 ALJ STERN: Do you have one?

1 MS. LUEDTKE: Yeah.

2 ALJ STERN: We're going to need about three of
3 them I think.

4 (Brief pause.)

5 ALJ STERN: Oh, he doesn't have, he doesn't have
6 a full set of exhibits.

7 All right. We're going to go off the record for
8 a minute.

9 (Brief recess.)

10 ALJ STERN: Okay. We're back on the record.

11 We have R-13, which is captioned at the
12 beginning, Tri-Core Companies, LLC, Non-Circumvention,
13 Non-Disclosure and Working Agreement.

14 Do you want to continue, Mr. Mogler?

15 MR. MOGLER: Yes, sir.

16 BY MR. MOGLER:

17 Q. So Tri-Core Companies was formed.

18 What was the purpose of Tri-Core Companies being
19 formed?

20 A. Tri-Core Companies was formed to take advantage
21 of property on the northern Sea of Cortez, primarily
22 beachfront, which the, what was called a new highway, as
23 it was being built, would eventually go from El Golfo de
24 Santa, which is on the west side of the Sonoran coast,
25 approximately, to Rocky Point, which is on the eastern

1 edge of where the gulf starts turning down.

2 So, again, Tri-Core Companies was formed to take
3 advantage of the properties on the beachfront.

4 Q. And this non-circumvent, non-disclosure working
5 agreement was created by Mr. Gibbons' attorney; is that
6 correct?

7 A. I believe so, yes.

8 Q. Okay. And why did you decide to partner with
9 Mr. Gibbons in this venture down in Mexico?

10 A. Mr. Gibbons was very knowledgeable of Mexico.
11 He was involved both as an engineering company in
12 Mexico, as well as personally, he had real estate in
13 Mexico. So it was my belief that Vince Gibbons was a
14 knowledgeable person in Mexico to do business in the
15 real estate side.

16 Q. Can I get you to turn, on R-13, to TRIC010882,
17 please? It's the front copy of the statement of
18 qualifications.

19 A. Yes.

20 Q. If you could just turn on the next page, which
21 is page one. It's Bates No. TRIC010883.

22 Can you read, under Mexico and International
23 Projects, can you read that first paragraph, please?

24 MS. LUEDTKE: I just want to object. I'd like
25 to get some foundation for what we're reading. I'm not

1 exactly sure what this is as part of the
2 non-circumvention agreement. So if we could just get
3 some foundation as to what we're reading.

4 ALJ STERN: Mr. Mogler, do you want to --
5 BY MR. MOGLER:

6 Q. Mr. Hinkeldey, the company was formed by
7 yourself, Mr. Gibbons, and Mr. Mogler.

8 The experience that you were relying on for
9 Mexico was Mr. Gibbons; is that correct?

10 A. Yes.

11 Q. And the exhibit that I have here in front of you
12 is that a statement of qualification for Mr. Gibbons?

13 A. Yes, it was. Yes, it is.

14 MS. LUEDTKE: Can I just ask is that part of
15 this agreement? That's all I wanted to know. Yes.

16 THE WITNESS: Oh, I'm sorry. Me? I'm sorry.
17 I will say -- may I answer?

18 ALJ STERN: Yes.

19 THE WITNESS: I will say it is not part of the
20 circumvention. I would say it would be separate. Would
21 be my --

22 MS. LUEDTKE: Okay. That's fine, then.

23 ALJ STERN: Okay. All right.

24 Go ahead, Mr. Mogler, continue.

25 MR. MOGLER: All right.

1 BY MR. MOGLER:

2 Q. TR -- can you turn to page TRCO10883, please?

3 A. Yes.

4 Q. And under Mexico and International Projects, can
5 you please read the first paragraph, please?

6 A. Okay. Villages at Loreto Bay, Master Planned
7 Development, Loreto, Mexico. Engineer of record for
8 this 10,000 acre development in charge of all
9 engineering, permitting and construction aspects for the
10 project. Project responsibilities include developing
11 the master planned document for sections 1 through 9,
12 field survey review, field survey review and
13 verification, condominium regime master plans, lot
14 layout and legal descriptions, Sembrado applications,
15 permits, coordination and negotiations with local,
16 state, and federal agencies in Mexico, infrastructure
17 inventory and analysis, area drainage master plan,
18 design of all engineering components, grading and
19 draining plans, construction staking, construction field
20 checks, coordination of all sub consultants,
21 environmental impacts, financial feasibility studies,
22 contractor bidding, negotiations and construction
23 management and inspections. Sections 7 and 8 require
24 extensive steep hillside analysis, design and
25 construction.

1 Q. Now, you just read some of Mr. Gibbons
2 qualifications as an engineer.

3 At the time that you were an independent
4 consultant for Tri-Core Business Development, how large
5 was Mr. Gibbons' engineering company at that time?

6 A. I believe there were at least 20 employees, if
7 memory serves me right, engineers. And he also -- I'm
8 just speaking to the states, I'm not sure if we had
9 anyone in Mexico as well. I know there were Mexican
10 engineers that fluctuated between Mexico and the United
11 States.

12 Q. So he had the experience to do developments down
13 in Mexico; is that correct?

14 A. Yes.

15 Q. If I can get you to turn to TRIC010885.

16 A. Okay.

17 Q. If you could read the description of that,
18 please, as well.

19 A. Los Celajes, Acapulco, Mexico design and
20 construction management of an exclusive group of 21
21 villas located in Acapulco, Mexico and designed with a
22 270 degree view of the ocean. Services included the
23 design, permitting and construction of the villas and
24 related infrastructure. The elevation and steep
25 hillside location of this project made it a technical

1 challenge from the beginning to the end. The total cost
2 for this project was \$25 million, United States dollars.

3 Q. All right. Thank you, sir. If you could turn
4 the page and go to TRIC010 --

5 ALJ STERN: Can I ask you a question,
6 Mr. Mogler?

7 What are you attempting to establish with the
8 history of Mr. Gibbons and his associates in doing these
9 developments?

10 MR. MOGLER: Mr. Gibbons had the education, the
11 statement of qualifications to develop projects down in
12 Mexico. He had the experience, and in depth --

13 ALJ STERN: Okay. Is he available to testify
14 about this?

15 MR. MOGLER: He, last that I have heard was that
16 he was spending, he went into a mental health facility.

17 ALJ STERN: Oh, so he's unavailable.

18 MR. MOGLER: I don't know where he is currently;
19 however, he had some --

20 ALJ STERN: Issues.

21 MR. MOGLER: -- issues.

22 MS. LUEDTKE: I don't think there's any
23 allegation that we didn't think that their engineering
24 contractor was --

25 MR. MOGLER: Our partner. Not our engineering

1 contractor, our partner in Tri-Core Companies.

2 MS. LUEDTKE: I never said that he --

3 ALJ STERN: He's not a named party, and I don't
4 think it's an issue in the proceeding that what you
5 attempted to do in Mexico with these, or whatever
6 these -- there were a number of businesses, and I guess
7 you're singling out the Tri-Core developments in Mexico
8 with these notes.

9 There's no allegations that your company wasn't,
10 or your various entities, weren't able to perform what
11 would have come if everything would have gone forward.

12 MR. MOGLER: Well, I think there is some
13 confusion. Because Tri-Core Mexico Land Development, I
14 own 2 percent in, and then Tri-Core Companies, I own
15 30 percent, a third --

16 ALJ STERN: Right.

17 MR. MOGLER: -- of the company. So today I'm
18 talking about Tri-Core Companies. And there's only one
19 company that was down in Mexico where it was myself, Jim
20 Hinkeldey, and Vince Gibbons. So I'm talking about
21 Tri-Core Companies today.

22 I know it's confusing because of all the
23 Tri-Core names, but what I'm establishing is that there
24 is in fact ability to do this project, and knowledge to
25 do these projects that were stated.

1 ALJ STERN: But I guess what you don't
2 understand is with respect to the allegations by the
3 Division, they're not saying the companies weren't able
4 to possibly do what they were attempting to do. I
5 think, if I understand the Division's allegations in
6 these cases, is that when you bring in investors in an
7 offering of some sort, such as this or these number of
8 investments, and you were using loans in the form of
9 notes, which by definition are securities under the
10 Arizona Securities Act, that you get into the issue of
11 whether the offering and using these notes should be
12 registered.

13 Now, I saw a Form D yesterday, I think, as an
14 exhibit. Whether that, in and of itself, exempts you
15 from offering notes to investors, that's a factual issue
16 as to whether the investors were all accredited, whether
17 they weren't accredited, how many weren't accredited,
18 how did you make the offering, things like that. Then
19 whether, in fact, there was some issues involving the
20 underlying manner in which the offering was made, which
21 goes to the allegations of -- I think there's an -- is
22 there a 44-1991 allegation here? I'm pretty sure there
23 is. That maybe some things were omitted when you got
24 people to sign these notes, or you signed the notes and
25 they gave you their money.

1 So those are the issues. I don't think there's
2 any question that, you know, that's raised by the
3 Division in their case here that you didn't have
4 necessarily the background to do what you were
5 attempting to do.

6 Do you understand the difference?

7 MR. MOGLER: I do understand the difference. I
8 was just attempting to build foundation and who the
9 company members were and their experience in terms of
10 what they brought to the table in terms of what their
11 roles were in the companies and the ability to do the
12 project.

13 And if the Court is indicating today that, that
14 there is no challenge to the ability, then I can move on
15 with the next piece of evidence.

16 ALJ STERN: Would the Division --

17 MS. LUEDTKE: I am not challenging that
18 Mr. Gibbons was an engineer involved in, as one of the
19 three LLC members of Tri-Core Companies. I just don't
20 want -- and honestly, I don't care if he talks about,
21 you know, his purported qualifications in here a little
22 bit, but I don't think we need to go into great detail,
23 because I don't know that there are any allegations that
24 say that they intended to do certain engineering that
25 was not performed.

1 ALJ STERN: I didn't notice any.

2 MR. MOGLER: I'm just attempting to establish
3 foundation.

4 ALJ STERN: I understand. But, again, keep in
5 mind that the issues in this case are not ones regarding
6 the ability, possibly, or your intentions. It's just
7 the way you went about raising money by using notes.
8 Okay? And what was told to the people who invested
9 about, or wasn't told to people who invested. And those
10 are the things that the Division raised in their paper
11 called the notice of opportunity for hearing.

12 So we can listen to some more of your background
13 material, but it still isn't going to the base issues.
14 But go ahead. I'm just trying to save you a little bit
15 of time.

16 MR. MOGLER: Save us all a lot of time, and I
17 appreciate that, Your Honor.

18 MS. LUEDTKE: And I don't have any objection to
19 this document coming in either.

20 MR. MOGLER: Fair enough. And then we can move
21 forward to R-14 then.

22 ALJ STERN: Well, okay, she doesn't have any
23 objections. Exhibit R-13, the non-circumvention,
24 non-disclosure working agreement with an attachment
25 dealing with the background, I guess, of Tri-Core

1 Engineering and Mr. Gibbons is admitted.

2 (Exhibit R-13 was admitted into evidence.)

3 ALJ STERN: Okay. Go ahead.

4 MR. MOGLER: I'm just attempting to tell the
5 entire story, so people understand it's not just the one
6 transaction.

7 ALJ STERN: Okay.

8 MR. MOGLER: That's really the point of all
9 this.

10 ALJ STERN: Okay.

11 MR. MOGLER: And the intent goes a long way in a
12 lot of other courts as well, so...

13 BY MR. MOGLER:

14 Q. R-14, do you have that in front of you,
15 Mr. Hinkeldey?

16 MS. LUEDTKE: Can you explain what that is?

17 ALJ STERN: Let's wait a minute, because I don't
18 know what R-14 is.

19 MR. MOGLER: Well, it should be in front of you.

20 ALJ STERN: Well, I have a whole stack of loose
21 paper, but I don't know what R-14 is.

22 MR. MOGLER: Well, there's, the previous number
23 was TMLD-30. The new listing number is R-14.

24 MS. LUEDTKE: There should be a TMLD-30 on the
25 bottom left hand of the document, and it's pretty large.

1 ALJ STERN: Okay. I see that.

2 MR. MOGLER: I actually separated it out.

3 MS. LUEDTKE: What Bates number now?

4 MR. MOGLER: Well, I did this, I did title
5 differently, and the appraisal would be 16.

6 Do you have this sheet?

7 MS. LUEDTKE: Yeah. Hang on. All I have is --

8 ALJ STERN: Okay. I think I have it. I found
9 R-14. I just, mine just may have a page or two out of
10 order.

11 MS. LUEDTKE: Okay. How about we start with
12 what is the one that you want to talk about, what are
13 the Bates numbers for that?

14 MR. MOGLER: Okay. The Bates numbers are
15 TRIMLD003875.

16 MS. LUEDTKE: Okay. Just that page?

17 MR. MOGLER: Yeah.

18 MS. LUEDTKE: Oh, and it goes on to 77, right?

19 MR. MOGLER: Yeah.

20 MS. LUEDTKE: Those three pages?

21 MR. MOGLER: Yes, ma'am.

22 MS. LUEDTKE: Okay. And that's R what?

23 MR. MOGLER: 14.

24 THE WITNESS: Excuse me, Judge. I think this
25 might be the Judge's, either, duplicate of the Vernon

1 Penner letter. It appears to be a duplicate, sir.

2 ALJ STERN: No, I have it.

3 THE WITNESS: Oh, okay. I thought I had an
4 extra as well.

5 ALJ STERN: Okay. So we're talking about an
6 exhibit that's marked R-14 from something called Penner
7 & Associates, attorney and business consultant in
8 Mexico. Is that what we're talking about?

9 MR. MOGLER: That's correct, sir. Thank you for
10 your patience, sir. I appreciate it. As well as
11 Ms. Luedtke's and the court's.

12 ALJ STERN: Do you need -- there's a third page.
13 Do you have the third page?

14 THE WITNESS: I do, sir. It's 75 to 77?

15 ALJ STERN: Yeah, that's it.

16 MR. MOGLER: Looks easier on TV.

17 ALJ STERN: Okay. Ready to go ahead,
18 Mr. Mogler?

19 MR. MOGLER: Yeah, thank you, sir.

20 BY MR. MOGLER:

21 Q. This exhibit that you have in front of you is
22 from Vernon Penner. Who is Vernon Penner?

23 A. Vernon Penner is an attorney that practices law
24 in Mexico.

25 Q. And he teaches, as well, real estate law --

1 A. He did teach real estate law in Arizona, yes,
2 for the real estate board, I believe.

3 Q. And how long has he been practicing Mexican law?

4 A. I don't know the exact time frame, but he was
5 born, he was almost raised in Mexico and has always been
6 in Mexico, and he's always been a lawyer. And Vernon is
7 probably mid 50s.

8 Q. And the activities in terms of securing the
9 property, or Mexican properties, they went through
10 Mr. Penner; is that correct?

11 A. Yes, they did.

12 Q. And Mr. Penner gave very detailed instructions
13 on how property was to be held; is that correct?

14 A. Yes, he did.

15 Q. And Mr. Penner -- how would one own property --
16 can you explain the process of owning property in
17 Mexico?

18 MS. LUEDTKE: I'm just going to object to
19 foundation to the extent he's talking about what he
20 learned through an attorney. I don't mind that coming
21 in, just as we did with Mr. Stevens yesterday. I don't
22 know if he is going to be reading from this document,
23 but, again, Mr. Penner is not here. It seems like a
24 backdoor way of getting in expert opinion about how land
25 is held in Mexico.

1 But if we're using it for simply the purposes of
2 what they understood to be how land is held in Mexico, I
3 don't have an objection to that.

4 ALJ STERN: Okay. So you don't -- well, we want
5 to hear Mr. Hinkeldey's understanding then of how one
6 acquires land in Mexico if they're purchasing real
7 estate there.

8 MS. LUEDTKE: I mean I just assume he is not an
9 attorney and that he got that information from an
10 attorney, but I don't know.

11 MR. MOGLER: It's my understanding we are
12 allowed hearsay.

13 ALJ STERN: Well, it's going to be hearsay,
14 because the person who could really tell us this is
15 Mr. Penner and he's --

16 MR. MOGLER: He's in Mexico right now.

17 ALJ STERN: What is that?

18 MR. MOGLER: Mr. Penner is not available. He is
19 in Mexico.

20 ALJ STERN: I understand.

21 So let's hear from Mr. Hinkeldey, sir, what is
22 the process, as you understand it, to acquire land in
23 Mexico, and is it a lot different from Mexican nationals
24 versus American citizens?

25 THE WITNESS: If you were an individual buyer,

1 like say myself, and I were to go down and buy property
2 in Mexico, and it's known, and I'm buying property
3 what's known to be in, what is called, the restricted
4 area, which is either 30 miles from the high tide mark
5 of the waterfront, or 20 miles from the border of all
6 states, the United States, or vice verse, it's either 30
7 or 20. But if you go buy land in, outside of the
8 restricted zone, which is basically, I'll call it the
9 interior part of Mexico, you do not, I believe, have to
10 be -- you can buy land there. If you --

11 ALJ STERN: You're saying, let's say --

12 THE WITNESS: On the interior.

13 ALJ STERN: An American citizen could buy
14 land --

15 THE WITNESS: Yes, sir.

16 ALJ STERN: -- without any problem.

17 THE WITNESS: My understanding, yes. On the
18 interior, which is outside of the restricted zone.

19 ALJ STERN: Okay.

20 THE WITNESS: It's my understanding that an
21 American can hold title there.

22 If they buy it in the restricted zone, which,
23 again, is 30 and 20, depending on my memory which is
24 right, the American citizen cannot own the land there.
25 They get, they have to take, they get what's known as a

1 bank trust or fideicomiso, and then they hold title to
2 the property via the bank trust. And that is for
3 50 years and it's renewable.

4 So if I were to buy something in Rocky Point,
5 not knowing the geography, but I'm sure it's within the
6 20 mile zone or 30, I would have to go through a bank
7 trust. So I could not own it fee simple as you could
8 here.

9 As a corporation or an -- inside the restricted
10 zone, actually, if you're a Mexican national or citizen,
11 you could own the property there. As an American
12 company interested in doing developing, you don't go via
13 the bank trust, to my understanding, but what you must
14 do, and you must form two Arizona LLCs who then own the
15 interest in what's called an -- I'm going to call it an
16 S. de R.L., society de something, but it's basically a
17 Mexican company. And via the two LLCs, two American
18 LLCs, then an American company can create the S. de
19 R.L., and they can acquire property, but it cannot be
20 for what is considered a residential, let's say, a
21 single family lot or something like that or a
22 condominium. It must be property that is considered
23 large enough for building. So it's not a backdoor way
24 for an American getting into Mexico to buy a single
25 family. That's my understanding.

1 BY MR. MOGLER:

2 Q. All right. And after you figured out, or had
3 the attorneys explain the ways in which to acquire
4 property in Mexico, Tri-Core Companies decided to move
5 forward and purchase Lot 47; is that correct?

6 A. Yes.

7 Q. And what was of the appeal of Lot 47?

8 A. Well, 47 was already in play.

9 Q. Okay. In which way? Can you explain?

10 A. Tri-Core Companies -- I'm sorry. Lot 47 was
11 already, Lot 47 was already purchased, but not yet
12 titled.

13 Q. Got it.

14 A. That's what I mean in play. I'm sorry.

15 Q. And --

16 ALJ STERN: Purchased by whom?

17 THE WITNESS: It was purchased originally by
18 Tri-Core Business Development.

19 ALJ STERN: All right. So this is sort of like
20 what Mr. Stevens was talking about yesterday, correct?
21 Or that was Lot 5?

22 THE WITNESS: I think Mr. Stevens talked about
23 Lot 5 yesterday, sir.

24 ALJ STERN: Yeah, that was Lot 5. Okay. This
25 is Lot 47.

1 Okay. Go ahead.

2 BY MR. MOGLER:

3 Q. Okay. Lot 47 was going to be, it was a
4 development. So it was an acquisition and a
5 development; is that correct?

6 A. Yes.

7 Q. And the name of the project was?

8 A. Relaxante, R-E-L-A-X-A-N-T-E, I believe.

9 Q. And Mr. Stevens, or Mr. Gibbons, did engineering
10 on that project?

11 A. Yes.

12 Q. Okay. If I can get the Court to turn to R-15,
13 Bates --

14 ALJ STERN: Well, do you want to move to admit
15 Exhibit R-14?

16 MR. MOGLER: I want to move to admit R-14.

17 ALJ STERN: Excuse me?

18 MR. MOGLER: Yes. I want to move to admit
19 Exhibit R-14.

20 ALJ STERN: Okay.

21 MS. LUEDTKE: I don't know that there's any
22 testimony, really, about what this is. I know it came
23 from Mr. Penner, so it's --

24 BY MR. MOGLER:

25 Q. Mr. Hinkeldey, did you receive a copy from

1 Mr. Penner about how to purchase property in Mexico on
2 Lot 47?

3 A. Yes.

4 Q. Did you request this explanation?

5 A. It was part of Vernon Penner's letter of how to
6 do it, how to proceed forward in Mexico, as per the
7 first paragraph.

8 Q. And this is the property that we're speaking
9 about, is that correct, Lot 47?

10 A. Oh, here's the restricted zone right here.

11 Q. Can you turn to the second page?

12 A. Yes, it is.

13 ALJ STERN: Wait. Let me just ask Mr. Hinkeldey
14 a question.

15 Mr. Hinkeldey, this is a letter from this
16 attorney, Mr. Penner, the attorney in Mexico, right,
17 Vernon Penner?

18 THE WITNESS: Yes, sir.

19 ALJ STERN: And, correct me if I'm wrong, he's
20 telling you how to do this, according to the letter,
21 it's dated December 13, 2012.

22 THE WITNESS: Yes, sir.

23 ALJ STERN: But weren't funds collected for the
24 purchase of this land prior to December of 2012?

25 THE WITNESS: Yes, sir.

1 ALJ STERN: Okay. So what he's telling you is
2 after the fact you were, somehow, somehow, the
3 respondents, Tri-Core Companies and Tri-Core Business
4 Development, set about collecting the funds to acquire
5 this property. But in, meanwhile I guess, if I'm
6 correct, no one knew exactly what was involved in having
7 to purchase the property the way you have to do it in
8 Mexico.

9 THE WITNESS: The purchase of Lot 47, Lot 47 was
10 originally, was always held in the name of an ejido
11 member --

12 ALJ STERN: A who?

13 THE WITNESS: E-J-I-D-O. And that's kind of
14 like an Indian tribe in Mexico. It's like an American
15 Indian, but there are certain ejidos down in Mexico, and
16 they were given land to farm, and so forth, almost
17 self-sufficient.

18 ALJ STERN: Right.

19 THE WITNESS: And the property was purchased
20 from a gentleman, and I --

21 ALJ STERN: Was that -- oh, Bustamante is Lot 5,
22 right?

23 THE WITNESS: Yes. I believe it was 5. I'm
24 pretty sure it was Bustamante.

25 But in Lot 47, the gentleman's name was Jose

1 Luis, and I believe his last name is Bolanos,
2 B-O-L-A-N-O-S. I'm going off memory. But I always
3 called him Jose Luis. And Jose Luis owned the property,
4 which Tri-Core purchased the property from Jose Luis.
5 So when the property --

6 BY MR. MOGLER:

7 Q. Tri-Core Business Development purchased the
8 property?

9 A. Yes. Yes. So when you -- because it's in the
10 ejido, there's many different laws that come into place.
11 It would almost be like -- I'm just going to make a very
12 quick analogy to the American Indian. I couldn't go in
13 there and buy land over in the Salt River. And the
14 ejido was basically, from what I understand, the same
15 thing, Your Honor.

16 ALJ STERN: I understand.

17 THE WITNESS: So when you go and you buy, if
18 you're going to buy a parcel of land from an ejido, you
19 must buy it from the gentleman who is kind of the ejido
20 record owner. And that is a very lengthy process,
21 because there must be postings so the whole ejido can
22 see it, and the postings must run for a certain amount
23 of time. And that is the reason that this is later on
24 in the time zone, time date, this December 12th.

25 ALJ STERN: Because then, at that point in time,

1 Mr. Penner is telling you gentlemen that this is what
2 you got to, the hoops you have to jump through to buy
3 that property --

4 MS. LUEDTKE: If I could interject. I think,
5 this is what I was getting to, was the foundation part.
6 If you actually read the letter, he's explaining the
7 procedure he actually took to get title to this, not
8 what they should do.

9 So I guess what I was trying to find out through
10 the questioning is did -- if I may. I don't want to be
11 asking him questions out of order. I was just trying to
12 get some foundation for this. If I'm interjecting too
13 much --

14 MR. MOGLER: Oh, please.

15 ALJ STERN: No, it's okay.

16 MS. LUEDTKE: My question was, did you request
17 this opinion from Mr. Penner as part of the company,
18 Tri-Core Companies, as to what happened in terms of Lot
19 47 title?

20 THE WITNESS: I'm not sure why Vernon wrote
21 this, but he might have just summed up what he was doing
22 and what the process was.

23 MS. LUEDTKE: Okay.

24 THE WITNESS: I'm not exactly sure what the
25 reasoning for this letter is.

1 MS. LUEDTKE: Okay. So you don't have any
2 recollection of going to Mr. Penner and asking him to
3 write this letter?

4 THE WITNESS: Oh, I probably did, because I had
5 a lot of contact with Vernon, but I just don't know why.

6 MS. LUEDTKE: Because in the body of the letter
7 he explains what he did in terms of obtaining Lot 47.

8 THE WITNESS: Okay. My -- yes. Okay. Thank
9 you.

10 MS. LUEDTKE: Is that consistent with your
11 understanding of what happened?

12 THE WITNESS: Uh-huh, yes, it is.

13 MS. LUEDTKE: In terms of Lot 47?

14 THE WITNESS: Yes. Thank you for that. Perhaps
15 it was at a request of somebody that we asked for the
16 letter. I'm just not a thousand percent sure. My best
17 guess would be somebody might have said, how do you have
18 the title, why was a delay in title, and so forth. At
19 which point Vernon produced this.

20 MS. LUEDTKE: Okay. I'm done. I have no
21 further objection to this --

22 BY MR. MOGLER:

23 Q. Mr. Hinkeldey, Mr. Penner was involved from the
24 very beginning in acquiring and making sure that the
25 legalities were done in Mexico in order for this --

1 A. For putting in the S. de R.L., yes, sir.

2 ALJ STERN: Okay. We'll get to the root of the
3 evil right here.

4 Ms. Luedtke says she's done, she has no
5 objections, so Exhibit R-14 is admitted. We can go on
6 to the next exhibit. How's that?

7 (Exhibit R-14 was admitted into evidence.)

8 MR. MOGLER: R-15, please.

9 ALJ STERN: All right. How many pages is R-15?

10 MR. MOGLER: R-15 is the title.

11 ALJ STERN: And does it just go -- oh, okay.

12 MS. LUEDTKE: Is this the Spanish version?

13 MR. MOGLER: Yes, ma'am.

14 MS. LUEDTKE: Is there any way we can just use
15 our translated version?

16 I think we have an agreement that we can use the
17 translated version that was submitted by the Division so
18 that we don't have any --

19 MR. MOGLER: S-45.

20 MS. LUEDTKE: S-45(b), I believe it is.

21 ALJ STERN: So R-15 is S-45, only it's in
22 English; is that right?

23 MS. LUEDTKE: R-15 is S-45(a).

24 ALJ STERN: R-15 is S-45(a).

25 MS. LUEDTKE: I don't think he is going to use

1 R-15 anymore. I think he is going to use the translated
2 version that's been admitted. Is that correct?

3 MR. MOGLER: Yes, ma'am.

4 ALJ STERN: Okay. So we don't need to worry
5 about R-15, unless you have some questions.

6 MS. LUEDTKE: Karen needs to get him 45(b).

7 THE WITNESS: And I can give her this one? It's
8 no good? The Mexican one. The Spanish one, I'm sorry.

9 MS. LUEDTKE: Just put it to the side.

10 (Brief pause.)

11 ALJ STERN: Are we, we're moving -- are we going
12 to talk about S-45(a)? Is that what is going to happen
13 now?

14 MS. LUEDTKE: B.

15 ALJ STERN: B?

16 MR. MOGLER: Yes, sir. Once, again, thank you
17 for your patience.

18 BY MR. MOGLER:

19 Q. S-45(b), the one you have, could you take a look
20 at that? That is in fact the title; is that not
21 correct?

22 A. Yes.

23 Q. Okay. And how long did it take to acquire the
24 title on Lot 47?

25 A. To perfect the title on Lot 47 was probably, I'm

1 going off of memory, would be approximately, I believe,
2 three years.

3 Q. All right.

4 ALJ STERN: And can I ask a real quick question?
5 How many acres, approximately?

6 THE WITNESS: Yeah. 25.

7 ALJ STERN: Okay.

8 THE WITNESS: 10.11 hectares.

9 ALJ STERN: Go ahead.

10 BY MR. MOGLER:

11 Q. If we could go to S-151, please?

12 ALJ STERN: S-151?

13 MR. MOGLER: Yes, sir.

14 MS. LUEDTKE: Are you done with 45(b)?

15 MR. MOGLER: Yes.

16 THE WITNESS: Oh, that's done?

17 MR. MOGLER: I'm moving to S --

18 THE REPORTER: I'm sorry. I'm having a hard
19 time hearing you.

20 MR. MOGLER: I'm sorry. I'll talk louder.

21 ALJ STERN: Speak into the microphone and she
22 should be able to hear you.

23 MR. MOGLER: All right. Thank you.

24 We're moving to S-151.

25 ALJ STERN: You're talking about investment

1 documents for Jerome Gussiaas?

2 MR. MOGLER: Yes, sir.

3 ALJ STERN: Okay. I don't think that's an
4 admitted document.

5 MS. LUEDTKE: It should be.

6 ALJ STERN: Did we admit S-151?

7 MS. LUEDTKE: Yeah.

8 ALJ STERN: Oh, okay.

9 THE WITNESS: I think it's the PPM itself.

10 BY MR. MOGLER:

11 Q. Yes, it is.

12 A. Oh, I'm sorry. You said with Jerome --

13 Q. It is.

14 A. Oh, it's Jerome's. I'm sorry. I shouldn't open
15 my mouth.

16 ALJ STERN: Okay. What's your question?

17 BY MR. MOGLER:

18 Q. If you could turn the page to ACC002805, please.

19 A. Yes.

20 Q. On the memorandum number at the top of the page,
21 could you read the person's last name, please?

22 A. Gussiaas.

23 Q. Gussiaas?

24 A. Gussiaas.

25 Q. And to the right, there's a referral mark. And

1 who is the referral on that?

2 A. A. Bridges.

3 Q. And would that be Amy Bridges?

4 A. I believe so, yes.

5 Q. And was she the girlfriend of Mr. Gussiaas?

6 A. To my understanding, yes.

7 Q. All right. If you can go down to the
8 \$4.5 million, the number there.

9 A. Uh-huh.

10 Q. Was the entire amount raised?

11 A. No, it wasn't.

12 Q. All right. And if you could go to the interest
13 rate, 60 percent rate of return.

14 A. Yes.

15 Q. Why such a great return?

16 A. At that point in time the -- I just want to make
17 sure of the date here. At that point in time in 2008,
18 the new highway was the catalyst that was going to make
19 the upper Sonoran coast very valuable, as far as
20 beachfront resort and so forth. The new highway was
21 coming down from both, from both Rocky Point and the
22 other village to the west, and it was moving along, but
23 was not completed. So you were basically selling
24 something on the future of the road being completed.

25 So that's why the rate was high. If the road

1 was in there, and easy access, the rate would not have
2 been that, in my opinion, because people could drive to
3 the property. We had to drive on railroad tracks to get
4 there.

5 Q. And the freeway, was it completed? You
6 indicated it was completed?

7 A. I'm sorry?

8 Q. The freeway, the highway was completed?

9 A. The highway. Yes, it was. There was some
10 delays, but yes, it was completed.

11 Q. And --

12 A. I'm sorry. Go ahead.

13 Q. If you read, if could you read after the first
14 paragraph of that page and where it says, investor
15 suitability requirements, after that it says each
16 investor.

17 A. Okay. Each investor must agree, must agree to
18 purchase the notes as a lender to the company for
19 investment purposes only and execute a subscription
20 agreement in the form contained in the accompanying
21 subscription booklet, parenthesis, see terms of the
22 offering, in capital, bold.

23 Q. And to your understanding, was this a debt
24 instrument?

25 A. Yes, it was.

1 Q. All right. If you could turn to ACC002808, page
2 No. 3.

3 A. Disclaimer page?

4 Q. Disclaimer page, yes.

5 Could you read the first paragraph please?

6 A. The note -- excuse me. The notes offered hereby
7 in this offering memorandum have not been registered
8 with or approved by the United States Securities and
9 Exchange Commission, nor have such notes or this
10 memorandum been filed with or reviewed by the Attorney
11 General of any state or the securities regulatory
12 authority of any state. This offering is based on the
13 exemption from such registration as set forth in -- I
14 believe it's -- section 4(2) and Rule 506 of Regulation
15 D of the Securities Act of 1933 as amended.

16 Q. What's your understanding of the last sentence,
17 this offering is based on exemption? What is your
18 understanding of that sentence?

19 A. My understanding of Rule 506 exemption, it is
20 what's, I guess, called a Reg D, and with that, if you
21 follow, if -- it allows small companies to raise money
22 without the expense of going through expensive
23 underwriting, say a Lehman Brothers or something like
24 that.

25 Q. Was a Form D filed on this particular offering?

1 A. I believe it was.

2 Q. Would you read the next paragraph, please?

3 A. This investment described?

4 Q. Yes, sir.

5 A. This investment described in this memorandum
6 involves risks, and is offered only to individuals who
7 can afford to assume such risk for an indefinite period
8 of time and who --

9 Q. Stop there.

10 To you, what is an indefinite period of time?

11 A. Indefinite period of time, to me, would simply
12 be forever. I'm sorry. But, but regarding this, an
13 indefinite period of time and my understanding of this
14 would be until the project is completed and sold out and
15 the investors are repaid. So I guess a textbook of
16 indefinite is forever, but my understanding, as I read
17 this, would be my understanding until the project is
18 completed and sold out and people are repaid.

19 Q. Have the investors, or the lenders in this case,
20 have they been notified and kept up to date on the
21 progress of the property?

22 A. Yes, they have.

23 Q. On a regular quarterly basis, yearly basis?

24 A. It was, it's an, it was, it's in a quarter. A
25 little spotty for a while, but we're back to aiming for

1 quarterlies, yes.

2 Q. Tri-Core Companies, has it ever stopped working
3 on this property, or --

4 A. No.

5 Q. -- moving the ball down the field, so to speak?

6 A. Huh-uh. No. I'm sorry. I shouldn't say
7 huh-uh.

8 Q. All right. If you can turn to page four,
9 please, or ACC002809.

10 Read the first paragraph, please.

11 A. Under the summary of the offering?

12 Q. Yes, sir.

13 A. The following summary is qualified in its
14 entirety by more detailed information that may appear
15 elsewhere in this private placement memorandum. Each
16 prospective investor is urged to read the private
17 offering memorandum in its entirety.

18 Q. Thank you, sir. And if you could turn to the
19 next page, please, page 5, ACC002810.

20 A. Uh-huh.

21 Q. And go down to Vince Gibbons, his resume. Could
22 you read just -- well, we established -- I'll skip that.
23 I apologize.

24 If you turn the page to page 8, ACC002813.

25 A. Yes.

1 Q. On the, could you read 4.3, nontransferability
2 of notes?

3 A. Nontransferability of notes. The notes have not
4 been registered with the Securities and Exchange
5 Commission under the Securities Act of 1933 as amended,
6 quote, the Securities Act, unquote, and are being
7 offered in reliance upon an exemption under -- I believe
8 it's -- section 4(2) and Rule 506 of Regulation D of the
9 Securities Act, as amended, and rules and regulations
10 hereunder. The notes have not been registered under
11 securities laws of any state and will be offered
12 pursuant to an exemption from registration in each
13 state. A purchaser may transfer or dispose of the note
14 only if such notes are subsequently registered under the
15 Securities Act, or if an exemption from registration is
16 available and pursuant to an opinion of counsel
17 acceptable to the company and its counsel, to the effect
18 that the notes may be transferred without violation of
19 the registration requirements of the Securities Act, or
20 any other security laws.

21 Q. Could you also read on ACC, the same, next page,
22 ACC002814, the Plan of Distribution.

23 Could you read the second sentence on 5.1?

24 A. This offering -- is that the sentence?

25 Q. Yes, sir.

1 A. This offering is made solely through the private
2 placement memorandum, and without any form of general
3 solicitation or advertising.

4 Q. Was there any advertising done on this property
5 or solicitation for -- or was it mainly through family
6 and friends?

7 A. It was family and friends.

8 Was their advertising specific to Relaxante as a
9 public? Is that your question?

10 Q. Yes, sir.

11 A. I don't think there was, no. And when I say
12 terms and rates and so forth, I don't believe so, no.
13 There might have been general talk about the company.

14 ALJ STERN: How much, how much did Mr. Gussiaas
15 invest? Do you know?

16 THE WITNESS: I'll have to look.

17 ALJ STERN: Oh, it's not in that document?

18 THE WITNESS: Well, it's from memory, it's in
19 this document that I'm looking for.

20 MS. LUEDTKE: I think the record is he invested
21 twice, and I don't know if that's in both of these.

22 MR. MOGLER: \$50,000.

23 ALJ STERN: Well, if he invested twice, was the
24 total 50,000, or that was just this particular --

25 MR. MOGLER: This particular note, which I'm

1 referencing. On page ACC002828, it says \$50,000, on
2 this note.

3 ALJ STERN: So Mr. Gussiaas invested \$50,000.
4 His rate of return, if things went accordingly, would be
5 60 percent of \$50,000, so he'd make \$30,000 on it?

6 THE WITNESS: If that's compounding it annually,
7 yes, but I think that was simple capitalization. I
8 think that's underestimating it, I believe.

9 ALJ STERN: Oh. Because it keeps growing?

10 THE WITNESS: Yes. Annually, yes, sir. And it
11 was for a two year period.

12 ALJ STERN: But this was back in 2008. So now
13 it's 2014.

14 THE WITNESS: Uh-huh.

15 ALJ STERN: It's still compounding?

16 THE WITNESS: Yes, it is. I wouldn't say it
17 would be at a 60 percent return because of the economy
18 and so forth, but theoretically, yes, sir.

19 BY MR. MOGLER:

20 Q. Was this particular lender offered a settlement?

21 A. Yes, he was.

22 Q. Did he reject that settlement?

23 A. My understanding, yes, he did.

24 Q. Thank you. If you can go to ACC002815.

25 A. 2815.

1 Q. Security for payment of the notes.

2 A. Yes.

3 Q. If you could read the last sentence.

4 A. Tri-Core Companies, LLC will establish an
5 administration account which will hold the title to the
6 property until all notes are paid in full.

7 Q. Has the administration account been established?

8 A. We are holding the title, yes.

9 Q. If you can turn to the next page, page 11,
10 ACC002816, please.

11 A. I'm sorry. 2816?

12 Q. 2816, yes, sir.

13 If you could read the land purchase price.

14 A. 1.5 million.

15 Q. And if you could read down to No. 5, the
16 footnote, if you could read that footnote, please.

17 A. Amount due to Tri-Core Business Development, LLC
18 for inter-company transfer of title to Tri-Core
19 Companies, LLC.

20 Q. Was that done?

21 A. Yes.

22 Q. All right. Thank you.

23 If you could turn to ACC002818, please.

24 A. 200 --

25 Q. 18. 2818, sir.

1 A. 2818. Okay.

2 Q. Thank you. No. 12, could you read that, please,
3 those factors?

4 A. Risk factors. This investment involves a degree
5 of risk. An individual contemplating investment in this
6 offering should give careful consideration to the
7 elements of the risk summarized below, as well as the
8 other risk factors identified elsewhere in this private
9 offering memorandum.

10 Q. If you could turn the page to ACC002819.

11 A. Okay.

12 Q. 12.5. Could you read that capitalization of the
13 company?

14 A. Prior to this -- capitalization of the company.
15 Prior to this offering, the company was funded by cash.
16 Independent of the amounts raised in this offering the
17 company does not have any other assets available to use,
18 to use to pay the principal or interest on the notes.

19 Q. Other than the settle of the property, does this
20 company have any other assets to pay the lenders?

21 A. Tri-Core Companies, no.

22 Q. Page 15, if you could turn to that, and read to
23 12.7, please, General Economy.

24 A. Which was it, Jason? I'm sorry.

25 Q. 12.7, General Economy.

1 A. General Economy. The company is subject to the
2 Mexican and U.S. economy and its effect on the consumer
3 confidence and spending.

4 Q. Did the economy of Mexico and the U.S. affect
5 this company and its operations?

6 A. Yes, it did.

7 Q. In what ways?

8 A. Rocky Point is really a bedroom community of
9 Arizona, and the new highway reduced the travel time
10 from California, Las Vegas, San Diego -- I'm sorry --
11 Los Angeles, San Diego market, dramatically, almost cut
12 it in half.

13 To go to Lot 47, prior to the new highway, you
14 couldn't do it. But the new highway was there; however,
15 when the economy fell apart, most of the buyers in Rocky
16 Point are from Arizona or Canada, but mainly, at that
17 time, in Arizona. So when the Arizona market was
18 affected and the values fell, there was a lot of people
19 just really stopped going down there. And the same can
20 be true, some, not as much as California, but not as
21 much as Arizona market, but the California market did
22 effect as well, but not to the greater extent of
23 Arizona.

24 ALJ STERN: So that highway was completed?

25 THE WITNESS: Yes, sir, it is.

1 BY MR. MOGLER:

2 Q. Prior to the highway being completed, who came
3 to you with the information on the development of that
4 freeway?

5 A. I'm sorry. I don't understand.

6 Q. Did Mr. Gibbons come to you with the information
7 in terms of the freeway? He introduced you to Mexico;
8 is that correct?

9 A. Yes.

10 Q. And how did Mr. Gibbons acquire or know about
11 this property, particularly this property?

12 A. Through his engineering company and the work
13 they do in Mexico.

14 Q. Was he working with a partner at that time?

15 A. Yes, he was.

16 Q. Okay.

17 A. I don't remember his name, but, yes, he was
18 working with -- and the gentleman was a, was a Mexican
19 national who housed and officed -- he was an engineer
20 with Tri-Core Engineering. Just for the life of me, I
21 can't remember his name.

22 Q. There was an appraisal done on the property; is
23 that correct?

24 A. Yes.

25 Q. And that's R-16.

1 ALJ STERN: Before we move -- you're moving on
2 to R-16 now from S-151, you're discussion, right?

3 MR. MOGLER: Yes, sir.

4 ALJ STERN: Okay. Let's take a break for about
5 ten minutes, and we'll come back and talk about R-16.

6 MR. MOGLER: All right. Thank you, sir.

7 (Recess taken from 10:59 a.m. to 11:14 a.m.)

8 ALJ STERN: Returning to the record.

9 Do you want to continue with your witness,
10 Mr. Mogler? Where are we going, Exhibit R-16?

11 MR. MOGLER: I'm going to stop for a second for
12 S-151. I'm going to stay on that document for a second.

13 ALJ STERN: Okay.

14 BY MR. MOGLER:

15 Q. The gentleman on this, the lender on this, he
16 was offered a settlement. Did he take that settlement?
17 S-151.

18 A. Oh, I'm sorry. Okay. I thought it was the
19 appraisal. I got confused.

20 I'm sorry. What was the question?

21 Q. Mr. Gussiaas, Amy Bridges' boyfriend, was he
22 offered a settlement?

23 A. Yes, he was.

24 Q. Did he take that settlement offer?

25 A. I believe he turned it down. So, no, he didn't.

1 Q. All right. Thank you. And if you turn to R-16,
2 please, the appraisal.

3 A. Oh, okay.

4 MS. LUEDTKE: Judge, during the break, I think
5 we figured out Bates numbers, if you need them. Or do
6 you have them?

7 ALJ STERN: Well, I see them on there.

8 MS. LUEDTKE: Well, if you want to know, it was
9 part of an exhibit and now it's separated out, so...

10 ALJ STERN: What, R-16?

11 MS. LUEDTKE: R-16.

12 ALJ STERN: Was part of another exhibit?

13 MS. LUEDTKE: Well, it was in my book. I assume
14 that he may have separated it out for you, but we
15 figured out Bates numbers so that the record is clear.

16 ALJ STERN: Whatever. I guess he'll be
17 referring to them.

18 Now, how -- R-16 goes to where? Since there's
19 loose pages again.

20 MS. LUEDTKE: TRIMLD3898 --

21 ALJ STERN: 3898.

22 MS. LUEDTKE: -- to 3975.

23 ALJ STERN: Wait a minute. All right. Starts
24 at 3898. And it goes to what, again?

25 MS. LUEDTKE: 3975.

1 ALJ STERN: 3975. Okay. That's a really thick
2 one. Okay. Let's go with R-16.

3 BY MR. MOGLER:

4 Q. Do you have the appraisal in front of you, sir?

5 A. Yes, I do.

6 Q. And this appraisal was prepared for Tri-Core
7 Business Development.

8 You had earlier indicated that title was
9 transferred from TBD to TCC; is that correct?

10 A. Yes, that's correct. But that was, when I said
11 title, I did not mean -- and it probably appeared that
12 way -- the deed to Phoenix Premium Developers, because
13 that was after the transfer, that was after it was
14 transferred from Tri-Core Business Development to
15 Tri-Core Companies or Phoenix Premium Properties.

16 Q. So the interest was transferred, not the actual
17 title?

18 A. Correct. The actual hard title of the S. de
19 R.L. was not yet on the property. So when I said it was
20 transferred, it was the interest in the property, not
21 the actual title in the name of Phoenix Premium
22 Developers is what I meant.

23 I think that was misleading how I said it.

24 Q. Can you explain, again, how property is held in
25 Mexico, to your understanding?

1 A. In this particular case, it is two American LLCs
2 are allowed to form the S. de R.L., which then can hold
3 the property in what is known in Mexico as the
4 restricted zone. And that, again, is only for property
5 that is, I'm going to say, nonresidential, meaning that
6 something you or I or anybody else in this court would
7 buy, single family property, condominium, or whatever.
8 In the restricted zone, they then must, for a single
9 family residential, get a bank trust, or, again, it's
10 called a fideicomiso, something -- I call it bank
11 trust -- for 50 years, which is renewable, and you pay
12 the bank fees.

13 Q. So it's a lease on the property, or --

14 A. In essence. I guess you could call it that.

15 Q. For an indefinite period of time?

16 A. Yeah. They are holding the title and you're
17 paying the fee to it, yes. I guess you could call it --

18 Q. What was the goal of the company? Was it to
19 develop the property and sell lots?

20 A. Yes.

21 Q. All right.

22 ALJ STERN: Let me back up just a minute.

23 This property, the title wasn't transferred, but
24 you say the property interest was transferred from
25 Tri-Core --

1 THE WITNESS: Business Development.

2 ALJ STERN: -- Business Development to --

3 THE WITNESS: Tri-Core Companies.

4 ALJ STERN: That's just the interest, but not
5 the title.

6 THE WITNESS: No. Because the title, as I refer
7 to it, I believe was misleading, because I always think
8 of the actual title in the name of the S. de R.L., and I
9 wanted to make sure there was no misunderstanding.

10 ALJ STERN: Okay. And the title was in the name
11 of?

12 THE WITNESS: Jose -- and it's actually on the
13 first page of the appraisal -- Bolanos Garcia Jose Luis.

14 MS. LUEDTKE: Currently?

15 THE WITNESS: No. It's in the name of the S. de
16 R.L. now. I'm sorry. It's kind of crazy to explain it.
17 But, no, it is in the name, as the deed indicated, the
18 English version, it is in the name Phoenix Premium
19 Developers, society de, something or other, S. de R.L.

20 If you can give me a moment, if you'd like, I
21 can look that up.

22 MS. LUEDTKE: I'll ask you later. It's not my
23 turn. Sorry.

24 THE WITNESS: Oh, okay.

25 ALJ STERN: Go ahead.

1 BY MR. MOGLER:

2 Q. R-16, the appraisal. So the property was in
3 fact appraised?

4 A. Yes.

5 Q. And obviously the purpose of that was to
6 establish the value of the property; is that correct?

7 A. Yes.

8 Q. All right. And if you could turn to page
9 TRIMLD003900.

10 MS. LUEDTKE: I'm just going to object to the
11 questions based on value again. I'm not sure what the
12 relevance is. There's never been an allegation that the
13 property is worth a certain amount, or it was said to be
14 worth a different amount. So I'm not sure how this is
15 relevant to the proceeding.

16 ALJ STERN: Any comments, Mr. Mogler?

17 MR. MOGLER: The ability to repay the lender, I
18 think, it establishes.

19 ALJ STERN: Well, it's a mitigating factor in
20 terms of will the investors ever receive their
21 investments back. But whether in fact, again, we're
22 dealing with these registration violation things. And
23 the Division says they're not contesting the value of
24 the property.

25 MR. MOGLER: They do contest though, the safe --

1 in the complaint itself it indicates that the, I mention
2 a radio show where I'm hosting, that the fact that the
3 investment is safe based on the security of the land.
4 That would go to speak to that complaint, in that there
5 is an ability to repay the investor of the lender in
6 this case, once the property is sold.

7 So it is a safe investment based on that, or
8 safe loan, based on that.

9 MS. LUEDTKE: If its ability to repay the loan,
10 I'm not sure how an appraisal from 2007 is relevant to
11 their current ability to repay a loan.

12 As for the safety element, I'm not even sure
13 that that goes to this exact offering. But to the
14 extent it does, the safety portion was to the effect of
15 the actual issuer of the note doesn't hold title to the
16 property and, thus, could not give security, making it
17 safe. It had nothing to do with the value of the land.

18 ALJ STERN: Do you understand her objection?

19 MR. MOGLER: I do. I understand that there's
20 the intent on the idea that they are going to be paid
21 back with the sale of this land, and the owners are the
22 same throughout, however it's held. So it's the
23 instrument, the debt instrument, that's being used to
24 secure the money to move the project forward would be
25 paid back by the sale of this land.

1 The note itself is held an indefinite period of
2 time, and the extensions were given on certain cases in
3 this cases that there is an effort, it's never stopped,
4 and we continued to move forward to secure the interest
5 of the lender.

6 ALJ STERN: And your objection, again, is to
7 the --

8 MS. LUEDTKE: I'll just address just what he
9 just, because he seems to be saying this goes to the
10 ability to repay investors. So I guess I'm sticking
11 with that. If you want me to address the other
12 arguments again, I can.

13 I'm not sure -- first of all, the value of the
14 land is not at issue in this matter, the value of the
15 land that they purchased. And if he's talking about
16 repaying investors in 2014, 2015, 2016, I'm unsure how
17 an appraisal from May of 2007, especially given the
18 testimony that everything crashed in 2008, 2009, is
19 relevant to the value of the property today.

20 ALJ STERN: Okay.

21 MR. MOGLER: Speaks to the value at the time,
22 state of mind. It's what we talked about.

23 And if you're not challenging the value, you're
24 establishing that there is in fact a value and there is
25 security. So she's testified to the fact, or saying to

1 the fact that there is in fact value, then there is
2 security, based on the fact that there is value.

3 ALJ STERN: Mr. Mogler, but we're going on here,
4 you know, people who invested in these notes, and I know
5 that there were some extensions or whatever, some people
6 agreed to extensions. I think the original terms of the
7 notes called for repayment within two years. Isn't that
8 the term of the note?

9 MR. MOGLER: There was an extension that went to
10 three years, but, yes, sir.

11 ALJ STERN: Three years. But here we are in
12 2014 and the property is still sitting down there and
13 the note holders are still having their notes framed and
14 on the walls of their houses, or wherever they put them.

15 And the Division isn't contesting the fact that
16 the land has some value. It's contesting what was
17 the -- did these people have security? Well, that's an
18 issue, I guess. Well, you're arguing security is going
19 to be in the value of the land. Well, perhaps, but the
20 individual note holder has no security, per se, based on
21 this. This is just, this is a, you know, a purported
22 appraisal of the land. Well, it's in 2007, dollars --
23 now we're up to 2014, and I'm sure the dollars are
24 different, which is what she's saying.

25 MR. MOGLER: I understand that.

1 ALJ STERN: Are you objecting to Exhibit R-16 --

2 MS. LUEDTKE: I am.

3 ALJ STERN: -- per se?

4 MS. LUEDTKE: There's no fraud related to the
5 value of the land.

6 ALJ STERN: Excuse me?

7 MS. LUEDTKE: I said, and I will -- I am
8 objecting, and I'll represent that there's no fraud
9 related to the value of the land when it was being
10 communicated to the investors. That was never the
11 fraud. It's the ownership and security.

12 ALJ STERN: Okay. Do you understand that?

13 MR. MOGLER: I appreciate the statement, and,
14 yes, I do understand it.

15 ALJ STERN: For instance, if you have a
16 security, if you own a car, and you have a title, that
17 gives you some security because you own it. You can
18 take your car into a car dealership and trade it in for
19 a new car. But when you have these notes, they're just
20 a note. There's no security there saying you promised
21 to pay someone, right?

22 THE WITNESS: It's a loan, correct.

23 ALJ STERN: It's a loan. But what is the
24 security, the underlying security? Well, you're saying
25 it's the value of the land. Yes, but the value of the

1 land isn't attached to that note. That's the
2 difference. With your car, you have the title; you have
3 the car; you have the note; you have your title. You
4 have your car. You can go in and get rid of your car.
5 You can sell it. You can sell it to the guy on the
6 street.

7 You take a note, say here, you know, Mogler owes
8 me \$50,000, well, other than that piece of paper,
9 what's, what's that guy on the street going to buy that
10 note for \$50,000 for? What's his security? He's hoping
11 you'll pay him the \$50,000 or whatever he pays for the
12 note, but he doesn't have a security interest. There's
13 a difference.

14 So, again, I don't, I don't know where we're at
15 with this R-16.

16 Are you trying to prove that this establishes
17 the security of a note holder?

18 MR. MOGLER: No. At this point I was just
19 trying to establish the value of the property at the
20 time of -- and if there's no challenge on that, I don't
21 have a reason to continue this line of conversation, I
22 guess. Respectfully.

23 ALJ STERN: I don't think there is. And the
24 Division's counsel says they're not contesting that the
25 land has value. They're just contesting the legal

1 terminology of what is a security interest, I guess, you
2 have to look at it.

3 Okay. So where do you want to go, Mr. Mogler?

4 MR. MOGLER: S-187.

5 ALJ STERN: S-187.

6 So R-16 you're moving away from?

7 MR. MOGLER: I'm just going to move away from
8 it, it seems.

9 ALJ STERN: It's just an appraisal.

10 MR. MOGLER: I'm attempting to show the big
11 picture versus, I guess, I should be concentrating on
12 focusing on a specific transaction.

13 ALJ STERN: Okay. S-187. This is an investment
14 document for Jessica Pries, now Hogan. Is that her
15 name, Pries? That was the lady who testified?

16 MS. LUEDTKE: Yes.

17 ALJ STERN: Okay. Go ahead, Mr. Mogler.

18 BY MR. MOGLER:

19 Q. Do you have it in front of you, Mr. Hinkeldey?

20 A. No. I'm looking for it. S-187?

21 Q. Yes, sir.

22 A. I have 2, 2(a), I have 2(b), 5(a), and 17.

23 ALJ STERN: No. And don't -- make sure,
24 Ms. Houle, that he doesn't get those mixed up with the
25 other documents to your --

1 That's Mr. Mogler's exhibit. But don't mix up
2 the ones that she gives you in those files with all
3 those other loose documents floating around.

4 THE WITNESS: Okay. I'll try my best, sir.

5 ALJ STERN: Okay. Go ahead, Mr. Mogler.

6 BY MR. MOGLER:

7 Q. Do you have S-187 in from front of you, sir?

8 A. Yes. It's in the manila folder, yes.

9 Q. If you could turn to TRIC003269.

10 A. Yes.

11 Q. If you could read in the memorandum, the
12 person's name, please.

13 A. Jessica Lauren Pries.

14 Q. And the dollar amount that was going to be
15 raised on this particular PPM?

16 A. 5 million.

17 Q. And the rate of return that was going to be paid
18 out on this particular PPM?

19 A. 40 percent rate of return compounded annually
20 over a 24 month period.

21 Q. Specifically, this PPM was for what, sir?

22 A. This -- bear with me as I look.

23 ALJ STERN: What was the period of time? I'm
24 sorry.

25 THE WITNESS: It was, maturity date, 24 months.

1 ALJ STERN: Okay.

2 THE WITNESS: And I'm looking for the -- to
3 answer your question.

4 BY MR. MOGLER:

5 Q. This PPM was for a property down in Mexico; is
6 that correct?

7 A. Yes, it was.

8 Q. Okay. Thank you. Could you read on the first
9 paragraph, Tri-Core Companies, could you read, after
10 suitability requirements, could you read, start with
11 each investor?

12 A. Each investor must agree to purchase the notes
13 as a lender to the company for investment purposes only
14 and execute a subscription agreement in the form
15 contained in the accompanying subscription booklet,
16 parenthesis, see capitalized terms of the offering, end
17 quote, end parenthesis.

18 Q. Your belief on the fact -- the word lender, did
19 you understand this to be a debt, a debt to the company;
20 is that correct?

21 A. Yes, I did.

22 ALJ STERN: A debt to the company, or a debt of
23 the company? You said a debt to the company.

24 MR. MOGLER: Uh-huh.

25 ALJ STERN: I think it would be a debt of the

1 company, isn't it?

2 MR. MOGLER: It would be a debt of the company.

3 BY MR. MOGLER:

4 Q. Specifically, do you believe this to be a debt
5 of the company?

6 A. Yes, I do.

7 Q. If I can get you to turn to TRIC003272.

8 A. Disclaimers.

9 Q. If you could read the second paragraph in its
10 entirety, please.

11 A. Investment described in this memorandum involves
12 risk and is offered only to individuals who can afford
13 to assume such risk for an indefinite period of time and
14 who agree to purchase the notes only for the investment
15 purposes -- excuse me -- and not with a view toward the
16 transfer, resale, exchange, or further distribution
17 thereof. There will be no public market for the notes
18 issued pursuant to the offering memorandum. The resale
19 of the notes is limited by federal and state securities
20 laws and it is therefore recommended that each potential
21 investor seek counsel, should they desire more
22 information.

23 Q. Definition of indefinite period of time, sir?

24 A. I'm sorry?

25 Q. Your definition of indefinite period of time?

1 A. Of a definite or an --

2 Q. Indefinite period of time.

3 A. Indefinite period of time?

4 Q. Yes, sir.

5 A. Again, I'm not trying to be a wiseguy, but
6 indefinite is forever, but as I would frame it for this
7 purposes, of PPM, I would say until the property is sold
8 and the investors are repaid.

9 I hope I didn't sound like a wise person. I
10 wasn't trying to.

11 Q. Could you read the last two sentences on the
12 last paragraph, please, starting with, although?

13 A. Okay. Although any projections contained in
14 this memorandum are based upon assumptions which the
15 company believes to be unreasonable, the actual
16 performance of the company may depend on factors beyond
17 the control of the company. No assurance can be given
18 that the company's actual performance will match its
19 intended results.

20 Q. What does that mean to you, sir?

21 A. That although this is a projection of the
22 future, at the point in time that the PPM was offered
23 and executed, that there was no way that any assurance
24 could be given that was what was stated in the PPM could
25 be obtained at the point in time this PPM was signed,

1 because you're projecting into the future.

2 Q. Okay. If you could turn to the next page,
3 TRI_C003273, page four.

4 A. Yes.

5 Q. Could you read the first paragraph under Summary
6 of the Offering, please?

7 A. The following summary is qualified in its
8 entirety by more detailed information that may appear
9 elsewhere in this private placement memorandum. Each
10 prospective investor is urged to read this private
11 offering memorandum in its entirety.

12 Q. What does that mean to you, sir?

13 A. That they have the right to come and question
14 and read it. They must read it; they're urged to read
15 it. The prospective people who are reading this,
16 they're urged to read it.

17 Q. Could you turn to TRIC003277?

18 A. Yes.

19 Q. Could you read the first paragraph at 4.3,
20 please, Nontransferability of Notes?

21 A. Nontransferability of Notes. The notes have not
22 been registered with the Securities and Exchange
23 Commission under the Securities Act of 1933, as amended,
24 the Securities Act, and are being offered in reliance
25 upon an exemption under -- I believe it's -- section

1 4(2) and Rule 506 of the Regulation D of the Securities
2 Act, as amended, and rules and regulations thereunder.
3 The notes have not been registered under the securities
4 laws of any state and will be offered pursuant to an
5 exemption from the registration in each state. A
6 purchaser may transfer or dispose of the note only if
7 such notes are subsequently registered under the
8 Securities Act, or if an exemption from the registration
9 is available, and pursuant to an opinion of counsel
10 acceptable to the company and its counsel to the effect
11 that the notes may be transferred without violation of
12 the registration requirements of the Securities Act or
13 any other securities laws.

14 Q. Why is this an important section in the PPM to
15 you, sir?

16 A. The nontransferability of notes?

17 Q. Yes, sir.

18 A. It's important to me in the PPM, because what,
19 the note cannot be transferred because there's not a
20 ready, I'll say, going back to my own world, secondary
21 market for them. There is not a market available to
22 trade notes. So when you buy this note, you know you
23 are severely limited, or you are limited, not even
24 severely. There's not a ready market out there to sell
25 it to.

1 Q. So, much like a car title, you wouldn't be able
2 to transfer that note; is that correct?

3 A. Before I answer that, let me reread. Okay.
4 Car title?

5 Q. Yeah. In similarity, this is not something that
6 somebody could transfer over as a value?

7 A. No. You could not transfer this.

8 It says the purchaser may transfer or dispose of
9 this note only if such notes are subsequently registered
10 under the Securities Act, or if an exemption from
11 registration is available.

12 Q. So the lender in this case, or in all cases
13 agreed to that; is that correct?

14 A. Yes. By signing it, I would say so.

15 Q. All right. Thank you.

16 ALJ STERN: Excuse me. What if the lender
17 wasn't an accredited investor? And I think -- I assume
18 you are familiar with that term?

19 THE WITNESS: Yes, I am, sir.

20 ALJ STERN: Okay. What if you have a lender,
21 you know, who doesn't have a lot of assets, you know,
22 less than a million dollars, don't make \$100,000,
23 \$200,000, \$300,000, if they're married -- well, is that,
24 would that be a person who should get involved and make
25 loans like this to companies who are involved in land in

1 a foreign country, such as Mexico?

2 THE WITNESS: I would say the average person,
3 under your statements, no, sir, they should not.

4 ALJ STERN: So these investments, are they, who
5 are they for? What kind of people invest in these?

6 THE WITNESS: I believe, under 506, there's
7 accredited and unaccredited investors.

8 ALJ STERN: How many unaccredited investors
9 could you have in a thing like this?

10 THE WITNESS: I believe 506 states 35.

11 ALJ STERN: Okay. So if, keeping that in mind,
12 do you know how many people invested in this offering?

13 THE WITNESS: Not off -- no, sir, I don't.

14 ALJ STERN: Okay. Go ahead.

15 BY MR. MOGLER:

16 Q. If you could go to page nine, or TRIC003278,
17 please.

18 A. Okay.

19 Q. If you could read the second sentence under,
20 Offering of Notes, this offering.

21 A. The notes will be delivered? Is that what you
22 want?

23 Q. This offering is made solely through.

24 A. Offering of Notes. This offering -- okay.

25 This offering is made solely through this

1 private placement memorandum and without any form or
2 general solicitation of advertising.

3 Q. Stop there.

4 What does that mean to you, sir?

5 A. That you can't go out and put an ad, for lack of
6 better word, or make any public statements that would be
7 for the general public stating that, come invest,
8 however much this was, 5, 10,000, at this interest rate
9 for, say, 24 months.

10 To me that would be a general statement, a
11 general public offering.

12 Q. Could you turn to page ten, please, TRI_C003279?

13 A. Yes.

14 Q. Could you read 6.2, please, Security for
15 Payment?

16 A. The notes being offered by the company in this
17 private placement memorandum are secured by the land
18 Tri-Core Companies, LLC purchases.

19 Q. On this particular offering, this would be
20 Lot 3; is that correct?

21 A. I believe so, yes.

22 Q. Is that in the process of being titled?

23 A. Yes, it is.

24 Q. All right. Thank you, sir.

25 If I could get you to turn to TRI_C0033 -- or

1 3282, page 13.

2 A. Yes.

3 Q. Under Risk Factors, No. 12, could you please
4 read the first paragraph and stop, please?

5 A. This investment involves a degree of risk. An
6 individual contemplating investments in this offering
7 should give careful consideration to the elements of the
8 risk summarized below, as well as other risk factors
9 identified elsewhere in this private offering
10 memorandum.

11 Q. Would you say the common person on the street
12 would be able to understand that statement, sir?

13 A. I believe so, yes, sir.

14 Q. Could you read the second paragraph, please?

15 A. This investment involves a degree of risk. An
16 individual contemplating investment in this offering
17 should give careful consideration to the elements of the
18 risk summarized below, as well as the other risk factors
19 identified elsewhere in this private offering
20 memorandum.

21 Q. What does that mean to you, sir?

22 A. That the investment does have risk associated to
23 it, and somebody should carefully think about going into
24 it.

25 Q. Thank you, sir.

1 Next page, page 14, TRI_C003283.

2 A. Okay.

3 Q. General Economy, 12.5, General Economy.

4 A. General Economy. The Economy, the company is
5 subject to the Mexican and U.S. economy and its effect
6 on consumer confidence and spending.

7 Q. During the down time is it a good time to buy
8 property, generally speaking?

9 A. Yes, if you want to capitalize on low value, and
10 hopefully an appreciation will pull you up.

11 Q. Was there an appreciation factor on the property
12 that was down in Mexico, in terms of -- was this a good
13 time to buy property in Mexico?

14 A. In --

15 Q. On Lot 3.

16 A. Yes. I just want to go back to the date.

17 Q. Okay. Thank you.

18 A. June 10th, 2010. Okay. Yes.

19 MS. LUEDTKE: I'm going to object. Just
20 because, if he is talking about the purchase of Lot 3
21 and when they purchased it, I don't think there is any
22 evidence in the record of when they actually purchased
23 Lot 3. So I don't know what they're talking about.

24 ALJ STERN: Well, are you talking dates of this
25 issuance of these notes, sir?

1 MR. MOGLER: Yes, sir.

2 ALJ STERN: Or when --

3 MR. MOGLER: The issuance of the note.

4 ALJ STERN: I mean, I think we are sort of out
5 in left field here. These notes were issued at a
6 certain point in time. The property may have been
7 purchased before then, or --

8 MR. MOGLER: I'm just trying to establish it was
9 a good time to be down in Mexico buying property is what
10 I'm trying to establish, Your Honor.

11 ALJ STERN: When?

12 MR. MOGLER: That's what we are getting to.

13 ALJ STERN: Well, is it a good time --

14 MR. MOGLER: -- the public offering.

15 THE REPORTER: I'm sorry. I didn't hear you.

16 ALJ STERN: Yeah, we can't go back and forth,
17 Mr. Mogler. You have to wait until I'm done talking.

18 You're trying to establish whether it's a good
19 time to buy property in Mexico. I think the relevant
20 time is, the time you have to look at is when the notes
21 are actually issued. So when that note, that offering
22 was made, I don't know the exact term, time.

23 MR. MOGLER: June 1st, 2010.

24 ALJ STERN: Okay. That's --

25 MS. LUEDTKE: Notes went into 2011.

1 ALJ STERN: Excuse me?

2 MS. LUEDTKE: The notes were issued into 2011.

3 ALJ STERN: In 2011?

4 MS. LUEDTKE: Well, my relevant dates for my
5 relevant investors are 2010, 2011, but there are
6 additional investors, according to the evidence.

7 ALJ STERN: Okay.

8 MR. MOGLER: And you could turn to TRI_C 003269,
9 the date of the private memorandum is June 1st, 2010.
10 That's what I was speaking to.

11 MS. LUEDTKE: Simply because that's the date
12 that the private placement memorandum was executed isn't
13 relevant to when these individuals were issuing -- or
14 executing it. I apologize.

15 ALJ STERN: She has a good point there,
16 Mr. Mogler. The fact that you have the actual private
17 placement memorandum prepared and dated is not the time
18 frame, I guess, from what her statement is and from what
19 the evidence is, that the notes were actually issued in
20 2011. So we're talking two different time frames.

21 I don't know what relevance it really is except
22 for the fact that --

23 What was your question way back when to your
24 witness?

25 MR. MOGLER: I don't know.

1 ALJ STERN: You don't know?

2 MR. MOGLER: I was talking about the economy in
3 general. Was this a good time to buy property in
4 Mexico. That's what I was speaking to.

5 ALJ STERN: Okay.

6 MR. MOGLER: So if it was in '11, then the
7 question would be in regard to '11.

8 ALJ STERN: Was 2011 a good time to buy property
9 in Mexico, sir?

10 THE WITNESS: Yes.

11 ALJ STERN: Okay. There, that's --
12 Okay. Go ahead with your next question.

13 MR. MOGLER: Thank you.

14 ALJ STERN: I guess 2012 would be a good time to
15 buy property in Mexico, or 2013 and '14. It's going up
16 all the time.

17 Okay. Go ahead.

18 MR. MOGLER: It's beautiful property.

19 BY MR. MOGLER:

20 Q. TRI_C003284.

21 A. Yes.

22 Q. Please read 12.8, Force Majeure.

23 A. Neither party shall be liable in damages or have
24 the right to terminate this agreement or any delay or
25 default in performing hereunder if such delay or default

1 is caused by conditions beyond its control including,
2 but not limiting, acts of God, government restrictions,
3 including the denial or cancellation or any export or
4 other necessary license, wars, insurrections and/or any
5 other cause beyond the reasonable control of the party
6 whose performance is affected.

7 Q. Based on the description and progress of the
8 company itself, were there any restrictions or, put upon
9 the company to move forward?

10 A. No.

11 Q. All right. And, any acts of God or anything
12 happen down there that --

13 And what does this paragraph mean to you, sir?

14 A. That anything beyond the company's control can
15 affect the outcome.

16 Q. Was there anything outside the company's
17 control?

18 A. No.

19 Q. All right. Turn to TRI_C003285, please.

20 A. Uh-huh.

21 Q. If you could read 15.2, General Suitability,
22 please.

23 A. Okay. Yes.

24 Q. If you could read that in its entirety, 1
25 through 5, 15.2, 1 through 5.

1 A. Each potential investor will be required to
2 represent the following by execution of a subscription
3 agreement:

4 1. The investor has such knowledge and
5 experience in financial and business matters and is
6 capable of evaluating the merits and risks of an
7 investment in this offering.

8 2. The investor has the ability to bear the
9 economic risk of this investment as adequate means to
10 provide for his, her, or its current needs and personal
11 contingencies, has no need for liquidity in this
12 investment and could afford the complete loss of the
13 investment.

14 3. The investor is acquiring the notes for his,
15 her, or its own account, or its own account for
16 investment purposes only, and not with a view toward
17 subdivision, resale, distribution, fractionalization
18 thereof, for the account of others, and has no present
19 intention of selling or granting any participation in or
20 otherwise distributing the note.

21 4. The investor's overall commitment to invest
22 in the note is not disproportionate to his, her, or its
23 net worth and the investment in these note, notes will
24 not cause such overall commitment to become excessive.

25 5. The investor has read and understands this

1 private placement memorandum and all its exhibits.

2 Q. Could you turn to page --

3 ALJ STERN: Before you turn the page -- I
4 appreciate your reading that disclaimer essentially.

5 Do you know whether this particular investor was
6 making a suitable investment, having read that?

7 THE WITNESS: I don't know, sir.

8 ALJ STERN: So you don't know any of that, you
9 just --

10 THE WITNESS: I don't know this individual, no,
11 sir.

12 ALJ STERN: Okay. So this person may have, you
13 know, worked a 9:00 to 5:00 job and made \$30,000 a year.
14 We don't know.

15 THE WITNESS: I do not know that, sir.

16 ALJ STERN: Okay. Go ahead to your next
17 question, Mr. Mogler.

18 BY MR. MOGLER:

19 Q. Thank you for reading the general suitability 1
20 through 5.

21 If you could turn to page 2155, please. It's
22 TRI_C003290.

23 A. Yes.

24 Q. Could you read the acknowledgment, please?

25 A. By signing below, the undersigned acknowledges

1 that he/she has read and understood this entire private
2 placement memorandum.

3 Q. Tri-Core Companies officed out of the Arizona
4 Investment Center. Why is that? How did that
5 relationship come about?

6 A. Excuse me, but are we done with this?

7 Q. Yes.

8 A. Tri-Core Companies was originally housed with
9 Vince Gibbons in engineering in a separate building,
10 Tri-Core Engineering, and Vince Gibbons was downsizing
11 his operations and moving it, actually, across the hall
12 to a smaller area, if I remember. And that's when
13 Tri-Core Companies moved to Arizona Investment Center.

14 Q. And Arizona Investment Center is owned by who?

15 A. Casimer Polanchek.

16 Q. And Mr. Polanchek, does he have any partners in
17 his company?

18 A. A gentleman by the name of Nigel, or Nigel,
19 or -- I don't -- the last name escapes me, but Nigel, I
20 believe his first name is.

21 Q. And how old is the relationship with
22 Mr. Polanchek?

23 A. With?

24 Q. With yourself or Mr. Mogler?

25 A. Five years.

1 Q. So the extent of the relationship, Mr. Mogler's
2 relationship, was four or five years with Mr. Polanchek;
3 is that correct?

4 A. Yes. From my belief.

5 Q. And Mr. Polanchek's partner, do you know
6 anything about Mr. Polanchek's partner?

7 A. Only what I have heard.

8 Q. Which is?

9 A. That he defrauded or did something --
10 MS. LUEDTKE: I'm going to object to the
11 relevancy of this.

12 ALJ STERN: Mr. Mogler? Any comment?

13 MR. MOGLER: She seemed to ask the question
14 yesterday. We are trying to clean some things up in
15 terms of the ownership and the relationship with
16 Mr. Polanchek, our company's relationship with
17 Mr. Polanchek.

18 ALJ STERN: I don't know what relevance his
19 partner has to do with anything anyhow, so I'm only
20 concerned with --

21 MR. MOGLER: He owns the Arizona Investment
22 Center. That seems to be relevance.

23 ALJ STERN: Mr. Polanchek, essentially, I know
24 you called him as a witness yesterday, but he's already
25 settled up with respect to this proceeding. He entered

1 into a consent agreement.

2 MS. LUEDTKE: No. We defaulted him.

3 ALJ STERN: Oh, he defaulted?

4 MS. LUEDTKE: And the Arizona Investment Center.

5 ALJ STERN: Oh, excuse me. They were defaulted.

6 I lost track of these. There's so many respondents.

7 He defaulted so there is an order out by the
8 Commission that essentially says what it says. He
9 didn't contest the issues, you're contesting them. So
10 with respect to Mr. Polanchek's partner, I'm not -- I
11 don't even know why that information came out yesterday.
12 So she's objecting to --

13 You're objecting to relevance here on this?

14 MS. LUEDTKE: I just don't want to defame people
15 that aren't part of this proceeding that -- I have never
16 made any allegations against Mr. Polanchek's partner.

17 ALJ STERN: Yeah. I don't even -- yeah, I heard
18 his name come up yesterday, but I don't even recall what
19 it is.

20 MR. MOGLER: Well, I'm just trying to paint the
21 entire picture. I just --

22 ALJ STERN: Okay.

23 MR. MOGLER: That's what I'm here to do,
24 respectfully.

25 ALJ STERN: Okay. Go ahead with the rest of

1 your questioning. Go ahead.

2 MR. MOGLER: I need to move to the next company,
3 ERC and C&D, and I have to prepare for that.

4 ALJ STERN: Is he your next, is he going to
5 be --

6 MR. MOGLER: He is my next witness on ERC and
7 C&D, but I'm not prepared. I have to -- because I
8 renumbered everything.

9 ALJ STERN: Oh, okay. Why don't we take a
10 recess. We'll come back about a quarter to 2:00. Okay?

11 MR. MOGLER: Do you have something to say,
12 Mr. Hinkeldey?

13 THE WITNESS: Yeah, if I may. Before you asked
14 me about force majeure, and I said no, you know, outside
15 of the influence of the company. And I'm thinking about
16 it as we were talking about Nigel, and the only thing
17 that you could construe possibly, the force majeure
18 clause, would be the economy both in the United States
19 and internationally. That's the only thing I could
20 construe as something out of the company's control, the
21 economy.

22 ALJ STERN: Okay. All right. We'll see you a
23 little bit later, about quarter to 2:00 or so.

24 (Recess taken from 11:58 a.m. to 1:47 p.m.)

25 ALJ STERN: We're back on the record.

1 And where are we picking up with this witness,
2 Mr. --

3 MR. MOGLER: We're going to change over to, the
4 first evidence is going to be S-216.

5 ALJ STERN: Which Exhibit are you going to?

6 MR. MOGLER: S-216.

7 ALJ STERN: Okay.

8 BY MR. MOGLER:

9 Q. Do you have it in front of you?

10 A. Yes, I do.

11 Q. You testified earlier to the fact that you were
12 a consultant for Tri-Core Business Development; is that
13 correct?

14 A. Yes, I was.

15 Q. And what you have in front of you, can you tell
16 us what the, what you have in front of you, please?

17 A. It is Tri-Core Business Development, LLC,
18 consultant agreement.

19 Q. And this agreement was between who?

20 A. Between Tri-Core Business Development, LLC and
21 C&D Construction Services, Inc.

22 Q. And this agreement was executed by a Mr. Tony
23 Salazar; is that correct?

24 A. Yes, it was.

25 ALJ STERN: Who was that? What is that

1 gentleman's name?

2 THE WITNESS: Peter A. Salazar, S-A-L-A-Z-A-R,
3 Salazar.

4 ALJ STERN: Okay.

5 BY MR. MOGLER:

6 Q. To your knowledge, were these services
7 completed?

8 A. I believe they were, yes.

9 Q. Over what period of time?

10 A. Between one to two years. I forget the exact
11 start date when Tony came in, but probably a year, two
12 years.

13 Q. All right. If I can get you to turn to R-20.
14 It's a deposition.

15 A. Is that separate from this?

16 Q. Yes. Specifically, if you could go to --

17 A. Hold on a second. Yes. Okay. It's a large
18 piece of paper.

19 Q. Yeah. Go to --

20 ALJ STERN: Just a minute. Again, I've got the
21 nonstapled copy. Did someone take my stapler that I had
22 up here?

23 THE WITNESS: Yes. It's over here. Do you want
24 me to get it for you?

25 ALJ STERN: Yes, sir.

1 THE WITNESS: Is it all right if I scoot behind
2 you?

3 ALJ STERN: Yes, you may.

4 Not you the white one. It was a big one.

5 THE WITNESS: The blue one.

6 ALJ STERN: Oh, there it is.

7 THE WITNESS: And if I may point out, I tried to
8 staple it. It was so large, I just put begin and ended,
9 because it wouldn't hold.

10 ALJ STERN: Okay.

11 (Brief Pause.)

12 THE WITNESS: Yes. I have it.

13 BY MR. MOGLER:

14 Q. Were you are present at this deposition that
15 Mr. Salazar gave?

16 A. Yes, I was.

17 Q. And was the purpose of this deposition -- can
18 you give us some background as to why there was a
19 deposition taken?

20 A. There was a dispute between who owned C&D
21 Construction Services.

22 Q. And that dispute was between who?

23 A. Tony A. Salazar and Irma and Javier Huerta,
24 H-U-E-R-T-A.

25 Q. All right. And can I get you to turn to

1 PS00018, please? Let me know with you're there.

2 A. I'm almost there.

3 ALJ STERN: What page are you at?

4 MR. MOGLER: PS00018, page 66, sir. It's
5 quartered, the pages are quartered.

6 BY MR. MOGLER:

7 Q. Are you there, sir?

8 A. Yes.

9 Q. Okay. Line 18 through line 20, can you read
10 Tony's testimony, please?

11 A. Which page?

12 Q. Page 66, line 18.

13 A. Question: And C&D is a hundred percent owned by
14 Tony Salazar by your testimony, right?

15 Answer: That's correct.

16 Question: Okay. So let's flip --

17 Q. Thank you, sir.

18 And can you turn to page, turn the page --

19 ALJ STERN: Excuse me. Maybe the Division is
20 aware of what's going on with this bit of evidence, but
21 I'm in the dark.

22 BY MR. MOGLER:

23 Q. Can you give us some background as to -- there
24 was contract work done, there was business services done
25 by Tri-Core Business Development in which you were a

1 consultant; is that correct?

2 A. Yes.

3 Q. There was a dispute later on as to who owed that
4 money in terms of -- or who owned the company?

5 A. Yes.

6 MR. MOGLER: I'm just attempting ownership
7 through testimony of Mr. Salazar.

8 ALJ STERN: Okay. Go ahead.

9 BY MR. MOGLER:

10 Q. If I can get to you turn to PS-2, R-21 -- or
11 PS-2 which is now R-21.

12 A. PS-2?

13 Q. Yes. I'm sorry. R-21.

14 MS. LUEDTKE: If I could just interject.

15 Since we had such a difficult time with moving
16 exhibits in last time, if Mr. Mogler intends that to be
17 the end of use of R-20 and wants to move it in, can we
18 do it closer to the time that we're talking about
19 instead of at the end of the day when I --

20 ALJ STERN: Right.

21 MS. LUEDTKE: I don't know if he --

22 MR. MOGLER: Yeah. I move to admit R-20.

23 MS. LUEDTKE: And I have no objection.

24 MR. MOGLER: Thank you.

25 ALJ STERN: You have no objection?

1 MS. LUEDTKE: It's irrelevant, but I don't
2 really care.

3 ALJ STERN: Yeah. I don't even -- it doesn't
4 make much sense to me. It's irrelevant, and I'm not
5 sure what the probative value is supposed to be here,
6 but since the Division is not objecting, I'll admit it
7 for whatever it's worth.

8 (Exhibit R-20 was admitted into evidence.)

9 ALJ STERN: Okay. Where are we going now, sir?

10 MR. MOGLER: Rapidly through this.

11 ALJ STERN: We're out of this?

12 MR. MOGLER: Yeah, we're out of it. Moving
13 on-to --

14 ALJ STERN: Okay. Just a minute.

15 MR. MOGLER: -- R-21, PS000123.

16 THE WITNESS: Yes.

17 BY MR. MOGLER:

18 Q. Is that an acknowledgment of obligation of
19 Mr. Salazar's understanding of the PPMs that he took out
20 and agreed to take the debt?

21 A. I'm just reading it quick.

22 Q. No hurry.

23 A. This is Tony's acknowledgment of obligations and
24 understanding.

25 ALJ STERN: Who is Tony? Peter?

1 THE WITNESS: Oh, I'm sorry. Peter, Peter A.
2 Salazar is Tony. A is Anthony. I'm sorry.

3 MR. MOGLER: I move to admit R-21.

4 MS. LUEDTKE: No objection.

5 ALJ STERN: Again, I sure don't quite understand
6 what's going on with this. You don't have any
7 objections, I'll admit it for whatever it's worth.
8 Okay.

9 (Exhibit R-21 was admitted into evidence.)

10 BY MR. MOGLER:

11 Q. R-22.

12 A. Yes.

13 Q. Page one.

14 A. Yeah. 124?

15 Q. Yes. 000124. Could you read number 4 and 5 on
16 that page, please?

17 A. At the time I incorporated C&D Construction, I
18 also prepared bylaws, a unanimous written consent of
19 board in lieu of an organizational meeting, and issued
20 stock certificate 0001.

21 No. 5. At that time, stock certificate No. 1,
22 representing all of the 25,000 shares of authorized
23 stock in C&D Construction was issued to me. A true and
24 correct copy of the original stock certificate is
25 attached hereto as Exhibit A.

1 Q. Now, these business services were -- thank you.

2 I move to admit R-22.

3 MS. LUEDTKE: No objection.

4 ALJ STERN: Okay. I'll admit it, Exhibit R-22.

5 (Exhibit R-22 was admitted into evidence.)

6 BY MR. MOGLER:

7 Q. Mr. Salazar hired the services of Tri-Core
8 Business Development, and he used PPMs to raise that
9 capital; is that correct?

10 A. Yes.

11 Q. And the total amounts total was 2.1 million, a
12 million five and --

13 A. I know there were two sold. It sounds about
14 right, correct.

15 Q. And then later on those notes were modified by
16 Mr. Salazar; is that correct?

17 A. Yes, they were.

18 Q. And he further acknowledged that debt as well.
19 Is that your understanding? Is that your understanding?

20 A. Yes. I'm sorry. Is that in R-23?

21 Q. Yeah. I'm just asking your understanding.

22 A. Yeah. Okay. Yes.

23 MR. MOGLER: All right. So I move to admit R-23
24 and R-24.

25 MS. LUEDTKE: I'll object to the foundation of

1 R-23. And I don't even know that we have got an R-24.
2 I don't know what that is.

3 ALJ STERN: Want a second to look at it?

4 MS. LUEDTKE: Well, I don't know what it is
5 because I don't have anything except for the PS numbers.

6 MR. MOGLER: R-24 is the modification agreement.

7 MS. LUEDTKE: Which number is it?

8 MR. MOGLER: PS00166.

9 MS. LUEDTKE: My only issue with this is that as
10 was discussed during direct testimony of Ms. Weiss,
11 there are numerous investors that the Division has not
12 asserted jurisdiction over for this investment, because
13 they're out-of-state investors.

14 There are documents in here that put that at
15 issue. If they want to put those investors at issue,
16 investors that the Division has not been able to clarify
17 whether or not jurisdiction has been obtained or not, I
18 guess they do so at their own peril. But as you can see
19 just by looking at -- I'm sorry, I'm very confused with
20 my R numbers here -- R-23, I believe it is. The first
21 one is an individual in Wisconsin that is not on our
22 restitution list.

23 ALJ STERN: You mean, Amparo Cano?

24 MS. LUEDTKE: Correct. And unfortunately, I had
25 this discussion with Mr. Mogler's prior counsel. And I

1 assume maybe that didn't get, you know, discussed with
2 Mr. Mogler when he lost his attorney. But going
3 through, you know, the first however many pages, they're
4 all Wisconsin investors that the Division has not
5 claimed restitution for. If they want to put them at
6 issue in this hearing, I guess that's my --

7 MR. MOGLER: Well, if you turn to PS000151,
8 Mr. Sherman.

9 MS. LUEDTKE: If he wants to pull out the ones
10 that are at issue in this hearing and just admit those,
11 I'm happy to do that and to consider those. But like I
12 said, I guess, if you want to admit them all, he is
13 doing so at his own peril, because they're not at issue
14 in this hearing unless these documents are admitted.

15 MR. MOGLER: The PPMs in this hearing have been
16 admitted. What I'm driving to is that the notes were
17 modified by Mr. Salazar, and the debt was satisfied by
18 Mr. Guy Quinn and Mark Sherman's company, ERC of
19 Chicago.

20 ALJ STERN: You know, there's an awful lot of
21 information in this case that hasn't been presented.
22 There's things I don't have a clue on where they're
23 coming from, and the attorney for the Division is trying
24 to advise you. The Division hasn't asserted anybody's
25 possible claims with respect to restitution involving

1 some of these entities that were apparently involved in
2 all of these various loans. And they haven't asserted
3 some of those claims.

4 Now, if the Commission subsequently would find
5 you responsible and liable for some which they've said
6 the Division did not assert claims on behalf of them
7 because they're not included within the jurisdictional
8 claims, the Division believes, if you want to add them
9 in, it's at your own peril. So you may want to rethink
10 your strategies.

11 MR. MOGLER: Can I clarify? Can I ask for a
12 clarification?

13 ALJ STERN: You want me to clarify?

14 MR. MOGLER: Yes.

15 ALJ STERN: I'll go off the record and maybe you
16 can have a discussion with the Division's counsel with
17 respect to this, and I'll come back in a couple of
18 minutes, and maybe you'll understand.

19 MR. MOGLER: Okay. Thank you, sir.

20 (Recess taken from 2:01 p.m. to 2:09.)

21 ALJ STERN: Okay. After discussion between the
22 counsel for the Division --

23 Mr. Mogler, where are we going with your
24 evidence here?

25 MR. MOGLER: I'm only going to attempt to admit

1 PS00151, which is Mr. Sherman.

2 ALJ STERN: Oh, wait a minute.

3 Is that part of Exhibit R-23?

4 MR. MOGLER: R-23, yes, sir.

5 ALJ STERN: So you, just that one -- so of the
6 R-23, the only exhibit in R-23 that you want to admit is
7 that one that's marked PS000151, correct?

8 MR. MOGLER: Yes, sir.

9 ALJ STERN: Just the, I guess this, this
10 agreement for discussing the loan dated October 26,
11 2010, apparently; is that correct?

12 THE WITNESS: Yes, sir.

13 ALJ STERN: Okay. But the rest of them we
14 disregard.

15 MS. LUEDTKE: Can we re-mark it?

16 ALJ STERN: Yeah. Why don't we just re-mark.
17 We'll just tear out -- you all do what you want to do.

18 PS000151 will then be Exhibit R-23, and that's
19 only relevant to Mr. Sherman.

20 And you don't have any objection?

21 MS. LUEDTKE: No objection.

22 ALJ STERN: Okay. And the rest of them we'll
23 just toss, I guess, or disregard the rest of these,
24 right, sir?

25 MR. MOGLER: Yes, sir.

1 ALJ STERN: Okay.

2 (Exhibit R-23 was admitted into evidence.)

3 THE WITNESS: Do you want me to put it in my
4 junk file?

5 ALJ STERN: Yeah. That will work. Okay.

6 BY MR. MOGLER:

7 Q. Mr. Hinkeldey, will you read this in its
8 entirety?

9 A. April 30th, 2012, Peter Anthony Salazar 130 West
10 Owens Avenue, North Las Vegas, Nevada, 89030. Addressed
11 to Mark Sherman, P.O. Box 51000, Phoenix, Arizona,
12 85076.

13 I, Peter Anthony Salazar, after reading and
14 understanding the loan documents between C&D
15 Construction Services, Inc., and Mark Sherman executed
16 on October 26th, 2010 in the amount of 100,000,
17 acknowledge the accuracy and content.

18 I further attest that this agreement was drawn
19 up and executed per my instructions.

20 Furthermore, I certified that Jason Todd Mogler
21 acted as instructed by the undersigned in the capacity
22 of representing Peter Anthony Salazar, owner of C&D
23 Construction Services, Inc.

24 I further acknowledge that the obligation in
25 this note is the sole financial responsibility of C&D

1 Construction Services, Inc.

2 I further accept the loan agreement and all
3 warranties and guaranties of the loan agreement on
4 behalf of C&D Construction Services, Inc.

5 Signed, Peter A -- sorry -- Peter Anthony
6 Salazar, C&D Construction Services, Inc., 702-880-1299.

7 And it was acknowledged in the State of Arizona
8 by Nicole Kordosky, K-O-R-D-O-S-K-Y. She was a notary
9 public, and she put her seal on it, and her commission
10 expired July 1st, 2012.

11 Q. Is it your understanding that the lenders on
12 these PPMs, that they signed similar documents?

13 A. Yes.

14 Q. Thank you, sir.

15 Is it your understanding, as well, that those
16 notes were satisfied in a court settlement with ERC of
17 Chicago?

18 MS. LUEDTKE: Object to the terminology of
19 satisfied.

20 ALJ STERN: I don't even know what you're
21 talking about, because it hasn't been discussed that I
22 can remember in the prior part of the case the Division
23 did. So I think the Division's counsel is but I'm not.
24 I don't know what happened between these parties.

25 BY MR. MOGLER:

1 Q. There was a -- I'll just skip on ERC Compactors.
2 If we can turn to S-195, please.

3 A. May I ask a question? Are we doing R-24 or
4 should that go in the junk pile?

5 MS. LUEDTKE: Just keep it up there.

6 THE WITNESS: Okay. Thank you.

7 I'm sorry. What was the --

8 BY MR. MOGLER:

9 Q. S-195, ERC Compactors.

10 A. Got you, yes.

11 ALJ STERN: You're at S-195?

12 MR. MOGLER: Yes, sir.

13 BY MR. MOGLER:

14 Q. Could you read the memorandum up top?

15 A. Mark Sherman.

16 Q. Okay. And the promissory note amount?

17 A. The promissory note. It was an offering of
18 1.5 million.

19 Q. And per unit, it was?

20 A. 15,000 per note.

21 Q. And the redemption at maturity?

22 A. Redemption at maturity is 15,900.

23 Q. And could you read the last sentence of the
24 first paragraph, please?

25 A. Okay. Each investor must agree to purchase the

1 notes as a lender to the company for investment purposes
2 only and execute a subscription agreement in the form
3 contained in the company's subscription book, booklet,
4 parentheses, see terms of offering, end parenthesis.

5 Q. ERC Compactors is a division of ERC Nevada; is
6 that correct?

7 A. Yes.

8 Q. Can you give us the background on ERC Nevada and
9 how it came about?

10 A. ERC of Nevada --

11 Q. Uh-huh.

12 A. -- came about as a result of an asset purchase
13 agreement.

14 Q. Can you tell us a little bit about the company?

15 A. Oh, it was a --

16 Q. ERC of Nevada?

17 A. Oh, I'm sorry.

18 Q. Yeah. Thank you.

19 A. ERC of Nevada was a recycling company located in
20 North Las Vegas on West Owens.

21 ALJ STERN: Wait a minute. ERC Compactors is a
22 Division of ERC Nevada. Is that what you said?

23 THE WITNESS: ERC Compactors, it was part of an,
24 of the operations in ERC in Nevada, yes. I don't know
25 if that means it's a division, but its operation was

1 based in, and a part of ERC Nevada. Doesn't make sense,
2 though, does it?

3 ALJ STERN: No.

4 THE WITNESS: Okay.

5 ALJ STERN: ERC Investments is not what you're
6 referring to?

7 THE WITNESS: No, sir. Would you like me to
8 elaborate a little bit?

9 ALJ STERN: Sure.

10 THE WITNESS: All right. ERC of Nevada was a
11 recycling company that was located in North Las Vegas on
12 Owens Avenue. And they were a recycler of cardboard,
13 metals, aluminum, plastic and so forth. And ERC
14 Compactors was part of, or fell under, I'll use it
15 loosely, fell under the ERC of Nevada banner, because it
16 addressed recycling cardboard, specifically, in Nevada
17 as well, in the Las Vegas area.

18 So it's kind of grouped together, not, maybe,
19 necessarily, division is not the right word, but it was
20 kind of under one big umbrella, if that makes sense.

21 ALJ STERN: Okay.

22 BY MR. MOGLER:

23 Q. And this was used to, the monies in this raise
24 were used to buy equipment; is that correct?

25 A. Yes.

1 Q. And was a Form D filed on this PPM?

2 A. I believe it was.

3 Q. If I can get you to turn to R-25, please.

4 A. Okay. Hold on.

5 ALJ STERN: R-24 you're just burying then, I
6 guess?

7 MR. MOGLER: Yeah. It's not on the sheet, so
8 I'm going to go on.

9 ALJ STERN: Okay. R --

10 THE WITNESS: I don't think I have an R-25 here.
11 Oh, 25B? Okay. Hold on. It's in the file.

12 ALJ STERN: Oh, it's in this one.

13 THE WITNESS: Yeah. It's in this green file,
14 sir, I believe.

15 So 24 can go, putting it over here.

16 ALJ STERN: Which one are you referring to,
17 R-25A or B?

18 MR. MOGLER: I'm referring to part two of ERC --

19 ALJ STERN: Wait.

20 MS. LUEDTKE: I need a minute too. I can't find
21 it.

22 ALJ STERN: Just a minute.

23 Mr. Mogler, which Exhibit are you specifically
24 referring to at this point? Just R-25B, R-25A? There's
25 two R-25s.

1 So do you know which one you're talking about?

2 MR. MOGLER: I know what page I'm talking about.

3 ALJ STERN: What?

4 MR. MOGLER: I know what page I'm talking about,
5 but it was renumbered. I'll just go back to --

6 BY MR. MOGLER:

7 Q. The notes, the PPMs that were signed, were they
8 satisfied?

9 MS. LUEDTKE: Can we hang on just a second?

10 ALJ STERN: Let's just take a minute here. This
11 is very confusing to me, and I, and I'm not sure the
12 Division even understands what's going on.

13 MS. LUEDTKE: Well, I don't know if we're
14 talking about an exhibit or now we're skipping it, but I
15 can't find it, so...

16 ALJ STERN: All right. Let's just take a
17 minute.

18 What are you referring to, Mr. Mogler? So we
19 have a clear idea.

20 MR. MOGLER: On my list it says R-25, ERCC-15.

21 ALJ STERN: Wait a minute. Wait. Look, sir, I
22 have an exhibit here. There's a bunch of loose sheets.
23 It says R-25A on it. Oh, it's stapled together. Excuse
24 me. And it starts out with some color on this --

25 THE WITNESS: It's 25B, Your Honor.

1 ALJ STERN: Okay. We're referring to R-25B.

2 It's, at the top it says ERC Compactors, LLC.

3 MS. LUEDTKE: I don't have anything with R

4 numbers on it past what I got yesterday.

5 MR. MOGLER: It's right here, Stacy.

6 (Brief pause.)

7 MS. LUEDTKE: Okay. Are we on R-25A or B?

8 MR. MOGLER: B.

9 THE WITNESS: That was B, correct?

10 ALJ STERN: Okay, Mr. Mogler, are we on --

11 Did you find R-25B?

12 MS. LUEDTKE: Yes.

13 ALJ STERN: Are you ready to proceed,

14 Mr. Mogler?

15 MR. MOGLER: No, I'm not.

16 BY MR. MOGLER:

17 Q. Yeah, if you could go to ERCC002709.

18 A. 002709?

19 Q. Yeah, that's correct.

20 A. Yes.

21 Q. These notes were modified.

22 Can you read it in its entirety, please?

23 A. Sure.

24 ERC Compactors, LLC note modification as

25 verbally agreed to on April 1st, 2013, your promissory

1 note from ERC Compactors, LLC, an Arizona limited
2 liability company, and dated August 22nd, 2011 in the
3 amount of 35,000, \$35,000, has been satisfied and
4 replaced.

5 New maker, ERC of Chicago, LLC, an Illinois
6 limited liability company.

7 New terms of your promissory note from ERC of
8 Chicago, LLC, an Illinois limited liability company are
9 as follows:

- 10 1. Principal amount: \$37,100.
- 11 2. Annual rate of return: 10 percent,
12 10 percent, simple interest over the term thereof.
- 13 3. Maturity date: 12, 12 months from the
14 original maturity date of each note.

15 In accordance with the Section 8(B) of the
16 promissory note from ERC Compactors, LLC, an Arizona
17 limited liability company, dated on August 22nd, 2011 in
18 the amount of \$35,000, please sign this letter
19 acknowledging your consent to the satisfaction of your
20 existing promissory note from ERC Compactors, LLC, as
21 described above, and consent to the terms of the new
22 replacement promissory note from ERC of Chicago, LLC, as
23 described above and evidenced by the check sent to your
24 respective trust company. You will be receiving a
25 satisfied promissory note from ERC Compactors, LLC via

1 certified mail.

2 Understood and agreed to by ERC Compactors, an
3 Arizona limited liability company, 8800 East Chaparral
4 Road, Suite 270, Scottsdale, Arizona, 85270. Signed,
5 Jason Mogler.

6 Mark Sherman, PO Box 51000, Phoenix, Arizona,
7 85076. Signed, Mark Sherman, and dated April 1st, 2013.

8 And then it says, attachment: New promissory
9 note from ERC of Chicago, LLC.

10 Q. Can you tell us the status -- so these notes
11 were taken in under ERC Compactors, and they were
12 assumed by ERC Chicago; is that correct?

13 A. What it says here is they were satisfied and
14 replaced by ERC of Chicago.

15 Q. They were satisfied and replaced. And that was
16 with the acknowledgment from the lender and the
17 borrower; is that correct?

18 A. Yes. Mark Sherman in this case.

19 Q. And ERC of Chicago issued the new notes, new
20 promissory notes?

21 A. Let me look. But, yes, I believe they did.

22 Q. All right. And ERC of Chicago is owned by which
23 individuals?

24 A. ERC of Chicago is owned by Guy Quinn, Mark
25 Sherman, and another lady, a Paula Obeid. I believe

1 it's O-B-E-I-D, or I-E-D. That's about as close as I
2 can get.

3 Q. What is the status of --

4 ALJ STERN: You say Mr. -- wait, excuse me --
5 you say Mr. Sherman is also an owner, part owner of ERC,
6 what is it, Chicago, LLC?

7 THE WITNESS: Mark Sherman, as I understand and
8 remember, when he, he was, I believe it was a 10 percent
9 owner in ERC of Chicago. And then, that's as I remember
10 it.

11 ALJ STERN: Okay. But who owned ERC Compactors,
12 LLC of, I assume, Arizona?

13 THE WITNESS: I believe that was Jason and
14 myself, Jim Hinkeldey. Jason Mogler and myself, Jim
15 Hinkeldey.

16 ALJ STERN: Did ERC Compactors, LLC, do anything
17 here? Or was that ERC Nevada?

18 THE WITNESS: That was all in Nevada, sir. And
19 Las Vegas, specifically.

20 ALJ STERN: So ERC wasn't a functioning
21 business, per se, here in Arizona. It was up in Nevada.

22 THE WITNESS: Yes, sir, correct. And also there
23 was an ERC of Chicago in Illinois as well.

24 ALJ STERN: And ERC, apparently, ERC, ERC of
25 Chicago, LLC, I assume now runs ERC Compactors, ERC

1 Nevada; is that right?

2 THE WITNESS: There was, there was --

3 ALJ STERN: If you know.

4 THE WITNESS: Yeah, I don't know. But they did
5 for a certain period of time. But I know they were in
6 litigation with Irma and Javier over the C&D
7 Construction Services. And then Guy left the Owens yard
8 and, Guy Quinn that is left the Owens yard, and moved to
9 a new location. And I have not spoken to Guy in, gosh,
10 six, eight months.

11 ALJ STERN: What is the Owens yard? Is that
12 the --

13 THE WITNESS: Owens is the North Las Vegas yard.
14 I'm sorry. I just have a habit of saying Owens.

15 ALJ STERN: Okay. All right. Sorry to --

16 THE WITNESS: No problem, sir.

17 ALJ STERN: -- lead us astray.

18 THE WITNESS: And my understanding was that Mark
19 was the owner in ERC Chicago, which is all part of this.
20 That was Mark, he always wanted that, and so did Paula
21 Obeid.

22 ALJ STERN: Okay. Go ahead.

23 So the only thing in 25B that you're referring
24 to, really, is 2709, the note modification of Mark
25 Sherman?

1 MR. MOGLER: Yes, sir.

2 ALJ STERN: So you don't -- the rest of the
3 documents, other than that note modification,
4 Mr. Sherman --

5 MR. MOGLER: I understand the reason why I
6 shouldn't have submitted all the documents at this time,
7 but I didn't when I put that together, so...

8 ALJ STERN: Okay. So that's all you're
9 submitting then?

10 MR. MOGLER: I have no further questions, Your
11 Honor.

12 ALJ STERN: Okay. So, Ms. Luedtke, do you have
13 any objections to, well, I guess this is another --

14 MR. MOGLER: Mr. Hinkeldey, do you have
15 something to add?

16 ALJ STERN: We'll make -- this R-25B, I guess,
17 will just be the note modification letter from
18 Mr. Mogler and Mr. Sherman, along with the attached
19 note.

20 Would that be what your intention is,
21 Mr. Mogler? I don't know.

22 MR. MOGLER: Yes, sir.

23 ALJ STERN: Okay. Can you handle that,
24 Ms. Luedtke?

25 MS. LUEDTKE: 2713, does that sound --

1 ALJ STERN: It's ERCCOO2709 to 2713, yes.

2 MS. LUEDTKE: I have no objection to that range.

3 ALJ STERN: All right. With no objection,
4 R-25B, consisting of those pages, the 270, the COO2709
5 to COO2713. All right.

6 MR. MOGLER: Do you have anything to add, Mr. --

7 THE WITNESS: No. No. Originally I was under
8 the impression it was only 09, but the Judge clarified
9 and added the note as well, signed by Mark Sherman.

10 ALJ STERN: There is another one --
11 Can I ask a question to you, Mr. Mogler?

12 MR. MOGLER: Sure.

13 ALJ STERN: Immediately following that, there's
14 another note modification.

15 MR. MOGLER: There's quite a few note
16 modifications in there that would apply to the
17 jurisdiction of this court. And I don't have it
18 prepared in front of me. So I'm not delaying, I'm
19 just --

20 ALJ STERN: No, I understand. I'm just asking,
21 because COO2714 appears to be another modification with
22 Mr. Sherman involved and deals with Floatron.

23 MR. MOGLER: I say we go ahead and submit it,
24 Your Honor.

25 MS. LUEDTKE: I don't have any objection to

1 adding that Bates range.

2 ALJ STERN: In fact -- I hate to do this to the
3 court reporter, because she doesn't deserve this --
4 we're going to make R-25B run from ERC and the, it goes
5 COO2709 all the way to COO2723.

6 Is that okay with the Division?

7 MS. LUEDTKE: What was your last number?

8 ALJ STERN: 23, 2723. It's all Mr. Sherman and
9 Floatron, or whatever it is.

10 THE WITNESS: Fuel Fresh.

11 ALJ STERN: Oh, this is another one.

12 THE WITNESS: Fuel Fresh is 2723, Your Honor.

13 ALJ STERN: Mr. Sherman signed it, I guess.
14 They all involve Mr. Sherman.

15 MS. LUEDTKE: I don't have any objection to that
16 range.

17 ALJ STERN: Okay. We'll admit those pages
18 pursuant to, I guess, agreement, or without, the
19 Division is not objecting.

20 So you want to get them in, and they're in.

21 (Exhibit R-25B was admitted into evidence.)

22 ALJ STERN: Okay. Anything else? Where are you
23 going?

24 MR. MOGLER: I have no further questions, Your
25 Honor.

1 ALJ STERN: No further questions for this
2 witness?

3 MR. MOGLER: No, sir.

4 ALJ STERN: Okay. The Division --

5 THE WITNESS: Excuse me, Your Honor. I'm going
6 to get a stapler.

7 ALJ STERN: Sure.

8 (Brief pause.)

9 ALJ STERN: You have no more questions for this
10 witness? Okay.

11 Do you want to cross-examine this witness?

12 MS. LUEDTKE: Yes, Judge.

13 ALJ STERN: Okay. Go ahead and do that, and
14 then I'll talk to you guys about tomorrow.

15

16 CROSS-EXAMINATION

17 BY MS. LUEDTKE:

18 Q. Mr. Hinkeldey, I believe you testified that you
19 are a member of Tri-Core Companies, correct?

20 A. Yes, I did.

21 Q. And the other members are Mr. Gibbons and
22 Mr. Mogler?

23 A. Yes, correct.

24 Q. And Mr. Mogler was a manager for that company?

25 A. Of Tri-Core Companies, yes.

1 Q. And has he always held that role as a manager,
2 say, since 2008?

3 A. There's a period in the inception of the company
4 for a few months that it was not, but then shortly after
5 the inception of the company, yes.

6 Q. You're also a member of ERC Compactors, LLC?

7 A. Yes. I believe I am, yes.

8 Q. Do you have any role, or have you ever had any
9 role with Pangaea Investment Group, LLC, or the Arizona
10 Investment Center?

11 A. No.

12 Q. There's been some testimony about the Arizona
13 Investment Center website. I believe you were here for
14 that testimony by Mr. Polanchek yesterday.

15 A. Yes.

16 Q. Were you involved in any way with putting the
17 content together for that website?

18 A. No, ma'am.

19 Q. Do you know who was?

20 A. I think Casimer Polanchek contracted with Jason
21 Mogler. It might have been a company, but it was a
22 contract he was going to be doing the website for
23 Pangaea Investment.

24 Q. You gave -- I'm going to try to streamline as
25 well as I can here -- you gave some testimony about

1 ownership and your understanding of ownership of
2 beachfront property in Mexico, correct?

3 A. Yes, ma'am.

4 Q. You're not a lawyer, correct?

5 A. No, ma'am.

6 Q. Has all of the information that you have
7 received, in terms of ownership in land in Mexico, have
8 you received that from attorneys? Or how do you know
9 that?

10 A. I know it by talking to some of the people down
11 in Rocky Point specifically, they're maybe in the title
12 business or whatever. But most of it has come from
13 Mr. Vernon Penner, who is an attorney and practices in
14 Mexico. So I'd say the majority of it would be
15 Mr. Penner.

16 Q. And I believe you testified that an American LLC
17 and Arizona LLC is not allowed to own property in fee
18 simple in Mexico, not allowed to hold outright title?

19 A. An Arizona LLC?

20 Q. Yes.

21 A. In the restricted zone -- I can't speak to the
22 interior.

23 Q. I'm sorry. I'm only talking, I --

24 A. I know, but I just want to --

25 Q. Give me a second. We can't talk over her.

1 A. I'm sorry.

2 Q. And that's my fault too. I do it a lot.

3 So when I'm asking you questions from here on
4 out, just note that it's only for the restricted area or
5 the beachfront property. Okay?

6 A. That's fine. Thank you.

7 Q. So I'll go back to my question.

8 With that understanding, was it your testimony
9 that an American LLC or an Arizona LLC cannot own fee
10 simple title to land in Mexico outright?

11 A. An American LLC or Arizona LLC -- and I'll speak
12 to owning other than residential, because I'm not sure
13 how to answer for a single family or condominium unit.
14 I don't know. I never was in that. I never had
15 property there. I don't know if an American LLC can own
16 residential under the bank trust. So I'm only speaking
17 the commercial side, which, again, can only be for
18 development purposes.

19 The requirement to own property in Mexico is
20 that two LLCs, two American LLCs --

21 Q. Okay. Let me stop you there, because I don't
22 want you to go through all that again, because I'm
23 actually going to ask you specifics about --

24 A. Sure. Go ahead.

25 Q. -- those things. But I'm just wondering, I know

1 there are two options for how you can hold waterfront
2 property in Mexico if you're not a Mexican citizen --

3 A. Yes.

4 Q. -- correct? I'm right there?

5 A. Yes. Residential, yes.

6 Q. We're talking about the bank trust --

7 A. Uh-huh.

8 Q. -- and the, let me see if I got the -- I can't
9 remember what you --

10 A. S. de R.L.

11 Q. S. de R.L. And I'm going to mess that up a lot.

12 A. That's okay. Excuse me. Can I ask Irma exactly
13 what the S. de R.L. --

14 Q. You can't. She's --

15 A. Oh, I'm sorry. I'm sorry. I'm sorry.

16 Q. Okay. So there are those two mechanisms for
17 owning commercial property in Mexico, correct?

18 Beachfront property.

19 A. Yeah. It's either a Mexican national or an
20 S. de R.L., yes.

21 Q. And you meant, when you said Mexican national,
22 you meant --

23 A. Somebody who has citizenship in Mexico.

24 Q. So a Mexican national can own beachfront
25 property in Mexico --

1 A. Yes.

2 Q. You can do the bank trust.

3 A. Are we still on the Mexican national?

4 Q. No.

5 A. Okay.

6 Q. You can do a bank trust for owning waterfront
7 property, correct?

8 A. If it's residential, yes.

9 Q. That's only for residential property --

10 A. Yes. Single family. You might be -- I have
11 never heard of it. My answer is going to be no. I'm
12 99.9 percent sure on that. To do, as an American again,
13 you cannot own large tract of land, other than the S. de
14 R.L. As an American you can't own in a restricted area,
15 a single family, condominium, or whatever it may be, is
16 my understanding, yes. And I'm 99.9 on that.

17 Q. Were you here yesterday when Mr. Stevens gave
18 testimony about the bank trust and how the beneficiary
19 of the bank trust can be an, an American LLC?

20 A. I was here yesterday, yes.

21 Q. Did you agree with that testimony?

22 A. He said -- I'm sorry. He said that an American
23 LLC can own a bank trust, can be involved in a bank
24 trust?

25 Q. Can be the beneficiary of a bank trust.

1 A. That I don't know. I could not say yes or no to
2 that.

3 Q. So your knowledge, based on your knowledge, you
4 have to be a Mexican national or you have to have -- I'm
5 just going to call it the Mexican corporation, how about
6 that?

7 A. Beautiful. To the best of my knowledge, yes,
8 ma'am.

9 Q. Okay. So Tri-Core Companies, LLC cannot go
10 directly to Mexico and own commercial property?

11 A. No, they can't.

12 Q. And that is the same for all of the properties
13 that are at issue in this hearing, correct?

14 A. In Mexico, yes. All the Tri-Core LLCs, yes. I
15 don't want to get confused with Jim Stevens and what he
16 and Sylvia does, because Sylvia is a Mexican national.

17 Q. And you gave testimony that if you use the
18 Mexican corporation, you do that if you want to develop
19 the property as opposed to resale it?

20 A. Either way you -- to own a large parcel, you
21 have to be an S. de R.L. corporation, Mexican
22 corporation. What you do with it is up to the company.
23 The S. de R.L., the form of ownership does not dictate
24 what can be done to the property. The property dictates
25 the form of ownership, if that makes sense.

1 Q. I want to start by asking you some questions
2 about Lot 47, Relaxante.

3 A. Yes.

4 Q. And that was a PPM that we looked at dated
5 March 1st, 2008.

6 A. Okay.

7 Q. Do you recall that? I can have you get it out.

8 A. No. I'll take your word for it.

9 Q. Well, let's grab S-151 up there in your stack.

10 A. And that was previous testimony that was
11 stacked, correct?

12 Q. I'm sorry?

13 A. That was in previous testimony, correct?

14 Q. Yes.

15 A. I'm sorry, what was the number?

16 Q. S-151.

17 A. Yes, I have it.

18 Q. And that was Mr. Gussiaas', one of his PPMs,
19 correct?

20 A. Yes. That's Jerome.

21 Q. And you see that that PPM is dated March 1st,
22 2008. The date that the PPM was, I assume --

23 A. Yes. March 1st on page two, yes, 2008.

24 Q. And I believe you testified this all related,
25 this PPM related to Lot 47.

1 A. Yes, ma'am.

2 Q. And you also testified that the economy affected
3 this investment.

4 A. Yes.

5 Q. Okay. What did you mean by that?

6 A. Rocky Point has always been a destination,
7 mostly for Arizonians, because it's within four hour
8 drive time to Rocky Point. So Rocky Point, such as, is
9 an area just -- I might give a longwinded answer. I
10 apologize for that. But Rocky Point growth was
11 tremendous when the real estate boom here just kept
12 flying up the charts. People pulling out a lot of
13 equity and so forth going down and buying a single
14 family or a condominium. So Rocky Point's, I'm going to
15 say 90 percent, my estimation, economy and housing was
16 driven by the United States, specifically Arizona.

17 Most people in California didn't go there,
18 because prior to the new highway -- and stop me if I'm
19 getting too long -- most people, prior to the new
20 highway going in, had to go along the old highway that
21 runs just a little bit south of the Arizona border
22 between, like I say, Tijuana towards Rocky Point. It
23 was an old road made to Mexican standards. So they
24 would actually have to go down all the way like this and
25 then drop down, roughly an hour from the border

1 approximately. With the new highway coming in, what
2 that did is -- and I'm terrible at geography, I
3 apologize -- what the new highway did is now you could
4 go down to Yuma, they have a new highway that runs
5 between, roughly -- I forget the city on the Mexican
6 side of Yuma, but geographically that's where it is.
7 And the new highway, it's a toll highway. It's
8 beautiful. You just fly through there now. So you can
9 drop down, like this, from the Yuma crossing, whatever
10 it may be, the new highway, then you can go to the new
11 highway, which runs parallel to the upper northern side
12 of the Sea of Cortez. So you could get to Rocky Point,
13 and it's in one of the maps here, you could probably get
14 to Rocky Point within, I'm going to say, five hours from
15 southern California.

16 So all of that really spurred the growth in
17 Rocky Point. But, again, specifically Arizona, there
18 was an area looking at Rocky Point from the water up to
19 the right, it's called Sandy Beach, and a gentleman by
20 the name of Gus Brown developed it. And Gus Brown has
21 all the high-rise condominiums down there, or the
22 majority of that, and they were just flying because of
23 the economy in the United States.

24 When the bubble burst here in '07, '08,
25 depending on who you talk to, there, along with all the

1 trouble -- and I'll throw this in, and please stop me if
2 you don't want me to say this, if it's not answering
3 your question -- the trouble with all the drug related
4 problems coming up from, I believe it's Caborca, along
5 the Sonoran coast and then up the highway, Rocky Point,
6 killed the Rocky Point economy. I'd say, 80 percent,
7 80 percent of it was real estate driven, value wise.
8 People did not have the cash to go down there and buy.
9 Everybody is -- and I know myself, I'm still licking my
10 wounds with my place. So nobody was being able to pull
11 out the equity in their homes and go down and buy.

12 Couple that with, or add to it, that mixture,
13 the drug problems down there. We go down there, and
14 we're actually stopped by the Marine, national Marine,
15 Mexican Marines, and they make us get out of the car
16 with their machine guns and they stand there and search
17 us.

18 So all that information filtering up to the
19 United States, made people go, oh my gosh, I can't go to
20 Rocky Point. And --

21 Q. And that impacted Lot 47 in the progression of
22 that?

23 A. Yes, ma'am. Because you'd have to go to -- it's
24 within 20 to 40 miles of Rocky Point, so everybody kind
25 of says that's Rocky Point. They kind of broad brush

1 it. It doesn't have its own specific location or name,
2 if that makes sense.

3 Q. And when would you say -- you said that the
4 bubble burst in 2007, 2008. Is that when these economic
5 realities became apparent?

6 A. No. They started filtering afterwards, in my
7 opinion.

8 Q. Till when?

9 A. Oh, my gosh, it's still going on.

10 Q. Well, I mean, at some point you realized this
11 project is going to have some issues because of the
12 economy.

13 A. Oh, I'm sorry. I thought you meant in general.
14 I apologize.

15 Q. No, no, no. I understand that there's ongoing
16 issues --

17 A. Yes.

18 Q. But at some point, you took all this into
19 consideration and you decided this project is going to
20 have some issues because of the economy, the drug
21 issues, things like that. When was that?

22 A. Oh boy, top of my head, I can't recall exactly
23 when.

24 Q. Year.

25 A. I'm trying to zero in on that. I'm going to

1 venture '11, give or take, 2011, '12-ish, in that range.

2 Q. You didn't see any impact before that with the
3 economy slowing things down because of the 2007, 2008
4 bubble burst?

5 A. We were already committed to the property, so
6 yes, we did. But we were already committed to it.

7 Q. But you saw the issues with respect to the
8 economy affecting that property when the bubble burst in
9 2007, 2008 --

10 A. We saw ripple effects, yes.

11 Q. Okay.

12 A. So at that time -- I'm sorry.

13 Q. That was going to be another one of my
14 questions.

15 You testified that Lot 47 was purchased by
16 Tri-Core Business Development, but not titled in that
17 name.

18 A. Correct.

19 Q. What do you mean by purchased? Would there be
20 some type of documentation that shows that, that I
21 haven't seen?

22 A. There could be. That was pretty much
23 spearheaded by Vince Gibbons and his partner. And,
24 again, I forget his partner's name. I apologize.
25 Because his partner was a member of that ejido, and so

1 Vince Gibbons, under Tri-Core Business Development, or
2 he, he was the point person for the purchase of that
3 property. So there might be. I don't have that. There
4 was some agreement --

5 Q. Why was he -- I'm sorry. Why was he involved in
6 Tri-Core Business Development's purchase of this parcel?

7 A. Best of my knowledge, he was not involved in it,
8 but he was the one that brought it to the table, the
9 Tri-Core Business Development.

10 Q. So he was brokering it?

11 A. Perhaps you could say that. I don't know if he
12 received any commissions out of it, but it was just
13 something that Vince said, excellent parcel was next to
14 one of Vince's big parcels. Vince was involved in a
15 master planned community down there, known as Punta
16 Delfin. And that's probably within, oh, extremely close
17 to where Lot 47 is. So Vince was the spearhead that
18 said get this great piece of property. Again, mostly
19 because he was involved in Punta Delfin.

20 Q. And you don't know where the documentation would
21 be that would show Tri-Core Business Development's --

22 A. No, ma'am.

23 Q. -- purchase?

24 Do you know what the purchase price was?

25 A. No, I don't.

1 Q. Would it be the same as the purchase price in
2 the purchase agreement that we looked at, that
3 translated copy, where Phoenix Premium Developers took
4 title?

5 A. No, it wouldn't.

6 Q. Why is that?

7 A. If I'm not mistaken, I believe what the value on
8 that is, is for, was more for tax purposes, but that's
9 my belief.

10 Q. So Phoenix Premium Developers, when they entered
11 into that purchase agreement in 2011 --

12 A. Uh-huh.

13 Q. -- they didn't actually pay the amount that's
14 listed in that purchase agreement for Lot 47?

15 A. And the purchase agreement you're referring to,
16 is that the title?

17 Q. It's S-45(b), if you want to grab it.

18 A. Yes, please.

19 Q. Before you get there, do you know when Tri-Core
20 Business Development purchased Lot 47, what year?

21 A. Let me see. I am, I want to say '06, '07
22 period.

23 And what was the, are you referring to,
24 Ms. Luedtke?

25 Q. S-45(b). We looked at that earlier.

1 You represented the purchaser here, correct?

2 A. That would be the deed, yes. If that's the
3 deed.

4 Q. That's essentially the equivalent of the deed?

5 A. The one that was translated into English?

6 Q. Correct.

7 A. Yes. That's the deed, yes.

8 Q. Okay. And you represented the purchaser in
9 that?

10 A. Phoenix Premium Developers, yes.

11 Q. All right. And my question is the amount that's
12 referenced in there has a sales price of 10,300,000
13 pesos?

14 A. Uh-huh.

15 Q. That was not the amount that was actually paid
16 to the seller by Phoenix Premium Developers?

17 A. No. Again, that has -- I'm not qualified to
18 really answer this, but I can tell you my understanding
19 of it, so you understand I'm not trying to pass myself
20 off as an expert.

21 The -- and it all falls back to the ejido. I'm
22 not trying to be misleading. It all falls back to the
23 ejido. As an ejido member, such as Jose Luis was the
24 owner, original owner of 47, they have a one time
25 exemption when they sell property from paying any taxes,

1 or whatever. So I believe the value indicating therein,
2 10 million pesos, I'm almost positive that that has to
3 do with the taxing authority, for lack of better word,
4 in Mexico.

5 Q. Do you know what 10,000 -- 10,300,000 pesos
6 roughly translates to?

7 A. About a million.

8 Q. About a million dollars?

9 A. I believe so, yeah.

10 Q. So they had to pay a million dollars in taxes?

11 A. No, no. They're exempt. They are exempt from
12 it. The ejido member is exempt. He doesn't pay
13 anything. But I believe, and again, you'd have to ask a
14 Mexican attorney.

15 Q. Well, my question is why is that amount in
16 S-45(b)?

17 A. And that's the contract?

18 Q. Yes.

19 A. You'd have to --

20 Q. It's on page two.

21 A. It is Mexican law that an amount has to be in
22 there.

23 Q. But you don't know what you paid for that
24 purchase, the purchase of Lot 47?

25 A. It would be in the, again, that's a taxing

1 thing, so it's -- I know it's crazy. I wish I was more
2 qualified to answer you.

3 We did a purchase, and I believe it is in the,
4 in your S-151, the PPM.

5 Q. Uh-huh.

6 A. Use of funds, it was designated, gone off
7 memory, footnote four, possibly.

8 ALJ STERN: Are you trying to find out the
9 dollar amount that the 10 million pesos represent?

10 MS. LUEDTKE: No. I think he already testified
11 that that was a million dollars and they didn't really
12 pay that. So I'm just trying to find out what the
13 purchase price was for Lot 47 when Tri-Core Business
14 Development purchased it.

15 THE WITNESS: I'm looking for the use of funds.
16 Bear with me.

17 ALJ STERN: I'm a little bit lost. I thought
18 earlier you were talking about Phoenix Premium
19 Development purchasing Lot 47.

20 MS. LUEDTKE: Well, he testified that in 2006,
21 2007, there was, Lot 47 was purchased by Tri-Core
22 Business Development. And I guess it took some time to
23 perfect title.

24 ALJ STERN: Okay.

25 MS. LUEDTKE: And when they perfected title,

1 that's what you get when you get that S-45(b), that one
2 that Phoenix Premium Developers actually has title to
3 it.

4 ALJ STERN: Oh, Phoenix Premium Developers has
5 title to it.

6 BY MS. LUEDTKE:

7 Q. Does that sound correct?

8 A. Yes, ma'am.

9 ALJ STERN: Even though, even though -- who
10 bought it?

11 MS. LUEDTKE: And I had asked him if he had any
12 documents that showed that purchase of Lot 45 by
13 Tri-Core Business Development --

14 ALJ STERN: You mean Lot 47?

15 BY MS. LUEDTKE:

16 Q. Lot 47 with Tri-Core Business Development 2006,
17 2007, and I don't think there are any, or there aren't
18 any available. Is that correct?

19 A. I'm sorry. I was looking at this.

20 Q. The Tri-Core Business Development purchase back
21 in 2006, 2007, you're unaware if there are actually any
22 documents that you could, that show that?

23 A. Yes. Last I knew is -- last I know, Vince
24 Gibbons held that paperwork for Lot 47.

25 Q. Okay. And then I think if you go to that PPM,

1 S-151, the use of funds --

2 A. Yes.

3 Q. -- that 2816. Is that where you're at?

4 A. Yes, it is, ma'am.

5 Q. Okay. And is that what you were telling me
6 about --

7 A. Yeah. It's footnote five.

8 Q. Okay. And how much, does that indicate how much
9 was paid?

10 A. 1.5 million.

11 Q. Was that the amount that was actually paid?

12 A. Yes.

13 Q. Title as of December 2011 was in Phoenix Premium
14 Developers, correct?

15 A. As of -- yes, ma'am, as of, yes.

16 Q. And prior to that it was the old owner, because,
17 obviously, Tri-Core Business Development may have
18 purchased it, but it didn't hold title until 2011?

19 A. Correct.

20 Q. All right. And then if you go to that S-45(b),
21 the translated copy.

22 Are you there?

23 A. Yes. I just got it now.

24 Q. If you go to page five, there is an italicized
25 portion that gives a statement about the establishment

1 of Phoenix Premium Developers.

2 A. And that's 405, Mogler 405?

3 Q. It's on page five. It's actually, the document
4 number is page five.

5 A. I got you. It's at the top.

6 Yes. I'm on page five of the document.

7 Q. Okay. And do you see italicized portion that
8 talks about how Phoenix Premium Developers was set up?

9 A. Uh-huh.

10 Q. And what entity set up Phoenix Premium
11 Developers?

12 A. I believe TCC1 and TCC2 were the two Arizona
13 LLCs created for the society, S. de R.L. It was TCC1 or
14 2.

15 Q. Were you a part of both of those LLCs?

16 A. I believe I was, yes. I know I was one. And I
17 forget exactly how it had to be set up, so I know at
18 least one of them, yes. And at least one of them I was,
19 yes.

20 Q. You understand that the private placement
21 memorandum that was provided to investors indicated that
22 Tri-Core Companies was going to be purchasing this
23 property?

24 A. Correct.

25 Q. Which was pretty much something that couldn't

1 happen in Mexico, for them to own fee simple in this
2 property, correct?

3 A. They could not own fee simple, correct.

4 Q. Why did Tri-Core Companies, LLC, why were they
5 not used as one of the LLCs that set up this Mexican
6 corporation?

7 A. At the advice of, I believe it was Vernon
8 Penner. He didn't want to put in -- because Tri-Core
9 Companies had some other things going on, so it was
10 clean just to put in two brand new LLCs. Also for the
11 benefit of the investors as well, if memory serves me.

12 Q. TCC1 --

13 A. Yes.

14 Q. Actually -- I'm sorry. TCC2, LLC --

15 A. Okay.

16 Q. Are you currently the only member of that?

17 A. I'd have to see the -- is it an exhibit I can
18 look at quick?

19 Q. I'll give you a copy.

20 A. If I could just take a look at it is fine.

21 Q. That's all right. We will just mark it so we
22 know what we're looking at. It's something new.

23 ALJ STERN: Can I have a copy, or is it part of
24 an existing exhibit?

25 MS. LUEDTKE: No. It's new.

1 THE WITNESS: Yes. According to this, I am the
2 only member.

3 BY MS. LUEDTKE:

4 Q. And that changed in, just a month ago, correct?

5 A. It changed a month ago?

6 Q. Mr. Mogler was a member of that company as well,
7 wasn't he, at one point?

8 A. I believe so. Again, I'm not sure if it was
9 TCC1 or 2, but, yes, 99 percent positive.

10 Q. Do you see the amendment that's listed there?
11 4/11/14, and there is a copy printed out of that
12 amendment.

13 A. Articles of Amendment? TCC2 Articles of
14 Amendment, Ms. Luedtke?

15 Q. Articles of Amendment with a stamp of April 11,
16 2014.

17 A. Oh, yes. Got it. Yes, ma'am.

18 Q. It looks like Mr. Mogler removed himself from
19 membership in the company on April 11, 2014.

20 A. Yes.

21 Q. Is that correct?

22 A. It appears so, yes.

23 Q. Do you know why that happened?

24 A. No, ma'am.

25 Q. Did you authorize him to remove himself from the

1 company?

2 A. No. I know we discussed some of it.

3 Q. Was there any purpose in doing that?

4 A. I don't remember honestly why.

5 MS. LUEDTKE: The Division moves for the
6 admission of Exhibit S-271.

7 ALJ STERN: S-271. Does Mr. Mogler have a copy?

8 MR. MOGLER: S-271 -- oh, yeah, she gave me a
9 copy.

10 I would object, Your Honor.

11 ALJ STERN: Okay. Any reason?

12 MR. MOGLER: She's admitting companies that are
13 not part of this hearing.

14 ALJ STERN: Ma'am?

15 MS. LUEDTKE: It goes to our allegation of fraud
16 concerning ownership of parcel 47, which we have claimed
17 that, contrary to the private placement memorandum that
18 says that Tri-Core Companies owns Lot 47, it's actually
19 a Mexican corporation that is made up of this company
20 and the other one that Mr. Hinkeldey just --

21 ALJ STERN: TCC1.

22 MS. LUEDTKE: TCC1 and 2.

23 ALJ STERN: I'll admit Exhibit S-271, but I have
24 a quick question for you. I'm going check my numbers,
25 because I know I have another exhibit sheet somewhere,

1 but I don't have some of the numbers on this one. Well,
2 I'll have to find it.

3 It seems to me the last number we left off with
4 was around 253. Are there numbers consistently going
5 higher?

6 Oh, here, wait. Yeah, I don't go above 253 was
7 the last one I had, S-253.

8 MS. LUEDTKE: It looks like through 270 was
9 admitted into evidence, according to our records.

10 ALJ STERN: S-270. Okay.

11 MS. LUEDTKE: Those were part of the examination
12 of Mr. Davis and the exhibits.

13 ALJ STERN: Okay. Wait a second.

14 Mr. Davis -- refresh my memory.

15 MS. LUEDTKE: He is their expert accountant.

16 ALJ STERN: Okay. Because I don't think I have
17 seen any of that, those exhibits, possibly.

18 We have Mr. Davis' information in here?

19 MS. LUEDTKE: Uh-huh.

20 ALJ STERN: I'll take your word for it, because
21 I have another set of the exhibit list somewhere, but I
22 just don't have it handy.

23 MS. LUEDTKE: If Karen can give you, if it will
24 help you, with another list of our LWE.

25 ALJ STERN: Oh, wait a minute. I do have it.

1 Sorry about that.

2 (Brief pause.)

3 ALJ STERN: All right. Returning to the record.

4 All right. So this document would be S-271, and
5 you're objecting to this document, again, because we,
6 the TCC2 LLC hadn't been mentioned earlier, or
7 something, it wasn't --

8 MR. MOGLER: It's not even part of this hearing,
9 Your Honor.

10 ALJ STERN: There's a lot that isn't part of
11 this hearing.

12 I'm going to overrule your objection. Exhibit
13 S-271 will be admitted.

14 (Exhibit S-271 was admitted into evidence.)

15 BY MS. LUEDTKE:

16 Q. Mr. Hinkeldey, do you have any understanding of
17 how you can securitize the U.S. investors involved in
18 the Lot 47 investment with Lot 47?

19 A. Through discussions with Vernon Penner, yes.

20 Q. What has he told you?

21 A. The safest way for the ultimate protection of
22 the investors is for them to, is for them -- is for --
23 and I'm going to use terms, I'm not quite sure the right
24 Mexican authority, but I'm going to call it the Mexican
25 registrar of records, or something like that, where you

1 go, and attorneys have to go there and physically put on
2 the register -- it's like our recording book in the
3 corporate world here, of titles and so forth. You would
4 have to have an attorney go to the recorder's office,
5 for lack of a better word. I believe it's in Mexico
6 City. And they would have to put and list all the
7 investors on the register, I believe it's next to Lot 47
8 or pertaining to Lot 47. There's other different ways
9 you could do it, which may be down and dirty, for lack
10 of a better word, but it does not afford the investor
11 the ultimate protection.

12 Q. And what right does the mechanism you were just
13 describing at the registrar's office, what rights does
14 that give the investor who's listed?

15 A. It is similar to our recording of a lien on the
16 property, first lien on the property. It's recording
17 that there is an interest in this property. So it's a
18 notice of record, I'll say, similar to a UCC, which you
19 can -- I tried to use a UCC. You can't do it there.
20 That would have been very simple. I wish you could.
21 But now you can't do it.

22 And another way you could do it is you could
23 have, either another LLC formed, or add to an existing
24 LLC, because I know I have had these discussions with
25 Vernon Penner, to have the investors add to an existing

1 or a new LLC, so they would then be an owner in the
2 Phoenix Premium Developers' S. de R.L. But that really
3 doesn't give them any protection at all.

4 Q. All right. So if we assume the mechanism that
5 you said actually gives them protection --

6 A. Yes.

7 Q. -- putting their names at the registrar's office
8 through an attorney, correct?

9 A. Yes, ma'am.

10 Q. Why has that never been done with any of the Lot
11 47 investors?

12 A. Because right now I'm cash strapped. We don't
13 have the money. It cost about 25,000 plus to do it, and
14 we've been trying to get the money to do it. That's the
15 unfortunate truth.

16 Q. Going back to that PPM with Mr. Gussiaas. I'm
17 botching his name, I'm sure.

18 A. Okay. Is that on 47?

19 Q. 151.

20 A. Okay. Are we done with this, Ms. Luedtke?

21 Q. Yes.

22 A. Which is it?

23 Q. S-151.

24 ALJ STERN: Ms. Houle, maybe you better
25 straighten him out here. Because he's got exhibits from

1 the other side, and he's got your exhibits, and they're
2 going to be all over the place.

3 THE WITNESS: I have S-151 here.

4 ALJ STERN: Okay.

5 THE WITNESS: I know, it is a little messy.

6 ALJ STERN: Well, they shouldn't get mixed up
7 together.

8 THE WITNESS: I have been trying not to. I'm
9 sorry.

10 ALJ STERN: Go ahead.

11 BY MS. LUEDTKE:

12 Q. Did you or Tri-Core Companies, LLC have any
13 relationship with Mr. Gussiaas before he invested that
14 first time?

15 A. Tri-Core Companies, the relationship was Amy
16 Bridges, which is on, I guess, the main page of the PPM.

17 Q. What -- she is listed as a referral, correct?

18 A. Yes, ma'am.

19 Q. What does that mean?

20 A. That she brought in, in this case, she brought
21 in Gussiaas to buy a unit, or whatever it was, of this
22 PPM.

23 Q. Who is Ms. Bridges? What did she do for the
24 company?

25 A. She was a, I believe a 1099.

1 Q. And what did she do for the company?

2 A. She was really just -- she did a little
3 presenting, but not for PPMs, per se, and she also did
4 some sales.

5 Q. Okay. And we've heard some testimony, I'm not
6 sure if you were here when Mr. Buckley testified, that's
7 been a while back, but you were here for Mr. Polanchek,
8 some testimony about referral fees and commissions.

9 A. Uh-huh.

10 Q. Would she have gotten a commission or a referral
11 fee for bringing her boyfriend into the company to
12 invest?

13 A. I would say mostly. I can't answer definitively
14 because I don't have it in front of me. But I would say
15 off the top of my head, yes.

16 Q. Is that how it usually worked? If they were
17 listed on the PPM as a referral, they would get --

18 A. Not always, no.

19 Q. Not always. When would it not happen?

20 A. It might depend on the relationship. Who came
21 in, where it came from. Again, I'd have to go and look
22 at records.

23 Q. So other than this gentleman being the
24 girlfriend of, or the boyfriend of the woman that was an
25 independent contractor for the company --

1 A. Yes, ma'am.

2 Q. -- Tri-Core Companies and its principals didn't
3 have any preexisting business relationship with this
4 gentleman?

5 A. No. There was a personal relationship, yes.

6 Q. A personal relationship --

7 A. Of Amy.

8 Q. -- of Amy.

9 A. Yes.

10 Q. Okay. And I think you were asked several
11 questions about different portions of the PPM and your
12 interpretation of the language in the PPM, correct?

13 A. Yes, ma'am.

14 Q. Did you help draft this PPM?

15 A. This is Lot 47?

16 Q. Yes.

17 A. Yes.

18 Q. Are there any other PPMs at issue in this
19 hearing that you helped draft?

20 A. There could be.

21 Q. Okay.

22 A. There might be.

23 Q. Well, the ones that you've looked at here today,
24 what about that ERC Compactors?

25 A. I helped in that, yes.

1 Q. What about C&D Construction?

2 A. I helped in that, yes.

3 Q. If you can go in Exhibit S-151, back to that use
4 of proceeds at 2816.

5 A. In this one?

6 Q. Correct.

7 A. Okay. Yes. That's 2816, correct?

8 Q. Correct. Under those categories, do you know
9 how much of the investor funds that were collected were
10 paid out under those various categories?

11 A. No, I don't.

12 ALJ STERN: Which exhibit are you referring to
13 again?

14 MS. LUEDTKE: 151.

15 ALJ STERN: Okay.

16 BY MS. LUEDTKE:

17 Q. For instance, do you know if \$100,000 was paid
18 out for offering expenses, or if not that amount, how
19 much?

20 A. No, I don't.

21 Q. What about commissions? Do you know if 450,000
22 was paid for commissions or a different amount?

23 A. No, ma'am.

24 Q. Who was in charge of the accounting for this?

25 A. The accounting was done, there really wasn't at

1 that point in time. But there is an accounting of -- I
2 forget the firm that did the accounting -- but the
3 gentleman's name Ram, I believe. I just don't know the
4 firm, but it's Ram. And he was brought in by Polsinelli
5 and Shughart, that did the accounting on this.

6 Q. Do you know if any of documents from that
7 accounting were produced?

8 A. That I don't know, no, ma'am.

9 Q. What about marketing for this project? Was
10 there marketing done for this project?

11 A. I'm sure there was.

12 Q. Okay. So some funds were used for marketing?

13 A. I would believe so, yes.

14 Q. And then it looks like there's some
15 administration costs.

16 A. Yes, ma'am.

17 Q. And if you go to the footnote, that says for
18 legal accounting fees and your two offices in Scottsdale
19 and Mexico?

20 A. Correct, yes.

21 Q. Do you know if any of the amounts that were
22 collected from investors were used to pay for those
23 administration fees?

24 A. I'm sure some of it was.

25 Q. Okay. And then you are able to verify that it

1 was actually 1.5 million that was --

2 A. The purchase agreement.

3 Q. Okay.

4 ALJ STERN: How much more do you have in cross
5 for him?

6 MS. LUEDTKE: I have a little bit, but if you
7 want me to find a good place to stop, I can probably do
8 that within the next couple of minutes.

9 ALJ STERN: Well, I was going to say we could
10 take a break and go till about 4:15, or whatever you
11 want to do. I want to check on something on what room
12 we are going to be in tomorrow because this stuff is all
13 over the place.

14 MS. LUEDTKE: Okay.

15 ALJ STERN: Do you want to take a little break
16 now, or do you want to --

17 MS. LUEDTKE: We can take a break now, that's
18 fine.

19 ALJ STERN: Okay. Let's --

20 MS. LUEDTKE: I do have one issue that I raised
21 with Mr. Mogler. I have a scheduling issue in the
22 morning that I'm not going to be in until around 11:15.

23 ALJ STERN: Well, we have a problem anyhow,
24 because I have another matter in the morning at 10:00.

25 MS. LUEDTKE: Well, that's mine, and someone is

1 going to be covering it for me, because I have a family
2 issue that I have to take care of.

3 ALJ STERN: Okay.

4 MS. LUEDTKE: But I'll be back by 11:15. I'm
5 happy to start early in the afternoon, if you want to do
6 that.

7 ALJ STERN: Maybe that's what we'll do, but I
8 want to see room wise where we are at.

9 So let's -- do you want to take a few minutes
10 right now?

11 MS. LUEDTKE: Sure.

12 ALJ STERN: Okay. Let's --

13 MR. MOGLER: Can I assert something? I don't
14 have any more witnesses after this, and I'm happy to
15 conclude after Mr. Hinkeldey is off the stand. So if
16 that helps with your situation about tomorrow.

17 MS. LUEDTKE: Potentially. It just depends how
18 quickly I can get through this. If we can stay a little
19 bit later, and I just don't know how long it's --

20 MR. MOGLER: I would sooner just get it
21 concluded today.

22 ALJ STERN: Well, let's just wait a minute.
23 Like I say, I have a commitment I have to make today, so
24 we are going to have to see where we are at.

25 So let's take about five, ten minutes.

1 (Recess taken from 3:21 p.m. to 3:27 p.m.)

2 ALJ STERN: Mr. Mogler, you said this is your
3 last witness before we --

4 MR. MOGLER: Yeah. I didn't think we could fit
5 any more people in today. So the witnesses that were
6 going to come in today they're going to testify, or at
7 least give -- we had a radio show and they're going to
8 talk about how they were on the radio show and talk
9 about different topics other than, you know, the things
10 that we --

11 ALJ STERN: Whatever, but I understand that --
12 are you going to call them as witnesses, or no?

13 MR. MOGLER: I don't think at this point. I
14 think this is the meat of it, and I wanted to just
15 present the meat of it.

16 ALJ STERN: Well, it's up to you, because I
17 imagine we might end up back here tomorrow.

18 Now, what about yourself? Are you calling
19 yourself?

20 MR. MOGLER: It's a consideration.

21 ALJ STERN: Well, there again, it's a
22 consideration, and we don't know. I think under the
23 circumstances the way we're going to do the schedule,
24 we'll continue with the Division's cross-examination of
25 your witness here, and then we will schedule this

1 proceeding to resume tomorrow at a convenient time, and
2 then at that point see where we are at, if we have
3 anything left, but...

4 Ready to proceed?

5 MS. LUEDTKE: Yes.

6 ALJ STERN: Okay. Let's go.

7 THE WITNESS: May I just clarify something
8 from --

9 BY MS. LUEDTKE:

10 Q. I'd rather not.

11 A. Okay.

12 Q. I'd rather stay on this and then --

13 A. That's fine.

14 Q. -- if Jason wants to clarify something with you,
15 he gets to go last, so --

16 A. Oh, okay.

17 Q. If you want to do that, but I want to stick on
18 --

19 A. Please. I'm sorry.

20 Q. -- this. I don't want to go back and --

21 A. I did not know the process.

22 THE REPORTER: I'm sorry. I really need you to
23 wait until she's done, please.

24 THE WITNESS: I'm sorry.

25 ALJ STERN: She's going to smack you.

1 BY MS. LUEDTKE:

2 Q. All right. So before we went to break, we were
3 talking about the Exhibit S-151 and the use of funds,
4 and you were explaining that 1.5 million was used to pay
5 Tri-Core Business Development for the land purchase of
6 Lot 47, correct?

7 A. That was the amount to Tri-Core Business, yes.

8 Q. All right. And --

9 ALJ STERN: When you say that was the amount due
10 Tri-Core business, that was the amount due from the
11 funds collected from --

12 THE WITNESS: The PPM, yes, sir.

13 ALJ STERN: Okay. Go ahead.

14 BY MS. LUEDTKE:

15 Q. And you also indicated that there were some
16 funds that were used as collected from the PPM for the
17 administration and marketing, but you just don't know
18 how much?

19 A. Correct yes.

20 Q. Are there any other categories where expenses
21 would have been paid that you, that fall under one of
22 these categories, but you just don't know how much?

23 A. No. Onsite work, stuff like that, I would
24 assume there was stuff done there.

25 Q. What would that be?

1 A. Survey.

2 Q. Okay. I put an exhibit up there, S-44.

3 A. I'm so out of order. I'm sorry. Yes.

4 Q. This is a document that was previously
5 introduced into evidence.

6 A. Okay.

7 Q. And I don't know if you were here for the
8 proceedings, but I'll represent to you that this was
9 produced, based on the Bates label at the bottom, it was
10 produced by Tri-Core Companies in response to a
11 subpoena.

12 A. Okay.

13 Q. And can you read what it says at the top of that
14 first page?

15 A. Relaxante Investor List.

16 Q. Okay. And do you see on line seven and eight
17 that investor we were talking about?

18 A. Seven and eight. Yes, Jerome Gussiaas.

19 Q. All right.

20 ALJ STERN: And this is Lot 47, right?

21 MS. LUEDTKE: Right.

22 BY MS. LUEDTKE:

23 Q. And if you go to the last page, there's an
24 aggregate loan amount.

25 For the total, what does that say at the bottom?

1 A. Loan is 1,428 -- \$1,428,832.07.

2 Q. All right. My question for you is if the
3 purchase price for the property was paid, how is it paid
4 when not even that much was raised from investor funds?

5 A. I don't know. I cannot answer that. I know
6 exactly what you're saying. I'm looking at it, and the
7 PPM, it stated 1.5, and this is saying 1.4.

8 Perhaps Tri-Core business dropped its price or
9 something. I'm not sure.

10 Q. So it's possible that 1.5 million wasn't what
11 was paid?

12 A. Yes, ma'am.

13 Q. All right. The other individuals listed on this
14 investor list, I know we have already talked about
15 Mr. Gussiaas.

16 Did Tri-Core Companies have any preexisting
17 investing relationship with any of the individuals
18 listed on this, these pages, to your knowledge?

19 A. No, ma'am, not to my knowledge.

20 Q. Do you know how any of those individuals learned
21 about the investment?

22 A. No, I don't. If I do, I certainly don't
23 remember.

24 Q. You testified --

25 ALJ STERN: How many -- excuse me -- how many

1 investors are on the list? Since I don't have it in
2 front of me.

3 MS. LUEDTKE: 34.

4 ALJ STERN: Okay. Go ahead.

5 BY MS. LUEDTKE:

6 Q. You testified that there is a statement in the
7 PPM about an administrative account, or administration
8 account that holds title to the property, Lot 47 --

9 A. Yes, ma'am.

10 Q. -- correct? What does that mean?

11 A. The administration account was created to hold
12 deed for Relaxante under the Phoenix Premium Properties.
13 And that's nothing more than just being held by us.
14 That's the administrative account.

15 Q. Okay. So it's not held by --

16 A. It's --

17 Q. I'm sorry. I cut you off.

18 A. I'm sorry. You or me.

19 Q. So it's not held by a third party or some type
20 of administrator, correct? It's just held by Tri-Core
21 Companies?

22 A. Yes, ma'am. We talked about it. But, no, to
23 answer your question, it is held by Tri-Core, yes.
24 That's one of the things we discussed.

25 Q. You were also asked some questions about the

1 June 1st, 2010 investment offering in Mexico, correct?

2 That was for Ms. Pries --

3 A. I had -- I'm sorry.

4 Q. Jessica Pries. Is that --

5 A. I had questions regarding her?

6 Q. You were asked some questions about her.

7 A. Oh, yes, yes. I'm sorry.

8 Q. And that was Exhibit S-187, if you have that up
9 there.

10 A. What was the title of that, Ms. Luedtke? It
11 might help me if I --

12 Q. It's a private placement.

13 A. Got you. Okay. I go by the thickness.

14 ALJ STERN: Ms. Houle, maybe you better help
15 him. He's having problems.

16 THE WITNESS: Please. I know it's a thick one.
17 That's what I'm looking for.

18 (Brief pause.)

19 BY MS. LUEDTKE:

20 Q. All right. Do you recall giving some testimony
21 about this private placement?

22 A. Yes, I do.

23 Q. All right. And if you look at the second page
24 at the bottom, it gives a date on there, June 1st, 2010.

25 A. Yes, it does.

1 Q. The date of the private placement, not
2 necessarily her investment, but that's the date of the
3 private placement, correct?

4 A. Yes, ma'am.

5 Q. Were you involved with drafting and finalizing
6 this private placement?

7 A. And this is for Lot 3?

8 Q. I don't know.

9 A. Okay. I'm assuming I was, if it's -- I'm just
10 trying to see which one it is. I'm going to assume I
11 was.

12 Q. All right. And, actually, that was going to be
13 my next question, because I believe that you gave
14 testimony that this PPM relates to a Lot 3, correct?

15 A. Okay. Yes. With that being the case, I'm sure
16 I helped her out with this.

17 Q. Why do you have the, an understanding that this
18 is related to Lot 3, as opposed to a different lot?
19 What in this PPM gives you that impression?

20 A. In the PPM, I must say I'm wrong by referring to
21 Lot 3.

22 Q. I'm sorry?

23 A. I'm must say I am wrong by referring to it as
24 Lot 3. Because as I'm looking through it quickly, I
25 don't see a mention of Lot 3. I'm just glancing real

1 quick.

2 Q. So you don't know if the subject matter of this
3 private placement memorandum dated June 1st, 2010 is
4 Lot 3 or a different lot, as we sit here today?

5 A. I just want to take a quick review, please.

6 Q. Sure. Take your time.

7 A. That's a great question.

8 I'm going say I don't see anything here,
9 Ms. Luedtke, that refers to Lot 3.

10 Q. So, at least based on these documents, an
11 investor wouldn't necessarily know that their investment
12 is in Lot 3, correct?

13 A. Based on this document, yes, I agree.

14 Q. Are you aware of any other documents that were
15 sent to investors with respect to the June 1st, 2010
16 private placement?

17 A. No, I'm not.

18 You mean the amount of people it was sent to?

19 Q. Correct.

20 A. No, ma'am.

21 Q. Keep that handy in case I need to come back to
22 it. And then I put another exhibit up there, it's S-47.

23 A. Okay.

24 Q. It should be a thin exhibit.

25 A. Yes, I have it.

1 Q. And I'll represent to you, again, this is a
2 document that's already been admitted into evidence.

3 A. Uh-huh.

4 Q. And that the testimony has been that this was a
5 document received in response to a subpoena from
6 Tri-Core Companies, as evidenced by the Bates stamp at
7 the bottom.

8 If you go on the second page of this document,
9 do you see Ms. Pries listed and her investment from
10 that?

11 A. Yes. She's the first one -- second one
12 mentioned, yes.

13 Q. And her investment matches up with what was in
14 her investment documents; isn't that correct?

15 A. I believe it was 10,000.

16 Q. Okay. And then if you go --

17 ALJ STERN: Is that in cash?

18 THE WITNESS: No, I'm not touching that, sir.

19 BY MS. LUEDTKE:

20 Q. Good idea.

21 If you go to the first page of S-47.

22 A. I'm sorry. First page.

23 Q. Do you see the title of that?

24 A. LAF5.

25 Q. Okay. And it says 5 mill 40 percent?

1 A. 5 mill 40 percent, yes.

2 Q. And that matches up with the \$5 million that's
3 the total that could be collected under this private
4 placement, correct?

5 A. Yes, ma'am.

6 Q. And the 40 percent rate of return that's
7 reflected in that, correct?

8 A. Yes.

9 Q. What does LAF5 mean?

10 A. That was lot or land appreciation fund.

11 Q. What does that mean?

12 A. It was property, it was set up to buy property
13 in Mexico. And perhaps that's not exactly why the name
14 is, any specific property is in here.

15 But lot appreciation five, or land appreciation
16 five, I'm not quite sure which it is. But that, again,
17 was set up to purchase property along the Sonoran coast.

18 Q. Why doesn't it say Lot 3, like the other one
19 said Lot 5, or Relaxante investors?

20 A. I don't know. I'm going to say at the time it
21 was done, there was possibly another piece of property
22 and this was more open-ended, if that makes sense to
23 you.

24 Q. Well, you own --

25 A. Not lot specific.

1 Q. You owned Lot 5 as of 2010, correct?

2 A. No.

3 Q. Or lot -- I'm sorry. I'm mixing up the lots.

4 A. That's okay. There's a lot of lots.

5 Q. I withdraw that question.

6 You owned Lot 3 as of 2010, correct?

7 A. We owned Lot 3. Lot 3 was in contract.

8 Q. Okay. What about in 2011, you owned it then,
9 correct?

10 A. 2011 it was still in contract, to the best of my
11 knowledge.

12 Q. There are investors that are listed on this
13 agreement that came in in 2011, correct?

14 A. On this one?

15 Q. Yes.

16 A. Yes, ma'am, there are.

17 Q. Or, I'm sorry, on that list, not agreement.

18 So why wouldn't it reflect what the subject
19 matter of their investment is at this point?

20 A. I don't know.

21 Q. Do you know, as you sit here today, what
22 property was purchased with the investors' funds from
23 the June 1st, 2010 private placement?

24 A. And that's S-187?

25 Q. Yes.

1 A. Okay. That would be Lot 3.

2 Q. But that had already been purchased, according
3 to your testimony.

4 A. No. Lot 3 was in contract.

5 Q. Okay. Who owns Lot 3?

6 A. Sylvia Torres.

7 Q. Currently?

8 A. Yes, ma'am.

9 Q. Why doesn't Tri-Core Companies own it?

10 A. We're in the process of doing that now with
11 Sylvia.

12 Q. Why hasn't it been finalized?

13 A. I, I don't know. It was, we were going to do it
14 with Sylvia one way or the other way. And I think the
15 final determination was that we were going to do it, for
16 ease and speed, we were going to do it with Sylvia
17 Torres because she is a Mexican national.

18 ALJ STERN: That's, Sylvia Torres, that's the
19 lady with --

20 THE WITNESS: Stevens.

21 ALJ STERN: Which one is Stevens?

22 THE WITNESS: Jim Stevens.

23 ALJ STERN: Oh, Jim Stevens.

24 THE WITNESS: He was here yesterday.

25 ALJ STERN: Oh, yeah. Right, right, right.

1 BY MS. LUEDTKE:

2 Q. Okay. So currently it's titled with Ms. Torres?

3 A. Torres, yes, ma'am.

4 Q. And do you have an anticipated date that it
5 would be transferred?

6 A. We're shooting, the next 30 to 60 days. Again,
7 we're trying to -- I'm sorry to interrupt you.

8 Q. No. Go ahead.

9 A. What we are trying to do is circumvent the need
10 to go through all the hoopla and expense -- because
11 right now we don't have it -- of going and forming the
12 S. de R.L. So we are going with title with Sylvia
13 Torres.

14 Q. Okay. So title is never going to be in your
15 Mexican corporation of Phoenix Premium Developers?

16 A. No. And it would never have been, because
17 that's separate and distinct, and I would be against
18 putting a bunch of different properties in here.
19 Because if you have more than one property in an S. de
20 R.L., God knows what could happen down in Mexico -- or
21 anywhere else, not Mexico, anywhere in the United
22 States.

23 So my theory has always been, freestanding,
24 freestanding. So if something were to happen, let's say
25 on Lot 47, the investors on Lot 3 would not be affected.

1 I don't know if that makes sense. But it's a safeguard
2 to them, in my estimation. It kind of insulates them
3 from any possible property damage.

4 ALJ STERN: Who would, who is going to get Lot 3
5 from Ms. Torres then? What entity?

6 THE WITNESS: We're going to, we're going to
7 have -- I believe there is an S. de R.L. already in
8 existence, with Sylvia. I'm not 100 percent sure. But
9 we'll put it in that.

10 ALJ STERN: So that's the Mexican trust with the
11 bank?

12 THE WITNESS: No. That's, she's a Mexican
13 national, so she doesn't have to go through it.

14 ALJ STERN: Oh, right. Okay. All right.

15 THE WITNESS: And that's why I'm trying -- it
16 speeds the process, if that makes any sense.

17 BY MS. LUEDTKE:

18 Q. Let me try to clarify, because I think that
19 confused me a little bit.

20 Right now it's titled with Ms. Torres
21 individually, because she's a Mexican national and she
22 can do that.

23 A. Yes, ma'am.

24 Q. And when you transfer title to Lot 3 to show
25 purchase --

1 A. Right.

2 Q. -- who is that going to be titled in?

3 A. It will be titled in both Tri-Core -- and,
4 again, this has to over a Mexican attorney, so I'm
5 saying my simple thoughts. I'm not a Mexican attorney.
6 That's going to be a combination of Tri-Core Companies
7 representing the investors that you show in your exhibit
8 here, and Sylvia Torres.

9 Q. Why would it be Ms. Torres as well?

10 A. I'm sorry?

11 Q. Why would Ms. Torres be on the title as well?

12 A. Because we would not have to go through the time
13 and expense again. It's more money driven, because we
14 don't have it right now, to go and form an S. de R.L.
15 So it would be more expedient to get the investors on a
16 piece of property on Lot 3.

17 Q. Okay. But that's where I'm confused. You said
18 that you were going to title it through Ms. Torres and
19 an S. de R.L.

20 A. And it could be going with an S. de R.L. What
21 I'm trying to say is that has to be done by a Mexican
22 attorney. He has to say the proper form.

23 Q. So it's possible the property could stay titled
24 with Ms. Torres?

25 A. No. I don't think so. I'm almost 99 percent,

1 Ms. Luedtke, that would not happen, no. We would not do
2 it.

3 Q. Okay.

4 A. I mean, that would be no safeguard for the
5 investors.

6 Q. Okay. Well, there's no safeguard right now with
7 Lot 47 either, correct? I mean, I'm just --

8 A. In theory, yes, ma'am.

9 Q. Do you have --

10 A. And I guess the -- I'm sorry. Go ahead.

11 Q. Do you have any documentation that shows the
12 process that you're at in terms of getting to title on
13 this property?

14 A. Lot 3?

15 Q. Yes.

16 A. Not yet, no.

17 Q. What's the purchase price for Lot 3?

18 A. I believe it's 3.6 million.

19 Q. Are you going to have to pay anything more than
20 that 3.6 million to actually get title transferred?

21 A. My understanding, no.

22 Q. And we obviously looked at a total amount here
23 in Exhibit S-47 of funds raised.

24 Where do you intend to get the remaining funds
25 to purchase that property?

1 A. There were a series of notes that were given by
2 Jim Stevens that will make up the difference.

3 Q. So Mr. Stevens has provided capital to the
4 company?

5 A. Promissory notes.

6 Q. Who is going to be taking the notes? Is
7 Ms. Torres going to be taking the notes?

8 A. The notes will be credited against the purchase
9 price.

10 Q. I'm confused.

11 A. I'm trying to explain it where it's not -- I'm
12 not trying to mislead you, believe me.

13 There is notes that Jim Stevens gave Tri-Core
14 that will be wiped out as part of the consideration for
15 the purchase of Lot 3.

16 ALJ STERN: Wait a minute. These notes are
17 payable to Tri-Core Companies?

18 THE WITNESS: Yes, sir.

19 ALJ STERN: Or Tri-Core Business Development?

20 THE WITNESS: Tri-Core Companies.

21 ALJ STERN: Okay. So Mr. Stevens executed a
22 group of notes payable to Tri-Core Companies for several
23 million dollars or something?

24 THE WITNESS: Yes.

25 ALJ STERN: Okay. So --

1 MS. LUEDTKE: Can I just ask why he did that?

2 ALJ STERN: Your guess is as good as anybody's,
3 I guess. I don't understand why.

4 THE WITNESS: Originally, on Lot 5, we were
5 going to be doing lot, parcel 5 of 5. The whole Lot 5
6 that was subdivided into five parcels. We were going to
7 be acquiring or given -- acquiring is right -- parcel 5
8 of Lot 5. Does that make sense? Okay.

9 The title problems that arose on Lot 5, forced
10 us over to do something different because Lot 5 was, had
11 clouded title. And the consideration for Lot 5 was the
12 extra work, or the work that we were doing, supporting
13 the whole Lot 5, not the parcel, the entire lot. So
14 that's why these notes came about.

15 ALJ STERN: And Mr. Stevens was just primarily
16 involved in Lot 5? Wasn't he, his deal was the lot --
17 that was the five sections in Lot 5, right?

18 THE WITNESS: Yes, sir.

19 ALJ STERN: But that's where Mr. Stevens is.
20 But now he's in Lot 3 too?

21 THE WITNESS: He's going to -- I don't know if
22 he's going to be in Lot 3. That's being put together by
23 an attorney, a Mexican attorney. I'm going to say, come
24 back and show it to you. That's not being evasive, it's
25 just the truth.

1 BY MS. LUEDTKE:

2 Q. Why would Ms. Torres wipe out the notes as part
3 of compensation that she should be getting for Lot 3?

4 A. I don't know why she would do it. I haven't
5 spoken to Sylvia.

6 Q. I assume you have an agreement with her to take
7 those notes as part of the compensation?

8 A. Yes. We have a verbal agreement.

9 ALJ STERN: And she's --

10 THE WITNESS: Yes, sir.

11 ALJ STERN: She's going to take notes -- Mr.,
12 what's his name, Stevens, is going to give her notes?

13 THE WITNESS: I don't know if Mr. Stevens is
14 going to give her notes, Your Honor.

15 ALJ STERN: Well, who is going to give
16 Ms. Torres, on the Lot 3 transaction, some notes? I
17 thought that's what you said.

18 MS. LUEDTKE: I don't think he said they were
19 going to give them notes. If I can clarify.

20 I think the testimony was that Mr. Stevens gave
21 Tri-Core Companies notes for parcel 5 of Lot 5 when they
22 did some extra work on that, when title went upside
23 down.

24 ALJ STERN: Okay.

25 BY MS. LUEDTKE:

1 Q. For lack of a better term; is that correct?

2 A. Yes, ma'am.

3 Q. And then, so those notes are from -- are they
4 Tri-Core Mexico Land Development, or are they
5 Mr. Stevens?

6 A. I believe, I don't have them in front of me, I
7 believe they're Mr. Stevens.

8 Q. All right. So Mr. Stevens gives notes to
9 Tri-Core Companies and those are several million
10 dollars?

11 A. Yes. Excuse me.

12 Q. And my understanding is that, in exchange for
13 Lot 3, you're going to give Ms. Torres some actual cash,
14 but the rest will be wiping out the notes that
15 Mr. Stevens owes the company?

16 A. I'll say yes to all of it except the cash part
17 to Ms. Torres. I'm not sure. I don't think so.

18 Q. Okay. So it would just be wiping out the
19 notes --

20 A. Yes.

21 Q. -- so that there is nothing owed by Mr. Stevens
22 to Tri-Core Companies?

23 A. Correct. Uh-huh. And it's quite possible, and
24 I don't know, and I know it sounds crazy as hell -- I'm
25 sorry -- it sounds crazy, but I don't know if Sylvia and

1 Jim had an arrangement for Lot 5, or whatever. I'm not
2 sure. I can't say why, the motivating factor is for
3 Sylvia. I can't speak for her. I haven't talked to
4 Sylvia in quite a while.

5 Q. You were here when Mr. Stevens gave some
6 testimony about the Tri-Core Mexico Land Development
7 offering for Lot 5?

8 A. Yes, I was.

9 Q. You testified that you were working as an
10 independent contractor for Tri-Core Business
11 Development.

12 Were you involved with preparing that PPM for
13 Mr. Stevens?

14 A. No.

15 Q. You weren't involved in that PPM at all?

16 A. No.

17 Q. Were you aware of the offering going on in Lot
18 5?

19 A. Yes, I was.

20 Q. For --

21 A. Oh, Lot 5. Oh, the entire lot, yes.

22 Q. Were you aware of the offering that was going on
23 by Tri-Core Mexico in Lot 5?

24 A. The PPM, yes, ma'am.

25 Q. Okay.

1 A. Ms. Luedtke, are we done with this one? I'm
2 sorry. You can't see it. S-187?

3 Q. I believe so, yeah.

4 A. Okay. S-128, right?

5 Q. Correct. This is another document that's been
6 admitted into evidence. It's another PMM by Tri-Core
7 Companies.

8 And if you look at the second, or I guess it
9 would be the third page in, it's dated February 1st,
10 2008. Do you see that?

11 A. Yes. On the top, yes.

12 Q. And were you involved in preparing this PPM?

13 A. Do you know what -- let me --

14 Q. If you want to take a look at it, feel free to
15 take your time.

16 ALJ STERN: You're on S-185, correct?

17 MS. LUEDTKE: S-128.

18 ALJ STERN: Oh, I'm sorry.

19 THE WITNESS: This is for Lot 5?

20 BY MS. LUEDTKE:

21 Q. That's what the testimony has been.

22 A. Yes. No, ma'am, not Lot 5.

23 Q. Were aware of the offering going on by Tri-Core
24 Companies in Lot 5?

25 A. I believe I was, yes.

1 Q. Do you know why two different entities would be
2 offering Lot 5 at the same time?

3 A. I think -- how many -- I shouldn't ask you this.

4 I believe -- and it was, it kind of confused me
5 when I first heard it myself -- I believe that there was
6 confusion existing between the full Lot 5 and parcel 5
7 of 5. Because whenever anything came up on Lot 5, it
8 always referred to Jim Stevens.

9 Q. Well, were -- I don't understand. Why, why, why
10 would two different companies be saying we're going to
11 buy it? Tri-Core companies is saying, in this private
12 placement, we are going buy Lot 5. And then Tri-Core
13 Mexico is saying, in their private placement, we are
14 going to buy Lot 5.

15 A. And that was Tri-Core Mexico Land Development?

16 Q. Yes.

17 A. Tri-Core Mexico Land Development was purchasing
18 the entire Lot 5, which was made up of five parcels, 1
19 through 5. This one I believe refers to the smaller
20 parcel, 1 of 5, which happens to be 5, Lot 5 of 5
21 parcels.

22 Q. Where is that made clear to investors that it
23 was only going to be one parcel of Lot 5?

24 A. I'd have to read it.

25 Q. I'm just saying, do you know if that was

1 something that was expressed to investors that they --

2 A. No, I don't, Ms. Luedtke. And that's why,
3 again, I was confused. I always thought it was the
4 whole Lot 5, the entire 5 parcels of 5.

5 Q. You thought that the Tri-Core Companies offering
6 was for all of Lot 5, as well, at the time of the
7 offering?

8 A. No, ma'am. No, no. I'm not saying that. I
9 always thought there was a mix up somewhere between
10 Tri-Core Mexico Land Development and the entire 5
11 parcels of Lot 5. So I'm not saying, no, that I didn't
12 think it was that.

13 I just said I was always a little bit confused.
14 Especially with the gentleman's testimony. Because he
15 always worked with Jim Stevens.

16 Q. Okay. I'm going to flip topics again.

17 A. Sure. Are we done with this?

18 Q. Yes. You can put that to the side.

19 You gave some testimony about the C&D
20 Construction.

21 A. Yes, ma'am.

22 Q. And you said that you had some input on the
23 contents of that PPM as well, correct?

24 A. Yes.

25 Q. Part of that PPM pledges security to investors

1 related to property in California and Nevada.

2 A. Yes.

3 Q. Do you know where that property is specifically
4 located, like a property address in California and
5 Nevada?

6 A. The California -- the Nevada property was
7 located, Owens, 130 West Owens, I believe. The Nevada
8 -- the California property, I might have heard it once.
9 I'm not quite sure, but it was a farm or something like
10 that.

11 Q. And was that --

12 A. I can't give you an exact address.

13 Q. Was that property that was owned by C&D
14 Construction during the time that the C&D offering was
15 being offered to investors?

16 A. Being drafted.

17 Q. Not drafted. Offered to investors.

18 A. Oh, sorry. Sorry.

19 According to Tony Salazar, yes. Anthony, Peter

20 A. Salazar, yes.

21 Q. And do you know if there have been any efforts
22 or filings to ensure that the investors in the C&D
23 offering have security in those properties, like deeds
24 of trust recorded, mortgages recorded, anything of that
25 nature?

1 A. No, I'm not.

2 Q. We also looked at a couple of select documents
3 from, I believe, it was R-25, and it showed ERC of
4 Chicago taking over some notes.

5 Go ahead.

6 A. Oh, I'm sorry. Thank you. Can I just backtrack
7 for a second to ERC, I mean C&D Construction and the
8 collateral?

9 Q. Yeah.

10 A. Originally, when Tony contracted, Tony said that
11 he was pledging collateral in property in California --
12 again, it was a farm, I forget exactly where it was --
13 and also the Owens property. After the fact, it came
14 out that Tony Salazar wasn't truthful, and that the
15 property in Owens was owned by 40 or 50 percent, or it
16 was split between Irma, and possibly Javier Huerta. I
17 think it just might have been Irma. She was an owner
18 along with another gentleman from California. I
19 remember his first name as David. So Tony
20 misrepresented what he could.

21 ALJ STERN: Let me, I mean, get some information
22 here.

23 C&D is a company involved in some sort of
24 construction in Nevada, correct?

25 THE WITNESS: No. It's construction cleanup.

1 They did the clean up of the houses.

2 ALJ STERN: Okay. So they're a construction
3 cleanup.

4 THE WITNESS: Yes.

5 ALJ STERN: But you had some dealings with
6 somebody named Peter Salazar that you referred to. He
7 had another name, Tony.

8 THE WITNESS: Tony. That's the middle name,
9 Anthony.

10 ALJ STERN: Oh, okay. And I saw his signature
11 on some documents.

12 THE WITNESS: Uh-huh, yes.

13 ALJ STERN: But, apparently, these individuals
14 here who are observing this proceeding, not taking an
15 active part, apparently, also had some ownership
16 interest in this entity; is that correct?

17 THE WITNESS: And that was disputed, and that
18 was part of the lawsuit.

19 ALJ STERN: That's part of this lawsuit that we
20 saw this big deposition from that --

21 THE WITNESS: Yes.

22 ALJ STERN: -- we really didn't get into it.

23 THE WITNESS: Yes, sir.

24 ALJ STERN: So during the time that Tri-Core was
25 dealing with C&D, they weren't dealing with the

1 Huerta's, they were dealing with --

2 THE WITNESS: Tony Salazar.

3 ALJ STERN: He was the -- and how did he come in
4 contact with -- or you may not know -- with Tri-Core?

5 THE WITNESS: Casimer Polanchek.

6 ALJ STERN: Oh. I guess that explains it.

7 All right. Go ahead. I'm sorry to interrupt.

8 Or would this be a good place to take a break?

9 MS. LUEDTKE: Yeah, we can take a break.

10 ALJ STERN: All right. We're going to recess,
11 and then we'll talk about when we are going to resume
12 tomorrow and how we are going to finish this up
13 hopefully.

14 Yes, sir?

15 THE WITNESS: Can I just, the one thing I wanted
16 to say earlier, can I have one minute to say it?

17 ALJ STERN: Yes.

18 THE WITNESS: Previously, when Mark Sherman was
19 here and testified that one of his documents was not
20 signed, and I believe it had to do, accredited or not
21 accredited, when Mark was on the stand, and he goes, I
22 did not have this form signed. And I believe it was
23 accredited and not accredited questionnaire --

24 BY MS. LUEDTKE:

25 Q. I'm going to stop you, because I don't even know

1 where we are going with that one, and I don't have the
2 documents.

3 I'll let Mr. Mogler talk to you about that, if
4 he --

5 A. Oh, okay.

6 Q. -- wants to clarify a document. But I don't
7 even -- look it --

8 A. I understand. I'm not sure of the procedure,
9 and I just --

10 Q. Mr. Mogler is going to have an opportunity to
11 talk to you again.

12 A. That's fine. I apologize for that.

13 ALJ STERN: That's okay. Okay. We'll recess
14 now, and then we are going to discuss what's going to
15 happen with all this material.

16 (The hearing recessed at 4:04 p.m.)

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1 STATE OF ARIZONA)
) ss.
 2 COUNTY OF MARICOPA)

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I, KAREN L. KESSLER, RPR, Certified Reporter
 No. 50821 for the State of Arizona, do hereby certify
 that the foregoing printed pages constitute a full, true
 and accurate transcript of the proceedings had in the
 foregoing matter, all done to the best of my skill and
 ability.

WITNESS my hand this 22nd day of May, 2014.


 KAREN L. KESSLER, RPR
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